

NORTHERN IRELAND VALUATION TRIBUNAL
THE HIGH HEDGES ACT (NORTHERN IRELAND) 2011 AND THE VALUATION
TRIBUNAL RULES (NORTHERN IRELAND) 2007 (AS AMENDED)

CASE REFERENCE NUMBER: 11/14

AIDEN DOWNEY – APPELLANT

AND

MOYLE DISTRICT COUNCIL – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O'Neill

Member: Mr Eric Spence MRICS

Belfast: 12 May 2017

DECISION

The unanimous decision of the tribunal, for the reasons noted below, is that the appellant's appeal against the decision of the Respondent not to issue a remedial notice is not made out and the tribunal orders that the appellant's appeal in this matter is dismissed and the tribunal orders accordingly.

REASONS

Introduction

1. This is an appeal under section 7 of the High Hedges Act (Northern Ireland) 2011 (the 2011 Act) against a decision of Moyle District Council on 8 May 2014 not to issue a remedial notice in respect of a hedge situated at 29 North Street, Ballycastle, County Antrim, BT54 6BW.

The background and the complaint

2. This appeal arises from a complaint about what is stated to be a high hedge situated upon property at 29 North Street, Ballycastle, County Antrim, BT54 6BW (the subject property). The owner of the hedge is Mr Francis McGinn (the owner).

The appellant is Mr Aiden Downey who owns a neighbouring apartment at 9 Fairview Apartments, North Street, Ballycastle, County Antrim.

3. The background is that the appellant, after various dealings with the owner, made a complaint to the Respondent to this appeal, Moyle District Council (the Council) under the 2011 Act. The complaint was dated 17 May 2012 and was made on the Council's high hedges complaint form.

4. The substance of the complaint to the council is

“Having owned the apartment for some 5 years now, the trees to next doors boundary have grown in excess of some 15 feet at least in that time. My main window to the apartment lounge is the biggest affected part and this has resulted in having a lack of light coming into the apartment due to the high level of leylandi trees now at levels above my 3rd floor apartment. Totally unacceptable.”

5. Upon receipt of the complaint the council investigated the matter and attended the site to conduct a survey. Measurements were taken. In consequence of this the council prepared a case report and on 8 May 2014 issued a formal decision notice to the appellant that the council had decided that the hedge in question is not acting as a significant barrier to light in accordance with the technical guidance. The notice advised the appellant of this right to appeal to this Tribunal.

The Appeal and complainant's submissions

6. In exercise of his statutory right to appeal, the appellant by appeal notice dated 1 June 2014 appealed the decision of the council. The grounds of appeal were as follows

“... The trees/hedges in question are adversely affecting my reasonable enjoyment of my property and this adverse effect warrants action to be taken. When I sit at my lounge window, all I see is big, dark conifers, trees and bushes. It is very dark at times as a consequence and I cannot enjoy living at this property. I had good light and enjoyed the superb views when I purchased it 7 years ago. The biggest influence on my decision to buy it. Over this last 7 years the bushes/trees/conifers have been allowed to grow with some of them now at 9 metres high. Moyle council's decision included a recommendation that the hedges/trees/bushes be limited to 6 metres or less. This has not been acted upon and would in anyway still not give me reasonable enjoyment of my property. As I would only see trees, bushes and conifers from my window and light would still be restricted.”

The law

7. The legislation relating to high hedges is set out in the 2011 Act which includes a definition of a high hedge as follows:

2—(1) In this Act “high hedge” means so much of a barrier to light as—

(a) is formed wholly or predominantly by a line of two or more evergreens; and

(b) rises to a height of more than two metres above ground level.

(2) For the purposes of subsection (1) a line of evergreens is not to be regarded as forming a barrier to light if the existence of gaps significantly affects its overall effect as such a barrier at heights of more than two metres above ground level.

(3) In this section “evergreen” means an evergreen tree or shrub or a semi-evergreen tree or shrub.

(4) But nothing in this Act applies to trees which are growing on land of 0.2 hectares or more in area which is forest or woodland.

5 —(1) For the purposes of this Act a remedial notice is a notice—

(a) issued by the council in respect of a complaint to which this Act applies; and

(b) stating the matters mentioned in subsection (2).

(2) Those matters are—

(a) that a complaint has been made to the council under this Act about a high hedge specified in the notice which is situated on land so specified;

(b) that the council has decided that the height of that hedge is adversely affecting the complainant's reasonable enjoyment of the domestic property specified in the notice;

(c) the initial action that must be taken in relation to that hedge before the end of the compliance period;

(d) any preventative action that the council considers must be taken in relation to that hedge at times following the end of that period while the hedge remains on the land; and

- (e) the consequences under sections 10 and 12 of a failure to comply with the notice.

(3) The action specified in a remedial notice is not to require or involve—

- (a) a reduction in the height of the hedge to less than two metres above ground level; or
- (b) the removal of the hedge.

(4) A remedial notice shall take effect on its operative date.

(5) “The operative date” of a remedial notice is such date (falling at least 28 days after that on which the notice is issued) as is specified in the notice as the date on which it is to take effect.

(6) “The compliance period” in the case of a remedial notice is such reasonable period as is specified in the notice for the purposes of subsection (2)(c) as the period within which the action so specified is to be taken; and that period shall begin with the operative date of the notice.

(7) Subsections (4) to (6) have effect in relation to a remedial notice subject to—

- (a) the exercise of any power of the council under section 6; and
- (b) the operation of sections 7 to 8 in relation to the notice.

(8) While a remedial notice has effect, the notice—

- (a) shall be a statutory charge; and
- (b) shall be binding on every person who is for the time being an owner or occupier of the land specified in the notice as the land where the hedge in question is situated.

(9) In this Act—

“initial action” means remedial action or preventative action, or both;

“remedial action” means action to remedy the adverse effect of the height of the hedge on the complainant's reasonable enjoyment of the domestic property in respect of which the complaint was made; and

“preventative action” means action to prevent the recurrence of the adverse effect.

8. If a council decides not to issue a remedial notice the complainant may appeal to the Valuation Tribunal against the decision.

9. The Valuation Tribunal Rules (NI) 2007 ('the Rules'), as amended by the Valuation Tribunal (Amendment) Rules (NI) 2012 provide rules for the determination of appeals under the 2011 Act. The matter was based on the written representations of the appellant and the owner.
10. The Rules are specific as to the grounds upon which an appeal against which what is referred to as an unfavourable decision may be made. These are contained in Rule 5D of the Rules as follows:
 - (a) that the council could not reasonably conclude that the height of the high hedge specified in the complaint is not adversely affecting the complainant's reasonable enjoyment of the domestic property so specified; or
 - (b) that, having concluded that the height of the high hedge so specified in the complaint is adversely affecting the complainant's reasonable enjoyment of the domestic property so specified, the council could not reasonably conclude that no action should be taken with a view to remedying that adverse effect or preventing its recurrence.

The evidence

11. The tribunal had before it the case file from the council and correspondence from the complainant and the owner all of which submissions were taken into account.

The technical evidence submitted by the Council

12. The council had taken measurements and made calculations in accordance with the High Hedges Act (NI) Technical Guidance (the Technical Guidance) issued by the then Department of Environment to establish the action hedge height.
13. The council found that the actual height of the hedge is 6.435 metres.
14. The council then proceeded to calculate the action hedge height of the hedge in question. The Technical Guidance contemplates two calculations to establish the action hedge height (i) the action hedge height for the garden and (ii) the action hedge height for windows.

15. In this case the council decided to omit the calculation regarding the garden area as it is a small paved area which is not a private area solely for the use of 9 Fairview Apartments as it has multiple users, is limited in size with no seating and is the access point for all the apartment owners.
16. In respect of the calculation regarding the loss of light to windows the council concluded that the closest distance from the hedge to the centre of the window was 2.92 metres. The council allowed the appropriate factor for the hedge being at right angles to the window (1), the height of the floor above the ground (5.639m) and the height of the base of the window wall above the base of the hedge (3.648m). On this basis the council calculated the corrected action hedge height for the window as 13.21 metres.
17. On this basis the council issued a decision on 8 May 2014 stating that the action hedge height was higher than the actual hedge height which indicates that the current height of the hedge is not likely to cause significant loss of light to the lounge window of 9 Fairview Apartments and therefore the council has decided that no formal remedial action can be taken at this time under the 2001 Act.
18. The decision of the council goes on to state that to prevent any adverse effect on the reasonable enjoyment of the complainant's property at 9 Fairview Apartments the council would recommend that the hedge owner trims the hedge annually to maintain it at or around a height of 6 metres or lower and this will still allow privacy to the hedge owners garden. The tribunal will return to the status of this aspect later in this decision.

The decision of the tribunal

19. In considering this matter the Valuation Member of this tribunal attended the property to undertake a site inspection on 24 February 2017.
20. In making his calculations the Valuation Member concluded that the average actual height of the hedge was 6.45 metres.

21. In establishing the action hedge height the Valuation Member had regard to the Technical Guidance. In the Technical Guidance reference is made to two calculations – loss of light to the garden and loss of light to windows.
22. In relation to the loss of light to a garden the Valuation Member observed that there is no garden as such which is attached to the property, the property being an apartment in an apartment block. There is a driveway between the apartment block itself and the hedge which is used by the owners of the apartment block to gain access to the carpark at the development. There is also a small paved area which is used by the apartment owners to gain access to the apartment block itself. However this would not appear to be an area which would be classed as being used by the complainant as a garden area for the purpose of the legislation. Furthermore the complainant has not made any submissions in relation to this area as his garden and merely refers to the loss of light to his window. Therefore the only calculation which is relevant is the loss of light to the window in the apartment.
23. The Valuation Member found that the closest distance from the hedge to the centre of the window was 3.2 metres. The hedge is at right angles to the window and the height of the floor above ground is 5.54 metres. Therefore he found that the corrected action hedge height for the window is 13.24 metres as opposed to 13.21 metres.
24. In this case therefore the action hedge height is 13.24 metres and the actual hedge height is 6.45 metres. Therefore the tribunal finds in favour of the council not to issue a remedial notice in respect of the hedge in question. There are no grounds made out that the council could not reasonably conclude that the height of the high hedge is not adversely affecting the complainant's reasonable enjoyment of the property at 9 Fairview Apartments, Ballycastle. Therefore in this case there is no reason for the appeal to be granted and the decision of the council not to issue a remedial notice is upheld.
25. The tribunal notes that the decision notice issued by the council on 8 May 2014 contains a section headed Remedial Action which states that to prevent any adverse effect on the reasonable enjoyment of the complainant's property the

council would recommend that the hedge owner trims the hedge annually to maintain it at or around a height of 6 metres or lower. This tribunal makes no comment on this which appears to be informative or guidance to the parties and does not form part of the formal decision of the council. It certainly does not constitute a remedial notice under the 2011 Act. Therefore this guidance is not the subject of this appeal. The tribunal would state that it is very important that the status of such information or guidance issued by a council is made clear in correspondence from the council so that all parties are clear as to the status and implications of such information or guidance.

26. In this case there is no reason for the appeal to be granted and the decision of the council not to issue a remedial notice is upheld.

Mr Charles O'Neill
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 1st June 2017