

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

CASE REFERENCE NUMBER: NIVT 30/21

TIMOTHY BLAKE – APPELLANT

AND

BELFAST CITY COUNCIL – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O'Neill

Member: Mr Brian Reid FRICS

Date of hearing: 11 October 2022, Belfast

DECISION

The unanimous decision of the tribunal, for the reasons noted below, is that the Appellant's appeal against the issue of a remedial notice dated 28 May 2021 is partially upheld and that the remedial notice attached to this decision issue as varied by the terms contained therein.

REASONS

Introduction

1. This is an appeal under section 7 of the High Hedges Act (NI) 2011 (the 2011 Act) against a remedial notice issued by Belfast City Council (the Respondent) dated 28 May 2021.

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 11 Innisfayle Park, Belfast BT15 5HS, (the subject property). The owner of the hedge is Mr Timothy Blake. The Respondent on foot of a complaint by a neighbour (the Complainant) made on the Respondent's high hedges complaint form, investigated the matter and accepted the matter as a high hedges' complaint.
3. In this decision it is not necessary to rehearse the detail of the efforts by the Complainant to seek to address the issues of concern with the hedge owner as the Respondent accepted that the Complainant had taken all reasonable steps to resolve the matters with the hedge owner before the formal complaint was made to the Respondent. Agreement was not reached between the parties and the Complainant made the complaint to the Respondent.
4. Upon receipt of the complaint the Respondent investigated the matter and attended the site to conduct a site survey.

5. The Respondent took 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. Measurements were taken and an initial assessment was made both in relation to the loss of light to the garden and loss of light to the window.
6. The Council when it considered the matter, noted that the issue involved two hedges:

Hedge One – a hedge which runs parallel and is orientated to the south of the complainant’s property. It is made up of two mature multi-stemmed *Griselinia Littoralis Variegata* with two large mature multi-stemmed Lawson Cypress trees *Chamaecyparis lawsoniana*, one on either side.

Hedge Two consists of a hedge which grows at 90 degrees and away from the complainant’s property and is orientated to the southeast.
7. The Respondent decided that Hedge One is adversely affecting the reasonable enjoyment of the neighbouring property at 6 Donegal Park Gardens, Belfast, BT15 5EU. The Council decided that Hedge Two is not adversely affecting the reasonable enjoyment of the property at 6 Donegal Park Gardens Belfast and that no action need be taken in respect of this hedge.
8. In addition to this the following preventative action was included in the Remedial Notice – Following the end of the period specified above, the council requires the following steps to be taken in relation to the hedge (c) maintain the two mature multi-stemmed *Griselinia Littoralis Variegata* which form part of the hedge so that at no time does it exceed a height of 6 metres above ground level and to maintain the two large mature multi-stemmed Lawson Cypress trees *Chamaecyparis lawsoniana* which make up the remainder of the hedge so that at no time do they exceed a height of 14 metres above ground level. It was further recommended that a further reduction of 0.30 metres of the whole hedge allowing a growing margin for maintenance to be carried out.

The law

9. 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.

10. 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. Rule 5B states that an appeal against the issue of a remedial notice may be made on one of the following grounds:

a. That the height of the high hedge specified in the remedial notice is not adversely affecting the complainant's reasonable enjoyment of the domestic property so specified;

b. That the initial action specified in the remedial notice is insufficient to remedy the adverse effect;

c. That the initial action specified in the remedial notice exceeds what is necessary or appropriate to remedy the adverse effect;

d. That the period specified in the remedial notice for taking the initial action so specified is not what should reasonably be allowed.

The evidence before the Tribunal

11. The tribunal had before it the case file from the Council and detailed submissions from the Appellant. All of these submissions were carefully considered by the tribunal and were taken into account in it arriving at its decision.

The Council measurements

12. On foot of the complaint an officer of the Council attended the property and took various measurements as follows in respect of Hedge One:

Loss of light to garden		Loss of light to window	
Area of garden	61.08m ²	Closest distance hedge to centre of window	8.95m
Effective hedge length	3.8m	Factor for hedge location reference the window	2
Effective garden depth	16.07		
Orientation	SE	Height of floor above ground	0
Distance between boundary and nearest part of hedge 0			
Allowance for slope -0.95		Allowance for slope/step -0.95	
Action hedge height (garden)	3.87m	Action hedge height (window)	4.53m

13. In accordance with the Technical Guidance the Council took into account the lower of the action hedge heights (for garden and window respectively) and this resulted in an action hedge height of 3.87 metres. Reference to these calculations will be made later in this decision.
14. On foot of its calculations the Respondent found that the action hedge height to be 3.87 metres and the Respondent found that the height of the hedge in question was adversely affecting the complainant's reasonable enjoyment of their property and issued a remedial notice.
15. In respect of Hedge Two the Council found that the action hedge height is 20 metres and that there is no need for a remedial notice in respect of this hedge. The Valuation Tribunal member agrees with this and therefore the tribunal finds that there is no issue that a remedial action was not issued in respect of Hedge Two.

The appeal and the submissions

16. The Appellant issued a notice of appeal to the Valuation Tribunal dated 21 June 2021. The grounds of appeal set out in the notice of appeal are as follows:

That the Council's decision goes beyond what is required by law. As the Appellant sees it the key issues are the same as those set out in his next door neighbour's appeal documentation. For expediency, he requests that the tribunal considers that appeal documentation with regard to this appeal.

17. As is prescribed in the legislation the matter was based on written representations by the Appellant and the Respondent. The matter was listed for hearing on 11 October 2022.

The Valuation Tribunal Member's calculations

18. The Valuation Member of the tribunal conducted a site visit of the property on 12 May 2022. His calculations were as follows in respect of Hedge One:

Loss of light to garden		Loss of light to window	
Area of garden	68.1m ²	Closest distance hedge to centre of window	10.91m
Effective hedge length	3.6m	Factor for hedge location reference the window	2
Effective garden depth	18.91m		
Orientation	SE	Height of floor above ground	0.16m
Distance between boundary and nearest part of hedge 1.71m			
Allowance for slope -0.73m		Allowance for slope/step -0.73m	
Action hedge height (garden)	6.65m	Action hedge height (window)	5.88m

19. The Valuation Member noted that the hedge is set back from the boundary and so in respect of the garden, the distance between the boundary and the nearest part of the hedge is 1.71 metres. This accounts for the difference in measurements such that the Valuation Member calculates the action hedge height for Hedge One is 5.88 metres. This is important and will be referred to latter in this decision.

The Appellant's submissions

20. The Appellant made various submissions to the tribunal in his appeal notice dated 21 June 2021 and in correspondence dated 13 July 2021. He also indicated that he wished the tribunal to consider submissions that had been made in another case to the tribunal. In summary and cumulatively these submissions are as outlined below.
21. The Appellant argues that the matter in question is not a hedge within the meaning of the 2011 Act. Furthermore, he states that there are gaps in the hedge which means that it is not interrupting the enjoyment of light by the complainant. He refers to the fact that there are deciduous trees in the line which shed foliage in wintertime and therefore the gaps are increased when the deciduous trees are not in foliage.
22. The Appellant also contends that the relevant trees were in situ long before the dwelling in which the complainant lives was built. Therefore, according to this argument, the complainant could not argue adverse effect by the trees because the

complainant never had any opportunity to enjoy any more light than had existed at the time of purchase of their property.

23. The Appellant also states that the action in the remedial notice issued by the Council would be such that it would have an adverse effect on the health of the hedge.

The tribunal's consideration of the matter

24. As is prescribed in the legislation the matter was based on written representations. The matter was listed for hearing on 11 October 2022.
25. The Valuation Member conducted a site visit attending both the property of the Appellant and the Complainant and noted the measurements referred to earlier in this decision.
26. In his submissions the Appellant included evidence referred to in another case by another appellant and asked that this be considered by this tribunal. It will be appreciated that each case stands or falls on its own facts and that some of the evidence given in this part, by its nature was specific to the other case. However, notwithstanding this, the tribunal has considered where relevant all the arguments put forward by the Appellant.
27. The Appellant in his submissions to this tribunal has pointed out that he considers that the relevant trees do not form a hedge. The Valuation Tribunal Member when he conducted his site visit found that the trees formed a hedge.
28. The Valuation Member further found that there was a hedge notwithstanding that there are gaps in the hedge. Under the High Hedges Act (NI) 2011, section 2, a 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. In this case the tribunal is satisfied that there is a hedge which is formed by a line of two or more evergreens. Therefore, it is a hedge for the purposes of the legislation.
29. In relation to the fact that the trees were present before the complainant's house was built and therefore the complainant could not argue that they were not adversely affected by the hedge must fail. The legislation in relation to high hedges is clear and unambiguous and does not take this into account in its drafting in that the Act states:
- 1(1) This act applies to a complaint which (a) is made for the purposes of this act by an owner or occupier of domestic property and (b) alleges a complainant reasonable enjoyment of that property that has been adversely affected by the height of the high hedge situated on land owned or occupied by another person.
30. Nothing in the legislation requires that the complainant must have owned or occupied the property before the existence of the hedge or to have enjoyed a certain amount of light that was then interfered with by the growth of the hedge.
31. Furthermore, the Act also states

1(2) This act also applies to a complaint which (a) is made for the purpose of this act by an owner of domestic property that is for the time being unoccupied and (b) alleges that the reasonable enjoyment of that property by a prospective owner of that property would be adversely affected by the height of the high hedge situated on land owned or occupied by another person.

32. In relation to the calculations in relation to the action hedge height in respect of Hedge One, the Valuation Tribunal member disagrees with the calculations of the Council largely in relation to the fact that the hedge is set back from the boundary and this needs to be considered. Therefore, on his calculations the action hedge height is that in respect of the calculation of light to the window which is 5.88 metres.
33. Therefore, it is the tribunal's decision that the hedge should be reduced to a height of 6 metres.
34. In relation to the Appellant's submission that cutting the trees anywhere below one third would adversely affect his enjoyment and he would suffer a huge negative environmental impact on his property, the tribunal will require that the hedge be reduced in height in two stages so that there will not be an adverse environmental impact on the property.
35. The tribunal agrees that hedges can form a natural habitat for nesting birds and wildlife and that the Appellant should make sure that any work undertaken should be done outside of the nesting period.

Conclusion

36. The tribunal has considered the detailed submissions made by both the Appellant and the Respondent in relation to this matter and has carefully considered all the evidence before it. The tribunal finds that the corrected action hedge height in respect of Hedge One amounts to 5.88 metres which is the lower of the action hedge height for the garden (6.65 metres) and that for the window (5.88 metres). As the hedge is now 18.35 metres in height action must be taken in relation to the hedge. In view of the calculations made by the Valuation Tribunal member, the tribunal in accordance with section 8 allows the appeal in part and varies the contents of the remedial notice issued by the council on 28 May 2021.
37. The remedial notice requires the Appellant to reduce the hedge in phases – phase one to a height of not more than 10 metres by 30 September 2023 and in phase two to a height not more than 6 metres before 30 September 2024. The remedial notice as varied is appended to this decision. The tribunal also requires that the hedge is to be maintained so that at no time after Phase 2 does it exceed the height of 6 metres above ground level.
38. In respect of Hedge Two the tribunal agrees with the view of the Council that no remedial action is required to be taken in respect of this hedge.

**Signed: Mr Charles O'Neill, Chairman
Northern Ireland Valuation Tribunal**

Date decision recorded in register and issued to the parties: 27 January 2023