

NORTHERN IRELAND VALUATION TRIBUNAL

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

CASE REFERENCE NUMBER: 19/20

DR JACQUELINE GRANLEESE - APPELLANT

AND

BELFAST CITY COUNCIL - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James Leonard, President

Member: Mr Tim Hopkins FRICS

Hearing: 21 February 2022, Belfast

DECISION

The unanimous decision of the tribunal, for the reasons provided below, is that the appellant's appeal against a Remedial Notice dated 16 November 2020 is not upheld and the tribunal Orders the appellant's appeal in this matter to be dismissed.

REASONS

Introduction

1. This is a reference under the High Hedges Act (Northern Ireland) 2011 ("the 2011 Act"). The statutory regime is prescribed by the 2011 Act and by the regulations made thereunder and this regime provides for a site visit by the Valuation Member of the tribunal and, thereafter, for a consideration of the appeal by a tribunal constituted of a Legal Member and the Valuation Member. There is no oral hearing in these cases; any evidence is derived from the Valuation Member's site visit and inspection of the locus and, further, from any documentary evidence (including electronic) received by the tribunal. All evidence thus available to the tribunal, from whatever source, was fully considered by the tribunal before reaching a determination.

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 15 Rosemount Park, Belfast BT5 7TR ("the subject property"). The appellant, Dr Jacqueline Granleese, is the owner of the subject property. A neighbour of the appellant, Mr Jackie Lau ("the complainant"), resides at 17 Rosemount Park, Belfast BT5 7TR. In the determination that follows the expression

“hedge” is used, initially, by way of description of the subject matter under consideration, pending a determination by the tribunal as to whether or not this expression, factually and legally, fulfils the statutory definition. The background to the matter is that the complainant, Mr Lau, (after various dealings with the appellant required to be made under the statutory regime before a complaint may be accepted), made a complaint under the 2011 Act to the respondent to this appeal, this respondent being Belfast City Council (“the Council”). The complainant paid the requisite fee, in this case £350.00. The complainant’s complaint form which is set forth in the evidence sets out the grounds of his complaint and also details some endeavours made to resolve matters. Reference is made to others also approaching the appellant concerning the matter and there is some documentation in respect of this. It is clear to the tribunal that the issues of concern have been ongoing for a number of years and, from the evidence, neighbourhood concerns are not just confined to the complainant. However, leaving this latter aside for the purposes of this appeal, the tribunal in this case is directing its focus to the complaint and to the resultant action taken by the Council.

3. The tribunal has accordingly noted the substance of the written complaint to the Council by the complainant, evident from the documentation provided. The essence of this complaint has been succinctly stated by the Council as: “The complainant alleged that the hedge is adversely affecting the enjoyment of the domestic property at 17 Rosemount Park, Belfast BT5 7TR by acting as a barrier to light”.
4. In this decision, the tribunal does not need to go into the detail of the preliminary meetings and various correspondence and discussions between the appellant and the complainant (and indeed two other identified neighbours), for the reason that the Council has readily accepted that proper endeavours had been made by the complainant to resolve matters directly with the appellant prior to the formal complaint being made to the Council. It is sufficient to say that agreement was not reached between the parties and the complainant accordingly proceeded to lodge his complaint with the Council.

The Council’s Action

5. Upon receiving the complaint the Council invited the appellant to submit a statement on 23 January 2020. Then a Council official, Mr Joe Higginson, arranged to visit the site on 6 October 2020. Measurements were taken by Mr Higginson and the tribunal has inspected Mr Higginson’s resultant report together with the calculation sheets compiled by him in the standard form. The matters reported upon, including detailed calculations, are as set out in Mr Higginson’s report and any such have been fully reviewed by the tribunal’s Valuation Member in the consideration of this appeal.
6. It is now appropriate to specify certain matters contained within the report prepared by Mr Higginson. The report has identified evergreen Leyland Cypress trees x *Cupressocyparis leylandii* at the locus. This specified tree type is stated to be very hardy, fast-growing and generally to form a dense, oval or pyramidal, habit when left unpruned. It is further stated that this species responds well to pruning. It is mainly used to create a formal hedge, screen, or windbreak, with an average growth rate of between 0.90 m -1.2 m per year. The trees within this hedge are described as being mature. However it is stated that these would continue to grow taller, if left unpruned.

The hedge is orientated to the north of the complainant's property and is positioned parallel to the complainant's house. Measurements are provided including the distance to the nearest window in the complainant's house, which is on the first floor and photography illustrates the situation, including the extent of the foliage in an aerial photograph.

7. Mr Higginson's report then, in turn, briefly sets forth the respective cases for the complainant and for the appellant. The case for the complainant is stated to be that the height of the hedge adversely affects the complainant's property by significantly reducing sunlight/daylight and that it has a very oppressive impact on the complainant's home and garden. In opposition to this case, the case for the appellant is stated to be that the complainant refers to two individual trees which latter, in the appellant's view, do not constitute a "hedge" under the 2011 Act. The appellant is also stated to be maintaining that the trees at this locus are a haven for wildlife, including birds and bats.

8. Mr Higginson's report then outlines the "main considerations" taken into account and states that the respondent's role in these cases is to seek to strike a balance between the competing rights of neighbours to enjoy their respective properties and the rights of the community in general and, thereby, to formulate a proportionate response to the complaint. The main considerations in the instant case are stated in Mr Higginson's report to include whether the problems complained of were sufficiently serious to justify action being taken in relation to the hedge, bearing in mind the effect such action would have on the property where the hedge is located and in the wider area. The report then proceeds to detail and to conduct an appraisal of the evidence. This section of Mr Higginson's report refers to the "technical guidance" employed in calculating the height a hedge should be in order not to cause unreasonable obstruction of light to windows and gardens. In these matters, so-called "technical guidance" refers to the "Guidance for Councils issued under the High Hedges Act (Northern Ireland) 2011". This "technical guidance" assists in a common approach being taken across all councils in Northern Ireland to the determination of complaints made under the 2011 Act. This guidance has been fully taken account of by the Valuation Tribunal in all appeals since the implementation of the 2011 Act statutory regime. The results consequently reported upon by Mr Higginson for the Council showed that the hedge was taller than the recommended height. It was also noted that the trees which made up the hedge were fast-growing. In terms of privacy, the observation made was that the height recommended would be enough to maintain privacy to both properties. In terms of the health of the hedge, it is reported that this particular species of hedge can grow quite vigorously. Cutting the hedge down to the height recommended in the "technical guidance" would involve a significant reduction of the current height (at the date of reporting). However, this was less than 50% of the current hedge height and thus it might be detrimental to the health of the hedge. Therefore the respondent's recommendation was that there ought to be a lesser amount of reduction to the hedge height, which should not result in damage to the hedge and which would accordingly not restrict any appropriate action being taken to reduce the hedge height. It was also recommended that a phased approach should be taken to reduce the hedge height. This latter issue was therefore stated as is specified in the consequent Remedial Notice. In the "formal decision" section of the Council's report it is concluded that the Council had decided that the height of the hedge was affecting the complainant's reasonable enjoyment of their property and accordingly that a Remedial Notice specifying action to be taken was to follow.

9. In a summary of the requirements of the resultant Remedial Notice, it is therein stated that the Remedial Notice specified that the hedge would be reduced to a height of not more than 10 m above ground level and also recommended was a further reduction of 0.3 m to allow the hedge to grow between trimming and still not cause significant problems. After the date specified in the Remedial Notice the specification was that the hedge must be trimmed regularly to ensure that it never exceeded a height of 10 m above ground level. The requirement to maintain the hedge at or below this height of 10 m should last until the hedge was removed or had died. The Remedial Notice specified that owner of number 15 Rosemount Park was obliged to carry out the work specified in the Remedial Notice within the timescale therein stated. The consequences of failure to proceed with the specified action (a possible prosecution and fine) were indicated. It was further stated that the Remedial Notice did not give the complainant any right to intervene and take the necessary action themselves. Finally, a statutory right of appeal to the Valuation Tribunal was also stated in the conclusion.

10. The foregoing points were accordingly encapsulated in the Remedial Notice, which was dated 16 November 2020 and was issued by the respondent and served upon the appellant. In the Remedial Notice it was clarified that two options were available to the recipient (in this case the appellant), either in regard to a single-phase or else a two-phased approach. There should be initial action taken to reduce the hedge to a height of not more than 10 m with a further reduction of 0.30 m, and this should be complied with in full by 16 December 2020. However, if carrying out a two-phased approach, the Remedial Notice specified that phase one, to reduce the hedge to a height of not more than 15 m, should be completed by 16 December 2020 and then phase two, to reduce the hedge to a height of not more than 10 m, with a further reduction of 0.30 m, should be complied with in full by 16 December 2021.

The Appeal

11. In exercise of her statutory entitlement to appeal available under the 2011 Act and regulations, the appellant, by Appeal Notice (Form 8) dated 8 December 2020, appealed to the Valuation Tribunal. The tribunal shall comment in some further detail below concerning the appellant's specific grounds of appeal but, in summary, the appellant in her appeal identified a number of grounds. The first contention advanced in the appeal was that, examining the pertinent statutory provisions, the trees abutting the complainant's driveway did not form a "hedge" within the statutory definition. Secondly, some of the photographic evidence produced by the respondent must have been recorded prior to 2016 in which year the appellant had paid to have a tree removed. Thirdly, the Remedial Notice was based on the respondent's findings that the "hedge" (which latter was not accepted as fulfilling the statutory definition by the appellant) was causing a significant obstruction to daylight and sunlight to the complainant's property and this was disputed. It was asserted that no evidence had been presented other than the respondent referring to the "technical guidance". The appellant had commissioned a "sun model" using the latest technology. This had been completed by a lecturer, Mr David Houston, from the School of Natural and Built Environment, Queens University Belfast. It was asserted by the appellant that it is clear from this "sun model" (as evidenced in the video animation of that as submitted) that this provided evidence that the "hedge" did not

cause a significant obstruction of daylight and sunlight to the complainant's property. The appellant has also stated that this "sun model" was based upon a day of high level sunshine, the 4th of August, and that the "sun model" showed that the "hedge" did not cause obstruction of daylight and, indeed, that the findings of the "sun model" demonstrated that the complainant's property caused the appellant's property to suffer from obstruction of daylight and sunlight. Accordingly, it was asserted that the "sun model" supported a conclusion at variance with the respondent's assessment. Thus the basis upon which the Remedial Notice had been issued was unlawful. Moreover, the trees (given that they were over 44 years old) were unlikely to significantly grow further and thus did not result in a significant obstruction of daylight to the complainant's property. In her final point, the appellant states that she had consulted with wildlife experts and that these experts had informed her that it was not possible to trim/top the line of trees without disturbing those creatures that lived there, such as protected species like bats. So, even though the line of trees and the single tree were higher than defined by the legislation, they did not affect the enjoyment of light to the only person whose land abutted the appellant's property. Accordingly, the appellant requested that the Remedial Notice should be set aside so that the bird and animal life that flourished in the appellant's garden might continue to do so. The appellant proceeded to provide a listing of various birds, mammals and insects.

The Statutory Provisions

12. The statutory provisions concerning the high hedges regime are to be found in the 2011 Act. The procedure essentially is as follows (for ease of description "B" being the owner or occupier of the land upon which the high hedge is situated and the party complaining being "A"): -
 1. A first approaches B concerning the high hedge adversely affecting reasonable enjoyment of A's domestic property and A endeavours to negotiate a resolution of the problem with B.
 2. If A is unsuccessful, A then lodges a complaint with the appropriate Council (section 3) and pays the appropriate fee (section 4). Each Council may determine an applicable fee (if any), up to a statutory maximum. Provisions enable the Council, once the Remedial Notice takes effect and after any appeals, to refund the fee (if any) to A, and the Council may then levy a fee on B.
 3. The Council then determines the appropriate action, if any, under the 2011 Act (sections 5 & 6).
 4. The Council's action may result in the issue of a "Remedial Notice" (section 5) which may require initial action to be taken before the end of a "compliance period" (such as reduction in hedge height by a specified amount, but not to a height of less than two metres) and any further preventative action following the end of a compliance period and any consequences of non-compliance. The Remedial Notice shall specify an "operative date".
 5. The Remedial Notice may be relaxed or withdrawn by the Council (section 6).

6. If B fails to take the action specified in the Remedial Notice B may be subject to proceedings (section 10).

7. Either A or B can appeal against the Council's decision to the Valuation Tribunal (section 7).

8. The tribunal shall arrange for the tribunal's Valuation Member to conduct a site visit. A two-Member tribunal panel consisting of the Legal Chairman and Valuation Member shall then determine the appeal by quashing or varying the Remedial Notice, by issuing a Remedial Notice where none has been issued, or by dismissal of any appeal. There are no oral hearings.

9. If any action such as is specified in the Remedial Notice is not taken within the compliance period, the Council can itself take appropriate action and can recover any expense reasonably incurred from B (section 12).

10. Any Remedial Notice, and any fees payable or expenses recoverable under the Act, may be registered as a statutory charge (section 15).

A number of statutory provisions now need to be set out, as the wording is material to the issues in this case. In respect of the technical definition of what constitutes a "high hedge" for the purposes of the 2011 Act, it is provided as follows: –

High hedge

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.

In respect of Remedial Notices it is provided as follows: –

Remedial notices

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.

Under section 7 of the 2011 Act appeals against Remedial Notices and other decisions of councils may be made in the prescribed manner to the tribunal and in this instance the appeal by the appellant is against the issue of a Remedial Notice.

The Evidence and Submissions

13. The tribunal has carefully noted the written evidence adduced and arguments advanced. The evidence includes a “sun model” submitted by the appellant in the form of a video animation. The tribunal had before it all of the papers which were made available to the respondent Council in connection with the complaint at the time of the Remedial Notice being made under section 5 of the 2011 Act. These papers included the complainant’s complaint made to the Council, copies of correspondence between the appellant and the complainant (and two other identified persons) copy correspondence between the appellant, the complainant and the respondent. These papers also included the Remedial Notice together with the detailed report concerning the matter prepared by Mr Higginson and explaining in summary form the evidence and information gathered and how the respondent had weighed the various issues raised in the matter. The tribunal's Valuation Member, in accordance with the applicable procedure, attended the site on 8 November 2021 and conducted a site survey and inspection. Any information and evidence gained as a result of that survey and inspection was considered by the tribunal, together with all of the other evidence available, in reaching a determination in the matter.

The Technical Evidence concerning the issue of Height Reduction

14. The Valuation Member’s site inspection and survey revealed that apparently one tree had been removed, as had been asserted by the appellant. However the evidence from the Valuation Member’s inspection was that the foliage of the two remaining trees still merged, in the opinion of the Valuation Member, to form a barrier to light (thereby negating section 2 (2) of the 2011 Act). It is to be noted that the respondent’s report refers to all of the trees at this locus not just to the two identified by the appellant. Perhaps some confusion might have been engendered by a misunderstanding in that regard. As a result of this inspection, the Valuation Member’s opinion was that the trees at the locus did constitute a “hedge”, as defined under the provisions of the 2011 Act, section 2. Furthermore, the Valuation Member conducted a technical assessment and, as a consequence, was in a position to confirm that the calculations prepared by Mr Higginson on behalf of the respondent Council were substantially accurate with only minor, and not material, variations observed. The assessment of the Valuation Member, after having inspected the locus, was that in respect of the garden area the hedge height was 20 m; the action hedge height assessed by the respondent was 11.95 m and, as assessed by the Valuation Member, was 12 m. In respect of the relevant window (at first floor level) the hedge height was, again, 20 m; the action hedge height as assessed by the respondent was 7.27 m and as assessed by the Valuation Member was 7.25 m. Accordingly, as mentioned, there are no very significant, indeed material, variations between the technical measurements and assessment by the Council and those conducted by the Valuation Member. All of the other measurements and technical aspects of the content of Mr Higginson’s report were checked by the Valuation Member and were found to be substantially accurate.
15. Based upon all of this, the conclusion of the Valuation Member, from the evidence of the site visit and technical assessment on that occasion, was that the report prepared on behalf of the respondent Council was substantially accurate and the contents could not be discounted by the tribunal on grounds of inaccuracy nor arising from any technical deficiency or error.

The Tribunal's Determination of the Appeal

16. Having considered all of the available evidence, in respect of the issues raised in this appeal, the tribunal makes the undernoted determination.
- 16.1 Firstly the trees observed at the locus do constitute a "high hedge". The appellant's assertion in that regard is not upheld. This determination is made by the tribunal for the reason that this subject constitutes a hedge, within the statutory definition of section 2 of the 2011 Act. This exists as a high hedge (as defined) which constitutes a barrier to light and which is formed wholly or predominantly by a line of two or more evergreens; it rises to a height of more than two metres above ground level. The tribunal will further comment below on the "barrier to light" issue, when addressing any evidence available from the "sun model".
- 16.2 Secondly, the appellant had made the assertion that some of the photographic evidence produced by the respondent must have been recorded prior to 2016 in which year the appellant had paid to have a tree removed. That may be so, but this does not affect the substance of the tribunal's determination in this appeal.
- 16.3 Thirdly, the appellant's assertion was that the Remedial Notice was based on the respondent's findings that the "hedge" was causing a significant obstruction to daylight and sunlight to the complainant's property. This was disputed by her. It was asserted that no evidence had been presented other than the respondent's referring to the "technical guidance". The use of the "technical guidance" is an intrinsic part of the method used to assess the substance of any complaint made to any Council under the 2011 Act and to address the issue of whether or not a Remedial Notice ought properly to be issued by the relevant Council. The model employed and method of assessment devised in the "technical guidance" takes account of all relevant technical matters and issues which might bear upon the Council's decision and it has been carefully devised and constructed in that regard. The "technical guidance" is intended to be read in conjunction with the statutory provisions. The tribunal takes due notice of that fact. The appellant will have been provided with a copy of this technical assessment as conducted on behalf of the Council and will thus be able to observe therein the relevant factors taken into consideration. In this context, the tribunal has been provided with the appellant's commissioned "sun model" and the tribunal has examined this in detail concerning any potentially relevant evidence available therefrom to set against the evidence of the respondent's technical assessment. It has to be borne in mind that this latter technical assessment on behalf of the respondent has been determined by the tribunal's Valuation Member to be substantially accurate. The tribunal harbours a number of issues or concerns concerning the "sun model". Firstly, insofar as can be observed (for the "sun model" does not specify certain potentially relevant detail, including calculated or notional time of year, time of day, any relevant heights and measurements and, for example, orientation of the subject) the "sun model" appears to address only issues of direct sunlight, unimpeded and direct, without any account afforded of indirect or diffused light. The statutory consideration is whether or not a "high hedge" constitutes a "barrier to light". There is no reference comprised in the statutory definition to direct sunlight. Indeed the site inspection by the Valuation Member revealed a substantial effect of the hedge constituting a barrier to light, this affecting both the garden to the complainant's property and also an elevated window. For this reason, the tribunal

determines that it is appropriate to attach substantial weight to the respondent's technical assessment conducted under the "technical guidance" provisions, in comparison or in contrast to any evidence available from the "sun model". There is nothing in the latter model which would cause the former significant evidence to be displaced and it would be entirely inappropriate for the tribunal to discount or to disregard such evidence resulting from the proper and accurate application of the "technical guidance".

- 16.4 Fourthly, the appellant's assertion was that the trees (given that they were, she states, over 44 years old) were unlikely to significantly grow further and thus did not (or would not) result in a significant obstruction of daylight to the complainant's property. This point is not accepted by the tribunal and there is no persuasive evidence to support this assertion.
- 16.5 In her final assertion, the appellant has stated that she had consulted with wildlife experts and had been informed that it was not possible to trim or top the line of trees without disturbing those creatures that lived there, such as protected species like bats. So, the appellant had requested that the Remedial Notice should be set aside so that the bird and animal life that flourished in the appellant's garden might continue to do so. Firstly, there is no corroborative evidence to support this assertion. Furthermore, the "technical guidance" obliges Councils to give consideration to the issue of historic, wildlife, or landscape value. For example, any remedial action is normally confined to times of the year when nesting birds would be least affected. However, there is no evidence placed with the tribunal that any persuasive case was made by the appellant to the respondent which required such consideration to be applied, other than that which has already been taken account of within the content of the Remedial Notice. The tribunal is not persuaded that there is any reason on account of this assertion to quash or not to uphold the Remedial Notice as it has been issued.
17. For the foregoing reasons, the tribunal upholds the respondent's Remedial Notice and dismisses the appellant's appeal against the Remedial Notice concerning all of the grounds advanced by the appellant. These findings accordingly dispose of the issues raised by the appellant on appeal and the appeal is dismissed. Any suspension of the effect of the Remedial Notice pending this appeal being concluded, is accordingly removed and the Remedial Notice is subsisting and fully effective, save for the matter of compliance dates. As the dates specified in the Remedial Notice have been suspended pending the outcome of this appeal, the respondent Council should now, forthwith, further clarify to the appellant the appropriate compliance dates, taking the date of issue of this determination properly into account.

James Leonard

James Leonard, President

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 29 March 2022