

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

CASE REFERENCE NUMBER: NIVT 12/20

MR BRIAN MCCABE– APPELLANT

AND

ANTRIM & NEWTOWNABBNEY BOROUGH COUNCIL – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Francis J Farrelly Esq

Valuation Member: Brian Reid Esq (FRICS)

Date: 16th November 2021

DECISION

The unanimous decision of the tribunal is that the appellant's appeal against the issue of remedial notice dated 22 October 2020 is upheld in part and the notice corrected as stated below.

REASONS

Introduction

1. This is an appeal under section 7 of the High Hedges Act (Northern Ireland) 2011 (the 2011 Act) against a remedial notice issued by Council (the Respondent) on .

Mr McCabe owns 67 Largy Road, Crumlin, BT29 4RS. His next-door neighbour, Mr Brendan Donnelly, whose postal address is 2B Gortnagallon Road, Crumlin, BT29 4QR complained about Mr McCabe's hedge. This resulted in an investigation by Antrim and Newtownabbey Borough Council. This included a site visit on 18 September 2019 and an opinion from a Dr Philip Blackstock, an arboricultural and woodland consultant employed by the Council. The conclusion was that the complaint was upheld.

The Council found the height of the hedge caused significant obstruction of light to Mr Donnelly's property. The Council issued a remedial notice, dated 22 October 2020, under

section 5 of the High Hedges Act (Northern Ireland) 2011. The notice relates to a hedge created of Leyland cypress at the rear of 67 Largy Road comprising of 6 cypress trees along the north-west boundary. These are shown on a plan included with the notice.

By way of remedy the Council required Mr McCabe within three months of the notice to reduce the height of the cypress trees between their properties. The height was to be 5 m, measured on their live crowns closest to the boundary with Mr Donnelly and 9.5 m when measured furthest away from the boundary.

After the three months the hedge was to be reduced in height so as not to exceed 5.5 m at the boundary with Mr Donnelly and 10 m where it bounds the road. The recommendation was that the hedge be cut back annually to a height of 5 m and 9.5 m respectively to allow for regrowth between trimmings and still not exceed the specified height.

Mr McCabe has exercised his right of appeal to the Valuation Tribunal and paid the appeal fee of £126. The statutory authority is section 7 of the High Hedges Act (Northern Ireland) 2011. The appeal is being decided on the papers provided by the respondent. In addition, the valuation member of the tribunal, Mr Brian Reid, visited and prepared a report.

Consideration.

The letter from Antrim and Newtownabbey Council of 22 October 2020 states the hedge was significantly higher than the recommended height. They said it exceeded the recommendation by over 7 m. It was found to have a significant impact on the complainant's property. The report concluded by saying the hedge causes a significant obstruction to light. In order to satisfy the technical guidance, the hedge would have to be reduced by more than one half of its current height which could result in it dying. The proposal was that the cypress trees are reduced in height.

Mr Brian Reid on behalf of the tribunal visited the property on 2 August 2021 and conducted calculations on site. He calculated the garden area at 30.9 m² as compared to the 310 m² assessed by the Council. Following from, the hedge height was 6.8 m rather than the 7.2 m calculated by the Council. Mr Reid also noted that the sloped site had not been taken into account by the Council. His conclusion therefore was that the hedge would need to be maintained at a height below 5.8 m rather than the 5 m indicated by the Council.

The technical guidance recommends that the hedge is cut down to between 600mm and 1 m below the Overall Action Hedge Height to give a suitable margin for growth. In this case the Council have recommended a reduction which is 2.2m below their overall Action Hedge Height. A summary of his calculations is provided in the index below. The reduction in height is to be performed over two stages.

The tribunal's decision in relation to the appellant's submissions

The decision of the tribunal applying the original published technical guidance from the DoE is that the hedge does breach the High Hedges Act (Northern Ireland) 2011. The photographs taken clearly demonstrate the significant overgrowth which has occurred, and it is not difficult to see the adverse impact it has had upon the light to Mr Donnelly's property. The complaint is upheld.

The remedial action is that the height of the hedge proximate to the boundary with Mr Donnelly's property is to be maintained at a height of 5.8 m. The reduction is to take place in a two-stage process, the timing of which is to be determined by the Council in accordance with good practice.

Chairman: Francis J Farrelly Esq

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 15 February 2022

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The overall Action Hedge Height is always the lower of the Corrected Action Hedge Height for the Garden or the Corrected Action Hedge Height for the Windows.

The Council and the Tribunal both agree it is the Corrected Hedge Height for Windows which should be used.

Windows	Council Calculations	Tribunal Calculations
Closest distance from hedge to Centre of window (K)	6.2m	5.25m
Orientation factor (L)	1	2
Uncorrected AHH for Window(K/L)+1 (M)	7.2m	3.62m
Height of Floor above ground level (N)	0	3.0m
Base of wall above base of hedge (P)	0	0.25m
Corrected action Hedge Height for Windows (M+N+P)	7.2m	6.87m
Overall Action Hedge Height	7.2m	6.87m
Buffer Zone/Growing Margin – AHH Minus 1metre	6.2m	5.8m
Remedial Notice Requirement	5.0m	5.8m
Error	1.2m	

The Law

2. 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.

3. 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.

4. 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.