

Northern Ireland Valuation Tribunal
The High Hedges Act (NI) 2011
The Valuation Tribunals Rules (NI) 2007 (As Amended)
Case Ref: NIVT 18/20

MR JOSEPH ALLEN
APPELLANT
and
BELFAST CITY COUNCIL
RESPONDENT

Chairman – Mr Michael Flanigan
Valuation Member – Mr Chris Kenton
Belfast 27th June 2022

The unanimous decision of the Tribunal for the reasons noted below is that the appellant's appeal against a decision of the Respondent to issue a Remedial Notice is dismissed.

Background

This is an appeal under Section 7 of the High Hedges Act (NI) 2011 ("the Act") against a remedial notice of Belfast City Council dated 17th November 2020 issued in respect of a hedge situate at 13 Innisfayle Park, Belfast, BT15 9HS.

This appeal arises from a complaint in respect of a high hedge situated at 13 Innisfayle Park, Belfast ("the property"). The complaint was made by Michael Casement of 10 Donegall Park Gardens, Belfast, BT15 5EU ("the Complainant").

Upon receipt of the complaint the council investigated the matter and attended the site to conduct a survey. As a consequence of this the council on 17th

November 2020 determined that the hedge in question was a high hedge acting as a barrier to light to the complainant's premises and issued a decision notice to the appellant directing the following steps. In order to prevent significant damage to the hedge it was directed that a two-stage approach be adopted to reduce the height of the hedge to an Action Hedge Height (AHH) as follows: -

1. Initially reduce the height to 16 metres to be completed by 17th December 2020.
2. Reduce to a height of 12 metres to be completed by 17th December 2021.

The notice advised the appellant of his right to appeal to this tribunal.

The Appeal

In exercise of his statutory right to appeal, the appellant by appeal notice dated 14th December 2020 appealed the decision by Belfast City Council.

The notice of appeal relied upon one ground for appeal specified under the Valuation Tribunal (Amendment) Rules (NI) 2012 as follows: -

- 5.B(a) That the height of the high hedge specified in the remedial notice is not adversely affecting the claimant's reasonable enjoyment of the property so specified.

Also in the Notice of Appeal the appellant stated his intention to provide a detailed statement of case in support of his appeal. The appellant subsequently made a substantial submission in support of the Appeal which included legal arguments and further grounds of appeal.

The Tribunal had before it the case file from the Council, submissions from the appellant and took into account all of the material before it. The Council had

taken measurements and made calculations in accordance with the Act to establish the Action Hedge Height (“AHH”). On 3rd February 2022 Mr Chris Kenton, a valuation member of the NI Valuation tribunal conducted a site inspection and prepared a report for the assistance of the tribunal.

The hedge which is the subject of the complaint and remedial notice is a well-established line of evergreen Leyland Cypress trees. The council had estimated at the time of their inspection the height of the trees at 20 metres whereas the appellant had estimated their height at 22 metres.

The Act defines a high hedge under section 2 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 2 meters above ground level.

2 (2) For the purposes of sub section (1) a line of evergreens is not 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 2 meters above ground level.

The appellant sought to argue that the Remedial Notice should not have been issued for two main reasons:

(1) that the complainant could not have suffered a loss of reasonable enjoyment of the property by reason of the height of the high hedge because the hedge had been in existence for a substantial period of time before the complainant’s house had been built and he had commenced occupation.

(2) That there were sufficient gaps within the hedge to take it outside the remit of the act and that there was adequate light through the gaps such that it was not a barrier to light.

In addition, the appellant's submissions sought to introduce a large range of arguments in relation to the original Council decision including those of legality, irrationality, and failure to give adequate reasons. Further submissions from the appellant also sought to introduce the law of nuisance, and the defence that the complainant had by moving to premises beside the hedge, had brought himself to a nuisance.

Decision

The High Hedges Act (NI) 2011 came into force on 1st April 2012 and from that date the law in relation to high hedges has been governed by statute. The Act specifies both the mechanism whereby a complaint can be raised, the powers of the council to make a remedial order and the grounds for appeal to the Northern Ireland Valuation Tribunal. There are four grounds of appeal against a Remedial Order from a Council. These are set out in the Valuation Tribunal (Amendment) Rules (NI) 2012 as follows:

5B. An appeal under section 7(1) of the 2011 Act against the issue of a remedial notice may be made on any 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, and

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

The Valuation Tribunal can only grant an appeal if an appellant can bring their

case within one of the four grounds of appeal specified in the Act and has no power to consider grounds of appeal other than those set out in the statute.

In support of his appeal the appellant launched a veritable armada of common law and judicial review arguments all of which must perish on this particular rock. Because the problem of High Hedges has been made the subject of a statute the Tribunal must look to the statute and to the statute only to determine this appeal.

In relation to the grounds of appeal which are available to the appellant the Tribunal has examined them as follows

The appellant's first argument was that the complainant's reasonable enjoyment of the property was not adversely affected by the hedge.

5 (b) (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.

This argument was based upon the fact that the hedge had been a very significant height before the complainant's house was built. The appellant's submission was that the complainant could not argue that he was adversely affected by the hedge because he had never had the opportunity to enjoy any more light than had existed at the time of his purchase of the property. The appellant sought to introduce various rules of statutory interpretation to support the argument which he advanced. The Tribunal was not persuaded by this argument. The rules of statutory interpretation are only of relevance in the case of some ambiguity within the legislation. The Tribunal could find no ambiguity within the Act which would prevent the complainant from raising a complaint in relation to a pre-existing high hedge. The Act is internally clear, and states as follows:

- (1) This act applies to a complaint which (a) is made for the purposes of this act by an owner or occupier of a 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.

Nothing within this paragraph requires the complainant to have owned or occupied the property prior to the existence of the hedge or to have enjoyed a certain level of light which was then interfered with by the growth of the hedge over time. If there was any doubt as to this aspect of the legislation it is removed by examination of the succeeding paragraph in the Act which states as follows.

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

It is clear from this provision that it is open to a complainant to raise a complaint in relation to a high hedge without ever having occupied the premises themselves if their prospective occupation would be adversely affected. The Tribunal could find nothing in the Act to support the appellant's argument which if correct would have rendered the Act entirely ineffective in all but a handful of cases.

The second limb of the appellant's argument was that there were sufficient gaps within the hedge such that it was not a barrier to light. The hedge in question is a line of Leyland Cypress Trees. Those trees were measured by the council as being 20 metres in height and by the appellant as being 22 metres in height. The Tribunal decision, informed by the site inspection of the valuation member is that

at either 20 metres or 22 metres height, the line of trees was both sufficiently high and dense to form a barrier to light and was a high hedge within the terms of the Act. The trees formed a continuous crown and any holes that did exist were the result of the vagaries of growth within the foliage and did not significantly mitigate against the overall barrier to light caused by it.

The appellant sought to argue that the remedial action set out in the notice would damage the trees. This is not a ground of appeal within the terms of the Act however the Tribunal noted that the Council did appear to have taken into account the health of the trees in directing a phased reduction in height. The Tribunal also noted that the remedial notice had attempted to strike a balance between the needs of the complainant for more light and those of the appellant for privacy. The Tribunal has no hesitation in finding that the row of Leyland Cypress trees making up the appellant's hedge whether 20 metres or 22 metres in height is a barrier to light adversely affecting the complainant's enjoyment of occupation. For the reasons set out above the appellant has failed to establish any of the grounds of appeal within the terms of the Act and the appeal is dismissed.

Mr Michael Flanigan

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 01 September 2022