

**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 22/22E
MS MAIREAD MCCLOSKEY– APPELLANT
AND
BELFAST CITY COUNCIL – RESPONDENT**

Northern Ireland Valuation Tribunal

Chairman: Mr Michael Flanigan

Member: Mr Timothy Hopkins

Date: 20/6/23

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 25th October 2021 is dismissed.

REASONS

The Background and the Complaint

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 25th October 2021 issued in respect of a hedge situate at 40 Colinbridge Road, Newtownabbey BT36 7SN.

This appeal arises from a complaint in respect of a high hedge situated at the above address ("the property"). The complaint was made by Caroline McComb of 26 Colinbridge Drive, Newtownabbey BT36 7SX ("the Complainant") and related to two hedges on the appellants property on either side of an access lane.

Upon receipt of the complaint the Council investigated the matter and attended the site to conduct a survey. The Council measured Hedge 1 at between 6-7 metres and Hedge 2 at

13 metres. Both hedges were made of evergreen plants. Further to this inspection the Council on 25th October 2021 determined that the hedges in question were a high hedge acting as a barrier to light to the complainant's premises and issued a Remedial Notice to the appellant directing the following steps. Because Hedge 2 was further away from the complainants' premises than Hedge 1 a different Action Hedge Height ("AHH") was calculated for each hedge. In order to prevent significant damage to the hedge it was directed that the appellant reduce the height of the hedges to the Action Hedge Height (AHH) as follows: -

1. To reduce the height of the Lawson Cypress trees in the boundary hedge (Hedge 1) to 5.3 with a 0.5 growth margin.
2. To reduce the height of the Australian Laurel hedge further away from the boundary (Hedge 2) to 10.64 metres with a 0.5 growth margin.

The Notice then further recommended that both hedges be maintained at the AHH specified above. The notice advised the appellant of her right to appeal to this tribunal.

The Appeal and Submissions

The Appellant by appeal notice dated 10th April 2022 appealed the decision of Belfast City Council.

The notice of appeal raised a number of issues for consideration by the Tribunal which can be summarised as follows:-

That the hedges were forestry and should be left undisturbed for environmental reasons and that the lands were agricultural lands to which the High Hedges legislation did not apply.

The appellant also made the case that she had made attempts to reduce the size of the hedges and that there had been insufficient engagement with her by both the complaint and the council representative.

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") set out above. On 20th April 2023 Mr Tim Hopkins, a valuation member of the NI Valuation tribunal conducted a site inspection and prepared a report for the assistance of the tribunal.

Decision.

The complaint and the subsequent Remedial Notice relate to two hedges on either side of a lane which runs from the public road along the boundary line with the complainant's premises. The hedge immediately adjacent to the boundary was made up of a combination of evergreen Australian laurel and groups of Lawson Cypress trees. The hedge which was further away is a well-established line of Australian Laurel.

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 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 2 meters above ground level.

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 Appellant in her Notice of Appeal and subsequently described the hedges as trees. This was consistent with the thrust of her appeal which was this was woodland situate on agricultural land and as such could not be determined to be a high hedge.

The Tribunal was unable to accept this submission. The appellant's home is situated on approximate 30 acres of land near the foot of Cavehill. Access to the appellant's premises is via a gate unto the Colinbridge Road. The lane way is bounded on one side by a line of double hedging. The hedge closest to the complaint's property belongs to them and is maintained by them. Immediately adjacent to this and running alongside the complainant's hedge is the hedge belonging to the appellant (Hedge1). This hedge is made of Australian Laurel and within it are a number of groups of taller Lawson Cypress trees. On the other side of the lane way is a further row of hedging (Hedge 2) which is the taller and larger of the Australian Laurel hedges rising to a height of approximately 13 metres.

The Act provides for an exemption for woodland and as such woodland cannot be a high hedge provided the area of woodland meets a sufficient size. The High hedges Act Guidance Notes state that in order to be exempt as woodland the area of trees must be greater than 0.2 hectares. The Tribunal was satisfied that the two lines of hedge involved at this location did not amount to an area of woodland larger than 0.2 hectares and therefore were not exempt from being a High Hedge within the terms of the Act. The Tribunal was satisfied that these were high hedges and were not woodland within the terms of the Act.

The appellant sought to argue that these were agricultural lands and as such also exempt. The legislation does not allow for an exemption in respect of agricultural land. It is therefore the case that a high hedge can occur even on agricultural land if it acts as a barrier to light to adjoining residential property and in all other respects satisfies the definition.

The Tribunal notes that the Appellant had taken some action herself to reduce the height of Hedge 2 and that the Remedial Notice in relation to hedge 1 required the height of only the Lawson Cypress trees within it to be reduced.

In this case the appellant for the reasons set out above was unable to establish any of the statutory grounds of appeal that are open to her and accordingly the appeal is dismissed and the terms of the Remedial Notice stand unvaried.

The Tribunal is well aware that issues around boundaries and high hedges can be emotive for parties. The legislation was introduced in order to provide a mechanism whereby disputes over high hedges could be addressed. The legislation is only there to cover the situation where parties cannot agree between themselves. The Tribunal notes that the appellant had taken some remedial action before the Notice was issued and she is to be commended for taking those actions. The Tribunal would encourage the Appellant to comply with the recommended actions contained in the Remedial Notice going forward.

Dated 14th August 2023

Michael Flanigan.

Chairman:

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 14 August 2023