

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 2/22

LEONIE K TOWNEND - APPELLANT

AND

ARDS & NORTH DOWN BOROUGH COUNCIL - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James Leonard, President

Member: Mr Christopher Kenton FRICS

Hearing: 12 September 2024, Belfast

DECISION

The unanimous decision of the tribunal, for the reasons provided below, is that the appellant's appeal advanced upon certain stated grounds against a Remedial Notice dated 2 February 2022 is not upheld and is dismissed by the tribunal, without further Order.

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) available to and received by the tribunal. All evidence thus available, 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 (or was) stated to be a high hedge ("the hedge") situated upon property at 74 Ashbury Road, Bangor BT19 6TX ("the subject property"). The appellant is understood to be the owner of the subject

property. A neighbour to the rear of the subject property (“the complainant”) resides at 3 Ashbury Crescent, Bangor. The complainant made a complaint under the 2011 Act to the respondent to this appeal, this respondent being Ards & North Down Borough Council (“the Council”). The Council gathered relevant evidence and conducted a technical assessment of the site in accordance with the 2011 Act, Guidance for Councils. The Council issued a report and a Remedial Notice dated 2 February 2022 (“the Remedial Notice”). The documentation from the Council sets out the grounds of complaint by the owner or occupier of 3 Ashbury Crescent, Bangor. The tribunal’s scrutiny is confined to the complaint and to the resultant action taken by the Council in response to this specific complaint by the issue of the Remedial Notice. However, certain events occurring since the issue of the Remedial Notice and since the institution of the appellant’s appeal, have fundamentally overtaken matters. What this means is that the tribunal may proceed straight to the nub of the issue, as will be briefly explained below.

3. On 21 January 2024 there occurred a severe storm affecting many properties in UK and Northern Ireland, which the tribunal believes was accorded by meteorologists the name “Isha”. The appellant notified the tribunal at that time that the storm had caused significant damage to the trees constituting the hedge which was the subject of the Remedial Notice. With this in mind, the Valuation Member arranged to attend the locus in order to carry out the requisite survey and inspection, under the statutory procedure. The Valuation Member, attending on site on 13 February 2024 and was able fully to conduct an inspection and to record relevant facts and observations, which were incorporated into a report to the tribunal. In brief, the Valuation Member’s report is that he attended at the two properties concerned, in accordance with an agreed appointment. He met with the complainant, but not with the appellant, notwithstanding efforts to do so. The Valuation Member was able to inspect the remains of the trees stated to have constituted a ‘high hedge’ under the 2011 Act. At the time of inspection, the subject trees of this appeal had been removed along almost the entire length of the boundary between 74 Ashbury Road (the subject property) and 3 Ashbury Crescent. Only one tree remained at the time of inspection and that constituted only one stump approximately 1.75metres tall and leaning at approximately 30 degrees from vertical.
4. The Valuation Member determined that it was impossible to confirm definitively that, prior to felling, the trees had constituted a ‘high hedge’ as had been specifically determined by the Council. However, given the species of the trees concerned (*Cupressus Leylandii*), the size of the stumps remaining and the height of remaining trees, outside the area of dispute, it was considered very likely that the trees, if they had remaining standing, would have constituted a ‘high hedge’ under the provisions of the 2011 Act. However, for want of conclusive evidence, including the severe truncation of the remaining tree, that made such a determination largely inconclusive.
5. The remaining tree does not, in and of itself, constitute a ‘high hedge’ under the 2011 Act. In the 2011 Act, Section 2, the following is stated: “ 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...”. The felling of the trees to a little above ground level is considerably in excess of any remedial works that might have been required by the Council under the 2011 Act and the terms of the Remedial Notice.

The Tribunal's Conclusion and Determination

6. The inevitable conclusion of the tribunal is that the destruction of the trees by this January 2024 storm has removed any evidential basis for the appellant's appeal. The burden of proof rests with any appellant in such an appeal to persuade the tribunal that the Remedial Notice appealed against is not properly to be upheld by the tribunal and is in some manner defective or disproportionate, or there is some other persuasive reason not to uphold it. Any evidential material in that regard is no longer present and available to permit the required survey and inspection and assessment of the relevant facts by the Valuation Member and thus by the tribunal. Any proof of relevant facts is not forthcoming, due to what must be said to be rather remarkable circumstances, beyond the control of any party to the appeal.
7. Accordingly, the appeal has not been substantiated and thus is deemed by the tribunal to be not well-founded. That being so, the appeal is dismissed and the Remedial Notice has indeed been overtaken by events and is thus rendered of no effect.

James Leonard

James Leonard, President

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 17th September 2024