

**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 7/24E

Mr and Mrs Macmillan – APPELLANTS

AND

Ards and North Down Borough Council – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Michael Flanigan LLB

Member: Andrew Tough

Date: 17th January 2025

DECISION

The unanimous decision of the tribunal, for the reasons noted below, is that the Appellants' appeal against the issue of a Withdrawal Notice dated 28th February 2024 is **Granted**.

REASONS

Introduction

1. This is an appeal under section 7 of the High Hedges Act (Northern Ireland) 2011 (the 2011 Act) against a Withdrawal Notice issued by the Respondent on 28th February 2024.

The Background and the Complaint

The High Hedge which is the subject of this appeal is made up of a row of Monterey Cypress trees situate within the grounds of No 3 Meadow Way, Crawfordsburn. In 2017 the said trees were the subject of a High Hedges complaint by the Appellant as owners of 30a Ballymullan Road, Crawfordsburn. The complaint was successful and on 1st November 2018 the Respondent issued a Remedial Notice in relation to a High Hedge which directed

the specific remedial action to be taken to reduce the height of the trees; such works to be completed within six months. The owners of 3 Meadows Way (“the hedge owners”) appealed that Remedial Notice in December 2018. The hedge owners however did not proceed with their appeal and ultimately the appeal was withdrawn in October 2019. When an appeal is made in relation to a Remedial order, the time for compliance does not run pending the outcome of the appeal. The withdrawal of the appeal was made an order of the Tribunal on 10th October 2019. The Tribunal directed that the period of six months for compliance should then run from 10th October 2019.

There then followed a lengthy period of correspondence between the hedge owners, acting through their solicitors, and the Respondent. The hedge owners raised various points in objection to carrying out the remedial action. These related to the cost of the works, responsibility for payment and environmental matters. The hedge owners did not seek to challenge the validity of the Remedial Notice itself nor could they credibly have done so having decided not to proceed with their appeal. The hedge owners as far as can be determined have never taken any of the remedial actions set out in the Remedial Notice. One event of relevance is that small number of trees were taken down at the request of NIE in 2022 as they formed a risk to power lines.

The next relevant action is the Respondent decision dated 28th February 2024 to withdraw the Remedial Notice. The Appellants have appealed that Withdrawal Notice to this Tribunal.

The Appeal and Submissions

The Appellants submitted an appeal against the Withdrawal Notice in accordance with Section 7 (1) of the High Hedges Act (Northern Ireland) 2011 (“the Act.”) Section 5 (c) of the Valuation Tribunal (Amendment) Rules (Northern Ireland) 2012 (“the Rules”) provides that an appeal against a Withdrawal Notice may be made on the ground that there has been no material change in circumstances since the remedial notice was issued that justifies withdrawal of the notice. Section 7 (6) of the Act states that the Withdrawal Notice shall not have effect pending the final determination of such an appeal.

The grounds for appeal were that the Remedial Notice had been without their agreement and that there had been no material change of circumstances. The Appellants submitted

that there had been no consultation with them before the decision to withdraw and no inspection of the hedge from their side. The Appellants submitted that the hedge had grown in height and depth since the Remedial Notice and was a greater barrier to light than then.

Respondent Submissions

The Withdrawal Notice dated 28th February 2024 states that the reason for the withdrawal was that

“Having reviewed the hedge (within the garden of 3 Meadow Way, Crawfordsburn) it is my opinion that the foliage has degraded considerably and that there are now significant gaps within it so that it no longer meets the legal definition in S.2(1) of the Act in that it is not a barrier to light.”

A subsequent letter from the Respondent dated 12th June 2024 sought to expand on the reason given above and submitted that there were two reasons for the decision as follows:

1. That there had been a material change.
The material change specified was that there were now significant gaps in the hedge which meant that it no longer satisfied the definition of a High Hedge.
2. That the original Council decision, taken on 1st November 2018, that the trees were a barrier to light and thus a High Hedge, was possibly not correct.

This supplementary reason states that because there were now gaps in the hedge which reduced the loss of light and because there were no photographs of the hedge from 2018, it was impossible to know the state of the hedge at that time. The Respondent submitted that this raised the possibility that the original decision (that this was a High Hedge within the terms of the Act) was not correct.

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.

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

On 28th February 2024 the Respondent issued a Withdrawal Notice in respect of the Remedial Notice. Both parties to the dispute, the hedge owners and the Appellants, were served with notice of the Withdrawal decision and advised of their rights of appeal. The Appellants appealed that Withdrawal by Notice of Appeal dated 19th March 2024. The Respondent's power to withdraw a Remedial Notice is set out in S.6 (10) of the Act. The Act does not specify any grounds for withdrawal and in those circumstances particular regard should be taken of the Guidelines for Councils document (“the Guidance”) issued by the Department of the Environment. The Guidance sets out in some detail when and how the power to withdraw a remedial notice can properly be exercised.

The Guidance in our view is clear that the withdrawal option is there primarily for those cases where the original remedial action is no longer required. Either the parties have agreed a

different course of action themselves or there has been some significant change in circumstances which renders the order unnecessary. The guidance states that a material change in circumstances is something that significantly affects the Council's decision on the original complaint. An example given is where there is a change of use on the affected property. The Tribunal takes the view that a S.6 (10) Withdrawal was never designed to cover the situation where the Respondent took the view that a Council decision taken years earlier may have been incorrect. It is worth noting that the hedge owners did lodge an appeal against the original Remedial Notice and could have argued at the time that the trees were not a barrier to light. They elected not to do so and withdrew that Appeal in October 2019.

On 10th October 2024 the trees were inspected by Mr Andrew Tough to prepare a report for the assistance of the Tribunal. The conclusion of that report was that the trees remained a significant barrier to light to the affected property. The trees remained a High Hedge within the definition of the Act and that no material change had occurred such as would justify the issue of the Withdrawal Notice. The Tribunal met on 17th January 2025 and granted the appeal. The terms of the original Remedial Order remain unchanged.

The Guidance further reminds us that “the aim of the Act is to diffuse tension in high hedge disputes and encourage communication and negotiation between the people concerned. It should never prevent implementation of an agreed solution”. Even at this late hour there is nothing which should prevent the parties directly or through their legal representatives having discussions about the nature and extent of the remedial action. If the parties can agree a course of remedial action, then they can jointly approach the council with details of their agreement and in those circumstances a Withdrawal Notice could properly be issued.

The Appeal is granted.

Chairman: Michael Flanigan

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 27/1/25