

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

CASE REFERENCE NUMBER: 4/17

FRANK COLEMAN -APPELLANT

AND

**ARMAGH CITY, BANBRIDGE AND CRAIGAVON BOROUGH COUNCIL –
RESPONDENT**

Northern Ireland Valuation Tribunal

Chairman: Barbara Jemphrey

Member: Tim Hopkins FRICS

Belfast: 25TH OCTOBER 2017

DECISION

The unanimous decision of the tribunal, for the reasons noted below, is that the appellant's appeal against the decision of the Respondent not to issue a remedial notice is not made out and the tribunal orders that the appellant's appeal in this matter is dismissed and the tribunal orders accordingly.

REASONS

Introduction

1. This is an appeal under section 7 of the High Hedges Act (Northern Ireland) 2011 (the 2011 Act) against a decision of Armagh City, Banbridge and Craigavon Borough Council on 7th April 2017 not to issue a remedial notice in respect of a hedge situated at 14 Tarsan Lane Portadown, BT63 5RT.

The background and the complaint

2. This appeal arises from a complaint about what is stated to be a high hedge situated upon property at 14 Tarsan Lane, Portadown, BT63 5RT (the subject

- property). The owners of the hedge are Glen Bell and Ashleigh Hanna (the neighbours). The appellant is Frank Coleman, who resides at 18 Tarsan Lane, Portadown, BT63 5RT.
3. The background is that the appellant, after various dealings with the neighbours made a complaint to the Respondent to this appeal, Armagh City, Banbridge and Craigavon Borough Council (the Council) under the 2011 Act. The complaint was dated 8th March 2016 and was made on the Council's high hedges complaint form.
 4. The substance of the complaint to the Council is

“The hedge on my neighbours' side is tall and thick and it is obstructing the light through one of my kitchen windows. I have two kitchen windows and the window affected is at the front of the house. A portion of the hedge at the front of my property was cut last summer but it is still too high and trimmings fell unto my side of the boundary and were not collected. Some of these cuttings remain on my side and they are unsightly. My neighbours ought to have collected them up afterwards. Moreover, the hedge to the rear of my property is well over 2 metres in height. It has never been cut. It likewise obstructs my light and my enjoyment generally of my property.”
 5. Upon receipt of the complaint the Council investigated the matter and attended the site to conduct a survey. Measurements were taken and calculations made in accordance with the High Hedges Act (NI) Technical Guidance (the Technical Guidance) issued by the then Department of Environment to establish the Action Hedge Height (AHH). In consequence of this the Council prepared a case report and on 7th April 2017 issued a formal decision notice to the appellant that the Council had decided that the hedge in question is not acting as a significant barrier to light in accordance with the Technical Guidance. The notice advised the appellant of his right to appeal to this Tribunal.

The Appeal and complainant's submissions

6. In exercise of his statutory right to appeal, the appellant by appeal notice dated 3rd May 2017 appealed the decision of the Council. The grounds of appeal were as follows “The hedge between the premises at no 14 Tarsan Lane Portadown and my property at 18 Tarsan Lane between the points A, B, C, D and E on the

map attached to the letter dated 7th April 2017 which I received from Armagh City, Banbridge and Craigavon Borough Council is too high. At its present height the hedge is blocking my light and adversely interfering with my use and enjoyment of my property. The hedge needs to be lowered considerably on my neighbour's side. The hedge in question is a boundary hedge and is on both my land and that of my neighbour."

The law

7. 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.

8. 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. The matter was based on the written representations of the appellant and the council.

The evidence

9. The tribunal had before it the case file from the council and correspondence from the appellant all of which submissions were taken into account.

The technical evidence and the tribunal's decision

10. The council had taken measurements and made calculations in accordance with the High Hedges Act (NI) Technical Guidance (Technical Guidance) issued by the then Department of Environment to establish the Action Hedge Height.(AHH) On 21st September 2017 ,Timothy Hopkins FRICS, a valuation member of the Northern Ireland Valuation Tribunal conducted a site inspection and survey of the hedge.

Findings

The table below sets out the measurements taken onsite by Timothy Hopkins FRICS together with the findings of the council at the date of their inspection. The same lettering is used to identify the measured areas as appears in the map attached to the councils report dated 7th April 2017.

Hedge	Garden/Window	Hedge Height	AHH Council	AHH Mr Hopkins
A-B	Garden	1.30-2.00	7.31m	7.50m
B-C	Window	1.60-2.00	4.30m	4.40m
D-E	Garden	2.00-5.50	7.15m	7.35m

Along the section of hedge marked A to B the actual hedge height on the appellant's side of the boundary is 1.70 metres, rising to 2.0 metres on the neighbour's side of the boundary. The council calculated the Action Hedge Height at 7.31 metres and Mr Hopkins calculated the Action Hedge Height at 7.50 metres. The hedge is therefore well below the minimum height recommended by the Technical Guidance and no action is required.

Section B to C relates to the appellant's complaint that the hedge is obstructing light through one of the windows to his property. The actual hedge height was measured at the time of inspection at between 1.30 metres on the appellant's side of the boundary and approximately 2.0 metres on the neighbour's side of the boundary. The council had previously calculated the Action Hedge Height for light to the appellant's windows at 4.30 metres. Mr Hopkins calculated the Action Hedge Height at the time of his inspection at 4.40 metres. The hedge is therefore well below the minimum height recommended by the Technical Guidance and no action is required.

The section of garden marked D to E is characterised by concrete hard standing, garage and storage buildings and an unmaintained area of ground containing mature apple trees.

The hedge height was calculated at the date of inspection between 2.0 and 5.50 metres. The hedge has become overgrown to a height of 5.5 metres immediately adjacent to an outbuilding on the neighbour's ground. The Action Hedge Height calculated by the council was 7.15 metres and by Mr Hopkins at 7.35 metres. The hedge is therefore well below the minimum height recommended by the Technical Guidance and no action is required.

Conclusion

The view of the tribunal is that hedges A to B, B to C and D to E are within permissible limits set by the Technical Guidance and are not causing an obstruction to light to either the appellant's gardens or windows.

Taking all matters into account the conclusion of the tribunal is that the appeal should be dismissed.

Barbara Jemphrey– Chair Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 1st November 2017