

NORTHERN IRELAND VALUATION TRIBUNAL

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

CASE REFERENCE NUMBER: 81/12

IRENE MILLER- APPELLANT

AND

BALLYMONEY BOROUGH COUNCIL - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Member: Mr Tim Hopkins FRICS

Hearing: 23 July 2013, Belfast

DECISION

The tribunal Orders that time shall be extended for the appellant's appeal to the date of receipt of the appeal notice under the High Hedges Act (Northern Ireland) 2011, being 21 January 2013.

The decision of the tribunal, for the reasons provided below, is that the appellant's appeal against a remedial notice made under the High Hedges Act (Northern Ireland) 2011, dated 10 December 2012 and issued by Ballymoney Borough Council, is upheld to the extent mentioned in this decision and as is provided for in the remedial notice that is now issued in the matter by the tribunal, and the tribunal Orders accordingly.

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, amending the tribunal's rules of procedure. The 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 and any evidence is taken from the papers placed before the tribunal and as a result of the Valuation Member's site visit.

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 50 Boyland Road, Ballymoney, Co Antrim BT53 8LJ (“the subject property”). The appellant, Miss Irene Miller, is the owner of the subject property. Neighbours of the appellant, Dr Getty and Dr Gray (“the complainants”), reside at 52 Boyland Road, Ballymoney, Co Antrim BT53 8LJ. The background is that the complainants made a complaint to the Respondent to this appeal, Ballymoney Borough Council (“the Council”), under the 2011 Act. The complaint was made using the Council's high hedges complaint form and was received by the Council on 30 August 2012.
3. The substance of the complaint to the Council states that the complainants had approached on numerous occasions the owner of high hedges (the appellant) and that on 17 June 2012 had informed the appellant that unless the hedges were cut to a reasonable height the complainants would have no option but to make a complaint under the high hedges legislation. The complaint identified high hedges one to the side of the house and one to the front made up by a number of very high evergreen trees and stated that opposite the kitchen window these reached beyond the height of a two storey house. The loss of light to the windows asserted was specified in the complaint form.
4. In this decision, for the appellant has referred to this issue in her appeal, the tribunal needs to address briefly the manner in which the Council dealt with the necessity for any complainant first to have endeavoured to address matters informally with the hedge owner, prior to making a formal complaint to the Council under the 2011 Act.
5. Initially the Council, not being satisfied sufficient evidence of any proper endeavours had been produced concerning efforts made by the complainants to resolve matters prior to the formal complaint being made to the Council, investigated that issue further. The Council thus sought specific details of any such endeavours from the complainants. The tribunal has noted the details of this investigation from the documentation provided. The Council had to deal with a significant conflict in the evidence and information available in that regard from the complaints on the one hand and from the appellant on the other. The Council proceeded to conduct a further assessment of this evidence and was then persuaded, having reviewed matters, that proper endeavours had indeed been made by the complainants to resolve the conflict with the appellant prior to the formal complaint having been made to the Council. Agreement was very clearly not reached between the parties and the complainants had accordingly proceeded to lodge the complaint with the Council.

The Council's Action

6. Upon receiving the complaint the Council arranged to investigate the matter and the Council arranged a number of site visits and arranged to survey the site. The site visits on behalf of the Council were made as follows:-
 - 3 September 2012 – unannounced site visit made by Mr Damian Gavin, Environmental Health Officer of the Council, on which occasion Mr Gavin inspected the complainants' property and spoke with the appellant.

- 2 November 2012 – pre-arranged site visit made to the complainant's property and the subject property by Mr Damian Gavin, accompanied by Ms Lynne McCullough, Environmental Health Officer, on which occasion measurements and photographs were taken.
- 7 November 2012 – calculations made re-checked on site visit.
- 13 November 2012 – unannounced site visit made by Mr Damian Gavin, accompanied by Dr Philip Blackstock, arboriculturalist.

The Council commissioned a survey, conducted upon the forgoing date, 13 November 2012, by Dr Philip Blackstock Dip.I.M., M.Sc., D.Phil. who produced a report dated 14 November 2012 entitled "*Recomendations on the Likely Survival of Conifers at Lands Adjacent to 52 Boyland Road, Ballymoney*", as that matter was regarded as being one of the relevant issues in the case. This report is further referred to as "the Blackstock report".

7. The Blackstock report shall be mentioned in further detail in paragraph 15 below, but, in brief, amongst other matters Dr Blackstock in his report identified a row of four multi-stemmed Lawson cypress trees, three of which were about 7.5m tall, the fourth (southernmost) being about 5.0m tall. These were identified as the cultivar "Grayswood Pillar" and were planted about 5.0m apart and about 1.0m from the boundary with the complainants' property. Some crown dieback was observed in all four trees consistent with the infection *Phytophthora cinnamoni* (which the tribunal understands to be an infection which causes root rot or dieback). It was noted that all of the subject trees had also sparse lower foliage. There was also a southernmost tree which was a healthy young Norway spruce about 9.0m tall, with a light porous crown. Regarding the technical issue of conifer height reduction, Dr Blackstock expressed an opinion on the basis of his experience that a reduction in the live crown of a cypress hedge of 50% was usually survivable. The Lawson cypress cultivar "Grayswood Pillar" was not normally used for hedging and it tended to be treated as a specimen tree planted for its striking foliage and upright form. Dr Blackstock expressed the opinion that the Lawson cypress trees reported were more likely to survive if 40% rather than 50% of their live crowns were removed and because of the cone-shaped nature of the upper crowns it was estimated that a reduction in the height of 50% of the live crown would remove about 40% of the live crown in these trees. Accordingly the recommendation was that the four Lawson cypress trees growing close to the side garden of the complainants' property would be reduced in height to between 4.0m (when measured on the edge of their live crowns closest to the complainants' property) and 5.0m (when measured on the edge of their live crowns furthest away from the complainants' property). Dr Blackstock recommended that this compromise would ensure the likely survival of the four trees and maximise the benefit to the complainants, whilst minimising the impact to the appellant.
8. The Council in the light of this information produced a report concerning the complaint which placed substantial reliance both upon the Council's own site visits and observations and also upon the specific findings and the matters of opinion as expressed by Dr Blackstock in the Blackstock report. The Council's report provides some detail regarding such matters as a description of the hedge and its surroundings, the Council's function and the main considerations taken into account, a summary of the respective cases advanced for the complainants and for the

appellant, and the Council's response to the points advanced, the methodology employed by the Council, and the conclusion and the formal decision made by the Council. The decision made by the Council was a determination that the height of the hedge in question was adversely affecting the complainants' reasonable enjoyment of the complainants' property and that a remedial notice was to be issued as a result of that.

The Remedial Notice

9. The remedial notice, dated 10 December 2012 ("the remedial notice"), identified the hedge located at the subject property with reference to a plan and as being 16.7m in length and marked the four mature Lawson cypress trees on an attached photograph. The initial action prescribed was that the hedge must be reduced to a height not exceeding 4.0 m above ground level to the side of the garden at the complainants' property and to height not exceeding 5.0 m above ground level to the side of the garden at the appellant's property. Preventative action was further prescribed so that the hedge would be maintained so that at no time did it exceed a height of 4.0 m above ground level at the side view of the complainants' property and to a height not exceeding 5.0 m above ground level at the side view of the appellant's property. Further information was provided as to how this was to be done to allow for re-growth between annual trimmings. The time for full compliance in regard to the initial action was specified as 7 March 2013 and the date for taking effect of the remedial notice was 25 December 2012. The consequences of failure to comply were stated in the notice, as specified in the statutory provisions.

The Appeal

10. In exercise of her statutory entitlement to appeal, the appellant, by appeal notice dated 21 January 2013 and received by the Office of the Tribunal on 21 January 2013, appealed to the tribunal. The appeal is out of time for statutory purposes, the remedial notice being dated 10 December 2012 and having been sent to the appellant on that date. The appellant, by way of explanation for that, stated that she has incorrectly thought that the prescribed 28 day period provided within which to submit an appeal ran from the date the remedial notice took effect, that date being 25 December 2012. The tribunal, having noted the explanation afforded and the relatively small degree by which the appeal was lodged out of time and as, materially, no significant prejudice or cost or other detriment is sustained by any affected party, exercises its discretion to extend time. Accordingly the tribunal Orders that time shall be extended for this appeal to the date of receipt of the appeal notice, 21 January 2013.
11. The tribunal shall comment in some further detail below concerning the appellant's specific grounds of appeal but, in summary, the appellant in her appeal notice identified several grounds. These were stated as follows in paragraph 6 of the appeal form, which reads as follows:-
- *Failure to follow procedures as stated in the guidance for completing the high hedge complaint form*
 - *Misleading and inaccurate statements*

- *Failure to check the health of the trees as promised*
- *Inaccurate measurements*
- *Inaccurate and misleading information about the complainant's property*
- *I do not have all the information I need to prepare the paperwork for my appeal, as I am waiting for freedom of information documents from Ballymoney Council. I will forward all relevant information as soon as possible*

12. After the appeal was instituted further correspondence and written submissions were received both from the appellant and also from the Council which shall be alluded to as necessary below.

The Statutory Provisions

13. The statutory provisions concerning the high hedges regime are to be found in the 2011 Act. In respect of the technical definition of what constitutes a "high hedge" for the purposes of the 2011 Act, it is provided as follows: –

High hedge

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.

In respect of remedial notices it is provided as follows: –

Remedial notices

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.

Under section 7 of the 2011 Act appeals against remedial notices and other decisions of councils may be made in the prescribed manner to the tribunal and in this instance the appeal by the appellant is against the issue of a remedial notice. Section 8 of the 2011 Act provides for determination of appeals and the material part is as follows:

Determination or withdrawal of appeals

8—(1) On an appeal under section 7 the Valuation Tribunal may allow or dismiss the appeal, either in whole or in part.

- (2) Where the Valuation Tribunal decides to allow such an appeal to any extent, the Tribunal may do such of the following as it considers appropriate—
- (a) –
 - (b) vary the requirements of such a notice; or
 - (c) -
- (3) On an appeal under section 7 relating to a remedial notice, the Valuation Tribunal may also correct any defect, error or misdescription in the notice if the Tribunal is satisfied that the correction will not cause injustice to any person falling within subsection (2) of that section.
- (4) Once the Valuation Tribunal has made a decision on an appeal under section 7, the Tribunal must, as soon as is reasonably practicable—
- (a) give a notification of the decision, and
 - (b) if the decision is to issue a remedial notice or to vary or correct the requirements of such a notice, send copies of the notice as issued, varied or corrected, to every person falling within section 7(2) and to the council.
- (5) Where, in consequence of the decision on an appeal, a remedial notice is upheld or varied or corrected, the operative date of the notice shall be—
- (a) the date of the decision; or
 - (b) such later date as may be specified in the decision.
- (6) -
- (7) In any case falling within subsection (5) or (6), the compliance period for the notice shall accordingly run from the date which is its operative date by virtue of that subsection (and any period which may have started to run from a date preceding that on which the appeal was made shall accordingly be disregarded).

In regard to the specific amendments to the Valuation Tribunal Rules (Northern Ireland) 2007 (“the Rules”) the Valuation Tribunal (Amendment) Rules (Northern Ireland) 2012 introduced a number of amendments after rule 5 of the Rules which include the following material provisions:-

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) 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 Evidence and Submissions

14. The tribunal noted the written evidence adduced and arguments advanced. The tribunal had before it all of the papers which were made available to the Council in connection with the complaint at the time of the remedial notice being made under section 5 of the 2011 Act. These papers included the complainant's complaint made to the Council, copies of correspondence between the appellant and the complainant and copy correspondence between the appellant, the complainant and the Council, and the Blackstock report commissioned by the Council. The content of the Council's remedial notice issued on 13 December 2012 under the provisions of the 2011 Act was noted, together with the detailed report concerning the matter prepared by the Council and explaining in summary form the evidence and information gathered by the Council and how the Council had weighed the various issues raised in the matter. In addition, the tribunal had before it and considered the appeal documentation and any submissions made by the appellant as a consequence of the appeal being instituted. The tribunal's Valuation Member, in accordance with the applicable procedure, attended the site on 18 July 2013 and conducted a site survey and inspection. Any information and evidence gained as a result of that survey and inspection was considered by the tribunal together with the other evidence available in reaching a determination in the matter.

The Technical Evidence concerning the issue of Conifer Height Reduction.

15. Technical evidence was made available from the Blackstock report. The appellant provided no technical or expert evidence concerning the issue of conifer height reduction.

The Blackstock Report

The Blackstock report which informed the Council's decision-making identified four mature Lawson Leyland cypress trees located between the subject property and the complainant's property. Dr Blackstock identified a row of four multi-stemmed Lawson cypress trees (identified as the cultivar "Grayswood Pillar"), three of which were about 7.5m tall, the fourth (southernmost) being about 5.0m tall. These were planted about 5.0m apart and about 1.0m from the boundary with the complainants' property. The trees were observed by Dr Blackstock to be in a diseased condition, affected by an infection which causes root rot or dieback. There was some crown dieback noted in all four trees consistent with the infection *Phytophthora cinnamoni*. It was noted that all of the subject trees had also sparse lower foliage, with live crown appearing between 2.5m and 3.0m above the ground. This lack of lower live foliage was consistent with shading from a much higher hedge. In addition to the four trees mentioned, there was also a southernmost tree consisting of a healthy young Norway spruce about 9.0m tall, which was observed to have a light porous crown. Regarding the technical issue of conifer height reduction, Dr Blackstock noted the absence of scientific results from well designed experiments on the survivability of conifers to topping but stated that a number of estimates had been adopted. These appeared to range from 30% (a reference was made to paragraph 7.5 of BS3998:

2010 Tree Work – Recommendations as posted by the Royal Horticultural Society website) up to about 50%, depending on species and vitality (a reference was made to paragraph 35 of “ High Hedges” published by the Planning Inspectorate). Dr Blackstock referred to a canvas of experienced contractors which supported his professional experience that a reduction in the live crown of a cypress hedge of 50% was usually survivable. Hedge survivability was reduced with the increasing age of the conifer and within certain cultivars or species not normally used as hedging. The Lawson cypress cultivar “Grayswood Pillar” was not normally used for hedging and it tended to be treated as a specimen tree planted for its striking foliage and upright form. Dr Blackstock accordingly expressed the opinion that the Lawson cypress trees reported were more likely to survive if 40% rather than 50% of their live crowns were removed and because of the cone-shaped nature of the upper crowns it was estimated that a reduction in the height of 50% of the live crown would remove about 40% of the live crown in these trees. Accordingly the recommendation was that the four Lawson cypress trees growing close to the side garden of the complainants’ property would be reduced in height to between 4.0m (when measured on the edge of their live crowns closest to the complainants’ property) and 5.0m (when measured on the edge of their live crowns furthest away from the complainants’ property). Dr Blackstock recommended that this compromise would ensure the likely survival of the four trees and maximise the benefit to the complainants, whilst minimising the impact to the appellant.

The Findings of the Valuation Member

16. The Valuation Member of the tribunal conducted a site inspection and survey on 18 July 2013. It was noted that in correspondence of 10 May 2013, addressed to the tribunal the Council had provided a written explanation and calculations supporting their decision. The Council had calculated the action hedge height in respect of loss of light to the garden at 4.00 metres. The Council had calculated loss of light to a window at 5.50 metres. The Council had therefore adopted the lower action hedge height of 4.00 metres and had recommended that the subject trees should be cut at an angle leaving the height adjacent to the boundary of 50 Boyland Road at no more than 4.00 metres and the height adjacent to the garden of 52 Boyland Road at 5.00 metres. The Council had in that regard adopted the recommendations of Dr Blackstock in cutting the trees at an angle in order to ensure the maximum benefits.
17. In calculating the action hedge height the Council had assessed the effective garden area at 168.84 sq metres and in doing so the Council had excluded the stoned / gravel garden area to the front of the complainants’ house, providing the following explanation: - *Not considered effective garden, as area consists of gravel, stones and shrubs unlikely to be used by the complainant in their use and enjoyment of their garden area.* In the opinion of the tribunal, the Council had incorrectly excluded the stoned garden area from their measurements for the reason that the stoned garden area was located to the front of the property and was a part of the garden area quite capable of enjoyment. The stoned garden area was south facing, therefore maximising sunlight to the garden.
18. The Council had also excluded two additional trees from their calculations. In the Council’s letter of 10 December 2012 to the appellant the Council had confirmed that: *“The holly bush at 50 Boyland Road and young Norway spruce have been excluded in the measurements of the length of the hedge. The holly bush was not*

within the garden perimeter at 52 Boyland Road and the Norway spruce has a light porous crown, therefore eliminated from any measurements". The tribunal concurs with the decision regarding the holly bush but does not agree with the decision relating to the Norway spruce. This is for the reason that the Norway spruce is a young conifer and forms part of the hedge. The Norway spruce will mature and may be the cause of future adverse effect upon to the owner or occupier of the complainants' property.

The Action Hedge Height Calculations

The Council's Calculations:

Loss of light to garden

Effective garden area	168.84 sq metres
Length of hedge	16.70 metres
Orientation East	0.40
$(168.84 / 16.70) \times 0.40$	4.04 metres
Action hedge height for garden	4.00 metres

Loss of light to window

Distance from window to hedge	9.00 metres
$(9.00 / 2) + 1.00$	5.50 metres

The Council had therefore adopted the lower of the two action hedge heights and had assessed the action hedge height at 4.0 metres.

The Tribunal's Calculations:

Loss of light to garden

Garden area	334.27 metres
Length of hedge	19.60 metres
Orientation East	0.40
$[(334.37 / 19.60) \times 0.40]$	6.82 metres
Action hedge height for garden	6.82 metres, say 6.80 metres

Loss of light to window

Distance from window to hedge	8.80 metres
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(8.80 / 2) + 1.00	5.40 metres
Action hedge height	5.40 metres

Adopting the lower of the two figures, the action hedge height should be 5.40 metres.

THE TRIBUNAL'S DECISION

19. The tribunal must focus upon the specific task required of the tribunal in such an appeal as this. This appeal is not an adjudication concerning a dispute between the complainants and the appellant, but is an appeal against a determination by the Council and the consequent issue of a remedial notice under the provisions of section 7 of the 2011 Act. Firstly, the tribunal examined the appellant's grounds of appeal set forth in the appeal notice and also the further documentation received from the appellant accompanying a letter from the appellant to the tribunal dated 10 April 2013. That latter provided considerably further detail including what the appellant regarded as relevant documentation in support of the appeal. Any copied communications from the complainants which post-date the institution of the appellant's appeal were disregarded by the tribunal in view of the nature of this appeal which lies against the Council's decision; these are not relevant or material to the determination of this appeal.

20. The tribunal's Rules as amended by the Valuation Tribunal (Amendment) Rules (Northern Ireland) 2012 provide at Rule 5B that (under the specific circumstances applicable to this case), the appeal under section 7 (1) of the 2011 Act against the issue of a remedial notice may be made on the grounds that, firstly, 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; secondly, that the initial action specified in the remedial notice exceeds what is necessary or appropriate to remedy the adverse effect; and, thirdly, that the period specified in the remedial notice for taking the initial action so specified is not what should reasonably be allowed. The tribunal examined the grounds of appeal put forward by the appellant and clearly the appeal includes the first point and probably also the second and the third points. The tribunal, for completeness, shall make some observations in regard to all three matters as provided in Rule 5B. The issues raised by the appellant expressly, and clarified in subsequent correspondence, are now addressed.

The First Issue - Failure to apply the law in relation to the High Hedges Act (NI) 2011 complaint application.

21. The appellant's appeal addresses first of all, an issue as to whether the complaint was properly made and indeed ought to have been received by the Council in the first place. Section 3 of the 2011 Act provides, concerning the applicable procedure for dealing with complaints, that if the Council considers that the complainant has not taken all reasonable steps to resolve the matters complained of without proceeding by way of such a complaint to the Council, or that the complaint is frivolous or vexatious, the Council may decide that the complaint should not be proceeded with.

The appellant argues that the complaint ought not to have been received by the Council for the reason that the complainants, at the pre-complaint stage, had not taken reasonable steps to have matters resolved prior to invoking the formal process under the 2011 Act. The appellant asserts that there was insufficient evidence provided of reasonable steps to have matters resolved for the Council to have proceeded with the acceptance of the formal complaint under the 2011 Act. It is noted that the Council initially did raise an issue with the complainants concerning this matter and did consequently require the complainants to produce more evidence in order to satisfy the Council in that respect. The appellant takes issue with the Council's determination in that regard. Having carefully taken note of all of the documentary evidence provided and specifically the matters of conflicting evidence from the complainants and from the appellant that were at the time available to the Council in the making of the Council's determination under Section 3 of the 2011 Act, the tribunal's determination is that, on balance, the Council was entitled to take the view that the preliminary requirements had been satisfied to the required extent and that the process is not rendered invalid on that account. It is appreciated that these are matters of conflicting evidence, but the Council was entitled to take heed of the available evidence, to weigh it, and to proceed properly with the making of a determination. Notwithstanding one admitted error in duplication of a copied note, that does not detract from the validity of the overall determination made by the Council. Accordingly, the tribunal does not uphold the appellant's appeal on that issue.

The Second Issue - Failure of the Council in a Duty of Care by accepting an abusive High Hedges complaint application.

22. As mentioned in the preceding paragraph, Section 3 of the 2011 Act provides that if the Council considers that the complaint is frivolous or vexatious, the Council may decide that the complaint should not be proceeded with. In short, having had regard to matters of conflicting evidence and opinion from the complainants and from the appellant, the Council was entitled to determine if the complaint was indeed frivolous or vexatious and, having so determined that it was not so, to proceed with the formal process under the 2011 Act. Accordingly, the tribunal does not uphold the appellant's appeal on that issue.

The Third Issue – the Complainants' grounds for complaint.

23. The appellant has challenged the grounds of complaint and asserted that the complaint is confusing but that none of the rooms are adversely affected as claimed by loss of light nor is there a detrimental impact upon the garden. The appellant has stated that the rooms referred to are all situated at the front of the house except one bedroom at the back. The tribunal in determining that issue has had regard to all of the evidence available including any evidence submitted by the appellant, the evidence available from the Council and also that available from the tribunal's Valuation Member's inspection of the site. The calculations made have been noted and the tribunal's determination is that the evidence supports an action hedge height being specified under the statutory provisions upon the basis that the complainants have fulfilled the necessary requirement to satisfy the Council under the provisions of the 2011 Act that the height of that subject hedge is adversely affecting the

complainants' reasonable enjoyment of the domestic property specified in the notice and that the hedge is forming a barrier to light.

The Fourth Issue – that there has been a failure to carry out correct measurements

24. The appellant has submitted that no measurements were taken at the subject property on 2 November 2012 or any other day. She has enclosed what she states to be the correct measurements by means of a survey map from Mr Tommy O'Neill Chartered Engineering Surveyor, dated 4 February 2013 and she has pointed out what she asserts to be a disparity in stated measurements of the Council and Mr O'Neill. She also states that the decision was taken by the Council to issue the Remedial Notice on 5 November 2012 before the Council was in receipt of all relevant information, including the report of an arboriculturalist on the health of the trees. The Council's site measurements pertinent to the determination in the matter have been revisited in the tribunal's Valuation Member's inspection of the site and are as above-stated, in paragraph 18 of this decision. The disparity between the Council's site measurements and those emerging from the tribunal's Valuation Member's inspection will be noted. The determination which follows in this decision is made on that account. In regard to the issue raised by the appellant in respect of the timing of the decision by the Council and the issue of the remedial notice, it is noted that on 7 November 2012 the Council's calculations made earlier were re-checked on a site visit and, further, that on 13 November 2012 a site visit was made by Mr Gavin and by Dr Blackstock. The remedial notice was dated and issued on 10 December 2012, so the pertinent site survey and arboriculturalist's opinion information was available to the Council prior to the issue of the remedial notice and the final determination effected by the issue of the remedial notice was taken in the light of that information. For the reason that the tribunal's site assessment and consequent calculations do confirm that the Council's action hedge height has not been correctly assessed, the tribunal does uphold the appellant's appeal on this point to the extent that the tribunal's determination is that there has been a failure by the Council to carry out correct site assessment and measurements and a consequent effect on action hedge height stipulated. See paragraph 26 below in that regard.

The Fifth Issue – that there has been a failure to carry out a proper inspection of the trees

25. The appellant has submitted that there has been a failure to carry out a proper inspection of the trees as Dr Blackstock did not visit the subject property, but only inspected from the complainants' property. The appellant states that she had brought the issue of the health of the trees to the attention of the Council's Environmental Health Officer, Mr Gavin, on 3 September and 2 November 2012 during site visits. In regard to that issue the tribunal must, in the absence of any further evidence, take the view that the technical methods used by Dr Blackstock to conduct his assessment are those that properly ought to be used by an experienced and well-qualified arboriculturalist. Nothing has been asserted to detract from the validity of the conclusions of Dr Blackstock in compiling his report and in expressing his

resultant opinion. For that reason, the tribunal does not uphold the appellant's appeal on this point.

26. For the foregoing reasons, the tribunal does not uphold the issues raised by the appellant in her appeal save for her challenge to the Council's survey and action hedge height specified, in the following respect. The tribunal's conclusion is that there is an error in the Council's assessment which is as detailed in paragraph 18 above. Firstly, the Norway spruce specified ought properly to be deemed to form part of the subject hedge. Secondly, in the view of the tribunal, the Council has incorrectly excluded the stoned garden area from the measurements. The tribunal's determination is that the stoned garden area is located to the front of the property and is properly to be deemed as forming part of the garden area quite capable of enjoyment. The stoned garden area is south facing, therefore maximising sunlight to the garden and ought thus properly to be taken into account.
27. In the tribunal's calculations the loss of light to garden results in an action hedge height for the garden of 6.82 metres (say 6.80 metres) and in the tribunal's calculations the loss of light to the window results in an action hedge height for the window of 5.40 metres. Adopting the lower of the two figures, the proper action hedge height should be 5.40 metres.
28. Consequent upon that assessment, under the provisions of sections 8 (2) (b) and 8 (4) (b) of the 2011 Act, the tribunal has power to issue and the tribunal accordingly issues the remedial notice that is appended hereto in place of the Council's remedial notice, dated 10 December 2012, and the tribunal Orders accordingly.

Mr James V Leonard, President
Northern Ireland Valuation Tribunal

10th September 2013

Date decision recorded in register and issued to parties: