

**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 35/18

PHILIP WILSON AND AISLING BELL – APPELLANT

AND

NEWRY MOURNE AND DOWN DISTRICT COUNCIL – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O’Neill

Member: Mr Tim Hopkins FRICS

Belfast: 3 December 2019

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 17 December 2018 partially upheld and that the remedial notice attached to this decision issue as corrected and varied by the terms contained therein.

REASONS

Introduction

1. This is an appeal under section 7 of the High Hedges Act (Northern Ireland) 2011 (the 2011 Act) against a remedial notice issued by Newry and Mourne District Council (the Respondent) on 17 December 2018.

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 26 Edenvale, Crossgar, BT30 9PU, (the subject property). The owners of the hedge are Philip Wilson and Aisling Bell (the Appellants). The Respondent on receipt of a complaint by a neighbour (the Complainant) made on the Respondent's high hedges complaint form, investigated the matter and accepted the matter as a high hedge complaint.
3. In this decision it is not necessary to rehearse the detail of the efforts by the Complainant to seek to address the issues of concern with the hedge owner as the Respondent accepted that the Complainant had taken all reasonable steps to resolve the matters with the hedge owners before the formal complaint being made to the Respondent. Agreement was not reached between the parties and the Complainant made the complaint to the Respondent.

The action of the Respondent

4. Upon receipt of the complaint the Respondent investigated the matter and attended the site to conduct a survey.
5. The Respondent took measurements and made calculations 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. Measurements were taken and an initial assessment was made both in respect of loss of light to the garden and loss of light to the window. Reference to these calculations will be made later in this decision.
6. On foot of its calculations the Respondent found the action hedge height to be 5.0 metres and the Respondent found that the height of the hedge in question was adversely affecting the complainant's reasonable enjoyment of their property and issued a remedial notice dated 17 December 2018 in which it required the appellants to reduce the hedge to a height of 6 metres by 1 April 2019 and in the

following year up to 1 April 2020 to further reduce the height of the hedge to a height not exceeding 5 metres above ground level. The notice was dated 17 December 2018 and was stated to take effect on 17 December 2018. The time for full compliance with the remedial notice was stated to be 1 April 2020.

The Appeal and submissions

7. The appellant issued a notice of appeal to the Valuation Tribunal dated 9 January 2019. The grounds of appeal are as follows:
 - (a) that the Appellants feel that they are willingly progressing towards reducing the height of the trees in stages and feel that the required works go too far. They indicate that they had agreed to reduce the height of the hedges when their finances allowed. In September 2018, they instructed an arboriculturist, who was of the view that the trees needed to be reduced in stages by no more than 30%. This work was completed at a cost of £700. The Appellants acknowledge that there are other trees on the boundary with their neighbour's property which are also acting as barrier to light and that reducing their trees will not fully remedy the Complainant's issue.
 - (b) the Appellants were advised by the respondent that an inspection would be carried out at their property and they would be given the opportunity to discuss their plans with the Respondent. This never happened and they feel this to be unfair.
 - (c) as the trees have already been significantly reduced in September 2018, they indicate that it would be detrimental to cut them further at this stage.
 - (d) that the trees are not much higher than six metres and the height of the hedge had not been measured by a representative of the Respondent.
 - (e) that the Respondent has not taken all relevant information on board and it is unfair that the Respondent visited the Complainant's property but did not visit their property and so they were unable to explain/show the work that had already been carried out and the work that has been planned for the future to try and resolve this issue amicably.

The law

8. 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.

9. 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. Rule 5B states that an appeal against the issue of a remedial notice may be made on one 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;
- (d) That the period specified in the remedial notice for taking the initial action so specified is not what should reasonably be allowed.

10. As is prescribed in the legislation the matter was based on the written representations. The matter was listed for hearing on 3 December 2019.

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

11. The valuation member of the tribunal carried out a site visit on 25 July 2019 and inspected the Appellant's property. The Complainant was not in attendance and access to the Complainant's property was not possible. The valuation member inspected the Complainant's property on 18 October 2019 and took various measurements. These were as follows:

Garden/window	Present hedge height	Action hedge height found by the Valuation Member
Garden parallel	6 metres	5.35 metres
Garden perpendicular	6 metres	19.50 metres
Window	6 metres	5.2 metres

12. In relation to this matter the Valuation Member found that the hedge is currently 6 metres high. The action hedge height in respect of the loss of light to the garden from the hedge which runs parallel to the Complainant's house being 5.35 metres

and that in relation to the garden from the hedge which runs perpendicular to the house being 19.50 metres. The loss of light to the window due to the hedge was found to be 5.2 metres. In the light of this the action hedge height is the lowest of these i.e. 5.2 metres.

13. In this case the Tribunal has taken careful note of the submissions of the parties.

14. 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. Rule 5B states that an appeal against the issue of a remedial notice may be made on one 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; (d) That the period specified in the remedial notice for taking the initial action so specified is not what should reasonably be allowed.

15. The Appellants in their notice of appeal state that they are willingly progressing towards reducing the height of the hedge. This was observed by the Valuation Member when he undertook his survey in that he found the hedge height to be 6 metres, which is the initial action that the Respondent had required in the remedial notice. The appellants are to be given credit for undertaking this. They also have referred to the expense of instructing an arboriculturist to undertake the work. The cost of carrying out the work required by a remedial notice is not a matter on which a remedial notice may be appealed, the grounds for appeal to the Valuation Tribunal in exercise of its high hedge jurisdiction are confined to those as outlined above.

16. The appellants further contend that as the trees have been already significantly reduced in September 2018 it would be detrimental to cut them further at this

stage. This is an appeal on the ground that the initial action in the remedial notice exceeds what is necessary or appropriate to remedy the adverse effect.

17. The tribunal in this case finds that the hedge is adversely affecting the Complainants reasonable enjoyment of the property. Furthermore, the initial action specified in the remedial notice does not exceed what is necessary to remedy the adverse effect. Given the state and condition of the hedge in question, the tribunal upholds the decision of the Respondent as to the measures to be taken to remedy the situation insofar as it concerns the hedge which runs parallel to the Complainant's house. Therefore, the tribunal upholds the decision of the Respondent to require the appellant to take initial action to reduce the height of the hedge to no more than 6 metres above ground level by 1 April 2019 and in the following year up to and until 1 April 2020 and to further reduce the height of the hedge to a height not exceeding 5 metres above ground level. However, this is upheld only in relation to the hedge which runs parallel to the Complainant's house. This decision requires no further action to be undertaken in relation to the hedge which is perpendicular to the Complainant's house.

18. The other issues raised by the Appellants in their notice of appeal to the Tribunal do not form issues that fall within the grounds of appeal as set out above.

19. The tribunal has reviewed the content of the remedial notice itself. The 2011 Act states in section 5(4) that a remedial notice shall take effect on its operative date. This is amplified in section 5(5) in that the 'operative date' is specified to be 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. The period within which a remedial notice has to be complied with is stated to be the period beginning with the operative date of the notice.

20. In this case the Remedial Notice is dated 17 December 2018. It is stated that the notice takes effect on 17 December 2018. Therefore, as the operative date of the notice is not clearly at least 28 days after the date of issue of the notice it is not correct in this respect.

21. There is power in section 8 of the 2011 Act that on an appeal 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 referred to in section 7(2) of the 2011 Act.
22. It is important to note that in this case the appellant appealed the Remedial Notice dated 17 December 2018. Section 7(6) of the 2011 Act states that where an appeal is made the notice shall not have effect pending the final determination or withdrawal of the appeal. Therefore, it is the view of the tribunal that injustice will not be caused to any person referred to in section 7(2) in this instance and the tribunal will correct the notice. The tribunal makes no comment as to whether any injustice may be caused in any other circumstance or in any other case.
23. Section 8(5) of the 2011 Act states: "Where, in consequence of the decision on appeal, a remedial notice is upheld, 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." The compliance period for the Remedial Notice shall run from the operative date (disregarding any period which may have started to run from a date preceding that on which an appeal was made).
24. The tribunal therefore hereby orders that the Remedial Notice issued on 17 December 2018 by the respondent be varied as indicated on the attached Remedial notice and further that the date of the Remedial Notice shall be the date that this decision is recorded in Register and issued to the parties. The Remedial Notice shall take effect on 19th January 2020 (the operative date). The compliance period shall be that the remedial notice is to be fully complied with by 1 April 2020.

Mr Charles O'Neill Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 19th December 2019