

Northern Ireland Valuation Tribunal
The High Hedges Act (NI) 2011
The Valuation Tribunals Rules (NI) 2007 (As Amended)
Case Ref No: 40/18

ROSEMARY MCCONVILLE – APPELLANT
AND
NEWRY MOURNE & DOWN DISTRICT COUNCIL – RESPONDENT

Chairman – Mr Michael Flanigan

Member – Mr Tim Hopkins FRICS

Belfast – 25 October 2019

The unanimous decision of the Tribunal for the reasons noted below is that the appellant’s appeal against a decision of the Respondent to issue a remedial notice is dismissed.

Reasons

Introduction – This is an appeal under Section 7 of the High Hedges Act (NI) 2011 (the Act) against the remedial notice of Newry Mourne & District Council dated 24th January 2019 issued in respect of a hedge situate at 9 Mourne View Park, Kilkeel, County Down.

This appeal arises from a complaint in respect of a high hedge situated at property 9 Mourne View Park, Kilkeel, County Down (the property). The complaint was made by Mrs Diane Morgan of 3 Mourne View Close, Kilkeel, County Down (“the neighbour”).

Upon receipt of the complaint the council investigated the matter and attended the site to conduct a survey. As a consequence of this the council on the 24th January 2019 determined that the hedge in question was a high hedge acting as a barrier to light to the complainant’s premises and issued a formal decision notice to the appellant. In

order to prevent significant damage to the hedge it was directed that a three stage approach be adopted to reduce the height of the hedge to an Action Hedge Height (AHH) as follows:-

1. Initially reduce to 7.5 meters before 1st April 2020
2. Reduce to a height not exceeding 5.5 meters before 1st April 2021
3. Reduce to a height not exceeding 2.5 meters before 1st April 2022

The notice advised the appellant of her right to appeal to this tribunal.

The Appeal

In exercise of her statutory right to appeal the appellant by appeal notice dated the 20th February 2019 appealed the decision by the council.

The notice of appeal raised two matters:-

1. That the initial letter from the council had been addressed to 9 Mourne View Close, Kilkeel.
2. That the hedge complained about overlooked the garages at number 3 and number 1 Mourne View Close, Kilkeel and accordingly as the hedge affected garages only that a complaint could not be brought in respect of the hedge.

The Decision

The tribunal had before it the case file from the council and correspondence from the appellant and took into account all of the material before it.

The council had taken measurements and made calculations in accordance with the High Hedges Act issued by the then Department of Environment to establish the action hedge height (AHH). On 4th September 2019 Tim Hopkins FRICS, a valuation member of the NI Valuation tribunal conducted a site inspection and prepared a report for the assistance of the tribunal.

Appeal ground 1.

The Tribunal noted that subsequent correspondence had correctly identified the appellants premises and been sent to the correct address. It is a matter of regret when

errors are made in correspondence however it does not invalidate the proceedings themselves and the appellant did not seek to argue that she was unaware of the proceedings or their outcome.

Appeal ground 2.

The complainant's dwelling house sits at almost a right angle to the appellant's hedge. The result of this is that a rear corner of the complainant's dwelling comes within a few feet of the end of the hedge. The angle of the house and its proximity to the hedge means that the area surrounding the number 3 Mourne View Close, Kilkeel can be divided into two distinct areas which were identified as areas A and B. Area B was furthest away from the appellant's hedge and was made up of a mixture of patio and lawn. Area A by contrast was bounded on one side by the complainant's garage and on the other side by the dwelling house. The surface of Area A between the garage and the house was largely tarmac. The decision of the Tribunal was that garden area B was not impacted by the appellant's hedge and could be excluded from any calculations. The next question to be addressed was whether Area A, which was a surfaced yard area between the gable of the house and the garage should be treated as a garden area for the purposes of calculating "loss of light to a garden". The appellant had made the point in her appeal that the hedge overlooked the complainant's garage and that garages were excluded from the operation of the legislation. In this the appellant is correct and if there was only a garage involved, her appeal might have been successful. The Tribunal however had to have regard to the Technical Guidance issued by the Department of the Environment in relation to the operation of the High Hedges Act. The guidelines state as follows:-

"these guidelines apply to any type of garden, even small back yards with no lawn".

Area A was such a small back yard with no lawn and the Tribunal decision was that it came within the definition of a garden for the purposes of the Act. The Tribunal was further satisfied that Area A was adversely affected by the height of the appellant's hedge.

The Tribunal decision was that the appellant's hedge did not impact upon garden Area B and accordingly Area B was excluded from its calculations. Area A while a surfaced

yard area is classified as a garden for the purposes of the legislation. Mr Hopkins calculated the AHH with reference to garden Area A only and determined that Area A was adversely affected by the height of the appellant's hedge and that the correct AHH was 2.5 meters. The Tribunal was satisfied that, notwithstanding the exclusion of area B, that the remedial notice to reduce the height of the hedge to 2.5 meters had been correctly issued.

The Tribunal notes that notwithstanding her appeal that the appellant had already taken steps to reduce the height of the hedge and the appellant is to be commended for taking that action. The hedge will need to be maintained at a height of 5.5 metres up to 1st April 2021 and thereafter reduced to a height of no more than 2.5 meters by 1st April 2022.

The appellant's appeal is refused and the decision of the council to issue the remedial notice is upheld.

Mr Michael Flanigan – Chairman

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to all parties – 4 December 2109