

HIGH HEDGES ACT (NORTHERN IRELAND) 2011	4th October 2016
TO: ENVIRONMENTAL SERVICES COMMITTEE	
FOR DECISION	

Linkage to Corporate Plan	
Strategic Priority	Protecting and Enhancing our Environment
Objective	Enforcement of Statutory Duty
Lead Officer	Head of Health & Built Environment
Cost: (If applicable)	Presently officer time spent and consultant fees

1.1 Details of complaint

A telephone enquiry was made to this Department on the 5th June 2014 regarding an alleged high hedge affecting the complainant at an address in Ballykelly.

Following receipt of the completed formal complaint form on the 6th October 2014, letters were sent to both the hedge owner and complainant requesting that the hedge owner should contact Council with any further relevant information regarding the complaint.

On the 8th October 2014 an email was received from the hedge owner highlighting a number of objections. Clarification on the points raised by the hedge owner was sought from the complainant.

On the 23rd February 2015 the requested legal documentation was received from the complainant.
Legal advice was sought by Council regarding the objections raised by hedge owner.

On the 30th June 2015 legal opinion was received from Council appointed solicitors.

A site visit was carried out to assess whether the hedge in question falls within the remit of the High Hedges Act (Northern Ireland) 2011 which was introduced to provide a means of dealing with high hedges that are having an adverse impact on the reasonable enjoyment of a neighbouring domestic property due to loss of light.

After establishing that the hedge in question was wholly formed by a line of two or more evergreen trees, rising more than two metres above ground level, and was likely to act as a barrier to light, it was deemed that the hedge did indeed fall within the scope of the legislation. Site measurements, photographs and sketches were taken to enable the Actionable Hedge Height to be established.

On the 2nd December 2015 the investigating officer visited the site with an Independent Arboricultural Consultant, to determine the extent of trimming to the trees that would be possible without killing or destroying the hedge.

In January 2016 the report from the Arboricultural consultant was received.

1.2 The Hedge and its Surroundings

The complainant's property at Ballykelly, is situated in a tidy and well maintained housing development, which consists mainly of semi-detached properties set in compact gardens. The hedge subject of the complaint is located to the rear of the owner's property in a south westerly direction.

The "hedge" refers to a continuous row of mature Leyland Cypress trees running the whole length of the boundary with land owned by the hedge owner. The trees are approximately 16-17metres in height, having previously topped at about 12m and act as a barrier to light to the garden and property of the complainant. The individual stems within the hedge are growing 2m apart and are between 2m-5m from a close boarded fence separating the adjoining properties. The hedge runs the whole length of the rear of the complainant's property. This hedge is deemed a hedge in accordance with the aforementioned legislation.

1.3 Relevant Policies or Legislation

There are no tree preservation orders placed on the hedge in question.

1.4 Case for the Complainant

The complainant lodged a formal complaint to Limavady Borough Council after demonstrating failed attempts of approaching the owner of the hedge. A number of letters were sent by the complainants prior to formal application being submitted.

The complainant has indicated that "the hedge is a barrier to both daylight and sunlight, with the house being dark all the time. This has an adverse effect on my family's quality of life".

1.5 Case for the Owner/Occupier of the Land where the Hedge is situated.

The owners of the hedge state that-

- The High Hedge Act 2011 excludes areas of woodland or forest greater than 0.2 hectares.
- The lands on which the complainant's house is built was sold on condition that there would be satisfactory woodlands to protect and screen the listed house.
- The transfer of the property from the developer excluded any right to light.
- The woodland is within the boundaries of a listed and historic garden.
- The lands are within an area of Local Landscape Policy

These issues have all been considered.

1.6 Main Considerations

The council's role in these cases is to seek to strike a balance between the competing rights of neighbours to enjoy their respective properties and the rights of the community in general, and thereby to formulate a proportionate response to the complaint.

1.7 Appraisal of the Evidence

Light obstruction

The council followed the method in the 'High Hedges Act (Northern Ireland) 2011 – Technical Guidance' for calculating what height a hedge should be in order not to cause an unreasonable obstruction of light to windows and gardens. Observations by Council officers during numerous site visits indicate the hedge had a significant impact on the complainant's property. At that time, a substantial portion of the garden was in shade cast by the tall mature Leyland Cypress trees.

Visual Amenity

The complainant's property is a 1 1/2 storey property. There is a garden to the property where the hedge in question is located. The hedge towers over the garden and dominates the complainant's property. It has a severe effect on the complainant's use and enjoyment of their rear garden area.

Plant growth, litter

As there were little or no plants in the complainant's rear garden, it was impossible to assess whether the height of the hedge would have an impact on any reduced growth of any vegetation present within the yard.

Privacy

Although reduction of the height of the hedge would mean less privacy for the property with the hedge than they now enjoy, a height of between 6 metres (on the complainants side) and 12 metres (on the hedge owners side) would be enough to prevent overlooking and so provide a reasonable degree of privacy at both properties.

Cost of remedial action

Such expenses must be expected and accepted as part of the general ongoing maintenance of the property.

Health of the hedge

The Council has consulted an independent arboriculturist to provide a report. The trees in question were not deemed to be unhealthy and would therefore allow a 50% reduction in the live crown.

1.8 Conclusion

The hedge is causing significant obstruction of daylight and sunlight to the complainant's dwelling. The hedge dominates the complainant's property, severely affecting living conditions and visual amenity. Calculations suggest that the height of the hedge would need to be reduced to 6 metres in order to remedy the problems identified. The resulting height would not, in the council's view, adversely affect the enjoyment of that hedge owner's property or the general character and amenity of the neighbourhood. On balance, it is believed that the harm caused by the hedge outweighs other factors and that remedial action is justified.

Taking on-board advice provided by the arboriculturist, it is concluded that the Leyland cypress trees should be cut at an angle. The hedge shall be reduced in height to 6m (when measured

on the edge of their live crowns on the complainant's side) and 12m (when measured on the edge of their crowns on the hedge owner's side). This compromise will ensure the likely survival of these trees. It will also maximise the benefit to the complainant, while minimising the impact to the owners of the trees. The requirement to maintain the hedge at, or below, this height lasts until the hedge is removed or dies.

1.9 Recommendation

It is recommended that a remedial notice be issued under section 5 of the High Hedges Act (Northern Ireland) 2011 specifying the above height requirements with a time period of compliance of 3 calendar months.