
Appeal Decision

Site visits made on 21 September 2020 and 28 October 2020

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 17 December 2020

Appeal Ref: APP/HH/1851

Hedge at Little Haven, 2 Abells, Denby Village, Ripley, Derbyshire DE5 8PA

- The appeal is made under section 71(1) of the Anti-social Behaviour Act 2003.
 - The appeal is made by Mr A Bates & Miss L Watson, the complainants, against a Remedial Notice issued by Amber Valley Borough Council.
 - The complaint, reference LSP-TRE/2019/0498, is dated 26 July 2019.
 - The Remedial Notice is dated 26 November 2019.
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Decision

1. The appeal is in part allowed and the remedial notice is varied.

Procedural matter

2. I have dealt with another appeal (Ref: APP/HH/1849) made by the hedge owners in relation to the same remedial notice. That appeal is the subject of a separate decision.

Main Issue

3. The main issue in this appeal is whether the requirements of the notice are appropriate and reasonable.

Reasons

4. The hedge that is the subject of the appeal runs along the boundary separating the complainants' rear garden at 12 Church Street from the side of the rear garden at Little Haven.
5. For the purposes of the Anti-social Behaviour Act 2003 a hedge can be a mix of tree species, including some deciduous, but the predominant type must be evergreen or semi-evergreen. On this basis the hedge consists of a line of approximately eight trees that effectively occupies the whole 9.4 metre (m) length of the boundary with the rear garden at No 12. The skyline of the hedge formed by the merged canopies of the taller trees rises in height from approximately 5m at either end to approximately 8m in the middle with smaller conifers 2m or slightly more in height in between the taller trees. There are some trees behind the hedge. However, as they are set further back from the boundary and are free-standing they cannot reasonably be considered to form part of the hedge.
6. Loss of natural light to a property that is caused by the height of a neighbour's hedge is normally deemed to be unreasonable, and the hedge in need of a reduction in height, if the hedge is growing above the "Action Hedge Height"

- (AHH). This can be calculated according to the methodology published by the government in '*Hedge height and light loss*'. This document sets out formulae for calculating loss of light to windows of the main rooms in a dwelling and to gardens.
7. The Council and appellants have calculated different AHHs. On the basis that the hedge effectively occupies the whole length of the rear boundary, and that the rear garden in shape is an irregular quadrilateral, I find that the appellants' AHH calculation of 3.7m is more accurate. Notwithstanding that the hedge would allow more light through during the colder months of the year, when the few deciduous trees within it are in leaf, it would still create an effective barrier to sunlight and place much of the garden at No 12 in the shade. In so doing it would adversely affect the reasonable enjoyment of the property.
 8. The outlook from the rear of the appellants' house and back garden over neighbouring gardens on either side is generally open. In contrast the hedge along the rear boundary completely encloses the outlook to the rear to a height that is moderately oppressive. In relation to the condition of the garden, I saw that the lawn was in good condition. As a result, whilst the effect of the hedge on visual amenity is adversely affecting the reasonable enjoyment of the property its effect on plant growth is not.
 9. In determining the extent of works required by a remedial notice a key principle of the high hedge legislation contained within section 69(3) of the Anti-social Behaviour Act 2003 is that the work should not require or involve the removal of the hedge. This includes work that it is reasonably foreseeable would result in the death or destruction of a high hedge.
 10. The large cedar tree in the hedge has a high crown and removal of its branches that overhung No 12 has resulted in bare branch stubs and an absence of foliage for the first few metres of its height. Cedar trees have a poor tolerance of hard pruning and a reduction to 3.7m in height would result in minimal live growth being left on this tree. For these reasons, such a reduction in height would be likely to result in its demise.
 11. The abies tree within the hedge has also in the past had its overhanging branches reduced in length. However, whilst these branches have died it otherwise has a full dense crown and is in a healthy condition. The remaining trees within the hedge are in good health and either taller or lower than the AHH. Healthy trees are capable of withstanding up to a 50% reduction in height and have a good chance of regenerating. Whilst due to its lack of foliage the cedar is unlikely to survive a reduction in height to, or below, the AHH, the rest of the trees within the hedge would. For the purposes of the Act, as the majority of the hedge would survive the remedial works would therefore not result in the removal of the hedge and so would comply with the Act.
 12. The varied remedial notice would result in the hedge being maintained in the future at a height 1m higher than that required by the Council's notice. However, as the appellants seek the reduction of the hedge to this taller height, and the varied notice would include the abies and large cedar, the overall reduction in the scale of the hedge would be greater than that required by the original notice. As a result, the works required by the varied notice would not leave the appellants worse off.

13. Although the house at 12 Church Street is at a higher level than the hedge, in combination with the tall boundary wall the hedge heights required by the varied Remedial Notice would exceed what is required to provide privacy to the dwellings and gardens of both parties.

Conclusion

14. For the reasons given above, I conclude that the terms of the Council's notice are not appropriate and are unreasonable. The appeal should therefore in part be allowed and the requirements of the Remedial Notice should be varied.

Ian Radcliffe

Inspector

**IMPORTANT: this Notice affects the property at
Little Haven, 2 Abells, Denby Village, Ripley, Derbyshire DE5 8PA**

ANTI-SOCIAL BEHAVIOUR ACT 2003

PART 8: HIGH HEDGES

REMEDIAL NOTICE

VARIED BY Ian Radcliffe BSc(Hons) MRTPI MCIEH DMS

Appointed by the Secretary of State under Section 72(3) of the above Act.

1. THE NOTICE

This notice is sent under Section 73 of the Anti-social Behaviour Act 2003 and varies and supersedes the Remedial Notice dated 26 November 2019 issued by Amber Valley Borough Council under section 69 of the 2003 Act pursuant to a complaint about the high hedge specified in this notice.

The notice is sent because it has been decided that the hedge in question is adversely affecting the reasonable enjoyment of the property at 12 Church Street, Denby Village and that the action specified in this notice should be taken to remedy the adverse effect and to prevent its recurrence.

2. THE HEDGE TO WHICH THE NOTICE RELATES

The hedge shown on the appended plan along the boundary between the side of the back garden at Little Haven and the rear of the back garden at 12 Church Street.

3. WHAT ACTION MUST BE TAKEN IN RELATION TO THE HEDGE

3.1 Initial Action

I require the following steps to be taken in relation to the hedge before the end of the period specified in section 4 below:

- (i) reduce the hedge to a height not exceeding 3.2 metres above ground level when measured from the base of the stems.

3.2 Preventative Action

Following the end of the period specified in section 4 below, I require the following steps to be taken in relation to the hedge:

- (i) maintain the hedge so that at no time does any tree within it exceed a height of 3.7 metres when measured from the base of its stem.

4. TIME FOR COMPLIANCE

The initial action specified in paragraph 3.1 to be complied with in full within 3 months of the date specified in paragraph 5 of this Notice.

5. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on the date this decision is issued.

6. FAILURE TO COMPLY WITH THE NOTICE

Failure by any person who, at the relevant time is an owner or occupier of the land where the hedge specified in paragraph 2 above is situated:

- a. to take action in accordance with the Initial Action specified in paragraph 3.1 within the period specified in paragraph 4; or
- b. to take action in accordance with the Preventative Action specified in paragraph 3.2 by any time stated there,

may result in prosecution in the Magistrates Court with a fine of up to £1,000. The Council also has power, in these circumstances, to enter the land where the hedge is situated and carry out the specified works. The Council may use these powers whether or not a prosecution is brought. The costs of such works will be recovered from the owner or occupier of the land.

Signed: *Ian Radcliffe*

Dated: 17 December 2020

Informative

It is recommended that: All works should be carried out in accordance with good arboricultural practice, advice on which can be found in BS 3998: 'Recommendations for Tree Work'.

Skilled contractors are employed to carry out this specialist work. For a list of approved contractors to carry out works on trees and hedges, see the Arboricultural Association's website at www.trees.org.uk or contact 01242 522152.

In taking action specified in this Notice, special care should be taken not to disturb wild animals that are protected by the Wildlife and Countryside Act 1981. This includes birds and bats that nest or roost in trees. The bird nesting season is generally considered to be 1 March to 31 August.



The Planning Inspectorate

Plan

This is the plan referred to in my decision dated:

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

**Hedge at: Hedge at Little Haven, 2 Abells, Denby Village, Ripley,
Derbyshire DE5 8PA**

Reference: APP/HH/1851

Scale: Not to Scale

