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## Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 20/01/21

gan Joanne Burston BSc MA MRTPI  
AIPROW

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 09/02/21

## Appeal Decision

Site visit made on 20/01/21

by Joanne Burston BSc MA MRTPI  
AIPROW

an Inspector appointed by the Welsh Ministers

Date: 09/02/21

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**Appeal Ref: ENV/3247691**

**Site address: Hedd Fan, Sully Road, Penarth**

**The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.**

- The appeal is made under section 71(1) of the Anti-social Behaviour Act 2003 [“the Act”], on the grounds set out in regulation 3(1)(a) and (d) and regulation 3(2) of The High Hedges (Appeals) (Wales) Regulations 2004.
- The appeal is made by Mr Vivian Arthur Ricketts [the appellant], the hedge owner, against a Remedial Notice issued by the Vale of Glamorgan Council [the Council].
- The complaint reference is 2016/00615/HH.
- The Remedial Notice (RN) is dated 5 February 2020.
- The requirements of the notice are as follows:

### Initial Action

- (i) Reduce the Hedge to a height not exceeding 5 metres above ground level.

### Preventative Action

- (i) Maintain the Hedge so that at no time does it exceed a height of 5.5 metres above ground level.
- (ii) The Hedge must be cut back annually to a height not exceeding 5 metres above ground level.

### Time for Compliance

- (i) The initial requirements specified in paragraph 3 above are to be complied with in full within 9 months of the date specified in paragraph 5 of this Notice.

### When this notice takes effect

- (i) This Notice takes effect on 6<sup>th</sup> of February 2020
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## Decision

1. The appeal is dismissed, and I hereby specify that the operative date<sup>1</sup> of the Remedial Notice (RN) shall be the date upon which this decision is issued.

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<sup>1</sup> 'When this Notice takes effect'

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## Procedural Matter

2. At my site visit I was invited to look at the hedge from both the appellant's and complainant's properties. It was also requested that I visit the rear gardens of both 'Cherry Croft' and 'Sunbury', which I did accompanied by the Council and the appellant.
3. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objectives of better environments.

## Main Issues

4. The main issues in this appeal are whether:
  - the height of the high hedge is adversely affecting the complainant's enjoyment of their property;
  - the steps required by the RN are reasonable; and if so,
  - the period specified in the RN is reasonable and proportionate to the negative impact that the hedge is having on the complainant's property, which is 'Lyncroft', Sully Road, Penarth.

## Reasons

5. The appellant (hedge owner) has appealed against the RN on all the stated grounds set out on the Appeal Form. It concerns a conifer hedge approximately 12 metres high and 27 metres in length forming part of the side boundary of Hedd-Fan. This hedge also forms the rear boundary of 3 properties known as 'Lyncroft', 'Cherry Croft' and 'Sunbury', which are detached bungalows in modest plots.
6. Sections 66(1) and (2) of the Act refer to a high hedge as '*so much of a barrier to light and access as is formed wholly or predominantly by a line of two or more evergreens*' and that '*a line of evergreens is not to be regarded as forming a barrier to light and access if the existence of gaps significantly affects its overall effect...*'.
7. The RN was issued on the basis of a site visit by the Council in response to the complaint. This stated that "*The hedge is causing significant obstruction of daylight and sunlight to the complainant's bungalow. It is out of keeping with its setting and dominates the complainant's property, severely affecting living conditions and visual amenity.*"
8. The hedge is situated directly to the west of 'Lyncroft', 'Cherry Croft' and 'Sunbury' at a distance of approximately 14 to 16 metres from the rear facade. The evidence before me indicates that it causes afternoon overshadowing of the rear elevations and gardens of these properties throughout the year.
9. I acknowledge the appellant's comment that the hedge does not affect light levels in 'Lyncroft'. However, whilst I note that the hedge directly behind 'Lyncroft' has been felled, given the height and location of the remaining hedge, the sun would be obstructed on a daily basis and that the shadow would extend across the garden and conservatory. Moreover, the hedge is considerably taller than dwellings in the vicinity and the plots are modest which prolongs the overshadowing effect and has a significant overbearing effect on outlook for their occupiers.

10. The Council calculated the height above which the hedge would be likely to cause a significant loss of light to the rear garden area (the action hedge height, AHH) in relation to 'Lyncroft' and 'Cherry Croft<sup>2</sup>'. The calculations returned an AHH of 3.88 metres<sup>3</sup> and 5.43 metres<sup>4</sup> for Lyncroft and 4.90 metres for 'Cherry Croft'. An RN was issued for an initial height of 5 metres and a preventative height of 5.5 metres. The Council's survey measurements are not disputed by the main parties.
11. I appreciate the appellant's argument that he finds the hedge very attractive and it has been a feature of his garden for many years. However, as the AHH is several metres below the hedge's current height, this reinforces my conclusion that the hedge is having a significant effect on daylight and overshadowing for some occupiers of neighbouring properties. Furthermore, the hedge is particularly prominent and has a significant overbearing effect which is detrimental to the outlook of all nearby residents and the enjoyment of their property.
12. The AHH indicates that the hedge reduction should be lower than that set out in the RN. However, the action specified in a RN cannot result in the death or destruction of the hedge and therefore I concur with the Council that the proposed reduction, as set out in the RN, would ensure the hedge's survival.
13. The appellant has stated that the hedge enhances the privacy of his garden and reduces light levels in his bedroom which assists with sleeping. However, I am not persuaded that the hedge needs to be 12 metres in height to ensure privacy and I find that a hedge height of 5 metres would allow for sufficient privacy between the dwellings to be retained. I am also confident that other measures could be used within the property to reduce light to a sufficient degree.
14. I note that the trees have been in situ for a considerable period of time and prior to the complaint moving into their property, nonetheless the Act allows for a complaint to be made by the owner or occupier of an affected property in light of the circumstances existing at that time.
15. The appellant also makes the appeal on the grounds that the period specified in the RN to carry out the action falls short of what should reasonably be allowed. However, I have not been provided with any evidence as to why a compliance period of 9 months to carry out the initial action of reducing the hedge height is insufficient. As such, I conclude on the main issues that the Council's RN should be upheld.

#### *Other matters*

16. I acknowledge the appellant's comments relating to protected species. Nevertheless, I have no substantive evidence before me to confirm the presence of bats and, in any event, such matters do not stop the hedge being a nuisance. The Law protects all species of bats and their roost sites. Accordingly, it is advisable that bat surveys be conducted on trees due to be felled or pruned if there is any possibility of bats using them as roosts. If bats are discovered when branches are removed or trees felled (particularly in winter), work must stop immediately, and you must contact Natural Resources Wales. The timescale provided by the RN would permit work to be taken on the hedge during September to late October before hibernation and outside of the bird nesting season.

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<sup>2</sup> 'Cherry Croft' also being representative of 'Sunbury'

<sup>3</sup> Calculation with hedge SW of garden/windows.

<sup>4</sup> Calculation with hedge opposite garden/windows.

**Conclusion**

17. Having thoroughly considered all the matters raised, I conclude that appeal is dismissed, and the RN upheld.

*Joanne Burston*

INSPECTOR