



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 08/06/21

gan **J Burston, BSc MA MRTPI AIPROW**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 18/6/21

Appeal Decision

Site visit made on 08/06/21

by **J Burston, BSc MA MRTPI AIPROW**

an Inspector appointed by the Welsh Ministers

Date: 18/6/21

Appeal Ref: ENV/3239648

Site address: 131 Fontygary Road, Rhoose Barry, CF62 3DU

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

- The appeal is made under section 71 of the Anti-social Behaviour Act 2003 on the grounds set out in regulation 5 of The High Hedges (Appeals) (Wales) Regulations 2004.
 - The appeal is made by Ms Yvonne Levitt [the Appellant] against the decision of Vale of Glamorgan Council [the Council] not to issue a Remedial Notice [RN].
 - The complaint Ref: 2019/00779/HH dated 15 July 2019, about a high hedge [the complaint hedge] at the above address was made by the appellant under Part 8 of the Act.
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Decision

1. The appeal is dismissed.

Background

2. The complaint hedge is situated on land at 131 Fontygary Road which borders the north-east boundary of 129 Fontygary Road, the appellant's property. The hedge runs the length of the side boundary of the rear garden of 131. The appellant complained to the Council that the height of the hedge detracted from the reasonable enjoyment of the occupants' house and garden in relation to light loss. The Council investigated these claims but decided not to issue an RN.
3. Section 65(1)(b) of the Act indicates that complainants have to show that the reasonable enjoyment of their domestic property is being adversely affected by the height of the high hedge. Paragraph 4.40 of the Welsh Government's 'High Hedges Complaints System Guidance' (HHG) indicates that the reference to reasonable enjoyment requires an assessment of the impact of the hedge on the enjoyment that a reasonable person might expect from their home and garden.
4. The appeal is made on the basis that the height of the hedge is adversely affecting the occupants' reasonable enjoyment of their property and that action should be taken to remedy the effect of the high hedge on the occupants' enjoyment of their property or prevent a recurrence of that effect.

Main Issue

5. The main issues are; whether the height of the hedge is adversely affecting the appellant's reasonable enjoyment of their property, and if so, whether it is reasonable and appropriate to issue a RN.
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Reasons

The hedge and its surroundings

6. The complaint hedge is comprised of a row of evergreen leylandii trees lying along a substantial length of the joint boundary between the two properties concerned. The length the hedge is approximately 24 metres. The hedge is situated approximately 2.6 metres from the centre of the nearest window of the complainants' property, which faces to the south.
7. A further specimen tree and privet shrubs are also planted along the joint property boundary, close to the rear elevation of No.131 which the appellant considers should form part of the overall hedge length. However, the Act defines high hedges as a line of two or more evergreen or semi-evergreen trees or shrubs higher than 2 metres above ground level that form a complete barrier to light or access. In this case the tree and privet are separate from the Leylandii hedge and whilst I accept that they are over 2 metres in height they do not 'interlock' to such an extent to form a complete barrier to light. I note that Ivy has grown around the tree and spread across to the leylandii, however, such climbing plants are excluded from the HHG.
8. Accordingly, for the reasons set out above, I agree with the Council that the first 5 metres of the boundary running south from the rear elevation of No.131 cannot be considered as a high hedge as set out in the Act.

Calculations by the Council

9. The Building Research Establishment's (BRE) 'Hedge Height and Light Loss' includes a recommended methodology to assess the impact of a high hedge. This involves the concept of an 'action hedge height' AHH above which a hedge is likely to block too much light. It includes methods of calculating whether a hedge is likely to result in an unreasonable loss of light to a main room in a dwelling or cause a significant loss of light to a nearby garden.
10. The BRE guidelines also include an assessment of winter sunlight and therefore, this objective measure is a reliable source of information to assess whether daylight and sunlight levels are met in accordance with the British Standard throughout the year. The methodology requires the use of the lowest AHH, as calculated for the relevant windows and the garden. A hedge which is lower than the AHH is unlikely to have an adverse effect on light loss.
11. The Council calculated that the enforceable AHH is 4.10 metres when the depth of the garden area, orientation, set back and difference in site levels are taken into account. It follows that, at the time the Council took its decision, the hedge was a maximum height of 3.8 metres. Similarly, at the time of my site visit the hedge was a maximum height of 3.7 metres.
12. Such calculations appear to have been undertaken in accordance with an established methodology and I have not seen any cogent evidence to lead me to take issue with this objective assessment.

Reasonable enjoyment of the property

13. In this case, the appellant objects to the Council's decision not to issue a RN on the basis that the height of the hedge is impacting upon the reasonable enjoyment of No. 129. Specifically, it is submitted that the hedge results in a loss of light at ground and first floor rear windows and within the rear garden. Furthermore, the hedge

causes debris on the patio area, is difficult to safely maintain and obstructs views to the west.

14. As set out above, the BRE guidelines include an assessment of light and therefore, this objective measure is a reliable source of information to assess whether daylight and sunlight levels are met in accordance with the British Standard throughout the year. In this case the hedge is below the AHH and thus the hedge is unlikely to have an adverse effect on light. Going against this assessment would require good reasons, and in my view, the Council's decision not to issue an RN based on the objective test is appropriate in this case.
15. I accept that the growth of the hedge over time may have reduced sunlight reaching the garden during the latter parts of the day, especially in autumn and winter when the sun is lower. However, the amount of daylight and sunlight that may be reduced by the hedge at its current height is shown to be well within the bounds of tolerance. Even without this objective assessment, it is clear that its specific impact on light is limited given the extent of the appellant's garden.
16. The hedge is dense in appearance and extends across the majority of the rear side boundary of the property. Nonetheless, I do not consider it has reached a height that it could be regarded as significantly diminishing the outlook from the property. In particular, the complaint hedge is situated to one side of the garden and in my view does not significantly affect the outlook from the appellant's property, since there is an extensive open aspect to the south and east.
17. This may not align with the appellant's expectations on the issue of outlook, but paragraph 5.89 of HHG indicates that as a general rule, it is not reasonable for someone to expect to see beyond the hedge to a particular landscape. Further, I do not consider that the property suffers serious visual intrusion from the complaint hedge which could be considered as having an oppressive effect on living conditions.
18. HHG points out (paragraph 5.70) that the Act only deals with complaints that relate to the height of the hedge. Problems associated with the width of the hedge will normally not be considered, as people in neighbouring properties have the right to cut overhanging branches back to the boundary.
19. In this respect I do accept that the appellant may struggle to cut back the upper third of the hedge without specialist equipment or professional help. However, maintenance of the hedge up to 2.5 metres will allow the appellant to maintain flower beds and grow appropriate plants.
20. Finally, the volume of debris falling from the hedge is likely to be low and whilst I accept this may be regarded as irritating and inconvenient, it would be considered as part of normal garden maintenance.
21. Whilst the height of the hedge is close to the AHH, still yet, it has not reached that height and the Council may review its position when the hedge grows above 4.10 metres. I consider the Council's response not to issue an RN at this point was proportionate striking a balance between the competing rights of neighbours.

Conclusion

22. Based on the foregoing analysis, I find the Council's decision not to issue a Remedial Notice to be reasonable and appropriate. For this reason, and having considered all matters raised, I conclude that the appeal should be dismissed.

23. 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 objective of supporting safe, cohesive and resilient communities.

J Burston

INSPECTOR