

High Hedges (Scotland) Act 2013

Appeal under section 12(1)

Decision by Dannie Onn, a Reporter appointed by the Scottish Ministers

- High hedge appeal reference: HHA-130-1
- Location of the hedge: Springburn Villa, Lochgoilhead, Argyll and Bute, PA24 8AJ
- Owner of the hedge: Mr and Mrs J and E Bryce
- Appellant's address: Birchwood House, Lochgoilhead, Argyll and Bute, PA24 8AJ
- Application for a high hedge notice 14/01302/HH dated 19 May 2014
- Appeal by Mr and Mrs W and I Burnside against the decision by Argyll and Bute Council that there is no adverse effect from the high hedge
- Date of site visit by Reporter: 30 October 2014

Date of appeal decision: 7 November 2014

Decision

I allow the appeal and quash the decision by Argyll and Bute Council that there is no adverse effect from the high hedge and I issue a high hedge notice, which is attached as an annex to this decision.

Reasoning

1. The determining issue here is whether the hedge adversely affects a reasonable level of enjoyment of Birchwood House and its grounds by its occupants.
2. The appellants' property, Birchwood House, is built on a sloping site with its main rooms on the upper floor. The lower floor is built into the hill and contains a garage and workshop accessed separately from the main house. The hedge existed when the house was built, but has grown taller since. It is a straight line of *Chamaecyparis x Leylandii* close-planted beside the property boundary and includes several remnant species from an earlier hedge and what looks like a sycamore tree at its northern end.
3. The distance between the hedge and the west side of Birchwood House is about 6.5 metres. The hedge currently rises about 6.8 metres above ground level for the whole of the western boundary of the appellants' property. Even allowing for the slope of the hill, with a rise of around 1.5 metres to the ground in front of the house, this hedge will cast a shadow for most of the evening for much of the year over the front part of the garden. It also blocks light from a significant proportion of the sky. This, coupled with the monolithic appearance

of the dominant *Leylandii*, has an overbearing effect along this side of the grounds of Birchwood House. The growth of the hedge has significantly reduced the enjoyment of the garden there.

4. I note that much of the area overshadowed by the hedge is surfaced for vehicles. However, it appears to me that only part of this is needed for access and parking. It could be used for other activities associated with living at the house, particularly as there is limited space available elsewhere in the steeply sloping garden.

5. The judgement on the impacts of a hedge is a matter for the decision maker in accordance with the circumstances of the case. However, the guidance note produced by the Scottish Government for the use of local authorities in relation to the Act includes methodology developed by the Building Research Establishment (BRE) for use by authorities in England and Wales as an example of a reasonable and suitable guide to light levels in some circumstances. Designed for evergreen hedges it is of some assistance in this case. The appellants' agent uses this methodology to set out the effects of the hedge as well as drawing on British Standard BS8206:2 2008, which is a code of practice for daylighting for buildings. The appellants' assessment is that the upper floor rooms would comply with that BS, but that the workshop would not. To meet the standard for a living room there, the hedge would need to be reduced to about 4.4 metres overall.

6. The appellant says that the effect of the hedge should be assessed on the potential use of the garage and workshop, which could be changed to principal rooms without the need for planning permission. I disagree. In my view, the garage and workshop are ancillary spaces, which need not have the same level of light as principal living rooms. The Act and the Scottish Government guidance refer to the enjoyment that the occupant could reasonably expect. The guidance relates this to the particular circumstances of each individual case. I consider that it would be wrong to anticipate what might be done hypothetically. That could introduce unnecessary restrictions and upset the balance between competing interests. The consideration of changes should be left until they occur. The Act allows for this and the Scottish Ministers guidance to local authorities includes a change of use on the affected property as an example of possible change. Should circumstances change, a fresh application can then be made, either for a notice to be issued or for an existing notice to be varied or discharged.

7. The appellants assess that the hedge blocks around 40% of the light available from the sky in the garden and suggest a hedge height reduction to 5.05 metres overall would be appropriate. This is based on internationally recognised sky light standards. They also say that the BRE guidance would result in an action height for the hedge (the height at which the hedge would be likely to block too much light) of 5.13 metres. I have checked this with my own measurements from site and a further calculation. In my assessment, using the whole of the available garden space and assessing the windows to the principal rooms only, the calculation based on the BRE guidance would not suggest a reduction in hedge height at all.

8. However, the issue here is reasonable enjoyment. Birchwood House appears to have been constructed specifically to look over the top of development lower down the hill and to take advantage of the views westwards over Loch Goil to the hills beyond. The hedge blocks the view and thereby reduces the enjoyment of Birchwood House for that reason too.

9. Of course, the hedge provides amenity to its owners at Springburn Villa. This includes helping to provide a suitable habitat for garden birds and other creatures. However, these are unlikely to be put off indefinitely by a well maintained hedge at a lower height. Cutting back might reasonably be required outwith the nesting season to avoid the potential for disturbance or harm to nesting birds. The owners say that the hedge was planted to provide a wind break and became established before Birchwood House was built. The growth of the hedge has restored their privacy they say. It is reasonable to balance the hedge-owners' amenity with the enjoyment of the appellants. Indeed, the Scottish Government's guidance encourages planning authorities to do so.

10. Looking at the dimensions supplied by the appellants' consultant and the dimensions I checked on site, it appears to me that the hedge could be maintained at a height of around 5.4 to 6.0 metres whilst still preventing direct overlooking from Birchwood House into the garden and main floor living areas of Springburn Villa. With the hedge reduced, it would be possible to see between the appellants' main rooms and the attic rooms of the hedge owners. However, and despite the difference in levels, I consider that the distance between these rooms (at over 40 metres) would prevent any intrusive overlooking.

11. Reducing the hedge would then increase the light levels in the garden and ancillary spaces at Birchwood House. It would also improve the views from it in accordance with the design intentions. I consider that this would strike a reasonable balance between competing interests. My view on this is reinforced by the apparent willingness of the owners to allow a reduction in the height of the hedge. The owners' garden is wider than the appellants' and runs in front of another house. The hedge there has been reduced in height by agreement. The level achieved accords roughly with my assessment of what is a reasonable balance in this case.

12. The appellants' tree consultant says that the hedge is of the type that will take to cutting back at the top and to a certain extent at the sides. In my experience it would also benefit from regular trimming to maintain its hedge habit and delay thinning out at the bottom. The hedge would not be lost as a result of the reduction in height.

13. I have considered whether the high hedge adversely affects the amenity of the area. The appeal site lies within the Loch Lomond and the Trossachs National Park. However, the National Park Authority had no comments to make on the application. The hedge is between two residential properties in a residential area of the town. It does not relate to the woodland around the town or any pattern of trees within it. The character and amenity of the area would be maintained with the hedge at its current height or if it were reduced. The *Leylandii* hedge is said to be about 30 years old. It is unrelated to any historic location, landscape or event of note and consequently, has little cultural significance.

14. Having determined that reasonable enjoyment of Birchwood House is adversely affected, I must decide whether the owner of the hedge should take any initial action to remedy the effect and specify a reasonable time to take it. I must then decide whether the owner should take any action to prevent recurrence of the adverse effect.

15. A hedge height of no more than 6.0 metres would be a reasonable balance between the interests of the owners and the appellants. Requiring initially that the hedge be cut to a height of 5.4 metres would allow for growth before the hedge needed to be cut again. That would prevent a recurrence of the adverse effects between cuts and allow a margin for growth to reduce the frequency of cutting back. This work should be carried out within 3 months of the notice taking effect. The impacts of the hedge will be less significant in

winter and the timescale would ensure that the owners can organise the work before the nesting season starts.

16. The responsibility for keeping the boundary hedge at a reasonable height must rest with the owners. I note that the owners in this case have given permission to other neighbours to trim the hedge in front of them and offered the same with the appellants. However, I have found that the hedge is too high and the remedy under the Act is to require action by the hedge owner.

Dannie Onn

Reporter



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High Hedge Notice

HIGH HEDGES (SCOTLAND) ACT 2013

Notice under section 14

To: Mr and Mrs J and E Bryce

This is a notice served by Scottish Ministers under section 14(1) of the High Hedges (Scotland) Act 2013. The Ministers have decided that the hedge described below adversely affects the enjoyment of the domestic property referred to in section 3 below. They have decided that action should be taken in relation to the high hedge with a view to remedying the adverse effect and, where stated, preventing its recurrence.

1. Description of the high hedge which is the subject of this notice: the 6.8 metre high hedge at Springburn Villa, Lochgoilhead, Argyll and Bute, PA24 8AJ comprising mainly *Chamaecyparis x Leylandii* and extending the entire boundary with Birchwood House to the east.
2. The land on which the high hedge is situated: Springburn Villa, Lochgoilhead, Argyll and Bute, PA24 8AJ
3. The domestic property adversely affected by the high hedge: Birchwood House, Lochgoilhead, Argyll and Bute, PA24 8AJ
4. Initial action to be taken by the person on whom this notice is served: The high hedge to be cut back to a height of 5.4 metres above ground level.
5. Time period within which this initial action must be taken: before 1 March 2015 (in order to avoid any impact on nesting birds).
6. Preventative action to be taken by the person on whom this notice is served: The high hedge is to be regularly cut back to 5.4 metres high before it reaches 6.0 metres high above ground level. Such action is to be taken outwith the bird nesting season.
7. Date on which this notice comes into effect: 7 December 2014

Dannie Onn

Reporter



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Notes

1. In the event of a failure to comply with this notice, Argyll and Bute Council is entitled to authorise a person to take action under section 22 of the Act, and may recover the expenses of that action.
2. It is an offence under section 24 of the Act intentionally to prevent or obstruct a person authorised to take action from acting in accordance with this Act.
3. This notice is binding on every person who is for the time being an owner of the neighbouring land specified in the notice.
4. This notice has been copied to Argyll and Bute Council, every owner/occupier of the domestic property referred to in the notice, and every owner/occupier of the neighbouring land.