

Planning and Environmental Appeals Division

Appeal Decision Notice

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High Hedges (Scotland) Act 2013

Appeal under section 12(1)

Decision by Mike Croft, a Reporter appointed by the Scottish Ministers

- High hedge appeal reference: HHA-130-2.
- Location of the hedge: Wellcroft, 80 John Street, Helensburgh, G84 9JZ
- Owners of the hedge: Mr Alan Carrick and Mrs Heather Carrick.
- Appellants' address: Longcroft, 78 John Street, Helensburgh G84 9JZ.
- Application for a high hedge notice 15/02916/HH dated 12 October 2015.
- Appeal by Dr and Mrs Evans against the decision by Argyll and Bute Council that there is no adverse effect from the high hedge.
- Date of site visit by Reporter: 31 March 2016.

Date of appeal decision: 11 April 2016.

Decision

1. I 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. The high hedge notice takes effect on the date specified therein.

Reasoning

2. At the outset I make clear that the submissions I have taken into account include those in Mr Carrick's letters to the council dated 19 May 2014 and 23 Nov 2015. The council says that it previously had no record of letters received from Mr Carrick in response to the appellants' application to it.

3. Longcroft is a detached bungalow which fronts Millig Street to the south-south-west. Its rear garden is just over six metres deep, rising by something of the order of 1.2 metres from the bungalow's rear main wall to the rear garden boundary, which is more or less parallel with Millig Street. The hedge in question, in Wellcroft's garden, lies just to the north of this boundary. It is of leylandii, dense and seemingly well kept. Wellcroft is a substantial detached house, with its main outlook towards the south-south-west, that is towards the hedge. The distance from the house to the hedge is a little over 20 metres. The appeal form says the hedge is about 13.5 metres long. From tape measurement, however, I found it during my site inspection to be 23 metres long. The appeal form and the council's statement give the hedge height as about 4.5 metres and four metres respectively. In my

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estimation, the council's measurement is the more accurate. I saw that the hedge is of consistent height throughout its length.

4. The appellants assert that the high hedges legislation states that the trees constituting the hedge should not be any higher than two metres. That is not correct: a height of two metres for a hedge is one of the prerequisites for a hedge to constitute a high hedge for the purposes of the legislation (and I have no doubt that the hedge here is indeed such a high hedge), but the test then, as specified in section 6(5)(a) of the Act is "whether the height of the high hedge adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have". Reasonable enjoyment of a domestic property can have a number of different components.

5. The appellants' concerns in this case relate to loss of sunlight and daylight to the bungalow, a situation which in their view can only get worse with the hedge's rapid growth. For my part, however, I am satisfied that no shadow from the hedge will be cast on the bungalow much later than about 0630 hours GMT, so the effect in terms of loss of sunlight will be a very marginal one, and then only in summer.

6. As for daylight, the hedge owners contend that the hedge does not inhibit their neighbours' light at all. The council's position is that it does not sufficiently diminish natural light to the habitable rooms of the neighbours' property to amount to an adverse effect on the enjoyment of the bungalow which its occupants could reasonably expect to have. I have considered this in some detail. The appellants' bungalow has a series of five rooms directly facing the hedge. They are two bedrooms, a bathroom, a dining room and a kitchen. Three of those rooms, the bedrooms and the dining room, are properly regarded as habitable rooms. I saw when I made observations in the bungalow that the hedge in question obstructs any view of the sky except when one stands very close to the window in each of the habitable rooms. Although some loss of light to those rooms is brought about by the appellants' use of venetian blinds, I consider that the hedge also has a significant effect in that regard. To my mind, the hedge appeared over-dominant from those rooms. Part of that effect results from the hedge being planted on ground that is higher than the bungalow's floor level (see paragraph 3 above). In addition, the fact that more than one habitable room in the bungalow is affected makes the hedge's adverse effect more serious than would otherwise be the case.

7. I therefore come to a conclusion different from the council's. I consider that the height of the high hedge adversely affects the enjoyment of the neighbouring bungalow that its occupants could reasonably expect to have.

8. My next task, therefore, arises from section 6(5)(b) of the Act which indicates that I need to consider "whether any action to remedy the adverse effect or to prevent the recurrence of the adverse effect (or both) should be taken by the owner in relation to the high hedge". The appellants seek a reduction in the hedge's height to six feet (1.8 metres). That is a greater reduction than can properly be required under the Act. The hedge owners contend that reducing the height to two metres (which can be required) would kill the trees completely. I do not believe that that degree of reduction is necessary. It seems to me that a reduction in height to three metres represents an appropriate balance between the interests of the appellants and the hedge owners. A maximum hedge height of three metres would in my assessment provide the appellants with an adequate level of



reasonable enjoyment of their bungalow, both initially and subsequently. A reduction to that height would result in no problems of loss of privacy for the occupiers of the two adjacent properties in this case, because the hedge at its reduced height would still be beneficial in that respect and because of the substantial distance between the dwellings within the two properties.

9. I am not aware of the hedge being used by nesting birds, but clearly it has potential in that respect. Under the Wildlife and Countryside Act it is an offence to carry out works that would disturb nesting birds, and it would clearly be unreasonable to compel the works to take place that would risk causing an offence. I am aware of several different nesting seasons. To be sure that no disturbance takes place I have taken the nesting season to be until the end of August. Given that this allows the hedge owners several months to make arrangements to carry out the works, I consider that it is reasonable to specify that the action must be completed by 30 September 2016. It would be open to the hedge owners to carry out the works sooner, provided they satisfy themselves that there would be no nesting birds that would be affected.

Mike Croft

Reporter



High Hedge Notice

HIGH HEDGES (SCOTLAND) ACT 2013



This is a high hedge notice issued under section 16(1)(a)(i) of the High Hedges (Scotland) Act 2013 following the decision of the Scottish Ministers under section 14(1)(b) of the Act to quash the decision of Argyll and Bute Council dated 27 January 2016 not to issue a high hedge notice.

1. Description of the high hedge which is the subject of this notice: the hedge comprising leylandii species approximately four metres high extending for 23 metres along the south-south-west boundary of the land at Wellcroft, 80 John Street, Helensburgh, G84 9JZ.
2. The land on which the high hedge is situated (this is the "neighbouring land" within the meaning of section 34 of the Act): Wellcroft, 80 John Street, Helensburgh, G84 9JZ.
3. The domestic property adversely affected by the high hedge: Longcroft, 78 John Street, Helensburgh, G84 9JZ.
4. Initial action to be taken by the owner of the neighbouring land: reduce the height of the leylandii trees that make up the hedge to no more than three metres, when measured from the base of the trees.
5. Compliance period: the period within which the initial action must be taken is by 30 September 2016.
6. Preventative action to be taken by the owner of the neighbouring land: maintain the hedge at the height specified in paragraph 4 above.
7. Date on which this notice comes into effect: 10 May 2016
8. 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.
9. 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.

Mike Croft

Reporter
Notes



1. This notice is binding on every person who is for the time being an owner of the neighbouring land specified in the notice.
2. 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.

