

Planning and Environmental Appeals Division

Appeal Decision Notice

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High Hedges (Scotland) Act 2013

Appeal under section 12(1)

Decision by Richard Hickman, a Reporter appointed by the Scottish Ministers

- High hedge appeal reference: HHA-130-3
- Location of the hedges: 127 & 127a East Princes Street, Helensburgh G84 7DW
- Owners of the hedges: Mr & Mrs Barrie and Mr & Mrs Cooper
- Appellant's address: 129 East Princes Street, Helensburgh G84 7DW
- Application for a high hedge notice 17/02117/HH dated 4 August 2017
- Appeal by Mr & Mrs Struzzi against the decision by Argyll and Bute Council that (a) the trees forming the hedge are not of significant height to cause a reduction of daylight to the rear habitable rooms of 129 and 131 East Princes Street and (b) the trees forming the hedge do not create an unacceptable level of overshadowing upon the rear gardens of 129 East Princes Street to that already occurring by the dwelling house
- Date of site visit by Reporter: 10 January 2018

Date of appeal decision: 18 January 2018

Decision

I quash the decision by Argyll and Bute Council that there is no adverse effect from the high hedges and that no action should be taken in relation to the high hedges; 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.

Description and background

1. This application for a high hedge notice seeks the reduction in height of a pair of parallel hedges that flank the sides of a narrow lane/driveway giving access to two houses situated to the rear of houses/flats fronting onto the north side of East Princes Street, within a residential area of Helensburgh. The hedges each comprise closely spaced trees with further shrub growth between the trunks. These hedges are cut low where they pass between the flanking buildings fronting onto East Princes Street (125 and 129), but reach heights of around 5-9m where they pass between the rear gardens of those properties. This section of the lane is about 30m long, aligned approximately southsouthwest to northnortheast. A much taller tree is situated at the north end of the eastern hedge.

2. The appellants live in the upper villa flat situated to the east of the tree lined lane. Most of the area to the rear of these 4 villa flats is a shared drying green, but the appellants have exclusive use of a strip of ground directly abutting the eastern hedge, extending from a location close to the rear of the villa block to the northern boundary of the property. This strip forms a garden area.

3. The appellants do not dispute the element of the council's decision notice that states that the high hedges do not cause a reduction of daylight in the rear habitable rooms of the villa block.

4. The main points put forward in support of the appeal are :

- The appellants' main objective is to have good use of their dedicated garden area during the main summer months, especially in the afternoons and evenings.
- Both hedges comprise closely spaced trees and shrub growth that form a dense barrier to light.
- The eastern hedge is approximately 6-9.5m in height, except for the tree at the north end, which reaches about 12m and should be retained.
- The western hedge is approximately 5-6m in height, comprising mainly evergreen species, and is located about 3m from the boundary with the appellants' garden.
- The western hedge reinforces the shadowing effect, so that the combined effect of the two hedges is to completely obstruct light and sunshine reaching the garden area, greatly reducing its potential for enjoyment and usefulness.
- Even if the eastern hedge did not exist, the western hedge would cause unacceptable overshadowing. That is why it has been included in the high hedge application.
- Photographic records and an analysis of the extent of shadowing (supplied) show that the eastern hedge casts a shadow over the garden area from early/mid afternoon onwards, extending into the evening during summer months. This deprives the appellants use of the area for 4-6 hours each summer day when there is good weather.
- The council's contention that the villa building results in a significant level of overshadowing of the garden area is incorrect. Although there is some overshadowing caused by the building during the middle of the day outwith summer months, as was the case when the council staff visited the site in September 2017, the shadow of the building is greatly reduced during the main summer months, with minimal effect on the garden area. Consequently the council's reason for refusing the application is unfounded.
- The two hedges are unmaintained, forming a dense tangle of unattractive vegetation, of no landscape value.
- The hedges are not a prominent feature in street views at the front of the properties.
- Any loss of amenity for the hedge owners due to the reduction in height of the two hedges flanking the lane would be greatly outweighed by the amenity benefit to the appellants and their immediate neighbours.

5. The main points put forward by the council in support of the decision to refuse the high hedge application are :

- The matter at appeal requires an assessment of overshadowing blocking light to the garden causing a negative effect on the applicants' reasonable enjoyment of their property.
 - The council considers that the two hedges reach a height of 4 to 6.5m.
 - The trees on the eastern side of the access path have been closely planted but are not entangled in a way that they appear as a solid green wall.
 - Some overshadowing of the garden area already occurs due to the location of the house.
 - At the time of the council's site visits in September, at 14:30 hrs the shadow of the applicants' house was cast over half of the growing area. From 15:00 onwards a clear line of sunlight would shine on the growing area, after which time shade would be cast by the hedge.
 - This level of overshadowing is not regarded as detrimental to residential amenity as there is a degree of overshadowing already occurring due to the house. This was a fundamental reason for the council not supporting the high hedge application.
 - If the trees are reduced in height, or replaced by a domestic size fence, there would still be a level of overshadowing of the growing area.
 - The council considers that the trees lining the path leading to the rear properties contribute positively to the amenity of both hedge owners as they visually break up housing blocks facing them to the south.
 - The trees are also an important link from the road creating a striking tree lined walkway for the owners.
 - The trees contribute positively to the amenity and character of the surrounding area as they are visible from the public road and have a variety of tree ages within them.
 - Some of these could be considered as veteran trees which may be a habitat for wildlife.
6. The main points put forward by the hedge owners are :
- The tree lined lane is a valued feature of these properties, which have a quiet location off the main road.
 - The trees provide a habitat for wildlife.
 - The trees are regularly trimmed.
 - The photographs supplied by the appellants show that their garden enjoys a generous spell of sunshine when not blocked by their own dwelling.
 - Trees to the east cause a certain amount of shading first thing in the morning.
 - Helensburgh prides itself on many tree lined streets and lanes.

Reasoning

7. There is no suggestion that these two lines of trees and shrubs are not high hedges, for the purposes of this legislation, as they form two closely spaced rows of trees rising well above the threshold height of 2m. Thus the next issues to be considered are whether, individually, they form a barrier to light; and if so, whether the loss of light adversely affects the enjoyment of the appeal property that the occupants could reasonably expect to have.

8. Although there is some disagreement between the council and the appellants as to whether the eastern hedge is a barrier to light (the council contending that it does not

appear as a solid green wall), it is evident from the very close spacing of the tree trunks and branches that there would be a significant blockage of light when the trees are in leaf, and this is confirmed by the appellants' photographs taken during the summer months.

9. With regard to the western hedge, on which the council makes little comment, this too comprises closely spaced trees and branches. Although it is a little lower in height than the eastern hedge, it contains a significantly larger proportion of evergreen species. It is located only about 3m away from the eastern hedge and the property boundary and is hence very close to the garden area that is of concern to the appellants. I agree with them that it will act as a barrier to light reaching and possibly permeating through the eastern hedge. This is likely to add significantly to blocking light from the appellants' garden when the deciduous trees in the eastern hedge are not in leaf, due to the high proportion of evergreen species in the western hedge. If the eastern hedge were to be reduced in height, the western hedge would form a very significant barrier to light due to its character and proximity to the appellants' garden.

10. Turning to the question of reasonable enjoyment of the property, I agree with the council and the appellant that the hedges do not cause a reduction in daylight reaching the habitable rooms at the rear of numbers 129 and 131 East Princes Street, as the rear façade of the building does not face towards the hedges and receives unobstructed daylight across the whole rear garden. It is clear from the photographs and shadow analysis that have been supplied that the combined effect of the two hedges is to block all of the sunlight and a great deal of the natural light reaching the garden area during the afternoon, and during the evening in summer months. I agree with the appellants that the reduction in light results in a greatly reduced potential for them to use and enjoy their garden area, especially as the height, proximity, and very dense character of the hedge are likely to have an overbearing impact on the sense of space in the garden.

11. The council does not accept that the hedges cause an unacceptable level of overshadowing in the appellants' garden area. This is based on the extent of shadowing from the residential building occurring in September, when council staff assessed the position. The council's appeal submission states that (at that time) the shadow of the building moved away from the garden area a little while before the shadow of the hedge affected the same area, thus resulting in a near continuous degree of shadowing. It is clear from the appellants' submissions that the extent of shadowing of the garden by the building is greatly reduced in the summer months, and that it is the afternoon and evening hours, when the building shadow is absent, that they value most. Hence I find the council's justification for refusing the application for this reason to be unfounded.

12. The presence of a 2m hedge or fence would continue to block some of the light reaching the garden. However this is the standard height for rear garden fences, and the appellants could not reasonably expect anything lower.

13. The council also has concerns about the potential impact on local amenity, both for the hedge owners and the general public, if the hedge application is approved. I can understand that the cut down profile of the two lines of trees would be much less attractive than what exists, especially in summer when the trees form green canopies overhead. I accept that this would result in a reduction in amenity, and would cause dissatisfaction to the hedge owners. However I consider that this aesthetic loss would be greatly outweighed

by the much increased practical enjoyment that the appellants would derive in making use of their garden in fine summer weather.

14. I consider that the reduction in the hedge heights would make little difference to the peace and privacy of the houses at the rear. The houses would continue to enjoy a secluded off street location. The hedges do not currently screen views between number 127A and the villa flats at numbers 129 and 131 East Princes Street, while number 127 is set well back from number 125.

15. With regard to public views of the reduced tree lines, there is only a brief glimpse of these hedges from the public roadway, the most notable features being the neat hedges and flanking buildings situated much closer to the street frontage.

16. I also note the concerns about the potential effects on wildlife. Provided that the reduction in the height of the hedges takes place outwith the main bird nesting season (stated by the RSPB to be March to August) there should be no significant disruption of wildlife as there are plenty of other trees and garden vegetation in the vicinity.

17. Drawing these matters together, for the reasons given above I conclude that each of these lines of trees constitutes a high hedge, and that each of these hedges forms a barrier to light. I also conclude that although there would be no loss of daylight in the habitable rooms at the rear of numbers 129 and 131 East Princes Street, the loss of light in the appellants' garden area during afternoons and summer evenings resulting from these barriers to light is such that the enjoyment of the garden would be significantly reduced.

18. Although part of the garden is affected by the shadow of the residential building in the first half of the day outwith the main summer months, and the reduction in height of the two hedges would cause some localised loss of aesthetic amenity, I am satisfied that these factors do not outweigh or justify setting aside the considerable increase in the enjoyment of the appellants' garden that would result from a reduction of the hedges to a height of 2m above the ground level on which they are situated, except for the much taller tree at the northern end of the eastern hedge.

19. My overall conclusion is that the presence of the two high hedges adversely affects the enjoyment of the domestic property at 129 East Princes Street which occupants of that property could reasonably expect to have; that both hedges should be reduced to a height of 2m in relation to the ground level on which they are located; and that the hedges should be maintained thereafter to achieve this height after the initial reduction.

20. I have considered all the matters raised but I find that they do not alter my conclusions.

Richard Hickman

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 31 October 2017 not to issue a high hedge notice.

1. Description of the high hedges which are the subject of this notice: Two hedges flanking the lane leading to numbers 127 and 127A East Princes Street, Helensburgh, situated between numbers 125 and 129 East Princes Street, from the point on each hedge in line with the main rear façades of numbers 125 and 129 East Princes Street, Helensburgh, extending in a northnortheasterly direction to a point in line the northwestern corner of the shared rear garden of 129-131 East Princes Street, Helensburgh, but omitting the northernmost tree in the eastern hedge.
2. The land on which the high hedges are situated (this is the "neighbouring land" within the meaning of section 34 of the Act): 127 and 127A East Princes Street, Helensburgh G84 7DW
3. The domestic property adversely affected by the high hedge: 129 East Princes Street, Helensburgh G84 7DW.
4. Initial action to be taken by the owners of the neighbouring land: Reduce the height of both hedges to a height no greater than two metres when measured from the base of the hedges on the neighbouring land.
5. Compliance period: The period within which the initial action must be taken is 1-30 September 2018.
6. Preventative action to be taken by the owners of the neighbouring land: Ensure that both hedges are maintained at a height no greater than two metres.
7. Date on which this notice comes into effect: 16 February 2018
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.

Richard Hickman

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.

