



Appeal Decision

Site visit made on 14 January 2025

by A Edgington BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 21 January 2025

Appeal Ref: APP/HH/2235

67 Cedar Road, Earl Shilton, Leicester LE9 7HF

- The appeal is made under section 71(3) of the Anti-social Behaviour Act 2003.
 - The appeal is made by Mrs Pamela Steer, the complainant, against the failure of Hinckley and Bosworth Borough Council to issue a Remedial Notice.
 - The complaint, Ref. 23/00973/HEDGE, is dated 1 October 2023
 - The Council's decision is dated 2 February 2024.
-

Decisions

1. The appeal is dismissed.

Preliminary Matters

2. At the visit I queried the garden area set out in the Council's Action Hedge Height calculation (AHH), calculated according to the guidance Hedge Height and Light Loss¹, as my initial review of the evidence suggested that the garden area was far larger. The delegated report shows that the Council calculated AHHs using both the entire garden and the vegetable garden only in their calculations. However, there is no provision within the guidance High Hedges: Prevention and Cure² for garden areas to be subdivided. Moreover, that guidance states that the *effect of the hedge on particular activities that the complaint engages in on the property, for example a vegetable patch, or the growing of competition plants, will not normally be taken into account*. I see no reason to deviate from the guidance in my reasoning.

Background and Main Issues

3. As this is an appeal allowed under Regulation 5 of the High Hedges (Appeals) (England) Regulations 2005, I am required to consider only the evidence available to the Council at the time the decision not to issue a Notice was taken.
4. The complaint stated that the conifer hedge close to the side boundary between 67 and 69 Cedar Road (Nos 67 and 69) was having an adverse effect on the reasonable enjoyment of No 69. The Council concluded that this was not the case and did not issue a Remedial Notice (Notice).
5. The complaint is concerned primarily with roosting pigeons and debris. There is also a concern raised in relation to obstructed sunlight in the vegetable garden.

¹ Hedge Height and Light Loss, ODPM, 2005

² High Hedges: Prevention and Cure, ODPM, 2005

6. The main issues are whether the hedge is having an adverse effect on the reasonable enjoyment of No 69, and whether the issue of a Notice would have been an appropriate and proportionate remedy.

Reasons

7. The hedge within No 67's garden comprises three mature conifers located in a line perpendicular to the boundary with No 69. There are other evergreen specimens, including a holly and conifers in the plot to the rear of No 69 which have a conjoined canopy with the hedge in No 67's garden. The hedge within No 67's garden has a length of around 4 metres which I have taken forward in my AHH calculation, even though given its orientation in relation to No 67, the effective hedge length would probably be less than 4 metres.
8. The Council calculated an AHH. However, as noted above, I observed that the garden area given in Cell A appeared to significantly underestimate the garden area. My own assessment, based on the aerial view submitted, concluded that the garden area is approximately 300 square metres. As such, my calculation of AHH³ gives a figure significantly in excess of that of the Council and also, substantially higher than the height of the hedge when the Council carried out its assessment.
9. Consequently, the hedge was not obstructing light within No 69's garden to a significant degree in February 2024, and therefore was not having an adverse effect on the reasonable enjoyment of No 69. In any case, the leeks growing in No 69's vegetable garden, which were in the area closest to the hedge, appeared healthy and vigorous. I saw nothing to indicate that their growth was affected by light obstruction from No 67's hedge. Moreover, given the orientation of the hedge in relation to No 69's garden, the hedge will only obstruct sunlight from late afternoon in the summer months. In a suburban situation there will inevitably be transient shade from obstructions throughout the day and it is unreasonable to expect all obstructions in other gardens to be removed to avoid that scenario.
10. Furthermore, there is a Google Earth aerial view dated 2023 in the Council's submission. It is unclear exactly when the photograph was taken but the rear of No 69's garden appears to be lawned. Given that the hedge has been in place for some 60 years, it seems reasonable to conclude that the occupiers of No 69 developed the vegetable garden in full knowledge of the presence of the hedge.
11. With regard to roosting birds, the only area I observed with concentrated bird droppings was underneath the conifers sited in the garden to the rear of No 69. This is not the hedge that is the subject of this appeal. The sheds located along the boundary with No 67, next to the hedge, were clear of bird droppings at my visit. In any case, the end conifer of No 67's hedge has been cut back in line with the boundary to more or less its entire height, and there is very little oversailing of No 69's garden from the hedge.
12. I did notice debris on the shed roofs and across the garden, some of which may have originated in No 67's hedge. However, the guidance states that where *litter is caused by the excessive height of the hedge*, which is the only reason this could be taken into account, *is likely to depend on the particular*

³ Appendix 1

circumstances. It refers to branches oversailing roof gutters which is not the case here. It also states that *the volume of litter is likely to be low and resulting problems are unlikely to represent a substantial interference with a complainant's enjoyment of their property though they may be regarded as irritating and inconvenient*.

13. In this case the canopy that had oversailed No 69's garden has been cut close back to the property boundary. The debris appeared to be short clippings, as though the hedge had recently had a light trim. I am not satisfied that this has originated as ongoing and spontaneous debris from the hedge. In any case, even if I accept that there is litter originating from the appeal hedge, it would be difficult to distinguish this from the other non-appeal hedge. Moreover, there is nothing before me to suggest that the quantities of litter or debris are unreasonable as a consequence of the hedge's height. No 69 has a very large garden and I see no reason why normal debris and pigeon droppings could not be accommodated. I conclude that the hedge was not having an adverse effect on the reasonable enjoyment of No 69 in respect of pigeons or litter.

Other matters

14. The appellant notes that the Council did not canvas opinion amongst other residents of nearby dwellings. However, there is no requirement to do so in relation to a complaint lodged by the occupiers of No 69. Those neighbours had the opportunity to support the complaint or be party to a joint complaint at the outset. Moreover, given my AHH calculation there will be even less impact on light loss at 71 and 73 Cedar Road as the hedge is remote from those plots, and there can be no adverse effects from roosting pigeons in the appeal hedge in those gardens.
15. I appreciate that the cut side of the hedge is not attractive when viewed from the east. However, the hedge-owners are entitled to plant and maintain their garden as they wish, as long as a nuisance is not caused. In this case I am unable to find a nuisance that could be remedied under the High Hedge legislation.
16. I appreciate that the complainant wishes to have a tidy garden, and I appreciate that people have different expectations with regard to their property. However, the hedge-owners are equally entitled to maintain their garden as they see fit. There are no inherent requirements for conifers to be pruned or maintained, or to be kept at a height of no more than 2 metres. Moreover, I am unable to conclude that the hedge at No 67 is causing a nuisance as a consequence of its height, which is the only option available under this legislation.
17. The appellant has also advanced the argument that the hedge was higher than the Council's AHH of 11.76 metres in relation to the vegetable garden in February 2024. I estimated the hedge to be around 11 metres tall at my visit. As such, even if I accepted that the Council's AHH in relation to the vegetable garden only was determinative, there is nothing before me to suggest that it was lower than the actual hedge height at that time.
18. The complainant has also mentioned health issues for a family member but on the basis of what is before me I am unable to conclude that the hedge is the primary cause.

Conclusion

19. The High Hedge legislation is concerned primarily with light loss arising from the height of an evergreen hedge. In order to issue a Notice, the Council had to be satisfied that the hedge was having an adverse effect on the reasonable enjoyment of No 69. Even using a reduced garden area in the AHH calculation, which significantly favoured the complainant, the Council concluded that it was not.
20. My AHH figures are significantly in excess of the Council's which leads me to give even less weight to the complainant's arguments. Whilst I appreciate that the complainant will be disappointed with the outcome of this appeal, the Act provides clear guidelines to assess the impact of a hedge on a garden, and these will not always provide a remedy. The appeal is dismissed.

A Edgington

INSPECTOR

APPENDIX 1

A SPREADSHEET TO CALCULATE ACTION HEDGE HEIGHT		
Only enter data in the green boxes		
Measure distances in metres	Quantities you measure/ look up	Calculated values
GARDEN		
<i>If the garden is not rectangular, or the hedge is shorter than the boundary on which it grows, enter -</i>		
Area of garden (see section 4.2 & 7.ii.a)	300 A	
Effective hedge length (see Figure 3)	4 B	
<i>Or, if the garden is rectangular and the hedge grows along the whole length of the boundary on which it is situated, enter -</i>		
Depth of garden	0 C	
Effective garden depth		$(A \div B) \text{ or } C$ 75.00 C'
Orientation		
Compass direction of hedge from garden (S, NW etc)	NW	
Factor from Table 1 (section 4.2)		0.50 D
Uncorrected action hedge height		$(C' \times D)$ 37.50 E
Hedge set back from boundary (section 4.3.1)		
If hedge over 1 metre back from boundary, enter distance between boundary and nearest part of hedge.	0 F	
Slopes (section 4.3.2)		
Distance between hedge and reference point for slope calculation		$(C' \div 3)$ 25.00 G
If garden slopes, enter height that a point in the garden G metres away from hedge boundary is above the base of hedge (negative number if hedge is higher).	0 H	
Corrected action hedge height for garden		$(E + F + H)$ 37.50 J
WINDOWS		
Measurements		
Closest distance from hedge to centre of window (section 5)		K
If hedge opposite window, or south of a window that faces within 30 deg S of E or W (see sections 5.2-3), write 2 here		
If hedge at right angles to window, write 1 here		L
If hedge at 45 degrees to window, write 1.5 here		
Uncorrected action hedge height for windows		$(K \div L) + 1$ M
Amendments		
Enter height of floor above ground (if first or above)		N
If site sloping or stepped, enter height of base of window wall above base of hedge (negative number if hedge is higher)		P
Corrected action hedge height for windows		$(M + N + P)$ Q
OVERALL ACTION HEDGE HEIGHT (Lowest of J and Q, or 2 if greater)		37.50