

## Appeal Decision

Site visit made on 16 October 2014

by **Helen Slade MA FIPROW**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date:

**30 OCT 2014**

**Appeal Ref: APP/HH/14/1372**

**Address of the hedge: 14 Judeland, Astley Village, Chorley, PR7 1XJ**

- The appeal is made under section 71(1) of the Anti-social Behaviour Act 2003.
- The appeal is made by Mrs Kathleen Moon, the hedge owner, against a Remedial Notice issued by Chorley Council ('the Council').
- The complaint (Case Reference ENF/HH/1) is dated 20 November 2013.
- The Remedial Notice is dated 18 June 2014.

### Decision

1. I allow the appeal in part and the Council's Remedial Notice ('RN') is varied in the terms set out in the RN attached to this decision. This requires the height of the hedge to be reduced initially to 2.0 metres but maintained thereafter at a height not exceeding 2.25 metres.

### Procedural Matters

2. The original complaint, made by Mr and Mrs Hilton of 16 Judeland, appears to indicate that two hedges were involved, one behind the other. The RN relates to only one hedge. This appeal decision therefore relates only to the hedge which is shown on the RN.

### Main Issues

3. The main issues in this appeal are:
  - a. whether the Council has overestimated the problems experienced by the complainant: e.g. that the complainants were aware of the proximity of the hedge to their property when they purchased it.
  - b. whether the Council has attached insufficient weight to the contribution that the hedge makes to the amenity of the appellant's property and her reasonable enjoyment of it: i.e. although there is a fence between the two properties the design of it does not provide sufficient privacy to the appellant's property.

### Reasons

#### ***The hedge and its surroundings***

4. The hedge which is the subject of the RN and this appeal is comprised of a row of evergreen leylandii trees lying along the whole length of the joint boundary between the two properties concerned: numbers 14 and 16 Judeland. The

length of the joint boundary, and thus the hedge for the purpose of the RN, is 22.5 metres. The hedge is situated 1.2 metres from the side kitchen window and part-glazed door of the complainants' property, which faces to the south east, and at the time of the inspection by the Council was 2.75 metres in height at this location. When I made my site visit the hedge was 3.1 metres high at this point.

5. With respect to light loss to the front garden, the effective length of the hedge is 12 metres (i.e. that part of the hedge alongside the front garden).
6. There is a wooden fence on the complainants' side of the hedge which is constructed of wooden uprights with gaps between and which is 1.8 metres high. Part of this fence has been renewed and part is original.

### ***The calculations by the Council***

7. The Council carried out an inspection and made various measurements of the relevant hedge and garden. Using the methodology recommended in the guidance '*Hedge height and light loss*' produced by the Building Research Establishment, the Action Hedge Height ('AHH') for the light loss to the kitchen was calculated to be below the minimum height permitted by the legislation. The Council therefore corrected the AHH to 2 metres, and issued an RN accordingly.
8. With respect to the light loss to the front garden, the calculations by the Council suggest that the AHH should be slightly higher, at 2.175 metres, but the RN applies the height of 2.00 metres to the whole length of the hedge.
9. The appellant has not specifically challenged the measurements used by the Council and I have no reason to consider that they are incorrect in any way. The issue is whether or not other factors should have been taken into account in reaching a decision to issue an RN.

### ***Whether the problems for the complainant have been overestimated***

10. The appellant considers that it should have been obvious to the complainants when they purchased their property that the proximity of the boundary fence-line and hedge might be an issue for them.
11. The guidance makes clear that an owner or occupier is entitled to complain even if the hedge was present when they moved in.<sup>1</sup> It is not necessary for anyone to have lived at a property for any set length of time before they can make a complaint, but clearly they must have had some time to evaluate the adverse effects.
12. The correspondence shows that discussions between the two parties have been going on since July 2012 in an effort to achieve an agreed height for the hedge, and, in a letter dated 6 October 2013, the complainants actually suggested to the appellant and her husband that a height of 2.25 metres opposite the back door, rising to 3.00 metres at the far end of the front garden would be reasonable. This offer was not accepted or acted upon by the appellant and so the complainants were forced to seek legal redress.
13. The letter of 6<sup>th</sup> October 2013 to Mr and Mrs Moon makes clear that the complainants were also concerned to preserve a degree of privacy between the

<sup>1</sup> Paragraph 4.44 of High Hedges Complaints: Prevention and Cure published by the OPDM May 2005

two properties. The Council's RN seeks a reduction in the height of the hedge below that which the complainants had suggested.

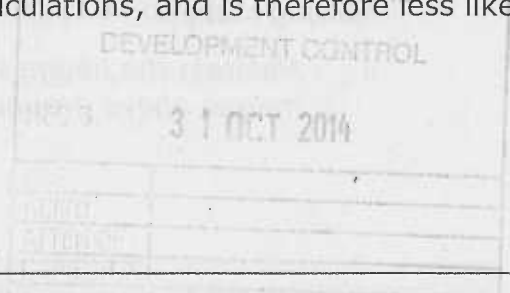
14. At my site visit it was clear that the principal effect of the hedge is that of light loss to the kitchen. The hedge at the time of my visit over-topped the fence by about 1 metre. It does prevent some natural light from entering the kitchen and adds to the sense of confinement which is already provided by the proximity of the boundary to the house wall.
15. Whilst I accept that the proximity of the boundary would have been obvious to the complainants when they purchased their house, this does not prevent a complaint being made. I conclude that the complainants were entitled to seek relief from the nuisance caused by the hedge, and that the Council's calculations in respect of the AHH were reasonable, based on the relevant guidance and the measurements taken on site.
16. However, the RN makes no allowance for the re-growth of the hedge, requiring an initial cut to 2.00 metres and for that same height to be maintained as preventative action. As *leylandii* is a fast-growing species this would mean trimming every few months and it would be almost impossible to avoid a technical breach occurring several times a year.
17. In the light of the complainants' own suggestion that the hedge should be trimmed to 2.25 metres opposite the back door I consider it would be more practical to require the section of the hedge alongside the house to be capped at 2.25 metres, following the initial cut to 2.00 metres as indicated in the RN as issued by the Council. This would be more achievable and less likely to cause future recurring problems. I intend to vary the RN accordingly.

### **Privacy**

18. It is clear from the correspondence that both parties are keen to preserve a degree of privacy. The hedge performs this function, supplementing the wooden fence which is of a slatted appearance. Although the newer fencing has narrower gaps between the slats, the original fencing is slightly more open in character. If the hedge was not present it would be possible to see through the fence, although the view would be quite limited. The presence of the hedge removes any view and provides good privacy for both properties.
19. The AHH for the light loss to the garden area (as calculated by the Council) is slightly higher than the corrected AHH for the kitchen, but is within the tolerance of my suggested variation for the RN.
20. I consider that the hedge does provide an important degree of privacy, as the complainants acknowledge, and that the variation to the RN that I intend to make will preserve the privacy of both properties. Although the complainants were clearly willing to accept a greater height for the hedge alongside the garden area, applying the same height to the whole length of the relevant hedge will be more practical to manage. It also accords more closely with the AHH arrived at using the recommended calculations, and is therefore less likely to result in any future difficulties.

*Helen Slade*

**Inspector**



**IMPORTANT: this Notice affects the property at:**

**14 Judeland, Astley Village, Chorley, PR7 1XJ**

CHORLEY COUNCIL	
DEVELOPMENT CONTROL	
REC'D	31 OCT 2014

**ANTI-SOCIAL BEHAVIOUR ACT 2003**

**PART 8: HIGH HEDGES**

**REMEDIAL NOTICE**

**VARIED BY Helen Slade**

**Appointed by the Secretary of State for Communities and Local Government under Section 72(3) of the above Act.**

**1. THE NOTICE**

This notice is sent under Section 73 of the Anti-social Behaviour Act 2003 and varies and supersedes the Remedial Notice dated 18 June 2014 issued by Chorley Council under Section 69 of the 2003 Act pursuant to a complaint about the high hedge situated at 14 Judeland, Astley Village, Chorley.

The notice is sent because it has been decided that the hedge in question is adversely affecting the reasonable enjoyment of the property at 16 Judeland, Astley Village, Chorley and that the action specified in this notice should be taken to remedy the adverse effect and to prevent its recurrence.

**2. THE HEDGE TO WHICH THE NOTICE RELATES**

The hedge situated between points A to B as shown on the attached plan in the rear garden of 14 Judeland, Astley Village, Chorley as shown edged red on the attached plan. The hedge is formed predominantly of leylandii trees.

**3. WHAT ACTION MUST BE TAKEN IN RELATION TO THE HEDGE**

**3.1 Initial Action**

I require the following steps to be taken in relation to the hedge before the end of the period specified in paragraph 4 below:

- i. Reduce the hedge to a height not exceeding 2 metres above ground level between Points A to B as shown on the attached plan.*

**3.2 Preventative Action**

Following the end of the period specified in paragraph 4 below, I require the following steps to be taken in relation to the hedge:

- ii. Maintain the hedge so that at no time does it exceed a height of 2.25 metres above ground level.*

**4. TIME FOR COMPLIANCE**

The initial action specified in paragraph 3.1 to be complied with in full within 4 months of the date specified in paragraph 5 of this Notice.

**5. WHEN THIS NOTICE TAKES EFFECT**

This Notice takes effect on the date my decision is issued.

**6. FAILURE TO COMPLY WITH THE NOTICE**

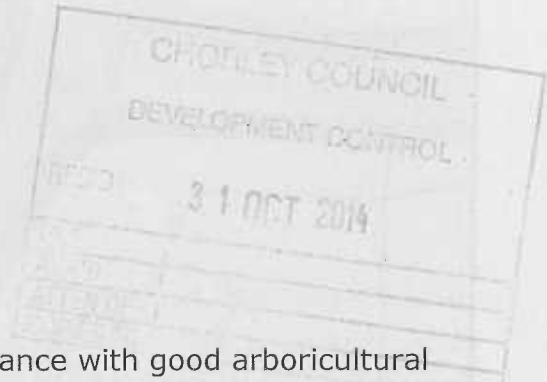
Failure by any person who, at the relevant time is an owner or occupier of the land where the hedge specified in paragraph 2 above is situated:

- a. to take action in accordance with the Initial Action specified in paragraph 3.1 within the period specified in paragraph 4; or
- b. to take action in accordance with the Preventative Action specified in paragraph 3.2 by any time stated there,

may result in prosecution in the Magistrates Court with a fine of up to £1,000. The Council also has power, in these circumstances, to enter the land where the hedge is situated and carry out the specified works. The Council may use these powers whether or not a prosecution is brought. The costs of such works will be recovered from the owner or occupier of the land.

Signed: *Helen Slade*

Dated: **30 OCT 2014**



**Informative**

It is recommended that:

All works should be carried out in accordance with good arboricultural practice, advice on which can be found in BS 3998: 'Recommendations for Tree Work'.

Skilled contractors are employed to carry out this specialist work. For a list of approved contractors to carry out works on trees and hedges, see the Arboricultural Association's website at [www.trees.org.uk](http://www.trees.org.uk) or contact 01794 368717.

In taking action specified in this Notice, special care should be taken not to disturb wild animals that are protected by the Wildlife and Countryside Act. This includes birds and bats that nest or roost in trees. The bird nesting season is generally considered to be 1 March to 31 August.

