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# Appeal Decision

Site visit made on 30 August 2022

**by Martin Allen BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 November 2022

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**Appeal Ref: APP/HH/1912**

**22A Moorend Park Road, Cheltenham GL53 0JY**

- The appeal is made under section 71(1) of the Anti-social Behaviour Act 2003.
  - The appeal is made by Jane Rosser Smith, hedge owner, against a Remedial Notice issued by Cheltenham Borough Council.
  - The complaint, un-referenced, is dated 1 September 2020.
  - The Remedial Notice is dated 4 December 2020.
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## Decision

1. The appeal is dismissed, and I hereby specify that the operative date of the Remedial Notice (RN) shall be the date of this decision.

## Preliminary Matters

2. A site visit was arranged at which I was to be accompanied by all parties, i.e., the appellant, the complainant and the Council. At the arranged time, the appellant, appellant's agent and complainant met me at the entrance to the property. However, a representative from the Council did not attend. I was satisfied at the time that I was able to undertake the visit and explained to all parties present that I would do so without the Council being present. The site visit proceeded on this basis.
3. The RN relates to part a hedge within the garden of 22A Moorend Road, as outlined red on the plan attached to the RN, not the whole length of the hedge. For the avoidance of doubt, I have considered only that part of the hedge to which the RN refers.

## Main Issues

4. The main issues are whether:
  - Two trees are part of the high hedge (HH),
  - the extent of reduction stipulated in the RN is reasonable and proportionate to the impact that the hedge is having on the complainant's property, No 4 Melbourne Close, and
  - the Council's RN is reasonable and appropriate.

## Reasons

*Are trees part of hedge?*

5. The Anti-social Behaviour Act 2003 (the Act) defines a 'high hedge' as a barrier to light or access which is formed wholly or predominantly by a line of two or more

evergreens and rises to a height of more than two metres above ground level. The Act further states that 'evergreen' means an evergreen tree or shrub or a semi-evergreen tree or shrub.

6. At the appeal site there is a row of cypress trees rising to about 3.3 metres in height, with two further trees positioned to the northern end of the row. These are approximately 18.3 and 10.4 metres in height (at the time of the Council investigation into the complaint). While these two trees are significantly taller than the row of cypress trees, they are viewed as part of the hedge. The branches and foliage of the trees, together with the row of trees, form a single continuous barrier to light. The trees are not positioned apart from the remainder of the hedge and thus form part of it. As such, I find that the trees fall within the defined high hedge in this case.

#### *Extent of reduction*

7. The Council assessed the impact of the hedge using the Action Hedge Height (AHH) calculated according to the methodology formulated by the Building Research Establishment Hedge Height (HH) and Light Loss (LL) published by the Government in October 2005. This publication sets out the formulae for calculating loss of light to habitable room windows and gardens. Loss of daylight and sunlight to a property that is caused by the height of a neighbour's hedge is normally deemed to be unreasonable if the hedge is growing above the AHH.
8. The Council states that the area of the garden of the neighbouring property, 4 Melbourne Close (No 4), is 106.9m<sup>2</sup>, with the effective hedge length being 12.1m. Using these measurements, the overall AHH for the garden is calculated at 2.65m. I note however that the occupier of No 4 indicates that the area of the garden is 126.34m<sup>2</sup>, not the figure used by the Council. At the time of my visit, I also measured the effective length of the hedge, which was the entire length of the rear boundary of No 4, which resulted in a figure of 14.25m. This was agreed with the parties at the time of the visit.
9. However, even if I were to use the complainant's figure for the area of garden and the measured figure for the effective hedge length, the resultant AHH remains 2.65m. The hedge owner refers to their own calculations in respect of the AHH and argues that it should be 3.3m. However, these calculations have not been provided. I therefore agree with the AHH stated by the Council, albeit that I have reached that figure by different means.

#### *Requirements of RN*

10. The RN requires Initial Actions to reduce:
  - The existing trimmed hedge to a height not exceeding 2.65m above ground level,
  - The larger of the two cypress trees to an overall height not exceeding 12m and 4m radial width of the west side of the canopy, and
  - The smaller of the two cypress trees to an overall height not exceeding 5m and 4m radial width on the west side of the canopy.
11. The RN also requires that Preventative Action is undertaken to maintain the trimmed hedge so that it does not exceed 2.8m in height, as well as that the larger and smaller trees do not exceed 14m and 6m in height, respectively, nor that either exceeds 4.5m radially.
12. In respect of the existing trimmed hedge, this action would require a reduction in height of approximately 0.75m. Given the good health of the hedge, I find that this

degree of pruning would not be excessive and that the trees would likely be able to withstand these works. Notwithstanding concern from the hedge owner, a large amount of photosynthetic material would remain, and careful pruning would ensure that this part of the hedge retained an acceptable appearance. Similarly, both of the trees at the northern edge of the hedge appeared healthy and there is nothing before me that would lead me to conclude that they are not capable of coping with the proposed reductions.

13. Accordingly, I consider in the light of the evidence before me that these are reasonable requirements and would be unlikely to result in the death or destruction of the hedge. As such, I find that the RN was not excessive.

### **Other Matters**

14. The hedge owner refers to the subjective comments in the report produced by the Council. However, these have had no bearing on the calculations in respect of light loss.
15. I note that No 4 has previously been extended which has resulted in part of the dwelling being closer to the boundary than previously. However, I have assessed this case on the basis of the currently existing situation.
16. I consider that the reduced height of the hedge would ensure that an acceptable level of privacy is retained for both the hedge owner and occupiers of No 4. Furthermore, the reduction would not result in any unacceptable increase in noise levels experienced by the parties.
17. Whether or not the complainant knew of the existence of the hedge at the time of purchasing the property is not a relevant consideration for the purposes of this appeal.

### **Conclusion**

18. I therefore conclude that the trees comprise part of the high hedge, and that the extent of reduction stipulated in the RN is necessary with regard to the impact that the hedge is having on the complainant's property.
19. The appeal is therefore dismissed, and the RN upheld save for varying the date it takes effect.

*Martin Allen*

INSPECTOR