



The Planning Inspectorate

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13 JUL 2018

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Ms Lisa Walton, Senior Officer
Planning and Development Management
Council of the Isles of Scilly
Town Hall
St Mary's
Isles of Scilly, TR21 0LW
LWalton@scilly.gov.uk

Your Ref: HH-17-001 Larn
Our Ref: APP/HH/1677
Date: 11 July 2018

Dear Ms Walton

ANTI-SOCIAL BEHAVIOUR ACT 2003 – SECTIONS 71(1) & 71(3) (HIGH HEDGES)
APPEAL BY: Mr Richard Larn
COUNCIL: Isles of Scilly
LOCATION OF HEDGE: Bream Ledge, Rams Valley, Hugh Town, St. Mary's TR21 0NQ

I enclose a copy of our Inspector's decision on the above appeal following the site visit on 22nd March 2018.

The appeal decision is final unless it is quashed following a successful judicial review in the High Court on a point of law. If the judicial review is successful the case will be returned to us by the Court for re-determination. However, if it is re-determined, it does not necessarily follow that the original decision on the appeal will be reversed.

An appeal may only proceed with the permission of the Court. An application for leave to appeal must be made to the Court promptly and in any event within 3 months of the decision in question, unless the period is extended by the Court.

A decision will not be overturned by the Court merely because someone does not agree with an Inspector's judgment. It would need to be shown that a serious mistake was made by the Inspector when reaching his or her decision or, that the site visit was not handled correctly, or that the appeal procedures were not carried out properly. Even if a mistake has been made, the Court may decide not to quash the decision if it is decided that the interests of the person who has sought permission for judicial review have not been prejudiced.

If you have concerns or queries about the decision or the way we handled the appeal(s), please visit our [Feedback and Complaints](#) webpage. Please quote the appeal reference number in any correspondence.

If you do not have internet access you may write to the Customer Quality Team, Room 3B Eagle Wing at the address above. Alternatively, if you would prefer hard copies of our information on the right to a Judicial Review and our feedback procedure, please contact our Customer Service Team on 0303 444 5000.



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Yours sincerely

Ruthie Haley
High Hedge Appeals Team

Appeal Decision

Site visit made on 22 March 2018

by **Helen Heward BSc (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11th July 2018

Appeal Ref: APP/HH/1677

Hedge at Bream Ledge, Rams Valley, Hugh Town, St Mary's Isles of Scilly, TR21 0NQ

- The appeal is made under Section 71(3) of the Anti-Social Behaviour Act 2003 (the Act).
 - The appeal is made by Richard J Larn OBE, the complainant, against the decision of Cornwall Council (the Council) not to issue a Remedial Notice (RN).
 - The complaint, Reference HH-17-001, is dated 21 June 2017.
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Decision

1. The appeal is dismissed.

Procedural and preliminary matters

2. Where an appeal is made against the decision of a Council not to issue a RN the appeal is conducted as a review of the Council's decision. This is made on the basis of the issues and evidence considered by the Council and taking into account any new evidence or changes in circumstances. This includes my observations on my site visit. The first requirement is to determine if a hedge is a High Hedge (HH) for the purposes of S66 of the Act. This determination is restricted to the following considerations. The hedge must be comprised of at least two trees of a predominantly evergreen or semi-evergreen species, with a height more than 2m above the ground level where the hedge is planted, and the hedge must be a barrier to light or access above 2m.
 3. If a hedge does not satisfy all of the criteria it cannot be considered as a HH for the Act; a RN cannot be served and other matters cannot be considered. Where a hedge is judged to be a HH, S68(3) of the Act is clear that, the primary consideration to address in considering whether or not to issue a RN is whether a HH is affecting a complainant's reasonable enjoyment of their property.
 4. The documentation submitted by the complainant to the Council on 21 June 2017 includes a letter and drawing which state that the complaint concerns "*eastern boundary trees*" and their location is indicated on the drawing as "*Area of Complaint*". This is marked with a broken black line and shown to be to the rear and side of a shed. The drawing is not to scale but the Council's report describes the location of this area as being roughly mid-way up the slope and growing back from the shared boundary, on the side of Bream Ledge. Neither party dispute this description of the location, and from my observations on site of the trees drawn to my attention by both the Council and complainant, nor do I.
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Main Issues

5. Therefore, the main issues in this appeal are whether or not two or more of the trees within the area of complaint from a HH for the purposes of S66, and if so whether or not it was reasonable for the Council to find that no action should be taken to remedy the effect of the HH upon the complainant's property, Harbour Gaze.

Reasons

Do the trees constitute a HH?

6. Only predominantly evergreen or semi-evergreen species are covered by the legislation. There are several trees in the *Area of Complaint*. The Council's report indicates that they concluded that the seven trees that they identified in the area of the complaint constitute a HH. The Council's report states that the seven include Beech, Elder and Hawthorn. Although Beech often retains its leaves in winter, it is not an evergreen species. Elder and Hawthorne are deciduous. I have therefore disregarded these trees.
7. The Council report refers to one Cypress tree. Close to the boundary and to the rear of the shed I found two adjacent to each other. This is an evergreen species and both trees are in excess of 2m above the ground level where they are planted. One is thriving. The other is much more spindly. Above 2m their canopies are growing together (which might account for why the information before me only indicates one) and form a dense mass of greenery which acts as a barrier.
8. Adjacent to these, and roughly in line, I noted two plants which the submitted evidence suggests may be Laurel. I had the benefit of seeing them in flower which indicated that they are Camellias. Both species are evergreen and both plants are slightly over 2m in height. However, they have a quite open habit and I could clearly see through both of them. They do not act as a barrier.
9. Paragraph 4.8 of the document '*High Hedges Complaints: Prevention and Cure*¹' published by the Office of the Deputy Prime Minister (now MHCLG) provides advice that "*the two or more trees or shrubs do not have to form a straight line. As long as they are roughly in line, they will be caught. It is unlikely, therefore, that the definition will catch groups of trees, copses or small woodlands – unless they have a row of trees bounding them.*" Therefore I carefully inspected all of the *Area of Complaint* indicated by the complainant to see if any other trees would meet both the requirements of S66 and which could be considered to be roughly in line. I did not find any.
10. I did not find a HH comprised of seven trees as identified by the Council within the *Area of Complaint*. However, I conclude that the two evergreen Cypress trees located within the *Area of Complaint*, located to the rear of a shed and adjacent to the boundary do constitute a HH as set out in the Act.

Continued over

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/11476/highhedgescomplaints.pdf

Was it reasonable for the Council to find that no action should be taken to remedy the effect of the HH upon the complainant's property?

11. I am confining my assessment to the effect of what I have concluded to be a HH. That is the two Cypress trees and, as is typical of their habit, the spread of their conjoined crown is quite limited.
12. The two dwellings are roughly 44m apart. Bream Ledge is on lower ground. Harbour Gaze is higher up on Buzza Hill and the floor to a sitting room is elevated above ground level. A front facing window to this room is the closest window and offers a direct view toward the HH. The Council's report informs me, that there is a change in levels of over 3m and a separation distance of approximately 10m. The parties do not dispute this and from my observations, of the height and spread of the two Cypress trees in the HH, I agree.
13. Other rooms on the front elevation also have large picture windows from which I do not doubt that the HH can be seen. But the sitting room window is the closest to the HH and the most likely to be affected.
14. There is nothing to say how tall the HH is but, when standing in the sitting room looking out of this window, I observed that the top of the Cypress trees in the HH can be seen extending vertically to more or less my eye level. On sitting the vertical amount of obstruction increases. Although the HH obstructs views toward the harbour I noted that it only restricts part of the overall view.
15. I was still able to take in a wide view, including parts of Hugh Town, boats in the bay, part of the pier and views towards islands beyond. The overall obstruction caused by the HH is limited, even when sitting, and does not materially impact upon the ability to enjoy a wide panoramic view from this window. Moreover, whilst this window is the main focus, there are other windows which offer additional views and light. The Council found no particular or significant loss of light within the sitting room. From my observations of the separation distance, elevation and amount of glazing, I agree.
16. The HH is growing on ground which is at a lower level than a large part of the adjacent front garden of Harbour Gaze. A path runs around the front garden area including alongside the boundary close to the HH and leads to a small sitting area. Sitting on a bench and walking around the front garden I saw the HH in a number of views, some quite oblique. The HH does not feel particularly oppressive and does not adversely impact upon the general perception of daylight or amenity in this garden. There is another garden area to the rear of the dwelling, on higher ground, which includes a decked terrace and outside seating. This appears to be the main sitting out area. The HH does not obstruct light or outlook in this area.
17. The hedge owner asserts that the trees are retained high to prevent overlooking of the garden and windows at Bream Ledge. The HH does act as a partial obstruction to these views and affords a degree of privacy and screening between the properties. In a coastal location with a harbour such as this it may well be that people use binoculars to examine views more closely. However, given the separation distances, and existence of screening from other trees and vegetation, the weight I have attached to this matter is limited.
18. The Council report included their opinion that the impact of the trees could be reduced by lightly trimming and that they might benefit from some maintenance and thinning. It may be that the hedge owner's property contains

substantial areas of other trees and hedges, and lowering the HH would not materially harm the amenities or enjoyment of the hedge owner's garden. But these are not reasons in themselves to serve a Remedial Notice.

Other Matters

19. The legislation does not protect rights to views, but views and light contribute to the amenity and enjoyment of a dwelling. However, the legislation does not provide for protecting the 'original' or 'natural' enjoyment of a property.
20. The trees are within an Area of Outstanding Natural Beauty and Conservation Area. From walking around the locality and considering the available views, I found that the HH is seen as part of a wider block of garden vegetation and does not adversely affect the visual amenity of the locality.
21. The hedge owner and Council consider that the mediator did not remain impartial. However, the Council proceeded to determine the application and therefore I have considered the complainant's appeal against that decision.
22. I attach limited weight to evidence regarding historical circumstances, including the removal of former boundary hedging. The trees may have doubled in height since 2012; this species can grow quite fast. But it is not for me to speculate about what might, or might not, happen if a RN is not served, including concerns about future growth or that the trees will be left untended and not regularly maintained. Nor have I attached any weight to comments regarding behaviours. I confined my considerations to the factual evidence before the Council and the effects of the HH at the time I visited.

Conclusion

23. The seven trees identified by the Council within the *Area of Complaint* do not amount to a HH. However I found that two Cypress trees do.
24. The HH, comprised only of these two trees, does not have a significant adverse impact upon the outlook, light and reasonable enjoyment of the sitting room at Harbour Gaze, or of the enjoyment of the property as a whole. It is therefore reasonable that no action should be taken to remedy the effect of this HH upon the complainant's property.
25. Having taken all matters raised into consideration, and for the reasons given, I conclude that the appeal should be dismissed.

Helen Heward
INSPECTOR