



# The Planning Inspectorate

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3H Hawk Wing  
Temple Quay House  
2 The Square  
Bristol  
BS1 6PN

Direct Line: 0303 444 5335  
Customer Services: 0303 444 5000  
Fax No 0117 372 6298  
e-mail: [environment.appeals@pins.gsi.gov.uk](mailto:environment.appeals@pins.gsi.gov.uk)

Mr Godbehere  
Derby City Council  
The Council House  
Corporation Street  
Derby  
DE1 2FS

Your Ref:  
  
Our Ref: APP/HH/16/1502  
  
Date: 16 August 2016

Dear Mr Godbehere

**ANTI-SOCIAL BEHAVIOUR ACT 2003 – SECTIONS 71(1) & 71(3) (HIGH HEDGES)**  
**APPEAL BY: HELEN DAVENPORT**  
**COUNCIL: DERBY CITY COUNCIL**  
**LOCATION OF HEDGE: 56 CRAYFORD ROAD, ALVASTON, DERBY DE24 0HN**

I enclose a copy of our Inspector's decision on the above appeal following the site visit on 8 June 2016.

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 any complaints or questions about a decision, or about the way we have handled the appeal write to:

Quality Assurance Unit  
The Planning Inspectorate  
4/05 Hawk Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN

Phone No. 0303 444 5884

Or visit:

<http://www.planningportal.gov.uk/planning/appeals/planninginspectorate/feedback>

The Quality Assurance Unit will investigate your complaint and will endeavour to reply within twenty working days.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kevin Gordon', with a stylized flourish at the end.

Kevin Gordon  
High Hedge Appeals

## **ADVICE**

If you require further information on seeking permission for judicial review you should consult a solicitor or other advisor or contact the Administrative Court Office at the Royal Courts of Justice, Strand, London WC2 2LL. Telephone: 020 794 76000. [www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk)

### **INSPECTION OF DOCUMENTS**

Requests to see appeal documents are not normally refused but please note that where paper files are maintained these are normally destroyed one year after the decision is issued.

Please make your requests to us quoting our appeal reference and stating the day and time your wish to visit. Please give at least 3 days notice and include a daytime telephone number, if possible.

### **PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION (THE OMBUDSMAN)**

If you consider that you have been unfairly treated through maladministration by us you can ask the Ombudsman to investigate. The Ombudsman cannot be approached directly; only an MP can pass on your request. In most cases, your local MP may be the easiest to contact (their name and address is listed at the local library), although you may approach another MP if you prefer. Although the Ombudsman can recommend various forms of redress he cannot alter the appeal decision in any way.

### **THE ADMINISTRATIVE JUSTICE AND TRIBUNALS COUNCIL (AJTC)**

The AJTC was set up by the Tribunals, Courts and Enforcement Act 2007 to replace the Council on Tribunals. If you feel there was something wrong with the basic procedure used for the appeal, you can make a complaint to the AJTC, 1<sup>ST</sup> Floor, 81 Chancery Lane, London WC2A 1BQ. The Council will take the matter up if they think it comes within their scope. They are not concerned with the merits of the appeal and cannot change the decision.



## Appeal Decision

Site visit made on 8 June 2016

by **Mark Yates BA(Hons) MIPROW**

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

Decision date: 16 August 2016

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**Appeal Ref: APP/HH/16/1502**

**Hedge at 56 Crayford Road, Alvaston, Derby DE24 0HN**

- The appeal is made under Section 71 of the Anti-social Behaviour Act 2003 ("the 2003 Act").
  - The appeal was made by Ms H. Davenport against a Remedial Notice ("RN") issued by Derby City Council ("the Council").
  - The complaint, Reference 01/2015/DC23, dated 28 January 2015, made by Mr L. Johnson of 54A Crayford Road, was upheld by the Council in its RN, dated 28 January 2016.
  - The RN was intended to take effect from 1 March 2016.
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### Decision

1. I allow the appeal in part and the RN is varied in the terms set out in the attached RN.

### Procedural Matter

2. I undertook a visit to the site on 8 June 2016 accompanied by Ms Davenport, Mrs Johnson and Mr Knight of the Council.

### Main Issues

3. The main issues are whether the hedge affects the reasonable enjoyment of the property and, if so, whether the requirements of the RN are appropriate and reasonable.

### Reasons

4. The hedge is located along the boundary of the rear gardens of Nos. 54A and 56 Crayford Road and comprises of a row of conifer trees. It was submitted by the complainant that the hedge seriously affects the amount of light available in the garden and some rooms of the house. Further, it is asserted that a lack of maintenance could cause damage to his property.
5. In considering the complaint, the Council had regard to the method formulated by the Building Research Establishment<sup>1</sup> for calculating what height a hedge should be in order to not cause unreasonable obstruction of light. It was calculated that the overall action hedge height ("AHH") is 1.85 metres but the RN specified that the hedge should ultimately be reduced in height to 2 metres. This was because Section 69(3) of the 2003 Act does not permit a RN to require a hedge to be reduced to less than 2 metres above ground level. Ms Davenport does not dispute the AHH calculation.

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<sup>1</sup> Appended to the advisory publication titled 'Hedge height and light loss' issued by the Office of the Deputy Prime Minister

6. The AHH is only one factor to be considered when determining this appeal. Nevertheless, these calculations should carry a significant amount of weight. They provide an objective measure of the effect of a hedge on a property. Further, I noted during my visit that the hedge is a dominant feature given its height and the size of the gardens of the properties. In light of the AHH calculation and my observations of the site, I accept that the hedge will have a significant impact on the amount of natural light available in the garden and rear rooms of 54A Crayford Road. This issue will clearly impact on the reasonable enjoyment of the occupants of the property. However, it cannot be determined that the height of the hedge could damage this property.
7. Ms Davenport is concerned about the effect that the reduction in the height of the hedge would have on wildlife and the immediate environment. She points to the impact that has arisen from the removal of trees by neighbours. Ms Davenport is clearly passionate about these issues and takes pleasure from the presence of wildlife, which was most evident from the growth of the hedge outside of her bedroom window. However, this has to be balanced against the significant impact of the hedge on the neighbouring property. The reduction in the height of the hedge if properly managed should still allow wildlife to flourish in her garden. In respect of the glare stated by Ms Davenport to arise from the cutting back of the hedge on the other side, this does not relate to the height of the hedge.
8. Section 69(3) of the 2003 Act prevents action from being specified in a RN that would lead to the removal of a hedge. The Council's Arboricultural Officer advised that an ultimate reduction to 2 metres should not lead to the death of the hedge but recommended that two-three years be allowed for the staged cutting of the hedge. Therefore, I am concerned about the suggestion in the informative note in the RN that the hedge could be reduced to 2 metres in one cut. I found a proportion of the hedge on the 54A side to be bare in light of works undertaken to reduce its width. However, it appeared to me to be healthy on the other side.
9. A period of two years following the initial cut would allow for a staged reduction in the height of the hedge to 2 metres. This would make it possible to assess the health of the hedge before any further reduction is made to its height. The advice of the Council's Arboricultural Officer is that the overall reduction in height should not lead to the destruction of the hedge. However, if at any stage the hedge has not sufficiently recovered, Ms Davenport could approach the Council to request an amended RN be issued.
10. I did detect the sound of birds in the locality of the hedge which suggests that Ms Davenport's concerns regarding this issue have some merit. Therefore, an extension to the period allowed for the initial action to be taken would appear to be justified. Disturbance to nesting birds should be avoided between March and August and the RN needs to make allowance for the initial works to be undertaken outside of this period. Any disturbance to nesting birds in the past is not something that I can now address.
11. It was not possible to determine during the site visit whether the alleged bee hives are present in the hedge. Nor am I aware of any statutory protection afforded to bees. However, if bumble bees have made a nest in the hedge, they should have vacated as part of their natural cycle by the extended compliance period for the initial works to be undertaken, as outlined below. In the unlikely event that there are honey bees nesting in the hedge, Ms

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Davenport could seek expert assistance on this matter, for instance in relation to their possible relocation.

12. Bearing in mind the above, I conclude that the hedge is having a significant impact on the enjoyment of the occupiers of 54A Crayford Road. Having regard to the issues raised by Ms Davenport, I do not consider the reduction in height specified in the RN to be unreasonable. However, the RN should be varied to enable the initial cut to be undertaken later in light of the likely presence of nesting birds. A further period of two years would enable staged cuts to be undertaken with the aim of reducing the height of the hedge to 2 metres. In respect of the preventive action, I consider that some growth above 2 metres should be allowed before the hedge is required to be reduced again.

#### **Other Matters**

13. Various issues have been raised regarding the conduct of the parties. However, such matters are not material to my determination of this appeal.

*Mark Yates*

**Inspector**

**IMPORTANT – THIS NOTICE AFFECTS THE PROPERTY AT  
56 CRAYFORD ROAD, ALVASTON, DERBY DE24 0HN  
ANTI-SOCIAL BEHAVIOUR ACT 2003  
REMEDIAL NOTICE**

**VARIED BY: Mark Yates BA (Hons) MIPROW**

**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 issued under Section 73 of the Anti-social Behaviour Act 2003 and varies and supersedes the Remedial Notice dated 28 January 2016 issued by Derby City Council pursuant to a complaint about a high hedge situated at 56 Crayford Road, Alvaston, Derby DE24 0HN.

In accordance with the authority conferred on me, I am satisfied that the hedge in question is adversely affecting the reasonable enjoyment of the property at 54A Crayford Road, Alvaston, Derby DE24 0HN and that action should be taken in relation to the hedge with a view to remedying the adverse effect and preventing its recurrence.

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

The hedge is approximately 13.8 metres in length and is located along the north western boundary of the rear garden of 56 Crayford Road, as marked by a red line on the attached plan.

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

**3.1 Initial Action**

The following action must be taken in relation to the hedge before the end of the periods specified in paragraph 4 below:

- (i) Reduce the hedge to a height not exceeding 7 metres above ground level.
- (ii) Reduce the hedge to a height not exceeding 2 metres above ground level.

**3.2 Preventative Action**

The following action must be taken after the end of the period specified in paragraph 4 (ii) below:

If at any time the hedge reaches a height of 2.5 metres above ground level, to reduce the hedge once again to a height not exceeding 2 metres above ground level.

**4. TIME FOR COMPLIANCE**

- (i) The initial action specified in paragraph 3.1 (i) above to be complied with in full within 2 months of the date specified in paragraph 5 of this notice.
- (ii) The action specified in paragraph 3.1(ii) above to be complied with in full within 26 months of the date specified in paragraph 5 of this notice.

## **5. WHEN THIS NOTICE TAKES EFFECT**

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This notice takes effect on the date of issue of the decision.

## **6. FAILURE TO COMPLY WITH THIS 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 above within the periods specified in paragraph 4; or,
- b. to take action in accordance with the Preventative Action specified in paragraph 3.2 following the date specified in paragraph 4(ii);

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 specified works. The Council may use these powers whether or not a prosecution is brought. The cost of such works will be recovered from the owner or occupier of the land.

Signed: *Mark Yates*

Dated: 16 August 2016

### **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."

It is recommended that 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 01242 522152.

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 1981. This includes birds and bats that nest or roost in trees.



