



## Appeal Decision

Site visit made on 10 August 2010

by **Michael R Lowe BSc (Hons)**

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

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Decision date:  
**- 8 SEP 2010**

**Appeal Ref: APP/HH/10/909**  
**Hedge at 26A Durham Road, Wolviston Village, Billingham TS22 5LP**

- The appeal is made under section 71 of the Anti-social Behaviour Act 2003 (the Act).
- The appeal, dated 20 March 2010, is made by Mrs Eileen Hewitt (the complainant) against a decision of Stockton on Tees Borough Council (the Council) not to issue a Remedial Notice.
- The appeal relates to a decision of the Council dated 1 March 2010 following a complaint (Ref 09/0510/EULT) dated 22 November 2009.

### Decision

1. I dismiss the appeal.

### Main issues

2. I consider the main issues to be:
  - i) whether the hedge impairs the reasonable enjoyment of those occupying property at 5 Moreland Close, Wolviston, and if it does,
  - ii) whether it is appropriate and reasonable to issue a Remedial Notice.

### Reasons

3. The hedge in question is situated alongside the northern boundary of 26A Durham Road and is about 22m in length and about 4.4m high behind a close-boarded fence measuring between 1.27m and 1.75m high. The garden of 5 Moreland Close is about 1.5m to 2m lower than the garden level of 26A Durham Road with a brick wall along the length of the boundary that varies in height between 0.93m and 1.14m.
4. The complainant alleges; loss of light to the garden and conservatory on the rear of the property, the lack of sunlight causes damp patches in the garden and debris from the hedge falls into the garden.
5. The Council say that they have followed the advice set out in *Hedge Height and Light Loss*<sup>1</sup>. They calculated the overall action hedge height at 2m. The action hedge height is the height at which the hedge in question is likely to cause a significant loss of light to a neighbouring property. It takes account of direct sunlight and diffuse daylight. The Council considered that the hedge caused obstruction to daylight and sunlight adversely affecting the complainant's reasonable enjoyment of her garden and property.

<sup>1</sup> Office of the Deputy Prime Minister / Building Research Establishment 2004, Revised 2005

6. The Council also considered the Arboricultural Officer's report which concluded that reducing the height of the hedge could destroy sections of the hedge such that there is limited scope for reducing the hedge. The reasons for this conclusion were that the lower branches of the tree stems have been removed, leaving only a small ratio of live top growth, and that removal of the live growth of Leyland Cypress trees would effectively kill the trees. Further, the previous pruning works have removed the central leading shoot. The report recognised that some trees within the hedge could tolerate some height reduction, but that would result in the loss of uniformity of the hedge.
7. On the first issue I have no doubt that the hedge is an overbearing presence when seen from the appellant's property and leads to a significant loss of light to the garden area. I conclude that the hedge does adversely affect the reasonable enjoyment of 5 Moreland Close by its occupiers.
8. Turning to the second issue, the Council's calculation of the Action Hedge Height suggests that the hedge should be no higher than 2m. However, reducing the height to 2m would leave only bare stems with little or no foliage and would undoubtedly result in the death of the hedge, as indicated by the Arboricultural Officer's report. The Council have recognised that parts of the hedge could tolerate some reduction, but were concerned that the result would harm the uniformity of the hedge.
9. Works that would result in the death or destruction of a hedge amount to the same as removing it and so are not permitted under the Act. In my view there is a very limited scope for the reduction of the height of the hedge without significant risk to the health of the hedge and the subsequent death of the hedge. Such a minor reduction would afford no perceptible relief to the appellant.
10. The appellant has suggested that a solution would be for the owner to plant a new hedge and remove the existing hedge. Be that as it may, such a solution is beyond the powers given in the Act.
11. I do not therefore propose to issue a Remedial Notice with regard to the hedge.

*Michael R Lowe*

INSPECTOR