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Planning and Development

Date: 3rd January 2023
My Ref: ENF/22/0025
COM/22/0078
BRP000919
Please ask for: Laura White
Tel: 01992 785555 ext: 5405
Email: Laura.White@broxbourne.gov.uk

Dear

Re: Complaint about a High Hedge situated to the rear of 19 Cedar Avenue, Waltham Cross

I refer to the complaint, made under Part 8 of the Anti-social Behaviour Act 2003, about the high hedge situated at 19 Cedar Avenue. The complaint alleged that the hedge is adversely affecting the enjoyment of the domestic property at 7 Cedar Avenue.

The Council gathered evidence and information in relation to the complaint by inviting the owner of the land where the hedge is situated to submit a statement. In addition, an officer of the Council visited the site on 26 May 2022.

This letter summarises the evidence and information gathered by the Council and explains how we have assessed and weighed the various issues raised by the complaint.

The Hedge and its Surroundings

The hedge is an evergreen hedge consisting of a series of evergreen conifer trees, approximately 10-15m in height, approximately 30m in length. The trees are sparse in the lower crowns.

The hedge is on the east boundary of 19 Cedar Avenue, between the residential property and The Vine PH, Winston Churchill Way.

The complaint property, 7 Cedar Avenue, is approximately 20m from the nearest edge of the hedge, with the residential garden of that property being only 7.5m from the nearest edge of the hedge (not including the outbuilding). The gardens of these properties are north-east facing. The residential properties of 9 and 11 Cedar Avenue are between 19 Cedar Avenue and the complaint property and are therefore closer to the hedge than the complaint property.

Cedar Avenue is a small residential cul-de-sac comprising terraced properties and is within a predominantly residential area. Acorn Court, a complex of retirement flats, sits to the east of the site with The Vine PH to the south east.

Relevant Policies or Legislation

There is no planning history of the property and there are no Tree Preservation Orders, or planning conditions applicable. The site is not within a conservation area or other area of special control.

The Broxbourne Local Plan 2018 – 2033 (adopted June 2020) is the relevant planning policy document.

Policy EQ1: Residential and Environmental Quality seeks to protect amenity of residential properties, including in terms of daylight and sunlight. The hedge at 19 Cedar Avenue is contrary to

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this policy as it is too large given its proximity to 7 – 11 Cedar Avenue and its location on the east boundary of the property. The shade caused by the hedge prevents enjoyment of the residential gardens by occupiers of these properties.

Case for the Owner/Occupier of the Land where the Hedge is Situated

The owner of 19 Cedar Avenue has not provided any compromise height for consideration. In addition, the complainant has not requested a drastic reduction in height.

The complainant has identified that the hedge has some benefits in that it reduces noise from the nearby Winston Churchill Way and surrounding road network.

The owner of the property has stated that the cost of reducing the hedge is currently beyond their means.

Case for Other Interested Parties/Results of Consultation

The Council received comments from both 9 and 11 Cedar Avenue which state their gardens are almost permanently in shade and that the rear of the properties are also affected. The lack of gap in hedge prevents any light coming through as well as obstructs any potential view.

Main Considerations

The Council's role in these cases is to seek to strike a balance between the competing rights of neighbours to enjoy their respective properties and the rights of the community in general, and thereby to formulate a proportionate response to the complaint.

The main considerations in this case are whether the problems complained of are sufficiently serious to justify action being taken in relation to the hedge, bearing in mind the effect such action would have on the property where the hedge is situated and on the wider area.

Appraisal of the Evidence

Light obstruction

The Council followed the method in the BRE guidelines on 'Hedge height and light loss' for calculating what height a hedge should be in order not to cause an unreasonable obstruction of light to windows and gardens. The results showed that the hedge in question is at least 6 metres taller than the recommended height. This indicates it is having a significant impact on the complainant's property. This is reinforced by photographs and details from the complainant and other neighbours.

Visual amenity

The complainant's property is in a terrace of two-storey dwellings with are few trees in the area. The hedge is out of keeping with this setting. Through its size and proximity to the complainant's property and garden, the hedge dominates the scene and has a severe effect on the complainant's living conditions.

Privacy

There is no difference in level between the land where the hedge is situated and the complainant's property. A height of 2 metres or above would be enough to prevent overlooking and so provide a reasonable degree of privacy.

Noise, smoke

Although the perception might be that the hedge blocks noise and smoke, in practice it is ineffective as a barrier against such nuisances. Both noise and smoke will pass through or round a hedge. These are not, therefore good reasons for growing a large hedge.

Cost of remedial action

The Council note that cutting down the hedge is considered unaffordable. This is not, however, material to the question that the Council must determine – i.e. whether the hedge is adversely affecting the reasonable enjoyment of the complainant's property – and so has not been taken into account. Such expenses must be expected and accepted as part of the general maintenance of the property, with its trees, in the same way as maintenance of doors and windows and household wear and tear.

Health of the hedge

The hedge is healthy although sparse in the lower crowns. Cutting the hedge down to the height recommended by the BRE guidelines on 'Hedge height and light loss' would involve a reduction of more than half of its current height. This could result in the destruction of the hedge and might restrict any action to be taken in relation to the hedge. A staged reduction in height will therefore be appropriate with further inspections to be made between each reduction to ensure the health of the hedge is being maintained.

Conclusion

The hedge is causing significant obstruction of daylight and sunlight to the complainant's property as well as the properties of residents between the hedge and the complainant. It is out of keeping with its setting and dominates the complainant's property, affecting living conditions and visual amenity.

Evidence suggests that the height of the hedge would need to be reduced to 4 metres in order to remedy the problems identified. The resulting height would be sufficient to safeguard the privacy of the occupiers of 5, 7, 9 and 11 Cedar Avenue and would not, in the Council's view, adversely affect the enjoyment of that property or the general character and amenity of the neighbourhood.

On balance, the Council believe that the harm caused by the hedge outweighs other factors and that remedial action is justified.

Such action would, however, involve a reduction of more than half of its current height, affecting the ability of the hedge to regenerate and possibly leading to its destruction. For this reason, the Council considers the reduction of the hedge should be carried out in stages over a period of years.

Formal Decision

For the reasons given above, the Council have decided that the height of the hedge in question is adversely affecting the complainant's reasonable enjoyment of their property and hereby issue the enclosed remedial notice specifying the action that must be taken in relation to the hedge to remedy its adverse effect and to prevent its recurrence.

Summary of Requirements of Remedial Notice

The remedial notice specifies that the hedge should be reduced in stages to a height of no more than 4 metres above ground level within 2.5 years of the date of the notice. Reduction to this height allows the hedge to grow between annual or more frequent trimming and still not cause significant problems.

After the above date, the hedge should be trimmed regularly to ensure that it never exceeds a height of 4.5 metres above ground level. The requirement to maintain the hedge at, or below, this height lasts until the hedge is removed or dies.

Person Responsible for Taking Remedial Action

Under the Act, the owner or occupier of 19 Cedar Avenue is obliged to carry out the works specified in the remedial notice, within any timescale set there. Failure to do so, may result in prosecution and a fine.

The remedial notice does not give the complainant any right to intervene and take the necessary action themselves.

Right of Appeal

The complainant and everyone who is an owner or occupier of the land where the hedge is situated, that is Mr. & Mrs. T Kounnas, can appeal to the Planning Inspectorate against the issue of the remedial notice.

Further information is in the leaflet High hedges: appealing against the Council's decision, a copy of which is enclosed. An appeal must be submitted to the Planning Inspectorate, on their official form, within 28 days from the date of this letter. The form is available on the Planning Inspectorate website at www.planning-inspectorate.gov.uk or from:

High Hedges Appeals Team
Planning Inspectorate
Regus House
Room 2/15
1 Friary
Temple Quay
Bristol BS1 6EA
Telephone: 0117 344 5687.

An appeal can be made on any one or more of the following grounds:

- that the action specified in the remedial notice falls short of what is needed to remedy the adverse effect of the hedge or to prevent it recurring;
- that, contrary to the decision of the Council, the hedge in question is not adversely affecting the complainant's reasonable enjoyment of their property;
- that the action specified in the remedial notice exceeds what is reasonably necessary or appropriate to remedy the adverse effect of the hedge or to prevent it recurring;
- that not enough time has been allowed to carry out the works set out in the notice.

The remedial notice will be suspended while any appeal is being determined.

If you would like further information about our decision, please contact Laura White (see contact details at the top of this letter), quoting the reference number given above.

I am sending this letter to the complainant and the owner and occupier of the land where the hedge is situated as well as to other interested parties who commented on the complaint.

Yours sincerely

A solid black rectangular box used to redact the signature of the sender.

Laura White
Planning Compliance Officer
Borough of Broxbourne

Enc.



REMEDIAL NOTICE

Sent to the complainant and every owner and occupier of the land where the hedge is situated

IMPORTANT – THIS NOTICE AFFECTS THE PROPERTY AT 19 CEDAR AVENUE, WALTHAM CROSS, HERTFORDSHIRE, EN8 8AU

ANTI-SOCIAL BEHAVIOUR ACT 2003 REMEDIAL NOTICE ISSUED BY: Borough of Broxbourne Council (“the Council”)

1. THE NOTICE This Notice is issued by the Council under section 69 of the Anti-social Behaviour Act 2003 pursuant to a complaint about a high hedge situated at 19 Cedar Avenue, Waltham Cross, Hertfordshire, EN8 8AU. The Council has decided that the hedge in question is adversely affecting the reasonable enjoyment of the property at 7 Cedar Avenue, Waltham Cross, Hertfordshire, EN8 8AU 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 in the rear garden at 19 Cedar Avenue and marked red on the attached plan. The complaint relates to the whole hedge.

The hedge is formed predominantly of evergreen conifer trees

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

Initial Action

The Council requires 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 8 metres above ground level
- (ii) 12 months after the completion of step (i) and subject to an assessment of the health of the hedge, to be carried out by the Council’s Arboriculture Officer or similarly appointed person, further reduce the hedge to a height not exceeding 6 metres above ground level
- (iii) 12 months after the completion of step (ii) and subject to an assessment of the health of the hedge, to be carried out by the Council’s Arboriculture Officer or similarly appointed person, further the reduce the hedge to a height not exceeding 4 metres above ground level

Preventative Action

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

- (iv) Maintain the hedge so that at no time does it exceed a height of 4.5 metres above ground level.

Informative

It is recommended that, following compliance with step (iii) the hedge is cut back annually to a height of 3.5 metres. This allows room for the hedge to re-grow between annual trimmings and still not exceed a height of 4 metres.

As set out above, the hedge should be reduced in stages. Please contact the Council to discuss and agree a suitable timetable for these works.

All works should be carried out in accordance with good arboriculture practice/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 Arboriculture Association's website at www.trees.org.uk

In taking the 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.

4. TIME FOR COMPLIANCE

The initial action set out at step (i) as specified in paragraph 3 above to be complied with in full within 6 months of the date specified in paragraph 5 of this Notice.

5. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on 2 February 2023


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:

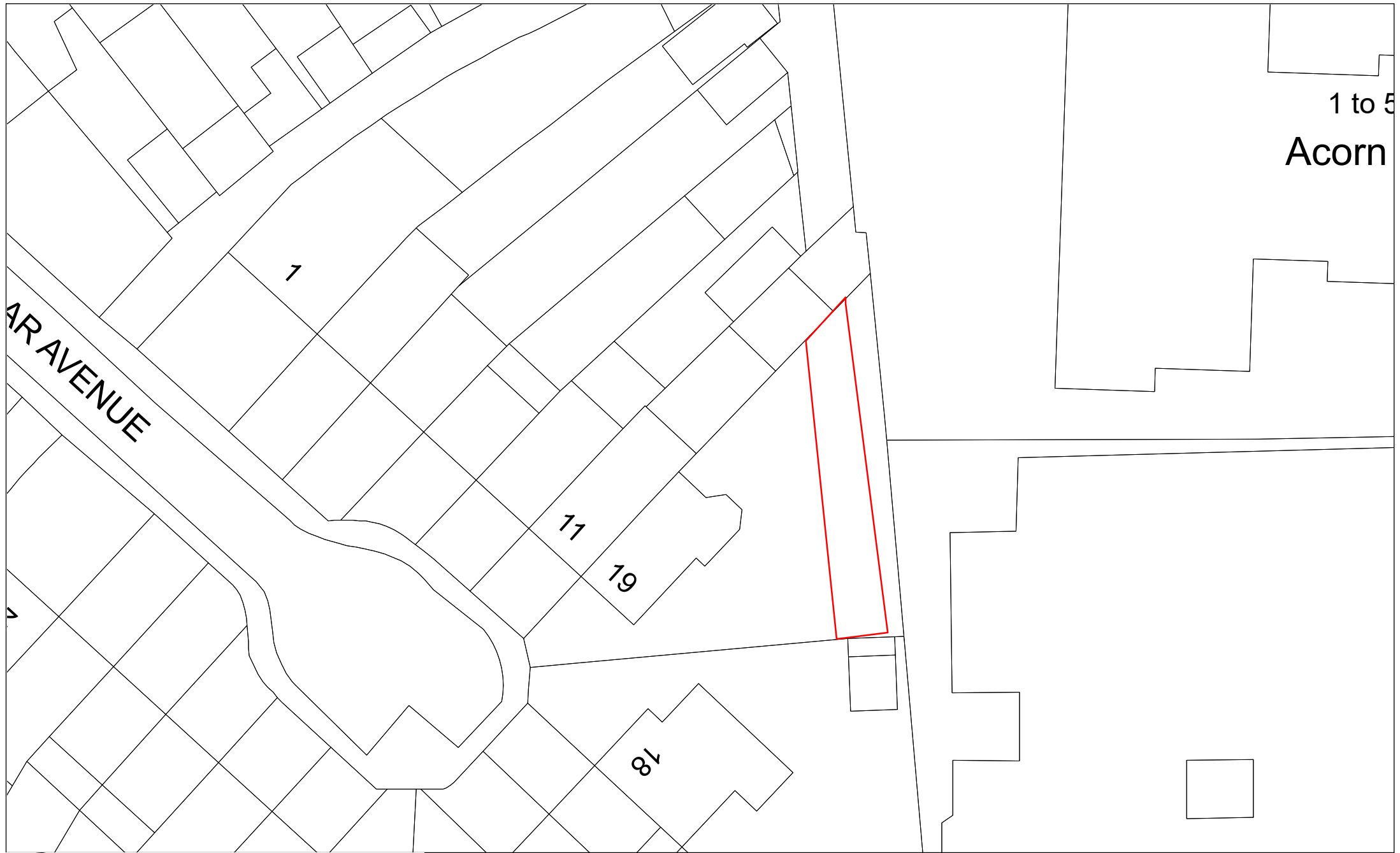
- a. to take action in accordance with steps (i) to (iii) – the initial action specified in paragraph 3 above within the period specified in paragraph 4; **or**
- b. to take action in accordance with steps (iv)) – preventative action specified in paragraph 3 above by any time stated there;

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.

Dated: 3rd January 2023

Signed: 

Matt Kolaszewski
DM Manager
Borough of Broxbourne
Bishops College, Churchgate, Cheshunt, EN8 9XE



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BROXBOURNE**
www.broxbourne.gov.uk

Enforcement Notice reference - ENF/22/0025
19 Cedars Avenue, Waltham Cross

S.Bates / L.White Scale: 1: 350

Date: 7 November 2022

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