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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION
(JUDICIAL REVIEW)

_____

IN THE MATTER OF AN APPLICATION BY DR JACQUELINE GRANLEESE FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

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The Applicant appeared as a Litigant in Person
Ms Nessa Fee (instructed by the Departmental Solicitor's Office) appeared for the Proposed Respondent
Professor Gordon Anthony (instructed by the Legal and Civic Services Department, Belfast City Council) appeared for the Notice Party

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COLTON J

Introduction

[1] By these proceedings the applicant seeks leave to challenge decision number 19/20 dated 21 February 2022, of the Valuation Tribunal (the proposed respondent) to dismiss an appeal against a remedial notice issued by Belfast City Council (the Notice Party) dated 16 November 2020.

[2] The remedial notice related to a complaint under the High Hedges Act (Northern Ireland) 2011 ("the 2011 Act").

[3] The relevant complaint was made by a Mr Jackie Lau who resides at 17 Rosemount Park, Belfast BT5 7TR. He complained about what he stated to be a high hedge situated upon property at 15 Rosemount Park, Belfast BT5 7TR. The applicant, Dr Jacqueline Granleese is the owner of the subject property.

[4] The court has been provided with all the material available to the tribunal in respect of the impugned decision.

[5] From that material it emerges that Mr Lau and other persons living nearby complained about the height of trees on the applicant's property which run alongside

Mr Lau's property. There clearly was a disagreement between Dr Granleese and her neighbours as to whether she should cut her trees as requested by them.

[6] Having failed to come to any agreement Mr Lau made a complaint under the 2011 Act to Belfast City Council, having paid the requisite fee of £350. The essence of his complaint was stated by the council as being:

> "The complainant alleged that the hedge is adversely affecting the enjoyment of domestic property at 17 Rosemount Park, Belfast, BT5 7TR, by acting as a barrier to light."

[7] Upon receiving the complaint form, the council invited Dr Granleese to submit a statement in response, which was provided on 18 February 2020.

[8] A council official, Mr Joe Higginson, arranged to visit the site on 6 October 2020. He took measurements at the site and provided a report together with calculation sheets in a standard form.

[9] The report identified Evergreen Leyland Cypress trees x Cupressocyparis Leylandii at the locus. The specified tree type is stated to be very hardy, fast-growing and generally to form a dense, oval or pyramidal, habit when left unpruned. It has an average growth rate of between 0.9m-1.2m per year. The trees are described as being mature. It is said that they will continue to grow taller if left unpruned. Measurements were provided including the distance to the nearest window in Mr Lau's house. Reference is made to various photographs illustrating the locus which have been provided to the court. They amply demonstrate the extent of the foliage at the locus.

[10] Mr Higginson's report briefly sets out the respective cases put forward by Mr Lau and Dr Granleese. Mr Lau stated that the height of the hedge adversely affects his property by significantly reducing sunlight/daylight and that it has a very oppressive impact on his home and garden. Dr Granleese disputes that the trees constitute a "hedge" under the 2011 Act. She asserts that the line of trees abutting the road were cut back regularly so as not to impede access by vehicles and she arranged to have one tree in the line of trees abutting the road cut down and another pollarded. This occurred in October 2016. She explains that she retains the trees mainly to accommodate birds and bats that live in them and the wildlife they attract such as hedgehogs.

[11] Mr Higginson's report goes on to outline the "main consideration" he has taken into account. He writes that his role 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. He seeks to formulate a proportionate response to the complaint.

[12] He has regard to the guidance for councils issued under the 2011 Act which assists in a common approach being taken across all councils in Northern Ireland to complaints made under the Act.

[13] His conclusion was that the hedge was taller than the recommended height. He noted that the trees were fast-growing. He acknowledges that cutting the hedge down to the height recommended in the technical guidance would involve a significant reduction of the current height. As this was more than 50% of the current height, he considered that it could be detrimental to the health of the hedge. Therefore, his recommendation was that the height should be reduced to a lesser extent.

[14] As a consequence, the proposed respondent issued a remedial notice which specified that the hedge should be reduced to a height of not more than 10m above ground level and also recommended a further reduction of 0.3m to allow it to grow between trimmings. After the date specified in the remedial notice the specification was that the height must be trimmed regularly to ensure that it never exceeded a height of 10m above ground level.

[15] The remedial notice was dated 16 November 2020 and served upon Dr Granleese. The notice included various deadlines for actions to be carried out.

[16] Having received the notice Dr Granleese exercised her statutory right of appeal to the Valuation Tribunal.

The impugned decision

[17] The tribunal consisted of the Chairman, Mr James Leonard, President and the Member, Mr Tim Hopkins FRICS.

[18] The unanimous decision of the tribunal was that Dr Granleese's appeal against the remedial notice dated 16 November 2020 was not upheld and the tribunal ordered that her appeal should be dismissed.

[19] The tribunal provided a written decision running to 10 pages.

[20] The structure of the decision was clear and coherent.

[21] It commences by stating its decision. It then sets out its reasons. By way of introduction it refers to the statutory regime. It rehearses the background to the complaint. It describes the council's action and refers to the contents of Mr Higginson's report. It correctly identifies the grounds of Dr Granleese's appeal. It sets out the relevant statutory provisions under which the tribunal was established and under which it considers appeals. It summarised the evidence and submissions.

[22] Importantly, the valuation member inspected and surveyed the site. His evidence is summarised in paras 14 and 15 of the decision. It provides as follows:

> **"The technical evidence concerning the issue of height reduction**
>
> 14. The Valuation Member's site inspection and survey revealed that apparently one tree had been removed, as had been asserted by the appellant. However, the evidence from the Valuation Member's inspection was that the foliage of the two remaining trees still merged, in the opinion of the Valuation Member, to form a barrier to light (thereby negating section 2(2) of the 2011 Act). It is to be noted that the respondent's report refers to all of the trees at this locus not just to the two identified by the appellant. Perhaps some confusion might have been engendered by a misunderstanding in that regard. As a result of this inspection, the Valuation Member's opinion was that the trees at the locus did constitute a 'hedge', as defined under the provisions of the 2011 Act, section 2. Furthermore, the Valuation Member conducted a technical assessment and, as a consequence, was in a position to confirm that the calculations prepared by Mr Higginson on behalf of the respondent Council were substantially accurate with only minor, and not material, variations observed. The assessment of the Valuation Member, after having inspected the locus, was that in respect of the garden area the hedge height was 20m; the action hedge height assessed by the respondent was 11.95m and, as assessed by the Valuation Member, was 12m. In respect of the relevant window (at first floor level) the hedge height was, again, 20m; the action hedge height as assessed by the respondent was 7.27m and as assessed by the Valuation Member was 7.25m. Accordingly, as mentioned there are no very significant, indeed material, variations between the technical measurements and assessments by the Council and those conducted by the Valuation Member. All the other measurements and technical aspects of the content of Mr Higginson's report were checked by the Valuation Member and were found to be substantially accurate.
>
> 15. Based upon all of this, the conclusion of the Valuation Member, from the evidence of the site visit and technical assessment on that occasion, was that the report prepared on behalf of the respondent Council was

> substantially accurate and the contents could not be discounted by the tribunal on grounds of inaccuracy nor arising from any technical deficiency or error."

[23] The decision then records its determination. It can be summarised as follows.

[24] Firstly, the tribunal determined that the trees observed at the locus did constitute a "high hedge", within the statutory definition of section 2 of the 2011 Act.

[25] Secondly, although some of the photographic evidence referred to by the council must have been recorded prior to 2016 in which year the appellant had paid to have a tree removed, it was decided that this did not affect the substance of the tribunal's determination.

[26] Thirdly, and importantly for this appeal, the tribunal assessed Dr Granleese's submission that the hedge did not in fact cause a significant obstruction to daylight and sunlight to Mr Lau's property. In particular it referred to a "sun model" commissioned by Dr Granleese which was examined by the tribunal in detail. This purported to demonstrate that in fact the location of the trees in question was such that it did not in fact reduce the sunlight to Mr Lau's property. Dr Granleese also argued that the photographs seen by the court supported this contention.

[27] The tribunal indicated that it harboured a number of concerns about the "sun model." Ultimately it relied on the site inspection carried out by the valuation member which in the tribunal's determination "revealed a substantial affect of the hedge constituting a barrier to light, this effecting both the garden to the complainant's (Mr Lau) property and also an elevated window." It attached substantial weight to the council's technical assessment which was conducted under the technical guidance provisions.

[28] Fourthly, the tribunal rejected Dr Granleese's assertion that the trees were unlikely to significantly grow further.

[29] Finally, it considered Dr Granleese's submission that it was not possible to trim or top the line of trees without disturbing the creatures that lived there including a protected species like bats. She had therefore requested that the remedial notice should be set aside so that the bird and animal life that flourished in her garden might continue to do so. The tribunal noted that the "technical guidance" obliged councils to give consideration to the issue of historic, wildlife or landscape value. By way of example it was indicated that remedial action is normally confined to times of the year when nesting birds would be least affected. Ultimately, the tribunal concluded that there was no evidence placed before it to make a persuasive case that required such considerations to be applied other than which had been taken into account within the content of the remedial notice.

[30] It is this decision which is the subject matter of this judicial review application.

The statutory scheme

[31] Before considering the grounds relied upon by Dr Granleese it is appropriate to set out the statutory scheme applicable in this scenario:

> ***"High Hedges Act (Northern Ireland) 2011***
>
> **Definition of High Hedge**
>
> (1) In this Act "high hedge" means so much of a barrier to light as –
>
> (a) is formed wholly or predominantly by a line of two or more evergreens; and
>
> (b) rises to a height of more than two metres above ground level.
>
> (2) For the purposes of subsection (1) a line of evergreens is not to be regarded as forming a barrier to light if the existence of gaps significantly affects its overall effect as such a barrier at heights of more than two metres above ground level.
>
> (3) In this section "evergreen" means an evergreen tree or shrub or a semi-evergreen tree or shrub.
>
> (4) But nothing in this Act applies to trees which are growing on land of 0.2 hectares or more in area which is forest or woodland.
>
> **Remedial notices**
>
> **5.** -(1) For the purposes of this Act a remedial notice is a notice -
>
> (a) issued by the council in respect of a complaint to which this Act applies; and
>
> (b) stating the matters mentioned in subsection (2).
>
> (2) Those matters are –

(a) that a complaint has been made to the council under this Act about a high hedge specified in the notice which is situated on land so specified;

(b) that the council has decided that the height of that hedge is adversely affecting the complainant's reasonable enjoyment of the domestic property specified in the notice;

(c) the initial action that must be taken in relation to that hedge before the end of the compliance period;

(d) any preventative action that the council considers must be taken in relation to that hedge at times following the end of that period while the hedge remains on the land; and

(e) the consequences under sections 10 and 12 of a failure to comply with the notice.

(3) The action specified in a remedial notice is not to require or involve -

(a) a reduction in the height of the hedge to less than two metres above ground level; or

(b) the removal of the hedge.

(4) A remedial notice shall take effect on its operative date.

(5) "The operative date" of a remedial notice is such date (falling at least 28 days after that on which the notice is issued) as is specified in the notice as the date on which it is to take effect.

(6) "The compliance period" in the case of a remedial notice is such reasonable period as is specified in the notice for the purposes of subsection (2)(c) as the period within which the action so specified is to be taken; and that period shall begin with the operative date of the notice.

(7) Subsections (4) to (6) have effect in relation to a remedial notice subject to -

(a) the exercise of any power of the council under section 6; and

(b) the operation of sections 7 to 8 in relation to the notice.

(8) While a remedial notice has effect, the notice -

(a) shall be a statutory charge; and

(b) shall be binding on every person who is for the time being an owner or occupier of the land specified in the notice as the land where the hedge in question is situated.

(9) In this Act -

"initial action" means remedial action or preventative action, or both;

"remedial action" means action to remedy the adverse effect of the height

of the hedge on the complainant's reasonable enjoyment of the domestic property in respect of which the complaint was made; and

"preventative action" means action to prevent the recurrence of the adverse effect.

Appeals against remedial notices and other decisions of councils

7.-(1) Where the council -

(a) issues a remedial notice,

(b) withdraws such a notice, or

(c) waives or relaxes the requirements of such a notice, each of the persons falling within subsection (2) may appeal to the Valuation Tribunal against the issue or withdrawal of the notice or (as the case may be) the waiver or relaxation of its requirements.

(2) Those persons are—

(a) every person who is a complainant in relation to the complaint by reference to which the notice was given; and

(b) every person who is an owner or occupier of the neighbouring land.

(3) Where the council decides either or both of the issues specified in section 3(3) otherwise than in the complainant's favour, the complainant may appeal to the Valuation Tribunal against the decision.

(4) An appeal under this section must be made before:

(a) the end of the period of 28 days beginning with the relevant date; or

(b) such later time as the Valuation Tribunal may allow.

(5) In subsection (4) "the relevant date" —

(a) in the case of an appeal against the issue of a remedial notice, means the date on which the notice was issued; and

(b) in the case of any other appeal under this section, means the date of the notification given by the council under section 3 or 6 of the decision in question.

(6) Where an appeal is duly made under subsection (1), the notice or (as the case may be) withdrawal, waiver or relaxation in question shall not have effect pending the final determination or withdrawal of the appeal.

(7) Rules under paragraph 7 of Schedule 9B to the Rates (Northern Ireland) Order 1977 (NI 28) (procedural rules for Valuation Tribunal) may, in particular, make provision -

(a) specifying the grounds on which appeals under this section may be made;

(b) requiring persons making an appeal under this section to pay such fee (if any) as may be prescribed;

(c) for a decision on an appeal under this section to be binding on persons falling within subsection (2) in addition to the person by whom the appeal was made;

(d) for incidental or ancillary matters relating to appeals under this section, including the awarding of costs.

Determination or withdrawal of appeals

8.-(1) On an appeal under section 7 the Valuation Tribunal may allow or dismiss the appeal, either in whole or in part.

(2) Where the Valuation Tribunal decides to allow such an appeal to any extent, the Tribunal may do such of the following as it considers appropriate—

(a) quash a remedial notice or decision to which the appeal relates;

(b) vary the requirements of such a notice; or

(c) in a case where no remedial notice has been issued, issue on behalf of the council a remedial notice that could have been issued by the council on the complaint in question.

(3) On an appeal under section 7 relating to a remedial notice, the Valuation Tribunal may also correct any defect, error or misdescription in the notice if the Tribunal is satisfied that the correction will not cause injustice to any person falling within subsection (2) of that section.

(4) Once the Valuation Tribunal has made a decision on an appeal under section 7, the Tribunal must, as soon as is reasonably practicable -

(a) give a notification of the decision, and

(b) if the decision is to issue a remedial notice or to vary or correct the requirements of such a notice, send copies of the notice as issued, varied or

corrected, to every person falling within section 7(2) and to the council.

(5) Where, in consequence of the decision on an appeal, a remedial notice is upheld or varied or corrected, the operative date of the notice shall be -

(a) the date of the decision;

(b) such later date as may be specified in the decision.

(6) Where the person making an appeal under section 7 against a remedial notice withdraws the appeal, the operative date of the notice shall be the date on which the appeal is withdrawn.

(7) In any case falling within subsection (5) or (6), the compliance period for the notice shall accordingly run from the date which is its operative date by virtue of that subsection (and any period which may have started to run from a date preceding that on which the appeal was made shall accordingly be disregarded).

Amendment to the Valuation Tribunal Rules (Northern Ireland) 2007

8. After rule 11 (*disposal by written representations*) insert the following new rule –

"Special procedure for high hedge appeals

11A.-(1) Subject to paragraph (2) an appeal under section 7(1) or (3) of the 2011 Act shall be disposed of on the basis of written representations.

(2) Where an appeal is to be disposed of under paragraph (1) the remaining provisions of these Rules shall, with any necessary modifications, apply to that appeal as if it were an appeal under rule 11(1)."

General principles

[32] Before turning to the applicant's grounds of challenge it is important to set out some general principles which apply to a judicial review challenge to a specialist

tribunal established by statute. The court's role is a limited one. As Lord Clyde said in *Reid v Secretary of State for Scotland* [1999] 2 AC 512:

> "Judicial review involves a challenge to the legal validity of the decision. It does not allow the court of review to examine the evidence with a view to forming its own view about the substantial merits of the case."

The court should pay due deference to the expertise of the decision maker in this case. It should only interfere with such a decision in accordance with the classic judicial review considerations including an error of law, procedural unfairness and a decision which is irrational in the *Wednesbury* sense or plainly lacking in logic.

The applicant's grounds of challenge

[33] I propose to deal with the applicant's grounds of challenge in the order in which they are set out in the original application. In this regard I take into account the skeleton argument submitted by Dr Granleese on 5 May 2023 upon which she elaborated at the leave hearing:

(i) **Illegality.** Dr Granleese contends that the impugned decision was unlawful in the following respects:

(a) She refers to the fact that in section 16 of the tribunal's decision reference is made to her gender by the use of words "by her" at section 16.3, by reference to "she states" at section 16.4 and by the use of the words "she had" at section 16.5. She says that at no other point in the tribunal's decision is anyone else's gender mentioned. As a consequence she claims that the decision contravenes The Sex Discrimination Order (1976) (Amendment) Regulations (Northern Ireland) 2016 by taking account of her gender in its decision-making process.

(b) She complains that the council wrongly took into account "the rights of the community in general" and "the wider area." She notes that in section 13 the tribunal "carefully noted the written evidence adduced and arguments advanced." This included a reference to correspondence between two other identified persons who were not the complainant to the council.

By doing so the applicant complains that the council took into account factors outwith the 2011 Act.

(ii) **Immaterial considerations**. Dr Granleese contends that the respondent took account of the following immaterial facts/considerations:

(a) Taking account of the complainant's first floor window, a matter of which she was not notified in advance of the appeal and which she contends has no planning permission. This contention was supplemented by an email from the assistant planner at Belfast City Council dated 27 June 2022 which states as follows:

> "Hi Jackie,
>
> Following our conversation I can confirm there is no planning history on record for the site at 17 Rosemary Park. Therefore the new window on the side elevation of the dwelling does not benefit from planning permission."

(iii) **Material considerations**. Dr Granleese further contends that the respondent failed to take account of the following material facts/considerations:

(a) That a tree in the subject line of trees was cut down after the aerial photograph relied upon by the council, thus negating its validity as the true representation of the situation on the ground.

(b) She sent an email photo of the two trees abutting the complainant's land which clearly shows significant gaps such as the two trees abutting the complainant's drive do not constitute a hedge under the definition of section 2(2) of the 2011 Act. The fact that the tribunal made no mention of the photograph in its determination leads to her concern that the tribunal simply "accepted the word of the valuation member Mr Tim Hopkins."

(c) Since there is no specific reference to any of the emails or photographs, she sent along with her appeal, Dr Granleese questions whether the tribunal took all the material information into account.

Dr Granleese complains about the way in which the tribunal dealt with the sun study model which she had commissioned. In particular, she notes that at 16.3 the decision states:

> "… The sun model does not specify certain potentially relevant detail, including calculated or notional time of year, time of day."

In fact the sun study model shows an entire day in August. It is argued, therefore, that not only has this material not been taken into account, but it has been unfairly dismissed.

(iv) **Procedural unfairness.** Dr Granleese contends that the impugned decision was procedurally unfair in the following respect:

(a) She complains that the entire procedure around the issuing of the notice and appeal is unfair in that it lacks transparency. Decisions are made in the absence of the parties. At the very least she contends that such tribunals should be "held by Zoom to improve."

Consideration

[34] At the outset it is important to note that the applicant is a litigant in person and does not have the benefit of legal advice. Therefore, the court is anxious to ensure that Dr Granleese is given every opportunity to present her case and that it fully understands that case.

[35] I found Dr Granleese to be a sensitive, courteous and sensible litigant. She is clearly attached to the trees which form the subject matter of this appeal. She is clearly aggrieved by the decision to require her to cut the trees to the level set out in the remedial notice. She is adamant that in fact the trees do not cause any interference with light to Mr Lau's property and suggests that the real genesis of the complaints are from neighbours who take issue with the appearance of the trees.

[36] I formed the impression that in substance this judicial review when properly analysed bears all the hallmarks of a merits challenge to factual conclusions arrived at by experts in the area. As the court considered the written and oral submissions of the applicant it increasingly came to the impression that it was being asked to in effect perform an appellate role.

[37] Having made those general comments I now turn to the consideration of the specific issues raised in the Order 53 statement.

[38] I find it difficult to understand the assertion that the applicant has been the victim of discrimination under the Sex Discrimination Order (1976) (Amendment) Regulations (Northern Ireland) 2016. I found nothing objectionable in the specific references to the applicant's gender which seemed to me to flow from the text. Mechanical repeated references to "the appellant" may well have avoided the use of the words "her" or "she." The decision expressly refers to the gender of other relevant parties. For example, Mr Higginson, about whose report the applicant complains is clearly identified as a male throughout the decision.

[39] Importantly I can see no basis for detecting that the use of the female pronoun on a very limited number of occasions throughout a detailed and lengthy judgment suggests that this in some way influenced the decision under challenge.

[40] I pressed the applicant on this point, and I accept that it was her genuine perception that her gender has been singled out in the decision. Despite that genuine

perception I have no hesitation in rejecting this as a ground for judicial review of the decision.

[41] In relation to the complaint that the council ought not to have considered "the rights of the community in general" and the "wider area" it is important to understand that in its determination the tribunal simply accurately records the history to the dispute leading up to the remedial notice.

[42] It is not the council's decision which is being challenged here but rather the decision of the tribunal. The tribunal was right to note the history and accurately record the background.

[43] However, what is absent from its decision is any suggestion that it was based on "the rights of the community in general" or that the evidence of complaints from other identified persons was the basis of its decision. The decision expressly states at para 2 that it left these considerations "aside for the purposes of this appeal." It confirmed that "the tribunal in this case is directing its focus to the complaint and to the resultant action taken by the council."

[44] It is abundantly clear from the substance of the decision that it was based on the evidence of the member Mr Hopkins arising from his inspection of the locus. The court considers therefore that this ground is insufficient to ground a claim for judicial review.

[45] In relation to the complaint concerning a lack of planning permission for the first-floor window in Mr Lau's premises, a number of matters are relevant.

[46] This matter was not drawn to the attention of the tribunal. Compliance with planning permission was not an issue raised in the appeal and, therefore, could not be taken into account. If in fact Mr Lau is in breach of any planning requirements this is a matter which can be dealt with by separate enforcement mechanisms.

[47] More importantly, it is clear that the decision is based on the inspection conducted by Mr Hopkins, which in essence confirmed the findings of Mr Higginson who was responsible for the initial remedial notice. The evidence in question specifically refers to "windows." The findings at the inspection were that the effect of the trees had a significant impact on Mr Lau's home and garden. The unequivocal factual finding of the tribunal was that the trees constituted a hedge and caused a significant obstruction to daylight and sunlight in Mr Lau's property. The method was one in accordance with the technical guidance provided for councils carrying out this task. The examinations on the ground revealed a substantial effect affecting both the garden to the complainant's property and also an elevated window. Reference to his property is clearly not confined to the single elevated window. As per section 5(2) of the 2011 Act, the tribunal must decide whether the height of the hedge (as found by the tribunal) was "affecting the complainant's reasonable enjoyment of the domestic property specified in the notice."

[48] The alleged failure by the tribunal to take into account the fact that a tree had been cut out of the line of trees and that an aerial photograph provided to the council was taken prior to pruning the line of trees in question, are said by Dr Granleese to support an assertion that the tribunal failed to take into account material considerations.

[49] Essentially, these are factual matters. What is clear is that the tribunal based its decision on the site inspection by the valuation member. He was able to assess and measure the trees in question and come to a conclusion as to whether they contravened the provisions of the 2011 Act. The actual condition of the trees was the subject matter of detailed consideration by the tribunal. Para 14 of the decision provides:

> "The valuation member's site inspection and survey revealed that apparently one tree had been removed, as had been asserted by the appellant. However, the evidence of the valuation member's inspection was that the foliage of the two remaining trees still merged, in the opinion of the valuation member, to form a barrier of light (thereby negating section 2(2) of the 2011 Act)."

[50] Para 14 of the decision refers to the attendance of the valuation member on site and it is clear that this specific issue was examined by him and that specific conclusions were reached by him.

[51] Dr Granleese complains about a failure to specifically refer to emails or photographs emailed together with her appeal. The tribunal expressly states that it took "all of the other evidence available" into account. More importantly, I return to the fact that the valuation member had the opportunity to inspect the locus and assess for himself the situation on the ground.

[52] Understandably, Dr Granleese focuses particularly on the way in which the tribunal dealt with the "sun model." She points to a contradiction in the tribunal's decision when it refers to what it describes as a number of concerns concerning the model. The tribunal observed that the model did not specify certain potentially relevant detail, including calculated or notional time of year, time of day, any relevant heights and measurements and, for example orientation of the subject. She points out that in fact as is acknowledged in the decision the model was based upon a day of high-level sunshine on 4 August.

[53] In this regard it is important to note that the tribunal faithfully sets out the basis for which Dr Granleese relied on the model at para 11 of the decision.

[54] In section 16.3 in dealing with this issue the tribunal states:

> "The sun model appears to address only issues of direct sunlight, unimpeded and direct, without any account afforded of indirect or defused light."

[55] Importantly, the decision goes on to say:

> "A statutory consideration is whether or not a 'high hedge' constitutes a `barrier to light.' There is no reference comprised in the statutory definition of direct sunlight. Indeed the site inspection by the valuation member revealed a substantial effect of the hedge constituting a barrier to light, this affecting both the garden to the complainant's property and also an elevated window. For this reason, the tribunal determines that it is appropriate to attach substantial weight to the respondent's technical assessment conducted under 'technical guidance' provisions. In comparison and in contrast to any evidence available from the 'sun model.' There is nothing in the latter model which would cause the former significant evidence to be displaced and it would be entirely inappropriate for the tribunal to discount or disregard such evidence resulting from the proper and accurate application of the 'technical guidance.'"

[56] At the risk of repetition, ultimately, what was involved here was a factual assessment. In coming to its conclusion, the tribunal clearly took into account all the evidence on this point available to it and came to a view that the trees did constitute a high hedge within the meaning of the 2011 Act.

[57] In no way could this decision be deemed irrational or lacking in logic.

[58] In relation to the complaint about procedural unfairness it is noted that the procedure adopted by the tribunal is dictated by statute. That procedure was faithfully followed in this process.

[59] An appeal under the 2011 Act is disposed of upon written representations in accordance with the special procedure for such cases contained in section 8 Valuation Tribunal (Amendment) Rules 2012.

[60] The applicant properly availed of the appeal procedure and made full representations in support of her case. The tribunal has provided a detailed written judgment setting out its reasons. This clearly complies with the statutory procedure. In no way could it be said to lack transparency or be deficient procedurally.

[61] Although not argued before me, I have also taken into account the applicant's rights under Article 1 of the First Protocol to the European Convention on Human Rights. Article 1 provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

[62] It is arguable that the impugned decision in this case comes within the scope of the applicant's rights under A1P1. Therefore, any interference with those rights must be justified in law.

[63] Applying the usual structure of analysis of questions arising in relation to Convention Rights the following is clear from the analysis above:

(a) Any restriction of the applicant's rights is prescribed by law in the form of the 2011 Act.

(b) The restriction pursues a legitimate aim including the protection of the rights of the complainant, Mr Lau.

(c) Is the restriction imposed by the impugned decision proportionate?

[64] For the reasons set out above the court concludes that the restriction imposed on the applicant meets the threshold of proportionality. The protection of the rights of Mr Lau have been carefully weighed in the decision, there is a connection between the means chosen and the protection of his rights and the decision maker has adopted the least restrictive means available to protect those rights.

[65] The decision maker has fairly and lawfully applied the wishes of the legislature expressed in the 2011 Act.

Conclusion

[66] The court, therefore, concludes that there is no error of law identified in the impugned decision. There has been no procedural unfairness. The decision of the tribunal is a rational one which was plainly open to it.

[67] The court, therefore, concludes that it is not appropriate to grant leave in this case. The threshold for leave set out in the case of *Ni Chuinneagain* [2022] NICA 56 of an arguable case having a realistic prospect of success has not been met.