

CITY OF WESTMINSTER			
PLANNING APPLICATIONS SUB COMMITTEE	Date 09.11.2021	Classification For General Release	
Report of Director of Place Shaping and Town Planning		Ward(s) involved Abbey Road	
Subject of Report	96 Hamilton Terrace, London, NW8 9UP		
Proposal	Complaint about a high hedge at the boundary between the rear gardens of 20A Alma Square and 96 Hamilton Terrace made under Part 8 of the Anti-Social Behaviour Act 2003.		
Agent	Emmanuelle Tandy		
On behalf of	Emmanuelle Tandy		
Registered Number	20/05385/HH	Date amended/ completed	4 September 2020
Date Application Received	24 August 2020		
Historic Building Grade	Unlisted		
Conservation Area	St John's Wood		

1. RECOMMENDATION

1. That the complaint be upheld
2. That a remedial notice be issued requiring:
 - (a) Hedge A (as specified in Fig. 1 and 2 of this report) to be reduced to a height not exceeding 4.6m above the garden level of 96 Hamilton Terrace and Hedge B (as specified in Fig. 1 and 2 of this report) to be reduced to a height not exceeding 3.5m above the garden level of 96 Hamilton Terrace.
 - (b) Hedge A to be maintained so that at no time does it exceed 5.2m above the garden level of 96 Hamilton Terrace and Hedge B to be maintained so that at no time does it exceed 4.1m above the garden level of 96 Hamilton Terrace.

2. SUMMARY

A complaint has been made under Part 8 of the Anti-Social Behaviour Act 2003 in respect of the hedge planted adjacent to the rear boundary between the rear gardens of 96 Hamilton Terrace and 20a Alma Square. A copy of the relevant part of the act is included within the background papers.

The hedge, within the rear garden of 96 Hamilton Terrace where it is directly to the rear boundary wall of 20A Alma Square comprises of a row of holm oaks trees and is in two distinct sections. One

row (Hedge B) with the stems of the hedge are approximately 3.5 metres away from the southern part of the rear boundary wall of 20a Alma Square and the second (Hedge A) stepped further back where with the stems of the hedge are approximately 6 meters from the northern part of the boundary of 20a Alma Square. Lateral branches from the tree trunks reach towards the boundary, at varying lengths. The hedges are approximately 7 metres tall. The hedges are roughly parallel to the rear boundary. There is no significant difference in the levels between the two gardens. Hedge C (as specified on in Fig. 1 and 2 of this report) is not directly adjacent to the complainants property and is not considered to be harmful to its amenity.

The hedges constitute a high hedge as defined by Section 66 of Part 8 of the Anti-Social Behaviour Act 2003 as it is formed wholly or predominantly by a line of two or more evergreens; and rises to a height of more than two metres above ground level. The complainant considers that the high hedge is causing a loss of light to the home and garden of 20A Alma Square and that this is harmful to their amenity. The complainant has submitted correspondence to the hedge owner requesting that the hedge be reduced in height. The complainant and the hedge owner have not to date come to a resolution to reduce the height of the hedge. The hedge has been assessed from the property of the complainant (20a Alma Square) and from the hedge owners property (96 Hamilton Terrace) in accordance with the complaints procedure set out in Section 68 of Part 8 of the Anti-Social Behaviour Act 2003.

The Council's role in this case is to try to strike a balance between the competing rights of neighbours to enjoy their respective properties and to consider whether the amenity problems encountered in the complaint are sufficiently serious to justify action being taken against to require the hedge to be altered in height.

To assess the impact of the high hedge on the rear garden and rear windows of 20A Alma, the method of assessment for high hedges set out in the Building Research Establishment (BRE) guidelines on 'Hedge Height and Light Loss' (2005) have been followed. This guidance document includes a method for calculating the 'Action Hedge Height' (AHH), i.e. the height to which the hedge should be reduced in order to ensure it would not cause an unreasonable obstruction of light to the windows or garden of the neighbouring properties.

It was evident from the site visit to the complainant's property (20A Alma Square) on 26 April 2021 that the hedge has an overbearing impact on the relatively small rear garden of the property.

Because the hedge subject to this complaint comprises of two distinct sections which due to their relative set back from the boundary with 20a Alma Square have differing impacts on that property. It is therefore considered necessary to apply the BRE method of assessment on each section independently.

By using the BRE method of assessment that is set out in the guidelines, it has been established that the greatest impact of the hedges is on the garden of 20A Alma Square. The assessment calculates that the high hedge must be reduced to an AHH of 2.73 meters in the case of the section closest to the boundary and an AHH of 5.2 metres and for the section furthest away from the boundary.

This assessment confirms that the height of the hedge in its current form is having an impact on the complainant's property and that it is therefore reasonable to require the height of the hedge to be reduced.

However, an assessment by the Council's Arboricultural Officer has concluded that any pruning of

the hedges below the height of 3.5 meters could cause significant harm to the trees and that they may not survive pruning to the AHH of 2.73 meters. Government guidance on high hedges states that the Council must weigh up all relevant information before reaching a balanced decision and that they must also think about effects on the neighbourhood, for example the hedge might help to make the area an attractive and pleasant place. The guidance also makes it clear that the council *may* use government guidance (including the Hedge Height and Light loss document and AHH calculation) to help decide what could be the best height for the hedge rather than should the decision wholly be based on that. The guidance also states that the Council cannot order a neighbour to take any action that could result in the hedges death or destruction.

Mindful of this guidance, it is considered appropriate to require the pruning of the hedge closest to the boundary to a height of 3.5 metres and no more to ensure its survival, rather than basing the height requirement entirely on the AHH calculation of 2.73.

Under the legislation, where action is found to be required to protect the amenity of the complainant's property, the local authority is required under Section 69 of Part 8 of the Anti-Social Behaviour Act 2003 to issue a remedial notice specifying the work to be done to the hedge to reduce its impact on the neighbouring property. The remedial notice cannot require the reduction of the hedge to below 2 metres in height above ground level or the complete removal of the hedge. The local authority must ensure that the works specified in the remedial notice relate to the hedge itself (i.e. excluding other planting that does not form part of the hedge), are directly resulted to the adverse effect found to be caused by the hedge and must not exceed what is necessary to remedy the adverse effect of the hedge.

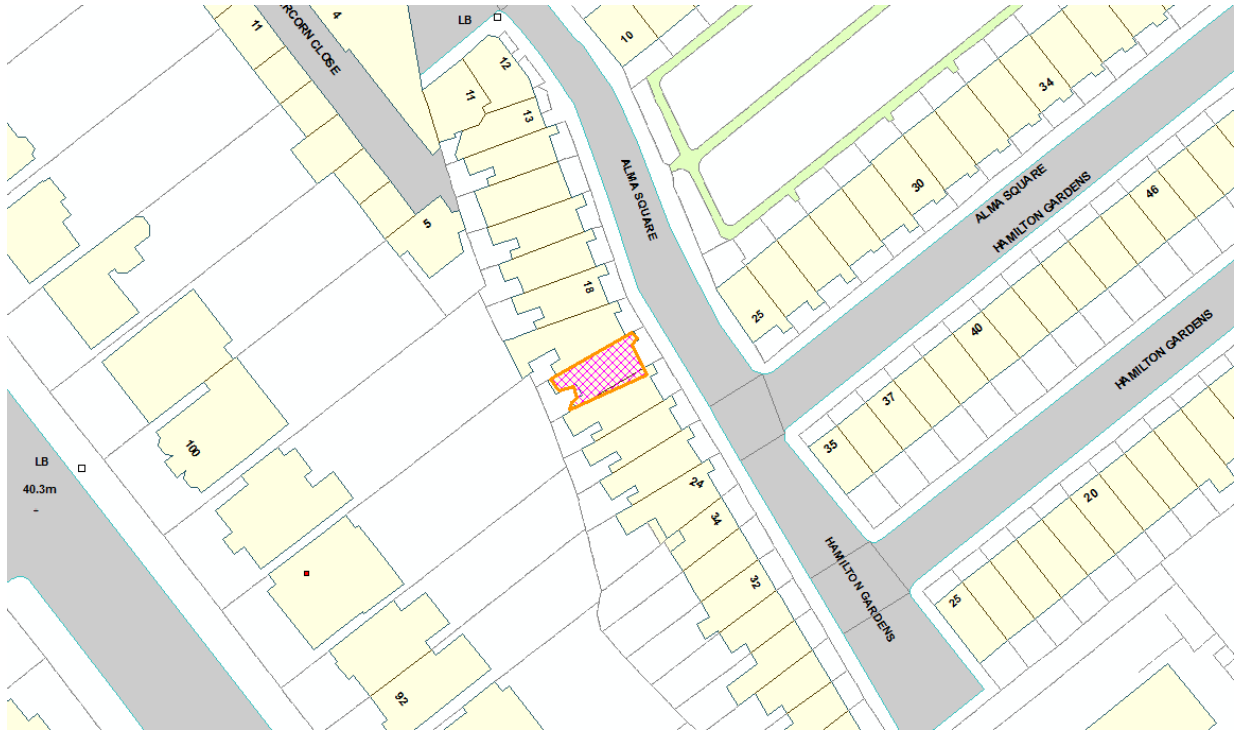
The legislation permits remedial notices to include requirements in terms of future maintenance of the hedge to ensure that it continues to be trimmed to avoid it exceeding the identified AHH. The BRE guidance recommends that a growing margin is considered when specifying the requirements in the remedial notice. This is to prevent short term re-growth causing a reoccurrence of the breach of the legislation.

In the case of the hedge closest to the boundary wall (Hedge B), 3.5 metres is considered the maximum that the hedge can be reduced to whilst ensuring its survival the growing margin should be allowed above this height. In the case of the hedge furthest away (Hedge A), the normal BRE guidance should be followed. This suggests that the initial required reduction height should be below the Action Hedge Height to allow a growing margin. The BRE guidance suggests a growing margin of between 0.6 meters and 1 meter. In this case it is considered that because the trees which makes up the hedges are not a particularly fast growing species and because the hedge closest to the boundary will not be required to be reduced to the Action Hedge Height, it is reasonable that the growing margin is specified at the lowest end of this range at 0.6 meters.

It is recommended that the remedial notice issued under Section 69 of Part 8 of the Anti-Social Behaviour Act 2003 requires the height of the hedge to be reduced, as specified in the preceding paragraph, within 3 months of the operative date of the notice (i.e. the date on which the remedial notice is issued).

Under Section 71 of Part 8 of the Anti-Social Behaviour Act 2003, once a remedial notice has been issued by the City Council, both the complainant and the hedge owner have 28 days in which to appeal to the Secretary of State against the requirements of the remedial notice.

3. LOCATION PLAN – complainant property outlined



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4. PHOTOGRAPHS



View of hedge from garden of 20a Alma Square



View from boundary looking back towards windows of 20a Alma Square



View from boundary looking back towards the garden and windows of 20a Alma Square

5. CONSULTATIONS

ST JOHNS WOOD SOCIETY

Defer to Council

ARBORICULTURAL OFFICER

Surveyed high hedge on site with case officer.

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 17

Total No. of replies: 2

No. of objections: 1

No. in support: 1

One letter in support of the application

One letter from owner of hedge stating that the lowering of the height of the hedge will have no material impact on the complainants light because of the existing lime trees and the distance to the property. Has not been able to prune recently because of COVID situation but has every intention to do so when feels comfortable doing so.

PRESS ADVERTISEMENT / SITE NOTICE:

Yes

(Please note: All the application drawings and other relevant documents and Background Papers are available to view on the Council's website)

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: RUPERT HANDLEY BY EMAIL AT rhandley@westminster.gov.uk

6. KEY DRAWINGS

Fig.1: Plan showing hedge Sections



Fig.2: Photograph showing hedge sections taken from the garden of 96 Hamilton Terrace.



DRAFT DECISION LETTER

**IMPORTANT - THIS NOTICE AFFECTS THE PROPERTY AT 96 HAMILTON TERRACE,
LONDON, NW8 9UP**

ANTI-SOCIAL BEHAVIOUR ACT 2003

REMEDIAL NOTICE (REF: 20/05385/HH)

ISSUED BY: WESTMINSTER CITY 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 96 Hamilton Terrace, London, NW8 9UP. The Council has decided that the hedge in question is adversely affecting the reasonable enjoyment of the property at 20A Alma Square, London, NW8 9QA 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 sections of hedge marked Hedge A and Hedge B (as specified in Fig. 1 and 2 of this report) adjacent to the boundary between the rear gardens of Nos.96 Hamilton Terrace. London, NW8 9UP and 20A Alma Square, London, NW8 9QA. The hedges are formed of holm oak 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 Hedge A (as specified in Fig. 1 and 2 of this report) to a height not exceeding 4.6m above the garden level of 96 Hamilton Terrace and;
- (ii) reduce Hedge B (as specified in Fig. 1 and 2 of this report) to a height not exceeding 3.5m above the garden level of 96 Hamilton Terrace.

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:

- (i) maintain Hedge A so that at no time does it exceed 5.2m above the garden level of 96 Hamilton Terrace and;
- (ii) maintain Hedge B so that at no time does it exceed 4.1m above the garden level of 96 Hamilton Terrace.

Informative

It is recommended that the hedges are cut back annually to the heights specified in the initial action section above. This allows room for the hedge to re-grow between annual trimmings and

still not exceed heights of 5.2 metres for hedge A and 4.1 metres for hedge B, as specified in the preventative action section.

All works should be carried out in accordance with good arboricultural practice/BS 3998: 'Recommendations for Tree Work'.

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, steps (i) and (ii) specified in paragraph 3 above, are to be complied with in full within 3 months of the date specified in paragraph 5 of this Notice.

5. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on 21 December 2021.

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 portion of hedge specified in paragraph 2 above is situated:

- a. to take action in accordance with the Initial Action steps (i) and (ii) specified in paragraph 3 above within the period specified in paragraph 4; or
- b. to take action in accordance with the Preventative Action steps (i) and (ii) 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:

Signed:

Deirdra Armsby, Director of Place Shaping and Town Planning.

on behalf of Westminster City Council, Westminster City Hall, 64 Victoria Street, London, SW1E 6QP