LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964

LAND COMPENSATION (NORTHERN IRELAND) ORDER 1982

IN THE MATTER OF A CLAIM FOR COMPENSATION

R/1/2023

BETWEEN

THE ESTATE OF DANIEL LOGAN (DECEASED) AND JOAN LOGAN – APPLICANTS

AND

DEPARTMENT FOR INFRASTRUCTURE - RESPONDENT

Re: (1) Part of farm at 290 Frosses Road, Ballymena (now 23 Lisnaoo Road)

(2) Land to the front of Logan's Complex at 233 Frosses Road

(3) Part of Logan's Complex, 233 Frosses Road

(4) Part of garden at 1 Mounthamilton Road

(5) Field at Drumadoon Road to the front of 1 Mounthamilton Road

(6) Access to a house at 228 Frosses Road

Lands Tribunal for Northern Ireland – Henry Spence MRICS Dip.Rating IRRV (Hons)

Background

1. The subject reference is an application for compensation arising out of land vested in connection with the dualling of the A26 road from Glarryford to the A44 Drones Road ("the scheme"). The estate of Daniel Logan (deceased) and Joan Logan ("the applicants") were the owners of the Logan's complex and other lands, parts of which were vested as part of the scheme.

2. The A26 was a dual carriageway up to Glarryford and was thereafter a single lane carriageway. As part of the Department for Infrastructure ("the respondent") Strategic Roads Improvement Programme, the respondent decided to dual the road from Glarryford up to the turn off for Ballycastle.

3. The respondent served a Notice of Intention to making a vesting order on 8th March 2012. On 28th November 2013 the respondent made a vesting order with an operative date of 7th January 2014 ("the valuation date"). The vesting order included lands belonging to the applicants. Works commenced on the dualling in March 2015 and were opened to traffic in June 2017.

4. For the purposes of the subject reference, the land which has been vested from the applicants is in six locations:

Location 1 –	Part of farm at 290 Frosses Road (now 23 Lisnaoo Road) which lay on both sides of the Frosses Road
Location 2 –	Part of the land lying to the front of a house beside the Logan's Complex at 233 Frosses Road
Location 3 –	Part of the Logan's Complex
Location 4 –	Part of the garden of a house at 1 Mounthamilton Road
Location 5 –	Part of a field at Drumadoon Road. This is a field in front of the property referred to at location 4
Location 6 -	The direct access from the Frosses Road to a house at 228 Frosses Road

<u>Procedural Matters</u>

5. The applicants were represented by Mr Douglas Stevenson BL, instructed by MTB solicitors. Mr Michael Neeson BL represented the respondent, instructed by the Departmental Solicitor's Office. The Tribunal is grateful to counsel for their helpful submissions.

6. Mr Thomas Donaghy of Frank Donaghy (Auctioneers) Limited provided expert valuation evidence on behalf of the applicants. Mr Alistair Ferguson of Land & Property Services provided expert valuation evidence on behalf of the respondent.

7. Mr Donaghy and Mr Ferguson are experienced valuation surveyors, and the Tribunal is grateful to them for their helpful submissions.

Position of the Parties

8. The applicants have helpfully detailed the respective positions of each of the valuation experts under each head of claim. This was not disputed:

	Applicants	Respondent
Location 1		
Vesting	£37,230	£37,230
Severance	£228,360 (20%)	£57,000 (5%)
Disturbance	£13,000	NIL
Location 2		
Vesting	NIL (included in location 3)	NIL
Injurious Affection	NIL	£11,500
Disturbance	NIL	NIL
Location 3		
Vesting	£209,150	£33,035
Severance	£1,467,302	£221,100
Disturbance	£81,915	NIL
Management Time	£9,000	£9,000
Location 4		
Vesting	£800	£800
Injurious Affection	£55,000	£29,400
Disturbance	NIL	NIL

Location 5		
Vesting	£8,120	£8,120
Severance	£4,540	£2,270
Disturbance	NIL	NIL
Location 6		
Injurious Affection	£36,250	£13,500
TOTAL	£2,150,667	£422,955

The Statutory Framework

9. The rules for assessing compensation are set out in the Land Compensation (Northern Ireland) Order 1982 ("the 1982 Order"). The sections relevant to the subject references are:

> "Article 6
>
> Compensation in respect of any compulsory acquisition of land shall, subject to the provisions of this Order and any other enactment, be assessed in accordance with the following rules:-
>
> (1) No allowance shall be made on account of the acquisition being compulsory;
>
> (2) The value of land shall, subject to rules 3 to 6, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise;
>
> (3) The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers or for which there is no market apart from the special needs of a particular purchaser or the requirements of any authority possessing compulsory acquisition powers;
>
> (4) Where the value of the land is increased by reason of the use of it or of any premises on it in a manner which could be restrained by any court, or is contrary

to law, or is detrimental to the health of the occupants of the premises or to the public health, the amount of that increase shall not be taken into account.

(5) Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, where reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement;

(6) The provisions of rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land."

10. Article 8 relates to claims for compensation for severance and injurious affection. It provides:

"Article 8

(1) In assessing compensation to be paid to any person in respect of the compulsory acquisition of any land, regard shall be had not only to the value of the land acquired but also to the damage, if any, sustained or which may be sustained by that person by reason of the severing of the land from other lands of that person held with that land, or otherwise injuriously affecting such other lands by the exercise of powers conferred on the acquiring authority by any transferred provision.

(2) Where land is acquired or taken from any person for the purpose of works which are to be situated partly on that land and partly elsewhere, compensation payable under paragraph (1) for injurious affection of land retained by that person shall be assessed by reference to the whole of the works and not only the part situated on the land acquired or taken from him.

(3) Where for the purpose of assessing the amount of any compensation to be paid under this Article the value of any land is required to be determined, that value shall, except in so far as any transferred provision (whether passed before or made or after the making of this Order) otherwise provides, be determined in accordance with rules (2) to (4) of Article 6.

(4) Paragraph (2) shall apply to compensation for injurious affection under section 63 or 121 of the Lands Clauses Consolidation Act 1845 as it applies to compensation under paragraph (1)."

11. Article 18 relates to "compensation for injurious affection caused by execution of works":

"Article 18

(1) Where, by reason of the execution of works on land acquired (whether compulsorily or otherwise) by an authority possessing compulsory acquisition powers, and other land is injuriously affected, the authority shall, subject to any provision to the contrary in any transferred provision and subject to and in accordance with the following provisions of this Article, pay compensation in respect of the injurious affection.

(2) Compensation in respect of injurious affection shall not be paid under this Article to any person from whom any land has been acquired by the acquiring authority for the purpose of executing the works and to whom any compensation is payable under Article 8 by the authority in respect of that injurious affection.

(3) Compensation shall be paid under this Article only in respect of injurious affection which would, but for the provisions of the transferred provision authorising the execution of the works, have given rise to a right of action for damages against any person causing the injurious affection.

(4) In assessing compensation to be paid under this Article, regard shall be had to any benefit which the person entitled to the compensation may derive from any works carried out or to be carried out on the land acquired by the authority.

(5) Where the authority undertakes before the compensation to be paid under this Article is agreed upon or determine, to make alterations or additions or to construct additional works or to abandon part of the land acquired or to grant other lands or easements, the compensation shall be determined having regard to such undertaking.

(6) Where for the purpose of assessing the amount of any compensation to be paid under this Article the value of any land is required to be determined, that value

shall, except in so far as any other transferred provision (whether passed or made before or after the making of this Order) otherwise provides, be determined in accordance with rules (2) to (4) of Article 6."

Authorities

12. The Tribunal was referred to the following authorities:

- Emslie & Simpson Ltd v Aberdeen City District Council [1994] Inner House of the Court of Session

- Director of Buildings and Lands v Shun Fung Ironworks Ltd [1995] UKPC J0220-2

- Taff v Highways Agency [2009] UKUT 128

- Killen v DRD R/38/2011

- Ramac Holdings Ltd v Kent County Council [2014] UKUT

13. Mr Neeson BL made the following submissions on his interpretation of the statute and the decided authorities:

(i) The Tribunal confirmed its approach to the assessment of compensation in Killen v DRD in which the principle of fair compensation was set out in Director of Buildings and Lands v Shun Fung Ironworks Ltd, Lord Nicholls observed:

> "the purpose of the legislation … is to provide fair compensation for a claimant whose land has been compulsory taken from him. This is sometimes described as the principle of equivalence. No allowance is to be made because the acquisition was compulsory; and land is to be valued at the price it might be expected to realise if sold by a willing seller, not an unwilling seller. But subject to these qualifications, a claimant is entitled to be compensated fairly and fully for his loss. Conversely, and built into the concept of fair compensation is the corollary that a claimant is not entitled to receive more than fair compensation; a person is entitled to

compensation for losses fairly attributable to the taking of his land, but not to any greater amount."

(ii) In the same case the Privy Council set out that "to qualify for compensation, a loss suffered post-resumption must satisfy the three conditions of being causally connected, not too remote, and not a loss which a reasonable person would have avoided.". In Emslie & Simpson Ltd v Aberdeen City District Council, trading losses incurred in the year prior to acquisition were rejected because the lost profits were attributable to the indiscriminate effects of blight and were irrecoverable. This decision was applied in Ramac Holdings Ltd v Kent CC where it was held that, to be compensatable, a loss must be caused by the acquisition of the land and not caused by the construction of the scheme itself.

(iii) The Tribunal concluded that "… the object of disturbance compensation is to cover personal losses suffered by the owner as a result of having to sell his land against his will, to reflect the value of the land to him. The losses which may be claimed are those suffered in consequence of the compulsory acquisition of the land (or threat of it). Losses caused by the construction of the scheme (or imminent threat of construction) underlying the acquisition of the land are not losses caused to the owner by the forced sale of his land but rather are caused to the owner, and usually many others, by the inconvenience of construction of the public authority's scheme as a whole.". By way of example, the Tribunal, in considering claims for "Transport Pads" held that "… the fact that the construction of the Phase 1C roadworks caused congestion and delays resulting in the need to construct transport pads to enable more transporters to deliver to the site does not give rise to a claim for compensation for disturbance, being a loss caused by construction of the scheme and not a loss caused by acquisition of the reference land" (Mr Neeson BL emphasis) and made no award for this.

(iv) Similarly in a claim for "Road Testing" costs the Tribunal held that "… we consider that the road testing costs are not recoverable as a matter of principle … they were caused by the congestion and delays occasioned by the roadworks. We find they were not caused directly by acquisition of any part of the reference land but instead were caused by construction of the scheme" (Mr Neeson BL emphasis).

(v) With reference to rule 6(4) the Tribunal is referred to Taff v Highways Agency. In Taff, the applicant was the tenant of business premises used as a scrapyard. The Highways Agency compulsorily acquired half of this land. Whilst Mr Taff had planning permission for his use of the land, he did not have a viable waste management licence. Mr Taff claimed extinguishment for the waste management business that operated from the acquired land. Rule 4 of section 5 to the Land Compensation Act 1961 is in similar terms to rule 6(4) of the 1982 Order and disregards any value of land which results from an unlawful use. As Mr Taff did not have a waste management licence, the Highways Agency argued Mr Taff's use could not be taken into account when assessing compensation. After considering the point as a preliminary issue, the Tribunal decided that: (a) the use of the land, to the extent it was covered by certificates of lawful use and the planning permission, should be take into account when assessing compensation, but given the lack of a waste management licence, any claim for disturbance based upon that part of the business which could be restrained was irrecoverable.

The Applicants' Compensation Claim

Location 1 – Land at farm at 290 Frosses Road now 23 Lisnaoo Road (Plots 2.18 and 4.01)

Mr Stevenson BL

14. The issues between the two experts in relation to this location were (i) the percentage by which the farm had been depreciated as a result of the vesting and scheme; and (ii) the applicants' claim for a disturbance payment in relation to the effect on the late Don Logan's business carried out from the sheds to the west of the A26.

15. Re "(i)" Mr Ferguson was of the view that the appropriate depreciation was 5%. Mr Donaghy's opinion was that the appropriate percentage was 20%. The difficulty that the experts faced is the lack of comparable evidence.

16. The point which arose from Mr Ferguson's evidence was that his 5% discount was as a result of the access changes to the east of the A26. His opinion was that the splitting of the farm and the need to use the overpass was not worthy of any depreciation. He also did not apply any depreciation to reflect the fact that the access to the sheds to the west was now along an access that was shared with the house and the farm lying to the north. The applicants submit that Mr Ferguson is simply wrong and that a farmer (the hypothetical purchaser) is going to discount his bid where he is presented with a shared access as opposed to his own individual access.

17. The reference property is one where there is evidence of the effect of the scheme. The experts are agreed that the value of the farm as at the date of vesting was £1,141,800. In evidence Mr Logan explained in 2020 the applicants put the farm on the market with an asking price of £585K. There were no bidders at that price and it was taken off the market.

18. Mr Ferguson argued that the marketing of the farm was some years after vesting. Mr Ferguson submitted that the quality of the land may have depreciated but he could not say that it definitely had. That did not, however, explain a price drop of more than half. The applicants say that the major difference between vesting and the attempted sale was the dualling of the A26.

19. The applicants therefore say that the appropriate percentage is more than the 5% offered by Mr Ferguson. The applicants say that Mr Donaghy's 20% depreciation is a conservative estimate and should be favoured by the Tribunal.

20. Re "(ii)", disturbance, Mr Logan gave evidence re the business run by Mr Don Logan from the sheds to the west of the A26. This was a simple business supplying mostly paper products and other disposables. Mr Ferguson raised two issues as to why no disturbance was payable; (a) Article 6(4) of the 1982 Compensation Order meant that compensation should not be paid (b) the <u>Ramac</u> case meant that compensation was not payable.

21. Re "(a)" Article 6(4) states:

> "Where the value of land is increased by reason of the use of it or of any premises on it in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the occupation of the premises or to the public health, the amount of that increase shall not be taken into account."

22. Mr Ferguson argued that as there was no planning permission for the use of the sheds, Article 6(4) meant that compensation was not payable. The applicants submit that this is wrong for two reasons. Firstly, whilst there may not have been a grant of planning permission for the commercial use of the sheds, the user had been long established. Mr Logan said the premises had been used for business purposes since 1997. Article 132 of the Planning Act (NI) 2011 provides that no enforcement action can be taken 5 years after the date of any breach. Thus, at the operative date, the Planning Service could not have raised any objection to, or take any enforcement action in respect of the use of the sheds.

23. The second reason is that Article 6(4) only applies where the unlawful user results in an increase in the value of the land. That is not this case. No one is suggesting that the late Mr Don Logan's use meant the shed was worth more at the operative date than they otherwise would have been. Further and relatively, the applicants' claim under this heading is not in relation to the value of the land as such. Rather the claim is for disturbance to Mr Don Logan's business.

24. As to the <u>Ramac</u> point, it was a case where the landowner claimed that the roadworks for the scheme meant that extra reinforced pads to support transporter lorries had to be constructed, and it claimed the cost of those pads as disturbance. The Upper Chamber held that this claimed loss was not compensatable, as it did not arise from the vesting of the land but rather arise from the scheme itself.

25. Questions might be raised as to the correctness of Ramac. Even assuming Ramac is correct, this is not a case where the disturbance claim is unconnected with the land vested. The claim made by the applicants is that access from the A26 to the property was hampered, and it is being remembered that part of the access was vested during the scheme works. This is a classic case for disturbance payment – where a business has been disturbed because of the land being vested. Mr Ferguson's principled objections to the claim for disturbance are, with respect, wrong. The applicants therefore have a valid disturbance claim which Mr Donaghy has valued at a modest figure of £100 per week making £13k.

Locations 2 and 3 – The Logan's Complex and 233 Frosses Road (Plots 5.10, 5.22 and 5.29)

Mr Stevenson BL

26. The issues in relation this location are:

(i) the amount of land vested

(ii) the value of the land vested

(iii) the rent payable from the Logan's Complex to which a multiplier has to be applied to get the capital value at the operative date.

(iv) the multiplier

(v) the level of injurious affection

27. Re "(i)" there was a dispute between the experts as to the total land vested. This was because a part of the land was not within the applicants' title but instead was within the respondent's folio. The applicants claimed that they had adverse possession to this small area of land. The amount in dispute was small, 0.23 of an acre. The applicants understand that it has been agreed to "split the difference" on this amount meaning the agreed land take is 0.775 acre.

28. Re "(ii)", again the absence of comparables hampered the experts. It is submitted that the evidence did not take matters much further forward. The applicants maintain that (i) Mr Ferguson's Coleraine comparable was for a different user and thus not a valid comparable (ii)

Mr Ferguson's Limavady comparable, at £79k per acre, was clearly a worse site than the Logan's Complex given the absence of planning permission and the flooding and environmental issues. It is clear the complex must be worth more. (iii) Mr Ferguson's reference to the Molloy's site was completely misguided as this was for a sale after vesting and what it actually spoke to was the effect of vesting on site value. The site had, pre vesting and dualling in 2009, been marketed at £2m. It was sold, post vesting and dualling at £70k.

29. The applicants thus say that the proper value per acre is much closer to Mr Donaghy's £235k per acre, than Mr Ferguson's £40k per acre.

30. Re "(iii)" Mr Donaghy gave evidence of the rental income at the date of vesting net of VAT, a figure which had been reconciled to the bank statements. Thus the evidence at hearing was that the rental income from the property at the operative date was £293k per annum.

31. Mr Ferguson said that whilst there might have been rental income of £293k from the tenants, the proper figure to use should be £265k, as this was the rental income shown from the tenants for whom there were documented leases. Mr Ferguson said that because there were not leases for some of the tenants, they could simply walk away and thus their rental income should not be included in the rental figure.

32. As was pointed out to Mr Ferguson in cross examination there are two problems with this approach. Firstly, the fact a tenant does not have a documented lease does not mean the tenant can simply walk away. The tenant will then be a periodic tenant, most likely a yearly periodic tenant given the rent is agreed at a yearly figure and will have to give at least 6 months notice ending at the date in the year when the tenancy commenced to determine the tenancy. The tenant would also have to serve notice under Article 8 of the Business Tenancies (NI) Order 1996. The tenant could not, therefore, simply walk away.

33. Secondly, the position of a tenant with an undocumented yearly tenancy is little different than a tenant whose lease has expired and who has a continuing tenancy under the 1996 Order. It

was put to Mr Ferguson that it is perfectly commonplace for shopping centres to be sold where tenants' leases had expired. There would be no suggestion in that case that a purchaser would simply disregard the rent payable from that tenant. Mr Ferguson seemed to suggest a purchaser would disregard that rent. The incorrectness of Mr Ferguson's approach can be seen by taking his argument to its logical conclusion. Say there was a centre with 3 substantial tenants (Teso, Apple, Primark). Say these tenant's lease had all expired. On Mr Ferguson's view, the rents from those tenants should be disregarded as their leases had expired, the rental income would be nil for valuation purposes, and thus the centre would be worth nothing. That is obviously wrong.

34. What could be said is that a landlord might be willing to pay a bigger multiplier (lower yield) if there are leases in place with terms still to run, but the absence/expiring of leases does not affect the base rent figure. Thus the applicants say that the appropriate rental figure to which the yield multiplier is to be applied is £293k.

35. Re "(iv)" for the yield Mr Donaghy used a figure of 8% and Mr Ferguson chose 12% basing his figure on the Diamond Centre in Coleraine which, he thought, had a yield of 13.3%. That is, he thought Logans was 1.3% better than the Diamond Centre.

36. Mr Donaghy provided evidence from the agent for the purchaser of the Diamond Centre, that the yield from the Diamond Centre was in fact 12.46%. Mr Ferguson did not dispute that figure. This meant that applying Mr Ferguson's 1.3% reduction the figures were Mr Donaghy's 8% against Mr Ferguson's 11.16%.

37. The other point of note from the evidence on this issue was that Mr Ferguson had provided the Northern Ireland Commercial Property Investments Review 2014. It stated:

> "Equivalent yields shortened through the course of 2014 to close out the year at 7.8% down from 8.0% in 2013. This suggests warming investor sentiment as the broader commercial property market recovery begins to take hold."

38. It was put to Mr Ferguson that this showed that the average yield for commercial property in 2013 was 8%. He accepted this and referenced this 8% average figure in his expert report.

39. The applicants thus say that Mr Donaghy's figure is the correct one. They submit that Logan's Complex was, if anything, better than an average commercial property and that Mr Donaghy's 8% yield is therefore an appropriate figure to use. That gives a figure for the value of the complex of £3.67m.

40. Re "(v)", the level of discount to be applied is a very inexact science given the lack of comparable evidence. The applicants say, however, what is of some assistance is to consider the properties for which there is evidence of sales pre and post vesting. These are:

    a. The farm at location 1, which went from an agreed value of £1.41m at vesting to a marketed value of £585k, at which it could not be sold.

    b. The property formerly known as Molloy's which was advertised for sale in 2010 at £2m and which was sold post vesting at £70k.

    c. The house at 207 Frosses Road. This was a house with a capital value of £140k. Apply Mr Ferguson's metric of increasing the capital value by 10% this gives a value of £154k. It was sold post vesting in 2014 for £110k, representing a depreciation of around 29%.

    d. The Complex itself, which had a value of £3.67m and which was sold in 2021 for £1.75m, a depreciation of around 53%.

41. The applicants say that what the above makes clear is that the dualling of the A26 had a very serious adverse effect on the value of the properties which abutted it. The applicants contend that the 53% figure referred to a para d. above is the correct figure, but they do say that Mr Donaghy's 40% discount is much closer to the proper figure than Mr Ferguson's 10%.

<u>Locations 4 – 1 Mounthamilton Road (Plot 5.25)</u>

<u>Location 5 – Land at Drumadoon Road (Plot 5.24)</u>

<u>Location 6 – Property at 228 Frosses Road</u>

<u>Mr Stevenson BL</u>

42. These properties are taken together. There is one point to note that arose from the evidence, and this was in relation to the property at 228 Frosses Road, where Mr Donaghy claimed a depreciation of 25% and Mr Ferguson claimed a depreciation of 15%. Mr Ferguson relied on a comparable at 207 Frosses Road which, he said, showed a depreciation of 15%.

43. It was put to Mr Ferguson that he had adopted a stance of taking the capital value rating assessment of a property and adding 10%, to arrive at a value for a property. He accepted that had been his approach. It was then put to him that on the property at 207 Frosses Road that would give a value of £154k. He accepted this. It was then put to him that the property was sold post scheme for £110k which showed a depreciation, on his approach, of 29%. He then tried to maintain that £110k was not actually the market value for the property, and that if the property had pre scheme worth £154k, it would not have been sold for £110k. This was a difficult argument to follow – the price paid for the property by the market of £110k was clearly the market value of the property. Simply put, this argument made no sense. The applicants respectfully say it was an attempt to argue around the fact that on his approach the property at 227 Frosses Road showed a depreciation of 29% and not 15%.

44. The applicants say that this property and the other properties demonstrate that Mr Ferguson has significantly undervalued the effect of the dualling of the A26 and that in relation to the properties at locations 4 to 6 Mr Donaghy's approach is the one which the Tribunal should prefer.

<u>Mr Neeson BL</u>

45. On behalf of the respondent Mr Neeson BL summarised its approach to the applicants' claim.

46. The Tribunal has had the benefit of evidence from experienced experts instructed by both sides. In large part, the determination of the applicants' claim will be based on which evidence is preferred by the Tribunal or its own assessment of the value of the various heads of claim having regard to the evidence. Within those terms the respondent submits as follows in respect of various aspects of the applicants' claims:

(i) In respect of "Location 1" there is significant divergence between the experts in terms of severance/injurious affection. Mr Ferguson proposes a reduction of 5% and Mr Donaghy proposes a reduction of 20%. The respondent agrees that the effect of the vesting has been that the farmhouse and fields no longer enjoy a direct access onto the Fosses Road. It is this impact which resulted in Mr Ferguson's assessment that the property has been devalued by 5%. The evidence on behalf of the respondent is to the effect that the post scheme access is an improvement on what went before it.

(ii) In terms of any claim for disturbance, the respondent submits that Mr Ferguson's approach ought to be preferred for three reasons. First, the basis of Mr Donaghy's assessment is unclear and not based upon an assessment of any known loss to the alleged business. Mr Donaghy accepted that he had not considered any business accounts or that he had any information in respect of turnover. This position was not improved upon when Mr Logan gave evidence. Second, there is no evidence that the premises enjoys planning permission for that use and in so far as a claim for compensation is said to arise from interruption to the business, the respondent denies that the use amounts to a lawful use and compensation should not be awarded in accordance with Rule 6(4). No application has been made for a Certificate of Lawfulness of Existing Use of Development. Third, any disturbance arises from the general effect of the scheme and not specific to the site itself. In those circumstances compensation is not payable in accordance with the principles set out in Ramac Holdings Ltd.

(iii) Both experts have acknowledged the difficulty in obtaining reliable comparables in assessing the compensation due for the Logan's Complex. However, the respondent submits that the approach of Mr Ferguson ought to be preferred. The applicant relies upon one comparable which bears little resemblance to the property, the subject matter of the application. The approach of the applicants has been to simply adopt the same valuation as the comparable identified without any appropriate amendment to the figure to reflect the difference inherent in the property. The respondent has considered a wider range of properties and, to reflect the ready acknowledgement that the profile of the properties differs, factored those properties into assessment in determining the appropriate compensation rather than simply adopting the value of another property.

(iv) The applicants' evidence in respect of rental income is unsatisfactory (including VAT and domestic property rent) and the respondent submits that the only appropriate method of determining the rental income is with reference to the leases themselves. In so far as the applicants agreed reductions in rent due to the scheme, the tenants remained under a legal obligation to pay the agreed rent and any relaxation of the collection of the full rent amounts to a failure to mitigate their loss. There is a contradiction in the approach taken by the applicants. Mr Donaghy refers to the "strength of tenant covenant", however, likewise alleges that rent reductions had to be agreed to prevent tenants leaving. Very limited evidence has been produced in support of this allegation. As Mr Ferguson points out, 12 of the 20 leases provided were for a fixed period of three years with one year unexpired as of 7th January 2014. The short term nature of these leases and potential loss of a significant part of the rental income undermine the security of the subject as an investment and this has not been sufficiently reflected in the yield proposed on behalf of the applicants. In addition, other than anecdotally, no evidence has been produced which supports an allegation that the complex suffered a significant reduction in footfall.

(v) The difference in the compensation due in respect of the remaining properties arises solely from the valuations provided. The Tribunal has received evidence from Mr Donaghy and Mr Ferguson on those issues and the compensation due will necessarily depend on which evidence the Tribunal prefers or its own assessment based on the evidence received.

The Tribunal

47. As has already been pointed out, the Tribunal, in assessing the correct amount of compensation to be paid, is faced with a distinct lack of reliable comparable evidence. It, therefore, only has the competing views of the experts.

Location 1 – Land and farm at 290 Frosses Road now 23 Lisnaoo Road (Plots 3.18 and 4.01)

48. These lands formed part of a 106.7 acre residential farm, which lies on both sides of the Frosses Road, with the farm and sheds lying to the east side and the majority of the land to the west side.

49. The experts disagreed on (i) the amount of injurious affection/severance to the retained lands and (ii) the amount of disturbance to be paid.

(i) Severance/Injurious affection

50. The experts were agreed that the value of the farm at the date of vesting at £1,141,800. Mr Donaghy's opinion was that the vesting had caused the value of the farm to reduce by 20%. Mr Ferguson had submitted that a 5% reduction was warranted.

51. Mr Donaghy outlined what he considered the effect of the vesting to be:

a. The farmhouse and fields no longer enjoy a direct access on to the Frosses Road.

b. The access to the farm is now along a lane which is very narrow.

c. The access to the shed and fields to the west of the Frosses Road is along a lane which is shared with the house and farm to the north.

d. If one wants to move from the east part of the farm (i.e. the house) to the west part (majority of the fields), one has to drive south towards the overpass, across the bridge, and then along the new lane running alongside the A26. The farm is split in two to a certain extent.

e. The Tribunal was referred to a map. If a farmer wanted to move livestock from field 5 to field 4, previously he would have simply gone straight across the road. Now he would have to go along the shared land running alongside fields 7 and 8, across the overpass, down the new lane and across the fields numbered 2 and 3.

52. Mr Ferguson agreed that the effect of the vesting was that the farm and lands had no access to the Frosses Road but his evidence was to the effect that the post scheme access is an improvement on what went before it. He considered the revised access arrangements to have a limited impact on the value of the holding as the proximity of the new junction provides convenient access from the new carriageway and also enhances safety for movement of farm machinery between the two locations.

53. Mr Donaghy gave evidence that the applicants had attempted to sell the farm in 2020. It was advertised for sale at £585k but there were no purchasers and it was taken off the market.

54. The Tribunal notes that this aborted sale was some considerable time after the date of vesting and in or around the time of the covid pandemic.

55. The Tribunal agrees with Mr Donaghy, the new access arrangements resulting from the scheme have a detrimental impact on the value of the retained lands. The Tribunal, however, considers 15% to be a more reasonable figure for the severance/injurious affection giving a sum of <u>£171,270</u>.

<u>(ii) Disturbance</u>

56. Mr Don Logan used one of the sheds in connection with a supplies business and as a result of the scheme, Mr Donaghy submitted that access to the shed was badly hampered. Mr Donaghy quantified the disturbance at £100 per week equating to £13,000 during the course of works for the scheme.

57. One of the main requirements is that when claiming compensation, a claimant must prove his loss. When questioned by the Tribunal, Mr Donaghy gave evidence that he had not carried out any assessment of the accounts of Mr Logan's business to see if there was any loss in profits over the period of the scheme. The Tribunal finds that the applicants had not proved any loss under this head of claim and the Tribunal assesses compensation at NIL, regardless of the planning issues relating to the shed.

Locations 2 and 3 – The Logan's Complex and 233 Frosses Road (Plots 5.10, 5.22 and 5.29)

58. The issues regarding these locations are, as submitted by Mr Stevenson BL:

(i) The amount of land vested.

(ii) The value of the land vested.

(iii) The rental value of the Logan's Complex to which a multiplier has to be applied to arrive at the capital value at the operative date.

(iv) The multiplier.

(v) The level of discount to be applied to the injurious affection claim.

(i) The amount of land vested

59. Mr Stevenson BL advised the Tribunal that the land take was agreed at 0.775 acres post hearing.

(ii) The value of the land vested

60. Again the absence of reliable comparable evidence hampered the experts and presents difficulties for the Tribunal.

61. Mr Ferguson put forward two comparables:

(a) Sale of commercial land at Somerset Road, Coleraine. The site extended to 8.89 ac and was sold at £336,500 on December 2013. This equates to £37,851 per ac. Mr Donaghy asked the Tribunal to note that this land was zoned for industrial and not commercial.

(b) Sale of commercial land at Clooney Road, Limavady cleared site extended to 0.29 ac and was sold at £23,000 in April 2015, equating to <u>£79,585</u> per acre. Mr Donaghy considered this site to be clearly worse than the Logan's Complex, given the absence of planning permission and flooding and environmental issues.

62. Mr Donaghy submitted details of the sale of a 0.55 ac commercial site in Mallusk which was sold at £125,000 to Arc Properties and which equates to <u>£235,000 ac</u>.

63. Mr Ferguson noted that this sale was to the adjoining landowner who was a "special purchaser" and who paid a premium for the site. The Tribunal accepts that there may have been an element of special purchaser and the sale is in a commercial locality within Mallusk, a very different setting to Logans.

64. The Tribunal therefore considers the site value to be more than Mr Ferguson's £79,585 per ac and less than Mr Donaghy's £235,000 per ac.

65. The Logan's Complex is a stand alone commercial complex some six miles from the nearest town of Ballymena. It would be a riskier commercial location and certainly not as good as a commercial site in Mallusk. It stands on the roadside and at the operative date had direct access from the road. Based on the very limited evidence the Tribunal assesses the land value at £150,000 per ac:

Land Value 0.775 ac @ £150,000 per ac = £116,250 *(iii) The Rental Value of the Logan's Complex*

66. The task for the experts was to assess the rental value of the Logan's Complex as at the operative date. Mr Donaghy assessed the rental value at £293,460.33 per annum which was the actual rents paid at the operative date and which included a rental figure of £7,392 per annum for the house, as Mr Donaghy considered that the entirety would be sold as one lot, including the house. Mr Ferguson's view was that the house should be assessed separately as it was not commercial. The Tribunal, however, agrees with Mr Donaghy, the entirety would be sold as one lot and the house should be included in the rental assessment.

67. Mr Ferguson's opinion was that the proper rental figure should be £265,000 pa as this was the rental figure for those tenants where there were documented leases. The Tribunal does not agree. The undocumented leases added to the rental value of the complex as at the operative date and would be taken into consideration by any potential purchaser. The Tribunal therefore assesses the correct rental value at Mr Donaghy's figure of £293k per annum.

(iv) The Multiplier/Yield

68. Mr Donaghy considered a yield of 8% to be appropriate, basing this on the nearest comparable in time – a Tesco Express at Coleraine Road, Portstewart which had a yield of 7.2%.

69. Mr Ferguson's opinion was that a yield of !2% was appropriate referring to the sale of the Diamond Centre in Coleraine which he said had a yield of 13.3%. Mr Donaghy, however, produced evidence from the agents acting for the purchaser of the Diamond Centre which confirmed the yield to be 12.46%, which brings Mr Ferguson's yield down to 11.16%.

70. The Tribunal considers that the Logan Complex would be a riskier proposition than the Tesco Express at Portstewart, and a potential purchaser would require a higher yield. The Tribunal, therefore, considers a yield of 10% to be appropriate and calculate the capital value of the complex at the operative date:

Rental Value	say £293,000 per annum
Yield 11%	<u>x 10</u> years purchase
Capital Value	£2,930,000

<u>(v) Injurious Affection</u>

71. Mr Ferguson considered the appropriate depreciation factor to assess the injurious affection to be 10%, while Mr Donaghy considered 40% to be appropriate.

72. Mr Ferguson considered the access to the complex for customers travelling north from the Ballymena direction to be largely unaffected with convenient access from the Killagan Road. He did accept, however, that customers travelling south have to access the complex from the new grade separated junction and bridge.

73. He advised the Tribunal that the complex had been sold in or around 2020 and there was no supporting evidence from the applicant in terms of footfall or rental information post scheme. On that basis he considered a figure of 10% be appropriate.

74. Mr Donaghy noted that the complex was sold in 2021 for £1.75m against his value assessed at the operative date of £3.688m which was a depreciation of 52%. Mr Donaghy accepted that this sale was far removed from the vesting date but considers that it supports a considerable depreciation. The Tribunal treats this figure with caution, however, as it was in or around the time of covid and was far removed from the vesting date.

75. Mr Donaghy submitted that the loss of the main access from the A26 had a devastating impact on the Logan Complex.

76. The Tribunal considers that the change of access to the complex, particularly for south bound traffic, does have an adverse impact on the Logan's Complex. There is, however, no supporting documentation, for example reduction in footfall, to assist in assessing the

depreciation. The Tribunal does not consider it be anywhere near as bad as 40% and assesses the injurious affection at 20%:

Capital Value	£2,930,000
	x 20%
Injurious Affection	£586,000

(iv) Disturbance

77. Mr Donaghy had claimed £81,915 disturbance which was for loss of rental income during the scheme. He advised the Tribunal that to try and keep the tenants during the scheme certain reductions in rents were negotiated. The applicants did, however, accept that there may be some element of overlap between the disturbance claim and the claim for compensation for the reduction in the overall value of the complex.

78. Mr Ferguson did not consider the loss to be compensatable on the basis of the decision in the Ramac Holdings case. This was not accepted as the applicants argue that the claim arises from the land vested i.e. the removal of the access from the Frosses Road by vesting.

79. The Tribunal agrees with the applicants, Ramac Holdings does not apply in this instance. The Tribunal, does, however, consider that this disturbance claim has been accounted for in the assessment of injurious affection/severance for the complex. In addition there was no exact evidence provided to substantiate the loss. The Tribunal assesses this element of disturbance at NIL.

Location 4 – 1 Mounthamilton Road (Plot 5.25)

80. This comprises a bungalow near the junction of the Mounthamilton and Drumadoon Roads. A small part of the garden, 0.02 acres was vested and the experts were agreed that the value of the land was £800.

81. Mr Donaghy values the bungalow at £275,000 and considers that a 20% depreciation is warranted, giving a figure of £55,000. Mr Ferguson's valuation is £245,000 with a depreciation of 12%.

82. Mr Donaghy considered his depreciation of 20% to be appropriate due to:

(i) The proximity of the house to the newly constructed road.

(ii) The lack of street lighting.

(iii) The busy nearby park and ride bus stop.

(iv) The use of the road by "boy racers" which has attracted complaints.

83. Mr Ferguson assessed the capital of the property on the basis that its capital value for rating purposes was £220,000 and added 10% on to this to give a capital value of £245,000. The Tribunal does not consider this, however, to be a proper method of assessing the capital value of any property. The capital value should be assessed by comparison to market sales.

84. The Tribunal, therefore, is left with Mr Donaghy's assessment of £275,000 but prefers a depreciation of 15%:

Capital Value	£275,000
	x 15%
Injurious Affection	£41,250

Location 5 – Land at Drumadoon Road (Plot 5.24)

85. This relates to the vesting of 0.812 acres of a 3.1 acre field fronting the Mounthamilton Road. The experts have agreed the figure for the land vested at £8,120 and the value of the retained land at £22,700.

86. The experts disagree on severance/injurious affection. Mr Donaghy claims 20% depreciation and Mr Ferguson 10%. There is practically no evidence and the Tribunal again prefers a depreciation of 15%:

Capital Value	£22,700
	x 15%
Injurious Affection	£3,405

Location 6 – Property at 228 Frosses Road

87. This property is rented out and previously had an access on the Frosses Road but this access was stopped up due to the scheme. Access is now along a shared lane from the Mounthamilton Road.

88. No land was vested but a legal right was stopped up. The applicants' claim is, therefore, under Article 18 of the 1996 Order.

89. The stopping up has resulted in the route from the house to the Frosses Road being considerably longer particularly in the north bound direction as that involves travelling some distance south, going across the overpass and then back north. Also the access to the house is now a shared access.

90. Mr Donaghy considers the property to be worth £145,000 and Mr Ferguson £90,000. With regard to depreciation Mr Donaghy claims 25% and Mr Ferguson 15%.

91. Again Mr Ferguson takes the capital value rating assessment and adds 10% to assess the market value. As previously stated the Tribunal does not consider this to be an appropriate method of assessing market value and it is left with Mr Donaghy's figure of £145,000.

92. The Tribunal considers the appropriate depreciation figure to be 20%:

Capital Value	£145,000
	x 20%
Injurious Affection	£29,000

Conclusions

93. The Tribunal's conclusions on the correct amount of compensation to be paid:

Location 1	
Vesting	£37,230
Severance	£171,270
Disturbance	NIL
Locations 2 & 3	
Vesting	£116,250
Severance	£586,000
Disturbance	NIL
Management Time	£9,000
Location 4	
Vesting	£800
Severance	£41,250
Location 5	
Vesting	£8,120
Severance	£3,405
Location 6	
Injurious Affection	£29,000
TOTAL	**£1,002,325**

22nd August 2025

Henry Spence MRICS Dip.Rating IRRV (Hons)
LANDS TRIBUNAL FOR NORTHERN IRELAND