

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
LAND COMPENSATION (NORTHERN IRELAND) ORDER 1982
ELECTRICITY (NORTHERN IRELAND) ORDER 1992
IN THE MATTER OF A REFERENCE
R/22/2016
BETWEEN
STREAMVILLE LLP – CLAIMANT
AND
SONI – FIRST RESPONDENT
NORTHERN IRELAND ELECTRICITY NETWORKS LIMITED – SECOND RESPONDENT

Re: Lands at 228 Carnteel Road, Glasdrummond, Dungannon

Lands Tribunal – Henry M Spence MRICS Dip.Rating IRRV (Hons)

Background

1. At the outset of the hearing the parties agreed that the claim against SONI, the first respondent, should be dismissed. The reference, therefore, only concerned Streamville LLP (“the claimant”) and Northern Ireland Electricity Networks Limited (“the respondent”).
2. The property at 228 Carnteel Road (“the reference property”) is located some 7 miles south west of Dungannon. The holding comprises 33.6 acres of land part of which had previously been granted outline planning permission for the “erection of a dwelling and domestic garage”. The planning permission was granted on 19th July 2005 and reserved matters were subsequently approved on 13th May 2008. The lands are currently let in conacre for agricultural use.
3. During the period May 2011 to September 2015 the applicant was approached by the respondent to grant permission for its electricity apparatus to be erected on the reference property. The applicant declined however, to consent to the grant of a voluntary wayleave.

4. By letter dated 28th September 2015, SONI made an application to the Department for Enterprise Trade and Investment (“DETI”) for consent to place its apparatus, including a steel tower, double wood poles and conductors, on the reference property.
5. On foot of that application and an independent Wayleave Officer’s report of 6th June 2016, the Department for the Economy (“the Department”), as successor to DETI, granted a Necessary Wayleave (“NWL”) in favour of the respondent, dated 22nd June 2016 (“the valuation date”).
6. The respondent’s apparatus erected on the reference property comprised:
 - (i) Three sets of double wood poles.
 - (ii) One steel tower.
 - (iii) An overhead 110kV electric line supported by the wooden poles and steel tower, comprising three phase conductors and two earth wires, a total of five lines.
7. The claimant is now seeking compensation under the provisions of the Electricity (Northern Ireland) Order 1992 (“the 1992 Order”), based upon an alleged diminution in market value of the reference property caused by the grant of the NWL. This is the matter before the Tribunal.

Procedural Matters

8. The claimant was represented by Mr Nolan Watson, a director of the claimant company. Mr Jeremy Baird of Maison Real Estate submitted a valuation report on the claimant’s behalf and gave oral evidence at the hearing.
9. The respondent was represented by Mr Stephen Shaw QC. Mr Kenneth Crothers, an experienced chartered surveyor, provided an expert valuation report on behalf of the respondent.

Position of the Parties

10. Both parties were agreed that the correct measure of compensation in the subject reference was the diminution in market value of the reference property, if any, arising from the grant of the NWL. On that basis Mr Baird considered that £177,000 compensation was due to the claimant. Having examined in detail all of the available evidence, Mr Crothers' expert opinion was that the grant of the NWL had no material effect on the market value of the reference property and the compensation to be paid by the respondent way of annual payments of £238.40 was more than adequate to reflect any impact on value which arose from the grant.

The Law

11. The relevant provisions of the 1992 Order are as follows:
- (i) Schedule 3 Part 1 paragraph 1(1) relates to the compulsory acquisition of land by the licence holder and provides that when a licence holder proposes to acquire land for any purpose connected with its authorised activities it may apply to the Department for an Order vesting that land in the licence holder. By virtue of subparagraph (2) such power includes the creation of a new right, an easement or other right over land.
 - (ii) Paragraph 6 of the same Schedule applies Schedule 6 of the Local Government Act (Northern Ireland) 1972 to the acquisition of land by means of a vesting order made under paragraph 1. As a result any issue of disputed compensation may be referred to this Tribunal to be dealt with in accordance with the general principles applicable to the compulsory purchase of land.
 - (iii) Schedule 4 relates to "Other powers, etc of Licence Holders" and paragraph 10 thereof deals with the acquisition of wayleaves.

Paragraph 11(1) of Schedule 4 provides:

"11-(1) Where a wayleave is granted to a licence holder under paragraph 10 –

- (a) the occupier of the land; and

- (b) where the occupier is not also the owner of the land, the owner may recover from the licence holder compensation in respect of the grant.”
- (iv) Paragraph 12 of Schedule 4 provides for the temporary continuation of wayleaves and enables a licence holder to apply for a NWL in appropriate circumstances.
- (v) Unlike Schedule 3, Schedule 4 does not include any provision that applies the provision of Schedule 6 of the 1972 Act to the grant of compensation referred to in paragraph 11.

Authorities

12. The Tribunal derived assistance from:

- John Richard Cuthbert v Northern Ireland Electricity Limited (R/26/2011)

The Necessary Wayleave

13. The terms of the NWL relevant to this reference are:

- (i) Paragraph 7 governs circumstances where the property owner has bona fide intention to develop any part of the land in a manner that would necessitate removal, resiting or alteration of the electric line. It allows for the payment of compensation in circumstances where the lines cannot be moved or altered.
- (ii) Part B of the Schedule attaching to the NWL makes provision for the respondent to undertake works to mitigate the visual impact of the respondent’s equipment. Mr Crothers advised in his expert report that, to date, the respondent had been unsuccessful in its attempts to engage with the claimant to discuss and agree a planting scheme.

Mr Baird's Evidence

Valuations

14. As in all references relating to land compensation the onus was on the claimant to clearly prove its loss. In his "valuation report" Mr Baird had assessed the value of the reference property post the grant of the NWL at:

Site	£35,000
Lands	<u>£198,000</u>
Total	£233,000

and prior to the grant of the NWL at

Site	£80,000
Lands	<u>£330,000</u>
Total	£410,000

thus giving a diminution in market value of £177,000.

15. Mr Baird's "valuation report" did not contain any market evidence to support these figures. When questioned by the Tribunal he confirmed that the valuations were based solely on his experience as an estate agent but he did not provide any specific examples from his experience.

Equipment

16. When further questioned by the Tribunal, Mr Baird was unable to confirm the extent of the respondent's apparatus on the reference property, including the number of pylons, wooden poles and overhead lines. Nor could he confirm the distance from any of the apparatus to the alleged building site on the reference property. The Tribunal finds it beyond belief that Mr Baird had assessed compensation at £177,000 without being able to confirm any of these basic details which were crucial to the assessment of compensation. When questioned by Mr

Shaw QC he accepted that Mr Crothers' factual evidence relating to the extent and positioning of the respondent's apparatus was correct.

Planning

17. When further questioned by Mr Shaw QC, Mr Baird accepted that there was doubt re the current planning status of the development site and he agreed that there was no clear evidence that the previously granted planning permission was still live.

Experts Meeting

18. Mr Shaw QC then referred Mr Baird to a "Minute of Experts Meeting" dated 18th October 2017 and in particular to paragraph 4:

"JB advises no specific issues arise from KC's Book of Facts or Reports."

Mr Baird confirmed that he accepted virtually all of the detail in Mr Crothers' reports, which Mr Shaw QC asked the Tribunal to note had resulted in the conclusion that NIL compensation was payable.

Mr Baird's Opinion

19. Mr Baird's "valuation report" contained no details of his experience as a valuer. At hearing he confirmed that he had been an estate agent since 2007 and in 2013 he established "Maison Real Estate", with offices in Armagh and Dungannon. He also confirmed that he was not a member of any professional body.
20. Mr Shaw QC asked Mr Baird to outline his relationship with the claimant. Mr Baird confirmed that the Neptune Group, which incorporated the claimant company, was the landlord of his premises in Dungannon. He also advised the Tribunal that he had acted for the claimant on previous occasions, mainly on the sale of development sites.

21. It was noted by Mr Shaw QC that Mr Baird's valuation report did not contain a "Statement of Truth" which would be standard practice for expert reports submitted to the Tribunal. When further questioned by Mr Shaw QC Mr Baird confirmed that the photographs, commentary and other facts contained in the Applicant's Book of Facts had been supplied by Mr Watson.
22. Mr Shaw QC asked Mr Baird about the sale of 90 Dungannon Road, Ballygawley, details of which had been submitted by Mr Baird post his valuation report. He agreed with Mr Crothers' devaluation of the sale price at £9,807 per acre and he also confirmed that in his evidence he had failed to state that the plot contained items of the respondent's apparatus. He then accepted Mr Crothers' evidence that these lands were traversed by 11kV – three phase electric lines, suspended on wooden poles, with one of the poles being located 19 metres from the site of a proposed dwelling. When questioned by Mr Shaw QC Mr Baird agreed that this evidence supported Mr Crothers' conclusion that the presence of the respondent's equipment on the reference property did not have any adverse impact on value.
23. Mr Baird was then referred by Mr Shaw QC to an email dated 13th December 2016, from "Nolan Watson to Jeremy Baird" and which had been submitted to the Tribunal. Mr Baird confirmed that this was his "letter of instruction" from the claimant company. In this email Mr Watson stated that the NWL "has greatly devalued the building site that have foundations laid and the small holding ..." and he asked Mr Baird "would you be able to review the value of the site and lands pre NIE installation as positively as you can, then post installation as negatively as you can ...". Mr Shaw QC submitted to the Tribunal that, in the subject reference, Mr Baird had been guided by his "landlords" instructions rather than acting independently.

Conclusion

24. Mr Baird's assessment of compensation was based solely on his opinion. However, based on the evidence submitted to the Tribunal, it was clear that Mr Baird's opinion was not independent, was biased and was not supported by any market evidence whatsoever. Indeed Mr Baird could not even confirm basic details about the extent of the respondent's apparatus

on the reference property and its proximity to the alleged building site. The Tribunal regrettably, therefore, can attach little weight to Mr Baird's evidence.

25. In his written evidence Mr Crothers had noted that the respondent's steel tower/pylon was 160 metres from the alleged building site. Mr Baird had accepted that this was correct. In Cuthbert the Tribunal noted:

"50. The Tribunal considers that the claimant has failed to clearly demonstrate in the circumstances of the subject case, with the lines and pylons being some 140 to 270 metres from the Reference Property at their nearest points, the market evidence points to a diminution in market value."

And

"51. In the factual circumstances of the Reference Property the Tribunal makes no award of compensation for the grant of the NWL."

26. As in Cuthbert, the Tribunal finds in the subject reference that the claimant had failed to provide any credible evidence whatsoever in support of its claim for £177,000 compensation.
27. The Tribunal agrees with Mr Crothers' expert opinion that the grant of the NWL had no material effect on the market value of the reference property and makes no award of compensation.

ORDERS ACCORDINGLY

2nd November 2017

**Mr Henry M Spence MRICS Dip.Rating IRRV (Hons)
Lands Tribunal for Northern Ireland**

Appearances:

Claimant: Mr Nolan Watson.

Respondent: Mr Stephen Shaw QC instructed by NIE Solicitors.