

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**LOCAL GOVERNMENT ACT (NORTHERN IRELAND) 1972**  
**HOUSING (NORTHERN IRELAND) ORDER 1981**  
**LAND COMPENSATION (NORTHERN IRELAND) ORDER 1982**

**IN THE MATTER OF A REFERENCE**

**R/16 & 17/2016**

**BETWEEN**

**NORTHERN IRELAND HOUSING EXECUTIVE – APPLICANT**

**AND**

**KIERAN MULGREW – RESPONDENT**

**Re: 195 & 197 Duncairn Gardens, Belfast**

**Part 1**

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

**Background**

1. This reference relates to the vesting of properties at 195 and 197 Duncairn Gardens, Belfast (“the reference properties”) by the Northern Ireland Housing Executive (“the applicant”). Compensation in respect of the vesting has not been agreed and the applicant has referred the matter to the Lands Tribunal for assessment of the correct amount of compensation to be paid.
  
2. Title to both reference properties was unregistered. Title to 195 Duncairn Gardens was held under an Indenture of Lease made on 13<sup>th</sup> February 1918 between John McCaughey and William Boyd for a term of 4,450 years for an annual rent of £4.50. Mr Kieran Mulgrew (“the respondent”) purchased this property on 1<sup>st</sup> December 1988 by way of Deed of Assignment.

3. Title to 197 Duncairn Gardens was also held under an unregistered lease made on 14<sup>th</sup> March 1918 between John McCaughey and George Riddock for a term of 4,450 years at an annual rent of £4.50. The respondent purchased this property on 20<sup>th</sup> January 1988.
4. In July 2004 the applicant made a proposal to vest a number of properties in North Belfast as part of a “North Belfast Scheme”. The initiation of these vesting procedures had been previously approved by the applicant’s Board, to facilitate the rehabilitation of a number of long term vacant properties in North Belfast which had been bricked up/secured and effectively abandoned by their owners.
5. The application for the Vesting Order was made under the statutory authority of the Housing (Northern Ireland) Order 1981 and the Local Government Act (Northern Ireland) 1972. The Vesting Order for the “North Belfast Scheme” became operative on 20<sup>th</sup> February 2006 (“the valuation date”) and this included the vesting of the fee simple interests of the reference properties.
6. Post vesting the applicant instructed its solicitors to transfer the reference properties to the Clanmill Housing Association (“Clanmill”) for rehabilitation and they were subsequently transferred on 27<sup>th</sup> May 2008.
7. The applicant had advised the Tribunal that nine properties were vested as part of the scheme and compensation for all but the reference properties had been agreed, with the majority of claimants being represented by an experienced agent.

#### **Procedural Matters**

8. Mr Keith Gibson BL represented the applicant. Mr Kieran Mulgrew appeared as a litigant in person. Ms Elaine Bennett, an experienced Chartered Surveyor from Land and Property Services, provided expert valuation evidence on behalf of the applicant. The Tribunal is grateful to the parties for their submissions.

## **Position of the Parties**

9. Ms Bennett considered the correct amount of compensation to be paid in respect of the applicant's acquisition of the reference properties be £180,000. The respondent considered the correct amount of compensation to be £360,000.

## **Statute**

10. The six rules for assessing compensation in respect of any compulsory acquisition of land are detailed in The Land Compensation (Northern Ireland) Order 1982 ("the 1982 Order"):

"Rules for assessing compensation

6.-(1) 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.”

11. Rules (1), (2) and (4) are of particular relevance to the subject reference. As specified in these rules, the task of the Tribunal was to assess the open market value of the reference properties at the valuation date.

### **The Applicant’s Submissions**

#### **State of Repair**

12. Ms Bennett provided the following factual details relating to the reference properties at the valuation date:

##### 195 Duncairn Gardens

- red brick Victorian mid-terrace
- 3 storey
- 2 storey bay window
- grass external area (“gea”) 140m<sup>2</sup>
- 5 bedrooms, 2 reception rooms, bathroom, kitchen
- capital value for rates purposes: the property did not have a rates Capital Value at the valuation date as it had been taken out of the Valuation List in April 2005 as it was considered incapable of occupation.

##### 197 Duncairn Gardens

- red brick Victorian mid-terrace
- 3 storey
- 2 storey bay window
- GEA 140m<sup>2</sup>
- 5 bedrooms, 2 reception rooms, bathroom, kitchen
- capital value for rates purposes: the property did not have a rates Capital Value at the valuation date. It had been distinguished as “house closed” in the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Valuation Lists.

13. Ms Bennett submitted that both properties were in a considerable state of disrepair at the valuation date. She provided photographs which she advised had been taken by an employee of Clanmill during an internal inspection on 19<sup>th</sup> September 2006, some 7 months post the valuation date. In her opinion, it was clear from the Clanmill photographs that both properties were in a state of disrepair and in need of gutting out and rehabilitation.
14. Ms Bennett also asked the Tribunal to note that following transfer to Clanmill on 27<sup>th</sup> May 2008 the reference properties were refurbished into two 4 bedroom terrace houses. A bill of quantities for the refurbishment works had been provided by Clanmill: £90,975 for 195 Duncairn Gardens and £98,741 for 197 Duncairn Gardens. Ms Bennett considered that this level of necessary expenditure on refurbishment clearly demonstrated that both properties were in a derelict state at the valuation date.
15. The respondent disputed the accuracy of the Clanmill photographs but he failed to submit any evidence to the contrary, such as his own photographs. At hearing he did, however, concede that No. 197 was in a “bad condition”. It was also his opinion, based on his experience as a builder over many years, that the costs of making the reference properties habitable would have been in the region of £10,000 to £12,000 for each property. He failed, however, to provide any firm evidence to support this assertion.
16. In order to assess the open market value of the reference properties at the valuation date it was essential for the Tribunal to make an assessment of their condition at that time. The only firm evidence before the Tribunal were the Clanmill photographs and the bill of quantities for the refurbishment costs. Based on that evidence the Tribunal accepts Ms Bennett’s submission and finds that the reference properties were in a considerable state of disrepair at the valuation date.

#### **Comparable Evidence**

17. Ms Bennett submitted details of two comparables which she considered to be the best evidence available:

193 Duncairn Gardens

- located in the same terrace

- 3 storey, 5 bedroom, 2 reception
- GEA 137m<sup>2</sup>
- this property was in a good state of repair at the time of sale and included a luxury kitchen, coloured bathroom suite, double glazed uPVC windows and oil fired central heating. She considered this property to be in a much superior condition
- sold for £120,000, August 2006

#### 191 Duncairn Gardens

- mid-terrace, 3 storey, 5 bedroom, 2 reception
- GEA 140m<sup>2</sup>
- similar blocked-up property in the same terrace
- the agent had agreed that this property was in a poor state of repair and in need of “gutting out”. Damage to the interior had been caused by vandalism and rainwater leakage through a hole in the rear pitch of roof
- £100,000 was awarded in compensation following a ruling by the High Court of Justice in the Northern Ireland Chancery Division.

18. Based on these two comparables Ms Bennett had assessed the open market value of the reference properties at £180,000 (£90,000 each property), at the valuation date.

#### **The Respondent’s Submissions**

19. The respondent submitted that each of the reference properties had been converted to three apartments prior to vesting and he provided documents from the applicant which in his opinion confirmed that Housing Benefit had been paid for the apartments in 1992. These documents were not disputed by the applicant but Mr Gibson BL asked the Tribunal to note that no further letting details of the apartments had been submitted to the Tribunal in evidence other than those for 1992, some 14 years prior to vesting.

20. On the basis of 6 apartments the respondent’s assessment of the open market value of the reference properties at the valuation date was:

6 apartments @ £60,000 each = £360,000

In support of his assessment the respondent had submitted a document entitled “University of Ulster Northern Ireland Market Report”. This document stated that the average price of a terrace house in North Belfast in Quarter 1 2006 was £91,050 and an apartment was £114,995. Ms Bennett’s opinion was that neither of these average property prices was reflective of what a derelict terrace property in North Belfast would have achieved if sold on the open market at the valuation date. The Tribunal agrees with Ms Bennett and finds this property report to be of no assistance in assessing the open market value of the reference properties.

21. Ms Bennett’s opinion was that if the properties had been for sale in the open market, as stipulated by rule (2) of the 1982 Order, they would have been regarded by any prospective purchasers as a redevelopment opportunity, regardless of their previous internal configuration as apartments, due to their derelict condition at the valuation date.
  
22. Furthermore, when questioned by Mr Gibson BL, the respondent conceded that he had not obtained planning permission for either of the conversions of the reference properties into apartments. The Tribunal considers that without planning permission it would have been extremely difficult to sell the reference properties on the open market as 6 apartments. The Tribunal therefore agrees with Ms Bennett, the open market value of the reference properties had to be assessed ignoring their previous internal configuration as apartments. To do otherwise would be at variance with Rule (4) of the 1982 Order.

### **Conclusion**

23. The respondent failed to submit any firm evidence in support of his claim for £360,000 compensation. The Tribunal therefore accepts Ms Bennett’s expert opinion, which was supported by the market and factual evidence submitted, and finds the open market value of the reference properties, at the valuation date, to be £180,000 (one hundred and eighty thousand pounds), in accordance with her opinion.

**ORDERS ACCORDINGLY**

**17<sup>th</sup> February 2017**

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

**Appearances**

**Applicant: Mr Keith Gibson BL instructed by Hool Law, solicitors.**

**Respondent: Mr Kieran Mulgrew appeared as a litigant in person.**