

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964**

**LOCAL GOVERNMENT ACT (NORTHERN IRELAND) 1972**

**LAND COMPENSATION (NORTHERN IRELAND) ORDER 1982**

**IN THE MATTER OF A REFERENCE**

**R/6/2015**

**BETWEEN**

**NORTHERN IRELAND HOUSING EXECUTIVE - APPLICANT**

**AND**

**STUART WILLIAM GEORGE FOSTER, GREGG JAMES FOSTER &**

**GARETH CUMMINGS SCOTT - RESPONDENTS**

**Re: 99 Soudan Street, Belfast**

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

**Background**

1. The property at 99 Soudan Street, Belfast (“the reference property”) was jointly owned by Stuart William George Foster, Gregg James Foster and Gareth Cummings Scott.
2. The title to the reference property was, at the relevant time 19<sup>th</sup> April 2010 (“the valuation date”), comprised in Land Registry folio number AN142103L County Antrim and held under an Indenture of Lease made 23<sup>rd</sup> July 1981 between the Martin Estates Company Limited of the one part and Robert Curry and another, for the term of 10,000 years.
3. The reference property was subject to a legal mortgage/charge in favour of the Alliance & Leicester Building Society plc (“the Building Society”). This charge was

registered as a burden on the folio on 26<sup>th</sup> July 2010. A copy of the Land Registry folio number AN142103L County Antrim has been submitted to the Tribunal.

4. The Northern Ireland Housing Executive (“the applicant”) has advised the Tribunal that, as at 29<sup>th</sup> December 2010, the amount required to redeem the mortgage, which was in favour of the Building Society, was in the region of £140,000. A copy of the redemption letter from the Building Society has been submitted to the Tribunal.
5. The reference property was located within a redevelopment area known as “The Village, Belfast, URA No. 144”. It was acquired by the applicant by way of a Vesting Order which became operate on 19<sup>th</sup> April 2010.

#### **Procedural Matters**

6. The applicant was represented by Mr Iain McGonigle of Hool Law, Solicitors. The Tribunal is grateful to Mr McGonigle for his detailed and helpful submission. The Tribunal also received expert opinion evidence from Mr Ciaran Quinn MRICS of Land and Property Services as to the correct amount of compensation to be paid. The respondents’ did not take part in the proceedings.

#### **Position of the Applicant**

7. There was no agreement between the applicant and the respondents as to the amount of compensation to be paid and the applicant has now referred to the Tribunal. There being no competing expert evidence the applicant sought a determination from the Tribunal that the correct amount of compensation to be paid was £76,000. The applicant also sought direction from the Tribunal that the compensation monies should be paid to the Building Society.

## The Legislation

8. Paragraph 11 of Schedule 6 of the Local Government Act (Northern Ireland) 1972 gives the Lands Tribunal the statutory authority to determine a dispute in relation to compensation arising from the operation of a Vesting Order:-

“11(1) As soon as a vesting order has become operative, any question of disputed compensation arising between the council and any person who –

(a) has an estate in the land to which the vesting order relates or would have such an estate if the order had not become operative, or

(b) has an estate any land injuriously affected by the works proposed to be carried out by the council,

shall be referred to and determined by the Lands Tribunal.

The existence of a charge in favour of Alliance & Leicester plc with the sums secured by the charge exceeding the market value of the property, engages Section 110 of the Land Clauses Consolidation Act 1845 which provides:-

“Sum to be paid when mortgage exceeds the value of the lands

110. If any such mortgaged lands shall be of less value than the principal, interest, and costs secured thereon, the value of such lands, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the mortgagee of such lands and the party entitled to the equity of redemption thereof on the one part, and the promoters of the undertaking on the other part; and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the mortgagee, in satisfaction of his mortgage debt, so far as the same will extend: and upon payment or tender thereof the mortgagee

shall convey or release all his interest in such mortgaged lands to the promoters of the undertaking, or as they shall direct.”

Paragraph 14 of Schedule 6 of the Local Government Act (Northern Ireland) 1972 provides:-

“14(1) The council, on paying to any person any compensation (whether the amount has been settled by agreement or determined by the Lands Tribunal), shall obtain from that person a receipt in the prescribed form, which shall be prepared by, and executed at the cost of, the council and the receipt shall operate to release the compensation fund from all claims by the person giving it and all parties claiming through or under him.”

Paragraph 17 of the Schedule 6 of the same Act where relevant provides:

“17(1) Where the amount of compensation has been determined but for some reason it is not possible for the council to obtain a good discharge therefore:-

(a) ...

(b) If the total amount of the compensation exceeds £1,000, the amount payable by the council shall be paid, applied and dealt with in accordance with the provisions of the Lands Clauses Consolidation Act 1845 with respect to the purchase money or compensation coming to parties having limited interests, or prevented from trading, or not making title, and those provisions shall have effect accordingly.

(2) Money paid into the County Court or, as the case may be, the High Court under sub-paragraph (1) shall, subject to County Court rules or rules of Court, be dealt with according to the rules of the Court.

- (3) The payment of the compensation in the manner provided by subparagraph (1) shall operate to discharge the compensation fund from all claims and interests in respect of which the compensation is payable.”

Section 111 of the Lands Clauses Consolidation Act 1845 dictates how the amount payable by the Applicant should be paid, applied and dealt with in accordance with the Act:-

“Deposit of such sum when refused on tender

111. If upon such payment or tender as aforesaid being made any such mortgagee fail so to convey his interest in such mortgage, or to adduce a good title thereto to the satisfaction of the promoters of the undertaking, shall be lawful for them to pay into the Supreme Court the amount of such value or compensation and the making of payment to the mortgagee or into the Supreme Court shall be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of such mortgaged lands from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they shall think fit, to execute a deed poll, duly stamped in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon shall such lands, as to all such estate and interest as were then vested in the mortgagee, or in any person in trust for him, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession; nevertheless all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or covenant or other obligation, other than the right to such lands, shall remain in force in respect of so much of the mortgage debt as shall not have been satisfied by payment of the mortgagee or into the Supreme Court.”

## **Authorities**

9. The Tribunal was referred to the following authorities:
- Land Clauses Consolidation Act 1845
  - Lands Tribunal and Compensation Act (Northern Ireland) 1964
  - Local Government Act (Northern Ireland) 1972
  - Land Compensation (Northern Ireland) Order 1982
  - NIHE v (1) Philip Magee (2) The Mortgage Business (R/16/2014)
  - NIHE v (1) John Rodgers (2) The Mortgage Business (R/17/2014)

## **Conclusion**

10. Having considered in detail the expert valuer's report and there being no evidence to the contrary, the Tribunal is satisfied that the correct amount of compensation to be paid is £76,000.
11. The Tribunal is also satisfied that Section 110 of the Land Clauses Consolidation Act 1845 gives the Tribunal the statutory authority to award the compensation monies to the Building Society as mortgagee, as the respondents are in substantial negative equity. The Tribunal therefore orders the compensation monies of £76,000 to be paid to the Building Society.

### **ORDERS ACCORDINGLY**

**21<sup>st</sup> October 2015**

**Henry M Spence MRCIS Dip.Rating IRRV (Hons)**

**LANDS TRIBUNAL FOR NORTHERN IRELAND**

## **Appearances**

**Applicant – Iain McGonigle of Hool Law, Solicitors.**