

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 REFERENCES

R/16/2014

BETWEEN

NORTHERN IRELAND HOUSING EXECUTIVE – APPLICANT

AND

(1) PHILIP MAGEE – 1ST RESPONDENT

(2) THE MORTGAGE BUSINESS – 2ND RESPONDENT

Re: 68 Soudan Street, Belfast

R/17/2014

BETWEEN

NORTHERN IRELAND HOUSING EXECUTIVE – APPLICANT

AND

(1) MR JOHN RODGERS – 1ST RESPONDENT

(2) THE MORTGAGE BUSINESS – 2ND RESPONDENT

Re: 22 Ebor Street, Belfast

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

BACKGROUND

1. Mr Philip Magee

Mr Philip Magee (“the 1st respondent”) was the owner of 68 Soudan Street, Belfast (“the reference property”) which was part of a large redevelopment area in South Belfast located between Tates Avenue and Donegall Road and which was known as The Village URA 144. The scheme extended to some 540 properties and the Northern Ireland Housing Executive (“the applicant”) acquired the reference property by way of a Vesting Order which became operative on 19th April 2010.

2. The applicant had obtained expert opinion on the valuation of the reference property in order to assess the compensation to be paid to the 1st respondent in respect of the vesting. The expert, Ms Elaine Bennett, had filed a copy of her expert report with the Tribunal and the report was made available to the 1st respondent. The expert concluded that, at the material date of valuation, 19th April 2010, the market value of the reference property was £73,000. The report records that this sum had been offered to the 1st respondent but it had not been accepted. The 1st respondent did not provide any expert evidence to counter Ms Bennett’s report.

3. The applicant advised the Tribunal that the reference property was subject to a charge of £200,000 in favour of the Mortgage Business (“the 2nd respondent”), which was part of the Lloyds Banking Group. A copy of the relevant documentation had been submitted to the Tribunal.

4. Mr John Rodgers

Mr John Rodgers (“the 1st respondent”) was the owner of 22 Ebor Street, Belfast (“the reference property”). This property was similarly part of The Village URA 144 and the applicant acquired the property by way of a Vesting Order which became operative on 19th April 2010.

5. The applicant had obtained expert evidence from Ms Elaine Bennett on the valuation of the reference property, in order to assess the compensation due to Mr Rodgers in respect of the vesting. Ms Bennett had filed a copy of her expert report with the Tribunal and the report had been made available to the 1st respondent. The expert concluded that at the material date of valuation, 19th April 2010, the market value of the reference property was £79,000. The report recorded that this sum had been offered to the 1st respondent but it was not accepted. The 1st respondent did not provide any expert evidence to counter Ms Bennett's report.

The applicant advised the Tribunal that the reference property was subject to a charge of £150,000 in favour of the 2nd respondent and a copy of the relevant documentation had been submitted.

PROCEDURAL MATTERS

6. The applicant was represented by Mr Mel Power BL instructed by Donaghy Carey solicitors. The Tribunal is grateful to Mr Power BL for his detailed and helpful submission. The 1st respondents were represented by Mr William Faulkner, a local estate agent. The 2nd respondent did not take part in the proceedings but the Tribunal was advised that they had prior discussions with the applicant with regard to the compensation monies to be paid.

POSITION OF THE PARTIES

7. There was no agreement between the applicant and the 1st respondents as to the amount of compensation payable and the applicant had referred to the Tribunal for determination of the proper compensation to be paid. There being no competing expert evidence the applicant sought a determination that the compensation to be paid to the respondents was respectively £73,000 and £79,000.
8. The 2nd respondent, as mortgagee considered that they were entitled to receipt of the compensation monies directly as there were Power of Attorney provisions contained at section 16 of their mortgage conditions. Further section 17(12) of these conditions

stated that the mortgage debt must be repaid immediately in the event that the property was compulsorily acquired.

9. Mr Faulkner confirmed to the Tribunal that the 1st respondents had no objection to the proceedings before the Tribunal and in particular they had no objection to any compensation monies being paid to the 2nd respondent.

THE LEGISLATION

10. 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 any 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 in 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.”

11. The existence of charges in favour of the 2nd respondent, with the charges exceeding the market value of the properties, 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.” (emphasis added)

12. 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.”

13. Paragraph 17 of 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 therefor,-

(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 [1845 c.18] with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title, and those provisions shall have effect accordingly. (emphasis added)

- (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 sub-paragraph (1) shall operate to discharge the compensation fund from all claims and interests in respect of which the compensation is payable.”
14. Section 111 of the Land 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, it 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 think fit, to execute a deed poll, duly stamped, in the manner herein-before provided in the case of the purchase of lands by them; and thereupon such lands, as to all such estate and interest as were then vested in the mortgagee, or 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 to the mortgagee or into the Supreme Court.”

CONCLUSION

15. Having considered the expert valuer’s reports and there being no evidence to the contrary the Tribunal is satisfied that the correct amounts of compensation to be paid are £73,000 (68 Soudan Street) and £79,000 (22 Ebor Street).

16. 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 2nd respondent as mortgagee. The Tribunal orders the compensation monies, as detailed in paragraph 16, to be paid to the 2nd respondent.

ORDERS ACCORDINGLY

4th August 2015

Mr Henry Spence MRICS Dip.Rating IRRV (Hons)

Lands Tribunal for Northern Ireland

Appearances:

Applicant: Mr Mel Power BL instructed by Donaghy Carey, solicitors.

1st Respondents: Mr William Faulkner.