

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 AN APPLICATION FOR COSTS
R/49/2011
BETWEEN
MRS ARLENE CASSIDY – CLAIMANT
AND
NORTHERN IRELAND ELECTRICITY LIMITED – RESPONDENT

Re: Property at 3 Finsbury Crescent, Belfast

Part 2 - Costs

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

Background

1. Mrs Cassidy (“the claimant”) is the owner of a four bedroom detached house known as 3 Finsbury Crescent (“the reference property”) and which is located in the Cairnshill/Four Winds area of Greater Belfast. A 275Kv Northern Ireland Electricity overhead power line (“the equipment”) runs just of the south east corner of the reference property, crossing over the garage.

2. At the date of purchase the reference property was subject to agreements to facilitate the presence of the equipment under a voluntary wayleave agreement (“VWL”) made on the 5th of August 1968 and which was subsequently replaced by a similar VWL on the 3rd of November 1992. The VWL arrangements were subsequently terminated by a notice served on behalf of the claimant, that led Northern Ireland Electricity Limited (“the respondent”) on the 4th March 2009 to make an application to the Department of Enterprise Trade and Investment (“DETI”) for the grant of a necessary wayleave (“NWL”) to retain its equipment on the reference property and which was subsequently granted on the 20th May 2011.

3. The claimant then sought compensation based upon the alleged diminution in market value of the reference property caused by the grant of the NWL, pursuant to schedule 4 paragraphs 10 and 11 of the Electricity (Northern Ireland) Order 1992 (“the 1992 order”) which gave the claimants a statutory right to “recover from the licence holder compensation in respect of the grant”.
4. The Tribunal found the claimant’s evidence to be inconclusive as to the impact of overhead lines on the market value of the reference property and by a decision dated 16th October 2014 the Tribunal made no award of compensation in respect of the grant of the NWL. Both parties are now seeking their costs in the reference.

Procedural Matters

5. The Tribunal received a written submission from Mr Niall Hunt QC and an oral submission from Mr John F Gibbons, solicitors, on behalf of the claimant. Mr Stephen Shaw QC provided written and oral submissions on behalf of the respondent.

Position of the Parties

6. Mr Hunt QC submitted that the claimant had been successful in her case to the extent that she had won the legal argument that she was entitled to compensation, which the respondent at no stage had accepted. He noted that in the substantive hearing the Tribunal had preferred the claimants approach, “scheme versus no scheme”, over the respondents approach. He accepted that the Tribunal had taken the view, however, that the claimant had not proven a loss in that regard, in the sense that the Tribunal did not accept that there was a reduction in the value of the claimant’s house caused by the grant of the NWL. He considered that this was the only aspect of the claimant’s case in which she had not been successful and that the case had established a clear principle that compensation was payable if it was proven that the value of a property had been reduced by the grant of a NWL. He submitted that the “Cassidy” scenario (i.e. minimal over sail of power lines) needed in all of the circumstances to be tested and as such it would be wholly unfair and wrong to penalise the claimant in her costs.
7. Mr Shaw QC submitted that nil compensation was awarded and as costs follow the event, the respondent was entitled to recover all of its costs from the claimant.

Statute

8. Rule 33(1) of the Lands Tribunal Rules (Northern Ireland) 1976 provides:-

“33(1) Except in so far as Article 5 of the Land Compensation (Northern Ireland) Order applies and subject to paragraph 3 the costs of and incidental to any proceedings shall be in the discretion of the Tribunal, or the President in matters within his jurisdiction as President”

Authorities

9. The Tribunal was referred to the following authorities

- Emslie and Simpson Limited v Sherdeen District Council (No2) [1995] RVR 159
- Purfleet Farms Limited v Secretary of State for Transport, Local Government and the Regions [2002] EWCA 1430
- Blakes Estates Limited v Government of Montserrat [2005] UKPC 46
- Donal and Vivienne O’Neill v Northern Ireland Housing Executive R/49/2009

The Tribunal finds the following quotes from this reference to be of particular relevance:

“12. Negative equity is a matter of current widespread concern, no helpful recent authority on the consequences for compulsory purchase was found by either party and the Tribunal concludes that it was neither unreasonable nor necessary to raise the issue.

13. The Tribunal agrees with Mr Gibson’s BL suggestion that in this case, although the claimants lost on the issue, there was no special reason to depart from the Purfleet presumption and the claimants should have their reasonable costs.”

Discussion

10. In the first of the NWL “costs” references to come before the Tribunal, Brickkiln v Northern Ireland Electricity [2015] R/41/2009 Part 3, the Tribunal decided that NWL references relating to compensation fell within the ambit of compulsory acquisition.

11. There is an underlying principle in the law of compensation called the principle of equivalence which is to the effect that a dispossessed landowner should obtain compensation equal to his actual loss suffered as a result of the compulsory acquisition [see Director of Buildings and Lands v Shun Fung Ironworks Ltd [1998]1 EGLR ... per Lord Nicholls at page 125]. In the Part 1 Brickkiln reference the Tribunal had already decided that the principle of equivalence should apply to NWL references. The theory is that where compensation is not agreed and a claimant has to go to a Tribunal in order to get it assessed, the costs he incurs are part of the total loss caused to him by the compulsory acquisition. Therefore, if he did not obtain an order for his costs the principle of equivalence would be flouted and the general rule has therefore become established that a claimant for compensation is entitled to his costs unless there are special reasons to deprive him of those costs (see Purfleet Farms and in this jurisdiction Dawn Bell v South & East Belfast Health & Social Services Trust Part 2 R/15/2002).
12. In the subject reference Mr Hunt QC had suggested that although the claimants had lost on the valuation issue, they had won on the major issue in that they had established the correct basis for assessing compensation in NWL cases. He therefore considered that there was no special reason to depart from the Purfleet assumption and the claimants should have their reasonable legal costs. Mr Shaw QC considered that as the claimants had been awarded nil compensation they should be responsible for the respondents legal costs.
13. In the Part 1 decision on the subject reference the Tribunal considered the respondents primary approach to be flawed and noted at paragraph 10: "... the Tribunal considered the respondents primary approach to be flawed as it did not take account of the basic fact that the grant of the NWL had caused the claimants to lose their legal right to have the respondent's equipment removed from their property. The Tribunal subsequently decided that compensation, if any, should be based on the diminution in market value of the reference property caused by the grant of the NWL". In paragraph 39 of the same decision the Tribunal recorded, however, "The circumstances in the subject case, that is overhead lines crossing the corner of the garden and the garage, are considerably less severe than those in McKibbin. In the absence of conclusive market evidence to clearly demonstrate that this set of significantly less severe circumstances would have an impact on market value, the Tribunal finds it inappropriate to award compensation in this case."

14. The Tribunal agrees with Mr Hunt QC, that the valuation issue was the only aspect of the claimant's case in which she had not been successful in that the valuation evidence was "inconclusive" as to the effect on market value of over sailing power lines.
15. Similar to O'Neill, the issue in this case, that is the basis of compensation for NWLS, is of widespread concern and the Tribunal understands that there may be a significant number of similar NWL Cases awaiting resolution. The Tribunal considers that in all the circumstances it was reasonable for the claimants to pursue compensation in this case. The issue had never previously come before this Tribunal and the Tribunal concludes that, as in O'Neill, that even though the claimant had lost on an issue, there was no special reason to depart from the Purfleet assumption and the claimant should have her reasonable legal costs.

Conclusion

16. The Tribunal awards the claimant her reasonable legal costs in the reference.
17. The claimant's expert, Mr Frank Cassidy, had confirmed in his evidence to the Tribunal that he was acting as an agent for the claims company, PCC Ltd, and on that basis the Tribunal makes no award of the experts' costs, as the claimant is not responsible for these costs.

ORDERS ACCORDINGLY

11th February 2015

Mr Henry M Spence MRICS Dip.Rating IRRV (Hons)

Lands Tribunal for Northern Ireland

Appearances

Claimant: Mr John F Gibbons of John F Gibbons, Solicitors

Respondent: Mr Stephen Shaw QC instructed by NIE Solicitors