

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

**LANDS TRIBUNAL RULES (NORTHERN IRELAND) 1976**

**PROPERTY (NORTHERN IRELAND) ORDER 1978**

**IN THE MATTER OF AN APPLICATION FOR “COSTS ON COSTS”**

**R/9/2015**

**BETWEEN**

**H GILLESPI (PROPERTIES) LIMITED – APPLICANT**

**AND**

**BRIAN WHITE AND JESSICA WHITE – RESPONDENTS**

**Re: 66 Church Road, Dundonald**

**PART 2**

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

**Background**

1. On 21<sup>st</sup> July 2015, H Gillespi (Properties) Limited (“the applicant”) lodged proceedings before the Lands Tribunal seeking modification of restrictive covenants which it alleged impeded its use and enjoyment of the lands at 66 Church Road, Dundonald (“the reference property”).
2. On 25<sup>th</sup> October 2016, however, the applicant withdrew its reference to the Lands Tribunal citing “commercial reasons”.
3. Following the applicant’s withdrawal, Brian and Jessica White (“the respondents”) sought their costs of the reference, which amounted to some £24,527.
4. Following a hearing on 28<sup>th</sup> February 2017 the Lands Tribunal fixed the correct amount of costs to be paid at £18,100. The respondents now seek their costs for the “costs” reference, that is “costs on costs”.

## **Procedural Matters**

5. Both parties provided the Tribunal with written submissions.

## **Position of the Parties**

6. The respondents requested the Tribunal to make an award to them in respect of work done in preparation for and attendance at the costs hearing on 28<sup>th</sup> February 2017. They asked the Tribunal to note that there were no offers in respect of costs made prior to the hearing, either by way of open offers or Calderbank offers.
7. The applicant submitted that, as the Tribunal ordered a reduction in various elements of the respondents' costs, citing these costs as excessive, there was merit in the applicant's defence of the level of costs.

## **The Law**

8. Rule 33 of the Lands Tribunal Rules (Northern Ireland) 1976 is relevant to this application:

“33.-(1) Except in so far as section 5(1), (2) or (3) of the Acquisition of Land (Assessment of Compensation) Act 1919[5] 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.”

## **Discussion**

9. In Christopher Throne v Department for Regional Development R/70/2006 Part 2 at paragraph 9, the Tribunal confirmed that it had the power to make an award on an application for “costs on costs” but that such applications were, and should be exceptional. The risk of “costs on costs” proceedings ad infinitum was acknowledged and the need for undertakings to be given by parties with regard to making no further application on costs.
10. In the subject reference the costs awarded by the Tribunal were substantially less than those being sought by the respondents. The Tribunal therefore agrees with the applicant's submission that there was merit in its defence of the level of costs being claimed. This was not an “exceptional” case where “costs on costs” should be awarded.

**Conclusion**

11. In the circumstances the Tribunal directs that each party should bear their own costs for the “costs” hearing on 28<sup>th</sup> February 2017.

**ORDERS ACCORDINGLY**

**5<sup>th</sup> April 2017**

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