

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 2 - COSTS

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

Background

1. On 20th February 2006 the Northern Ireland Housing Executive (“the applicant”) vested the fee simple interest in the properties at 195 and 197 Duncairn Gardens (“the reference properties”). The reference properties were then owned by Mr Kieran Mulgrew (“the respondent”).
2. Following protracted negotiations the parties failed to reach agreement on the correct amount of compensation to be paid. The applicant had assessed compensation at £180,000 for both properties. The respondent considered the correct amount of compensation to be £360,000. The applicant subsequently referred the matter to the Lands Tribunal for determination and by a decision dated 17th February 2017 the Tribunal assessed the correct amount of compensation at £180,000. This was the figure put forward by the applicant.
3. The applicant now seeks its costs in the reference.

Procedural Matters

4. Mr Keith Gibson BL instructed by Hool Law, solicitors provided a written submission on behalf of the applicant. Mr Kieran Mulgrew supplied a written submission on his own behalf.

Position of the Parties

5. In the Part 1 hearing the Lands Tribunal accepted the applicant's submissions and rejected entirely those made by the respondent, which had no corroborating evidence. The amount of compensation awarded by the Tribunal matched entirely the amount of compensation offered by the applicant. In the circumstances the applicant now seeks its costs in the reference.
6. In his submission the respondent did not make any valid proposals about the allocation of costs in the reference. He merely disputed the applicant's allegation that an offer of settlement had been accepted on his behalf by his solicitors and agents.

Statute

7. Rule 33 of the Lands Tribunal Rules (Northern Ireland) 1976 gives the Tribunal a statutory discretion on the allocation of costs:

“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.”

8. The Tribunal was also referred to Article 5 of the Land Compensation (Northern Ireland) Order 1982:

“5.—(1) Where either—

- (a) the acquiring authority has made an unconditional offer in writing of any sum as compensation to any claimant and the sum awarded by the Lands Tribunal to that claimant does not exceed the sum offered; or
- (b) the Lands Tribunal is satisfied that a claimant has failed to deliver to the acquiring authority, in time to enable it to make a proper offer, a notice in

writing of the amount claimed by him containing the particulars mentioned in paragraph (2);

the Lands Tribunal shall, unless for special reasons it thinks proper not to do so, order the claimant to bear his own costs and to pay the costs of the acquiring authority so far as such costs were incurred after the offer was made or, as the case may be, after the time when in the opinion of the Lands Tribunal the notice should have been served.”

Authorities

9. Mr Gibson BL referred the Tribunal to the following authorities:

- Purfleet Farms Limited v Secretary of State for Transport, Local Government and the Regions [2002] EWCA Civ 1430

In this case Potter LJ stated the presumption that, under the compulsory purchase code, a claimant should be entitled to its costs in the absence of some special reason to the contrary. A Tribunal not allowing such costs must be able to identify circumstances:

“where the tribunal considers that on an item of costs incurred, or an issue raised, was such that it could not, on any sensible basis be regarded as part of the reasonable and necessary expenses of determining the amount of the disputed compensation in which the claimants conduct of, or in relation to, the proceedings has led to an obvious and substantial escalation in costs over and above these costs which it was reasonable to incur in vindication of his right to compensation.”

- Donal and Vivienne O’Neill v Northern Ireland Housing Executive R/49/2009

Applicant’s Submission

10. The conduct of the respondent, his solicitors and agents in accepting an offer of compensation prior to hearing was disputed by the respondent in his submission. Nonetheless Mr Gibson BL submitted:

- i. The amount of compensation offered by the applicant had not been exceeded by the amount awarded by the Tribunal.
- ii. In this regard there was clear and apposite authority for departing from the jurisprudence in this matter set as out in Purfleet Farms. Purfleet Farms concerned

compulsory acquisition and a reference to the Lands Tribunal to determine compensation when the parties could not agree. The landowner sought £12.26 million compensation; the vesting authority assessed compensation at £3.75 million but made a sealed unconditional offer of £5 million. The Tribunal determined the compensation at £6.66 million. In this case the landowner achieved an award in excess of the amount assessed by the vesting authority but also in excess of their unconditional offer.

Despite this, however, the landowner was criticised for seeking compensation well in excess of the award and the vesting authority was only ordered to pay three quarters of the landowners costs. Chadwick LJ delivered a supporting judgment and the following portion of his judgment was directly on point:

“(42) As Lord Nichols pointed out, in the passage in Director of Buildings and Lands v Shun Fung Ironworks Ltd [1995] 2 AC 111, at p125, to which Potter LJ has referred, a claimant whose land has been taken from him under compulsory powers is entitled to ‘compensation for losses fairly attributable to the taking of his land’. In a case where the acquiring authority have made an unconditional offer of an amount of compensation that exceeds the amount subsequently awarded on a reference to the Lands Tribunal, it can be seen that (at least prima facie) the costs incurred by the claimant in pursuing the reference after the offer has been made are not fairly attributable to the taking of his land; those costs are attributable to the claimant’s attempt to obtain more than the amount of the loss in respect of which he is entitled to compensation.”

- iii. This position was supported by Article 5 of the Land Compensation (Northern Ireland) Order 1982
- iv. In the subject reference the applicant had gone not only to the stage of making an unconditional offer in writing, it actually had its offer accepted by the respondent’s solicitors and on the basis of acceptance, discharged costs to the respondent. This was disputed by the respondent.
- v. This particular case was far removed from the normal course of events and justified an exception to the rule in Purfleet Farms. The respondent failed to adduce any evidence whatsoever to support his valuations thus rendering the

entire exercise more futile than it might otherwise have been. The landowner in Purfleet Farms was criticised for the nature and content of his evidence, whereas in this particular case the respondent did not even meet that scenario, for he chose to call no evidence whatsoever.

11. In conclusion Mr Gibson BL submitted that this was an appropriate case to depart from the precedent set by decisions such as Purfleet Farms and in this jurisdiction O'Neill v NIHE and award the acquiring authority its costs against the respondent. He considered that to do otherwise would suggest that a landowner had a totally unfettered right to incur the costs of a hearing with no corresponding sanction on costs. In his opinion this would discourage the vesting authority from making offers where the making of such an offer would have no practical effect.

Conclusion

12. Supported by the authority of Lord Nichols in Purfleet Farms and Article 5 of the Land Compensation (Northern Ireland) Order 1982 the Tribunal agrees with Mr Gibson BL, this was an appropriate case to depart from the precedent set in Purfleet Farms. The respondent did not submit any market evidence to the Tribunal in support of his claim for £360,000 compensation, the Tribunal accepted the applicant's assessment of the correct amount of compensation to be paid and in the circumstances the Tribunal orders the respondent to pay the applicant's costs in the reference from the date the formal offer of £180,000 compensation was made by the applicant.

ORDERS ACCORDINGLY

5th April 2017

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