

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

**IN THE MATTER OF AN APPLICATION**

**BT/117/1989**

**BETWEEN**

**MARGARET CARLIN - APPLICANT**

**AND**

**THE SCOTCH-IRISH TRUST OF ULSTER - RESPONDENT**

**Lands Tribunal for Northern Ireland - Mr A L Jacobson FRICS**

**Omagh - 19<sup>th</sup> February 1990**

This was an application under Section 8(1) of the Business Tenancies Act (Northern Ireland) 1964 ("the 1964 Act") for the grant of a new tenancy of the Cafeteria situated in the Ulster-American Folk Park at Camphill, Omagh, Co Tyrone.

The matter commenced with a Landlord's Notice to Determine Business Tenancy dated 23<sup>rd</sup> August 1989 signed by the Secretary to the Scotch-Irish Trust of Ulster ("the Trust"). The Notice stated that the Trust would oppose an application to the Lands Tribunal for a new tenancy on the grounds:-

- "1. We intend to carry out substantial works of construction on the holding or part thereof which we could not reasonably do without obtaining possession of the holding.
2. On the termination of the current tenancy we intend to occupy the holding for a reasonable period for the purposes of a business to be carried on by the Trust."

That Notice brought the present contractual tenancy to an end on 28<sup>th</sup> February 1990.

On 29<sup>th</sup> August 1989 the Applicant, by her Solicitors served notice that she was not willing to give up possession of the premises and on 15<sup>th</sup> December 1989 made this Application to the Lands Tribunal.

In her Application the Applicant stated that her present tenancy was for one year from 1<sup>st</sup> March 1989 at a rent of £500 per annum. She proposed a new tenancy of one year at a rent of £600 per annum.

Mr Michael Long of Counsel (for the Respondent) called Dr Denis Stewart McNeice PhD (curator and director of the museum), Mr Frederick Schofield (chartered architect) and Mr William Anthony Nicholl (museum administrator) to give evidence.

Mr McNeice testified that the Trust was set up to research and organise displays of material regarding the emigration of peoples to America, including conditions experienced on the sea passage. Mellon House was opened in 1969 and the displays themselves were commenced in 1976. Financing of the Trust came from Government funding through the Department of Education for Northern Ireland, from the Mellon family and private sponsorship, from EEC grants and grants from the International Fund. The Trust appointed a Board of Directors to run the Ulster-American Folk park. That Board consisted of some Trust members, some members of the Department of Education plus members of the public whose appointments were deemed to be suitable.

He further testified that the cafeteria shared a building with the library containing all the Trust's books relating to emigration but there was no proper space providing reading facilities. Further books and material had been identified that the Trust would acquire but necessary space was required to house and display such material.

The Trust was presently programming a database from research (which was continuing) from the Northern Ireland Public Records Office; from libraries such as the Linen Hall Library in Belfast; from shipping lists, emigrants' letters etc. The computer, which was housed in a different building on the site, had been donated and the International Fund had made a grant for other computer equipment and machines. It was necessary to expand the space for the library; to provide a reading area, space for the librarian to supervise users of the library, two small offices and a computer room housing twenty two computer terminals for use of students and researchers. He submitted the architects plan showing the existing use of the whole building and the proposed use.

He further testified that it was not intended to provide on site a cafeteria - there was a building provided for visitors who bring packed lunches (mainly supervised school parties).

He submitted what he termed were the minutes of the Board of Management for 5<sup>th</sup> February 1988, 15<sup>th</sup> April 1988 and 30<sup>th</sup> November 1988. The Lands Tribunal notes that

paper for 5<sup>th</sup> February 1988 was not the minutes for that date but a progress report prepared for that meeting; so was the paper for 30<sup>th</sup> November 1988.

Mr Schofield testified that he had prepared the plan submitted by Dr McNeice. He had submitted that plan together with a planning application but as yet no decision had been made by the Department of the Environment for Northern Ireland. He had also prepared other elevations in February 1990 and had subsequently applied for Building Control approval. He also submitted an outline schedule of the work required which had been sent by him to Mr Nicholl (the administrator) on 29<sup>th</sup> November 1989.

He further testified that he had been requested by letter of 15<sup>th</sup> June 1989 to "consider re-designing the existing cafe space for library use". After preparing a preliminary sketch for discussion amendments were incorporated and resubmitted. No final specification and no estimate of costs had been made by him nor had he been formally instructed and fees agreed but he advised on a number of features of the Ulster-American Folk Park from time to time.

Mr Nicholl testified that he had estimated the cost of the alterations using the Board's own staff at £12,750. The electrical work and the plumbing would be carried out by outside tradesmen normally employed from time to time. There were four staff available viz:- a joiner, shop fitter, a handyman and a groundsman. His estimate of £12,750 did not include for all the items contained in the Outline Schedule of Works but broad - brush estimates for a number of items had been made after obtaining two estimates for cost of supply of timber and plasterboard (measured quantities).

Mr Reginald Weir QC (for the Applicant) called Mrs Carlin to give evidence. She testified that she had leased the cafeteria since 11<sup>th</sup> March 1977 under various contracts - either for 5 years, 3 years or 1 year. She ran the business with the help of her family. Trade had gradually built up through the years from staff, visitors such as parents with families and school parties by arrangement.

Staff ate in the premises up until 1988 when the Director, Education Officer and Administrator stopped coming altogether and for about 18 months she had not seen them to have conversation with them. That rift had commenced with Mr Nicholl making a complaint (said to be made by two ladies in a letter) which Mrs Carlin disputed and an accusation that she had not opened at 9.30 am to make coffee for a teachers' course. As a

result her solicitor had sent a letter to Mr Nicholl. She was of opinion that the whole thing was a trick to get her out.

The Tribunal finds the following facts proved or admitted:-

1. Mrs Carlin has been in occupation of the cafe (the holding) continuously since 11<sup>th</sup> March 1977. Various contracts of tenancy have existed eg 5 year's lease, 3 year's lease, or one year's tenancy culminating in 1 year from 1<sup>st</sup> March 1989. The tenant was responsible for maintaining the interior (including glass in window and doors) in good order and condition. She was also responsible for charges for electricity, water, rates, Northern Ireland Tourist Board registration fee, a licence fee for sale of ice-cream. Full catering facilities were to be provided and all prices charged agreed with the lessor.

Until recently there had been a whitewashed building sharing a common access with the cafe. That sectional building was available for school parties who did not wish for a cooked meal but had brought packed lunches. Those children had been removed elsewhere in the park at a cost of £2,000. That additional room had always been made available in accordance with the terms and conditions of the tenancy. The former access to that building has been left with rough timber and a sheet of plastic.

2. The cafe and the library form separate parts of a sectional building.
3. The development of the library has been curtailed by the Board's shortage of funds and although subsequent on the donation to it of a computer, a database is in course of being set up the Board cannot afford to properly staff and stock the library and database.

To overcome a probable deficit of £36,000 overall indicated in the budget for 1988/1989 obviously it was necessary to ensure that funding and running costs for the library and emigration database were reasonable. Discussions took place with the Chief Librarian of the Western Education and Library Board regarding the funding of the library early in 1988. A paper was submitted to the Management Committee of 5<sup>th</sup> February 1988 concerning the transfer of the library to the Western Education and Library Board for development as a regional resource. That paper showed that the

level of funding required would amount to some £44,000 for the year and that could not be found within the resources of the Folk Park.

The progress report for the Board of Management meeting on 30<sup>th</sup> November 1988 included a copy of a draft agreement between the Ulster-American Folk Park and the Western Education and Library Board for consideration. That agreement was "to facilitate the development of the Ulster-American Folk Park Library as a regional resource for Northern Ireland".

That draft agreement included:-

"3. Ownership of Stock: The existing stock (of books, etc) would remain the property of the Ulster-American Folk Park but after the transfer date the new stock would belong to the Western Education and Library Board. Usage of the total stock to be flexible, irrespective of technical ownership."

"4. The Emigration Database: The Headquarters of all five Library Services in Northern Ireland would have free access to the information contained within the Database".

"5. Site of the Library: The Library would remain an integral part of the Folk Park. Ulster-American Folk Park would undertake responsibility for providing suitable accommodation on the museum site for the storage and user needs of an expanded library service."

4. The plans submitted for planning permission show that the holding will be used to house the room with 22 computer terminals, the reading area of the larger area of library, two small offices, a store and a toilet, and a new entrance. That is all to be accomplished by removing the existing light partitions and replacing them with new light partitioning. The only alteration is the forming of the new entrance.

5. In a letter of 19<sup>th</sup> October 1989 the architect (inter alia) advised:-

"The 'Quayside Streets' buildings with their historic facades will, I understand be utilised to provide accommodation for administrative uses as well as space for exhibitions.

Unfortunately, these buildings and the adjacent areas would not suit future catering and educational accommodation which should be more centrally placed.

Presumably, proposed future restaurant, library and education accommodation would be best located close and linked to the Centre Building and Gallery, the buildings providing a screen to the "works" and "New World" areas beyond".

6. The "Schools' Programme" pamphlet for Autumn/Winter 1988/89 referred to snacks and lunches being available from the cafe if booked in advance with the proprietress. The corresponding pamphlet for 1989/90 omitted all references to the cafe.

Mr Reginald Weir QC (for the Applicant) submitted:-

1. There are two landlords' objections. The first stated objection is in the words of Section 10(1)(f)(ii) of the 1964 Act and the second in the words of Section 10(1)(g).

The evidence in front of the Tribunal shows that the building as a whole (including the holding) will be handed over to the Western Education and Library Board. (See paragraph 5 of the draft agreement between the Ulster-American Folk Park and the Western Education and Library Board.)

Thus the Respondent cannot bring itself within Section 10(1)(g) for the holding will not be occupied for the purposes, or partly for the purposes of a business to be carried on by the landlord.

Therefore the Respondent's objection fails.

2. The Section 10(1)(f)(ii) objection is linked with this for the work is being done in order to provide the Western Education and Library Board with premises. Also there is no need to obtain possession to do the amount of work to the holding.
3. The volume of work proposed is insufficient to qualify as substantial under Section 10(1)(f)(ii) of the 1964 Act. The Respondent's estimates do not include many of the architect's "Outline Schedule of Work".
4. The Respondent's case is that it is intended that the Trust will do the work in order to hand over to the Western Education and Library Board; but the objection was that the

Trust would use it themselves. The whole thrust of their case was that they must have it for a library. Submits that is outwith the aspect of Section 10(1)(g) of the 1964 Act.

5. Submits that the Trust has not moved out of the zone of contemplation into the valley of decision for:-

(a) the architect, Mr Schofield, has not been instructed to produce estimates and specifications etc. Even his recommended outline schedule of work was partly eliminated in Mr Nicholl's estimate;

(b) there is no evidence in front of the Tribunal that the Board of Management or the Trust have taken a decision to proceed. In the draft agreement with the Western Education and Library Board the Ulster-American Folk Park is to provide premises but the Board of Management has not seen the costings submitted to the Tribunal nor has there been any formal resolution;

(c) the building is poor, patched-up Portakabin and is no place to house valuable books and a number of computer terminals.

6. A number of questions must be asked:-

(a) Why move that part of the Portakabin in which school parties had their lunches?

(b) Why alter the more recent brochures so that all mention of the cafe was deleted? Last year's brochures promoted the cafe.

(c) Why did Dr McNeice, Mr Nicholl and Mr Gilmour stop eating in the cafe?

(d) Why did those three men never look into the cafe in the past 18 months?

(e) Why was Mrs Carlin advised not to take any more orders for food?

Submits that the actions are not creditable and the entirety is an attempt to use the 1964 Act "to harness their inelegant horse".

Mr Michael Long (for the Respondent) submitted:-

1. The landlord's grounds of objection are two in number not one.

2. The objection under Section 10(1)(g) of the 1964 Act.

The Tribunal should read the discussion paper in conjunction with the draft agreement.

The Trust is not handing over to the Western Education and Library Board for:-

- (a) the existing stock remains in Trust ownership;
- (b) the computer machinery is in Trust ownership.

Therefore there is a use partly for the purpose of the building. It is not to the exclusion of the Ulster-American Folk Park which has the interest of a landlord as to what goes on in the whole.

It is not a matter of exclusive occupation - the 1965 Act only requires partly for the use of the landlord.

Submits that both are entitled to use and occupy.

3. The objection under Section 10(1)(f)(ii) of the 1964 Act.

This is a factual matter of all the evidence as to whether these works are substantial works of construction. The evidence is that merely extending the library and using the smaller room for computer terminals without also occupying the present cafe space would not reasonably suffice.

- 4. The planning application has not yet been decided. If the Tribunal is in doubt as to the probability of permission being granted, the 1964 Act gives the Lands Tribunal power to require that permission to be obtained and not to give a decision until that evidence is provided.
- 5. There is no vendetta against Mrs Carlin who in her evidence did not go that far.
- 6. Section 11(2) of the 1964 Act allows the Tribunal to use its discretion if the Tribunal is not satisfied that the Trust will proceed within a reasonable period of time but all that is being contemplated is an internal arrangement of partitions. Nevertheless the Respondent would accept the Tribunal's decision in that respect.

Mr Weir QC in reply:-



Submits the word "partly" in Section 10(1)(g) governs the words "purposes of a business" and does not govern the word "occupied".

## **DECISION**

The Tribunal does not accept that there was a vendetta against Mrs Carlin by the Scotch-Irish Trust of Ulster. Nevertheless, it is obvious from the evidence that three senior employees have had many differences of opinion with Mrs Carlin and the evidence summarised by Mr Weir in 6 above are indicative that those differences were acted out in fact. The Tribunal expresses its hope and desire that differences between the Trust's senior employees and the Trust's tenant would be forgotten and forgive immediately.

Secondly, the Lands Tribunal cannot accept the evidence of Dr McNeice and Mr Nicholl that the Trust do not wish to have a cafe at the Ulster-American Folk Park for:-

- (a) All similar parks/museums in Ulster which are situated outside of the City and Town find it necessary to have a cafe for visitors. If visitors from a distance found nowhere to obtain hot food a return visit would be unlikely.
- (b) Mr Schofield's letter of 19<sup>th</sup> October 1989 to Dr McNeice referred to the "proposed future restaurant, library and education accommodation".
- (c) In cross-examination Mr Nicholl in answer to a question as to why a cafe was planned in the future answered:- "Any commercial organisation from outside may wish to build".

However, neither of these two matters assist the Tribunal's decision in this case - they merely highlight the difficulties which exist between Mrs Carlin and the employees of the Trust.

The Tribunal considers there are two separate landlord's objections to a new tenancy viz:-

- "1. We intend to carry out substantial works of construction on the holding or part thereof which we could not reasonably do without obtaining possession of the holding" ie in the words of Section 10(1)(f)(ii) of the 1964 Act.

Two matters arise:-

- A. The evidence throughout the Respondents case dealt with the entire Portakabin, not the holding. Almost all the works on the holding consist of removing internal partitioning and erecting new partitions to form two small offices, a store, a male toilet and a reading area (as part of the enlarged library in the other part of the Portakabin). A new front door and a side door are to be made. The architect's outline schedule of work included new double glazed PVC windows, new floor finishes and a new access path outside but Mr Nicholl's evidence was that those matters were not to be carried out.

The Tribunal is not satisfied that the works on the holding are sufficiently substantial.

- B. Even if the Tribunal was wrong in that matter, the Tribunal is not satisfied that the intention of the Scotch-Irish Trust of Ulster has moved into "the valley of decision" for:-
- (a) there is no evidence in front of the Tribunal that the Trust, by resolution or otherwise, made a decision to proceed. Only one set of typed minutes of a meeting of the Management Committee were put before the Lands Tribunal. Those minutes of 15th April 1988 reported on-going discussions between Mr Gilmour (the education officer) and the Western Education and Library Board's Chief Librarian re funding of the library. The progress report for the meeting of 5<sup>th</sup> February 1988 contained a paper for discussion proposing the transfer of the library to the Western Education and Library Board "for development as a regional resource". That paper indicated that the level of funding for the library's development would be some £44,000 and that could not be found "within the resources of the Folk Park".

The progress report for the Board's meeting of 20<sup>th</sup> November 1988 included a copy of the "draft agreement between the Ulster-American Folk Park and the Western Education and Library Board" for consideration. That draft agreement proposed the "amalgamation of the Ulster-American Folk Park Library with the Western Education and Library Board Library Service as from 1 April 1989".

No copy of the minutes of that meeting was put in evidence, nor was a copy of any resolution of the Trust nor was there any evidence that such draft agreement was ratified by both parties to the agreement.

- (b) As far as the works are concerned, the Respondent has gone so far:-
- (i) the architect has produced plans and submitted them for planning permission. Those plans were drawn in August 1989 and amended in October 1989. No decision has yet been made by the Planning Authority;
  - (ii) the architect has submitted plans to Building Control but so far no response as to whether there will be any further requirements (colloquially known as a "snagging list");
  - (iii) no proper specifications have been drawn up;
  - (iv) no proper costings have been made - the broad - brush calculation of £12,750 by Mr Nicholl was made in the week before the hearing and has already been rejected by the Tribunal;
  - (v) no contractors have been approved to provide estimates. The evidence given to the Tribunal that, apart from electrics and plumbing, the work which will be done "in house" with four men has not been priced for labour. Nor was any estimates given to the Tribunal for the outside electrician/s and plumber apart from broad-brush figures included in the estimate of £12,750.

All these matters lead to one conclusion that the Scotch-Irish Trust of Ulster have not reached the valley of decision. The Trust has not established the first objection to the satisfaction of the Tribunal.

The second objection is as follows:-

"2. On the termination of the current tenancy we intend to occupy the holding for a reasonable period for the purposes of a business to be carried on by the Trust."

The evidence in front of the Tribunal, while not disclosing a final decision by the Trust, is disclosed by the draft agreement (attached to the progress report for the Board of Management meeting of 30<sup>th</sup> November 1988) between the "Western Education and Library Board and the Ulster-American Folk Park". The purpose of that agreement was to amalgamate the Ulster-American Folk Park Library with the Western Education and Library

Board Library Service. Paragraph 5 of that agreement refers to the "site of the Library" and states:- "The Library would remain an integral part of the Folk Park. Ulster-American Folk Park would undertake responsibility for providing suitable accommodation on the museum site for the storage and user needs of an expanded library service". Paragraph 3 refers to "Ownership of Stock" and states:- "The existing stock (ie of the library) would remain the property of the Ulster-American Folk Park but after the transfer date the new stock would belong to the Western Education and Library Board. Usage of the total stock to be flexible, irrespective of technical ownership".

Those facts show that the Trust, is to carry out the responsibility for providing suitable accommodation for the Western Education and Library Board to amalgamate and expand the existing library with its own Library Service. In doing so the Western Education and Library Service will provide the staff and the expansion out of its own resources. The Tribunal cannot accept that the Trust will be occupying the holding "for the purposes of a business to be carried on by the Trust".

The Trust has not established the second ground of objection to the satisfaction of the Tribunal.

As the Tribunal is not satisfied with either ground of objection, the Applicant is entitled to a new tenancy. The Applicant asks for one year and the Tribunal grants that period. In accordance with Section 9 of the 1964 Act the Tribunal ends the existing tenancy on 31<sup>st</sup> May 1990. The landlord's notice to determine under Section 4 would have terminated the tenancy on 28<sup>th</sup> February 1990.

The parties now have to agree the rent to be paid - if not agreed the parties come back to the Tribunal to decide the quantum.

The Respondent will pay the reasonable costs of the Applicant, if not agreed to be taxed by the Registrar of the Lands Tribunal on the County Court scale.

**ORDERS ACCORDINGLY**

**12<sup>th</sup> March 1990**

**Mr A L Jacobson FRICS  
Lands Tribunal for Northern Ireland**

**Appearances:-**

**Mr Reginald Weir QC (instructed by Brian P McElholm LLB, Solicitor) for the Applicant.**

**Mr Michael Long of Counsel (instructed by McConnell & Fyffe, Solicitors) for the Respondent.**