

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**PROPERTY (NORTHERN IRELAND) ORDER 1978**

**IN THE MATTER OF A REFERENCE**

**R/2/2019**

**BY**

**BELFAST CITY COUNCIL - APPLICANT**

**Re: Wilmont House, Upper Malone Road, Belfast**

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

**Background**

1. Belfast City Council (“the applicant”) is the legal owner of Wilmot House (“the reference property”) which is located on the Upper Malone Road, Dunmurry. It comprises a large, red brick Victorian House built in 1859 which is grade B+ listed and is located within the Sir Thomas and Lady Dixon Park (“the park”). The park is also owned by the applicant.
2. In December 1959 Lady Edith Stewart Dixon conveyed the reference property and park to the then Belfast Corporation, now the applicant. The applicant is, therefore, the legal and beneficial owner of the reference property by virtue of a Deed of Conveyance dated 5<sup>th</sup> December 1959 made between Lady Edith Stewart Dixon and the Lord Mayor Aldermen and the Citizens of the City of Belfast (“the 1959 Conveyance”).
3. The 1959 Conveyance contained the following clauses:

“To use the said house and lands for the greatest good of the citizens of the City of Belfast and in particular to use the said lands as a public park and public playing fields and not to erect any buildings thereon save such as may from time to time prove necessary for such purposes.”

And

“...the said public park and playing fields shall be known as the Sir Thomas and Lady Dixon Park and Sir Thomas and Lady Dixon Playing Fields respectively.”

And

“... not to permit the sale of intoxicating liquor upon the lands and premises or part thereof.”

4. The reference property had been refurbished and used as Council offices for a number of years. Subsequently, however, the applicant ceased to use the property and it is now in a state of serious disrepair. The property is no longer used for any purposes as it is not fit for habitation or use.
5. The applicant has advised the Tribunal that it has no fixed ideas about the future use and redevelopment of the reference property. Given its obvious attractiveness from an architectural and historical perspective, as well as its setting within the prestigious public park, the applicant considers the opportunity exists for a variety of uses, including as a boutique wedding venue or high-end restaurant. This is in line with similar developments by the applicant at Malone House and Belfast Castle.
6. The applicant considers that use as a wedding venue or restaurant will involve the sale of alcohol, as will the holding of outside events at the park, similar to the use of the applicants other properties at Ormeau Park, Botanic Gardens and Custom House Square for events such as rock concerts. The sale of alcohol is considered by the applicant to be an essential element of these proposed activities. The applicant now seeks extinguishment of the covenant prohibiting the “sale of intoxicating liquor” to allow for the sale of alcohol on the reference property and the park.
7. The Tribunal has received an affidavit from Ms Helen Kernan, solicitor for the applicant. The Tribunal is satisfied that all reasonable attempts have been made by the applicant to identify any possible beneficiaries but to no avail.

## **The Statute**

8. Article 5(1) of the Property (Northern Ireland) Order 1978 (“the Order”) provides:

“Power of Lands Tribunal to modify or extinguish impediments

5.-(1) The Lands Tribunal, on the application of any person interested in land affected by an impediment, may make an order modifying, or wholly or partially extinguishing, the impediment on being satisfied that the impediment unreasonably impedes the enjoyment of the land or, if not modified or extinguished, would do so.”

9. Article 3 of the Order defines the scope of “enjoyment”:

“3(3) In any provision of this Part – ‘enjoyment’ in relation to land includes its use and development.”

10. Article 5(5) of the Order specifies certain matters which the Tribunal must take in to account together with any other relevant circumstances.

## **The Article 5(5) Issues**

11. On behalf of the applicant, Mr Chris Callan of CBRE Commercial Property Consultants, has submitted an expert report dealing with the Article 5(5) issues. Mr Callan is an experienced chartered surveyor and the Tribunal is grateful to him for his comprehensive report.

## **Mr Callan:**

5(5)(a) The period at, the circumstances in, and the purposes for which the impediment was created or imposed

12. The impediment prohibiting the sale of intoxicating liquor was created over 60 years ago, in the 1959 conveyance. It was understood at that time that Lady Dixon stipulated the reference

property should be used as an old people's home and it was used as such for a time, but the building is now vacant and derelict.

13. It would seem reasonable that the sale of intoxicating liquor in a public park or old peoples home was unlikely at the time when the reference property and park was conveyed to the applicant. The prohibition of the sale of alcohol was a common feature of the title to land and property across Northern Ireland, especially in Victorian times. The public's attitude to the consumption of alcohol is significantly more relaxed now as is reflected in the current statutory licensing framework.

5(5)(b) Any change in the character of the land or neighbourhood

14. There has been little change in the character of the neighbourhood, in the form of the park, since the impediment was imposed some 60 years ago. The reference property is now, however, in a state of significant dereliction.

5(5)(c) Any public interest in the land ...

15. There was a clear public interest in the reference property as it was in the ownership of the City Council, a public body. The reference property, in its current state of dereliction, was a liability for the applicant in the form of security and insurance costs.
16. In addition the reference property's continuing decline will detract from the general amenity and attractiveness of the park. The applicant now seeks to bring the property into useful economic use, which will require a comprehensive redevelopment.

5(5)(d) Any trend shown by planning permissions

17. There are no planning consents relevant to the application for modification or extinguishment of the covenant that relates to the sale of intoxicating liquor.

5(5)(e) Whether the impediment secures any practical benefit to any person and, if it does so, the nature and extent of that benefit

18. Comprehensive attempts had been made to identify any possible beneficiaries to the 1959 Conveyance but to no avail. Following advertisements in local newspapers, however, an objection had been received by the Tribunal but the objector was not a beneficiary, rather she was an interested party who visited the park regularly.
  
19. Even if beneficiaries were identified, prohibiting the sale of alcohol within the reference property and the park did not secure any practical benefit.

5(5)(f) Where the impediment consists of an obligation to execute any works ...

20. There was no obligation to execute any works.

5(5)(g) Whether the person entitled to the benefit of the impediment has expressly or by implication, by his acts or omissions, to the impediment being modified or extinguished

21. As the applicant has been unable to identify any beneficiaries, this is not applicable.

5(5)(h) Any other material circumstances

22. It is normal practice of the Tribunal to only consider an application for modification or extinguishment of an impediment where an alternative use has been identified.
  
23. The circumstances in the subject reference are unusual in that the applicant has not sought planning permission for an alternative use. The applicant proposes, however, to commence an exercise in seeking expressions of interest from potential developers in the licensed and leisure market. Waiting until a developer has been identified would incur further delay and expense.

24. Additionally, if the impediment is not modified or extinguished the applicant would be obliged to abandon any prospect of attracting a leisure/licensed operator, which it had been able to do in the past for other Council owned facilities such as Malone House and Belfast Castle. Further, in relation to open-air events within the park, unless the impediment is modified or extinguished the applicant would be unable to include the extensive public lands within its list of potential venues.
  
25. In summary, the applicant wished to make the process of attracting a new commercial use for the reference property as wide and as straightforward as possible. In doing so the applicant seeks to protect an important part of Belfast Victorian built heritage in one of its most important public spaces. In addition, the ability of the applicant to host large scale outdoor events, where the sale and consumption of alcohol was part and parcel of such events, increased the use of the park for the benefit and enjoyment of the general public.

### **Conclusion**

26. Even if the beneficiaries of the impediment could be identified, Mr Callan's expert opinion was that the impediment was obsolete and conferred no practical benefit to any person.
  
27. The issue for determination by the Tribunal was did the impediment achieve some practical benefit and if so, was it a benefit of sufficient weight to justify its continuance without modification or extinguishment?
  
28. In the circumstances of the subject reference the Tribunal is satisfied that the subject impediment, if not extinguished would unreasonably impede the applicant's use and enjoyment of the reference property and the park in that it would significantly restrict its future use.

### **Decision**

29. Having considered in detail Mr Callan's expert report and the issues listed in Article 5(5) of the Order, the Tribunal grants extinguishment of the impediment relating to the "sale of intoxicating liquor".

### **Compensation**

30. It was Mr Callan's expert opinion that no compensation was warranted.
31. The Tribunal may award compensation in accordance with Article 5(6)(b) of the Order. The Tribunal agrees with Mr Callan, however, in the subject reference the impediment was obsolete and secured no practical benefit to any person. The Tribunal directs that no compensation is payable.

### **Objectors**

32. Due to the current pandemic restrictions the Tribunal was unable to convene a public hearing of the subject reference. It will now, therefore, publish its decision and allow a further four week period for any possible objectors to come forward, prior to issuing the Order of the Tribunal.

**4<sup>th</sup> May 2021**

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