

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
LOCAL GOVERNMENT ACT (NORTHERN IRELAND) 1972
LAND COMPENSATION (NORTHERN IRELAND) ORDER 1982

IN THE MATTER OF AN APPLICATION

R/1/2022

BY

DEPARTMENT FOR COMMUNITIES – APPLICANT

Re: 15 Southwell Road, Bangor comprised in Folio DN167867L

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

Background

1. By reference lodged with the Lands Tribunal on 10th January 2022, pursuant to Article 3(a) of the Land Compensation (Northern Ireland) Order 1982 (“the Order”), the Department for Communities (“the applicant”) sought the following determination:

“A determination of the amount of compensation payable to the persons who held a leasehold interest in the property at 15 Southwell Road, Bangor, comprised in folio DN167867L prior to the making of a Vesting Order by the applicant on 1st December 2016 pursuant to Schedule 6 of the Local Government Act (Northern Ireland) 1972.”

2. On 1st December 2016, the applicant made a Vesting Order (“the Vesting Order”) in respect of lands at Queens Parade/Marine Gardens, Bangor to facilitate a proposed redevelopment of the site for regeneration purposes.
3. The Vesting Order includes the property at 15 Southwell Road (“the reference property”), comprising of the unregistered freehold reversion and the registered long leasehold interest in folio DN167867L.

4. On foot of the Vesting Order the leasehold interest was merged with the freehold reversion which was the subject of first registration on 7th November 2018, being folio DN227873 County Down. The Lessee's title in DN167867L was cancelled on 16th March 2021.

5. On 25th May 2018 the Vesting Order became operative being the date the Vesting Order was lodged with the Registrar of Titles in accordance with paragraph 6 of Schedule 6 to the Local Government Act (Northern Ireland) 1972.

6. The applicant's reference relates to the long leasehold interest which was registered in the names of:
 - (i) Gavan Reynolds, of 15 Southwell Road, Bangor, owner of an undivided half share as tenant in common;

 - (ii) Francis Reynolds, of 27 Hillfoot Drive, Drumpellier, Coatbridge, Lanarkshire, Scotland, owner of an undivided fourth share as tenant in common; and

 - (iii) Angela Niemier (now deceased) whose last known address was Kleinenberger, Weg 7, 33100 Paderborn, Germany, owner of an undivided fourth share as tenant in common.

7. The above registered owners are siblings. On 9th March 2021 Angela Niemier died.

8. Gavan Reynolds and Francis Reynolds jointly instructed McGurk, MacDermott and Partners, Solicitors to represent them in respect of the subject reference. They in turn instructed an expert valuer, Bill Corbett, who engaged with the Department's appointed valuer, Ross Linter MRICS, and they agreed a global compensation figure of £245,000 for the reference property, made up as follows:

Market Value	£240,000
Home Loss Payment (10% of MV of GF Unit)	<u>£7,000</u>
Less EJO/Counsel Costs	£15,758

Less backdated Rent	<u>£11,000</u>
	£220,252
Interest	<u>£22,098</u>
Total	£242,350
Say	£245,000

9. It is agreed between the applicant and Mr Gavan Reynolds and Mr Francis Reynolds that the amount of £245,000 will be apportioned to each of them in accordance with their respective interests in the property, namely 50% to Gavan Reynolds (£122,500) and 25% to Francis Reynolds (£61,250).
10. The issue for determination by the Lands Tribunal is how the interest of their deceased's sibling, Angela Niemeier ("the Deceased"), is dealt with.

Procedural Matters

11. The Tribunal received a written submission from Ms Maria Mulholland BL on behalf of the applicant. The Tribunal is grateful to Ms Mulholland BL for her helpful submission.

Ms Mulholland BL's Submissions

The Position in Respect of the Deceased's Estate

12. Mr McGurk, on behalf of Gavan and Francis Reynolds, has advised that Gavan and Francis Reynolds were the Deceased's next of kin as she had no children and her husband pre-deceased her.
13. The Departmental Solicitors Office's ("DSO") own enquiries, on behalf of the applicant, with the relevant authorities in Germany also confirmed that they understood the Deceased's next of kin to be Gavan and Francis Reynolds.

14. Mr McGurk further advises that he has been instructed by Gavan and Francis Reynolds to apply for letters of administration in respect of the Deceased's estate, but this process has not yet been completed.
15. This means that the Deceased's interest is not formally represented before the Lands Tribunal.
16. Accordingly, the applicant requests the Lands Tribunal to:
 - (i) determine the compensation due to the Deceased's estate; and
 - (ii) order that the said compensation be paid into court.

The Lands Tribunal Power to Determine the Deceased's Compensation

17. Paragraph 11(1) of Schedule 6 to the Local Government Act provides for disputes in respect of compensation to be referred to the Lands Tribunal and states as follows:

“As soon as a vesting order has become operative, any question of disputed compensation arising between the council and any person who -

- (a) has an interest in any land to which the vesting order relates or would have such an estate if the order has not become operative, or
- (b) has an estate in any land injuriously affected by the works proposed to be carried out by the council, shall be referred to and determined by the Lands Tribunal.”

18. Paragraph 11(2) provides as follows:

“Where the person entitled to compensation under the Schedule is not known or cannot be found or neglects or refuses to produce his title or to claim the compensation, or where a person claiming compensation is not absolutely entitled to the compensation or is under any disability the council may refer to the Lands Tribunal any question in connection with the compensation and that question shall be deemed to be a question of disputed compensation for the purposes of this Schedule.”

19. As the Deceased's estate is not formally represented before the Tribunal it is respectfully submitted by the applicant that the issue of the Deceased's compensation falls under the terms of paragraph 11(2).
20. The Tribunal agrees and the question of the amount of the Deceased's compensation is to be determined by the Lands Tribunal.

Determination of the Deceased's Compensation

21. The applicant requests the Lands Tribunal to determine the Deceased's compensation in accordance with the valuation agreed by the two independent experts instructed by the Department and the Deceased's siblings (and next of kin) respectively.
22. Accordingly, the Lands Tribunal is requested to determine the Deceased's compensation in the sum of £61,250 being 25% of the agreed valuation and in accordance with the respective agreed shares of the Deceased's siblings.

Payment of the Deceased's Compensation into Court

23. Paragraph 17 of Schedule 6 to the Local Government Act provides as follows:

"17(1) Where the amount of compensation has been determined but for some reason it is not possible for the council to obtain a good discharge therefor,-

- (a) if the total amount of the compensation does not exceed £1,000, the council shall pay the money into the county court and that court shall have with respect thereto all the jurisdiction exercisable by the High Court under the Lands Clauses Act;
- (b) if the total amount of the compensation exceeds "1,000, the amount payable by the council shall be paid, applied and dealt with in accordance with the provisions of the Lands Clauses Consolidation Act 1845 [1845 c.18] with respect to the purchase money or compensation coming to parties having limited

interests, or prevented from treating, or not making title, and those provisions shall have effect accordingly.

(2) Money paid into the county court or, as the case may be, the High Court under sub-paragraph (1) shall, subject to county court rules or rules of court, be dealt with according to the orders of the court.

(3) The payment of the compensation in the manner provided by sub-paragraph (1) shall operate to discharge the compensation found from all claims and interests in respect of which the compensation is payable.”

24. Section 69 of the Land Clauses Consolidation Act 1845 provides as follows:

“69. Purchase money payable to parties under disability, amounting to 200/ to be deposited in the Bank

If the purchase money or compensation which shall be payable in respect of any lands, or any interest therein, purchased or taken by the promoters of the undertaking from any corporation, tenant for life or in tail, trustee, executor or administrator, or person having a partial or qualified interest only in such lands and not entitled to sell or convey the same except under the provisions of this or the special Act, or the compensation to be paid into the Senior Courts and such monies shall remain so deposited until the same be applied to some one or more of the following purposes; (that is to say,)

In discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith to the same or the like uses, trust, or purposes; or

In the purchase of other lands to be conveyed, limited, and settled upon the like uses, trust, and purposes, and in the same manner, as the lands in respect of which such money shall have been paid stood settled; or

If such money shall be paid in respect of any buildings taken under the authority of this or the special Act, or injured by proximity of the works, in removing or replacing such buildings, or substituting others in their stead, in such manner as the Court of Chancery shall direct; or

In payment to any party becoming absolutely entitled to such money.”

25. Section 3 of the Land Clauses Consolidation Act 1845 provides that:

“Any reference to the Senior Courts shall, where it relates to monies to be paid or deposited in respect of lands situate in Northern Ireland, be read as a reference to the Court of Judicature.”

26. Accordingly, as the compensation in the subject reference exceeds £1,000 it must be paid into the High Court and remain there until any party becomes absolutely entitled to it. In other words, the compensation will remain lodged in the High Court until such times as a grant of letters of administration is obtained in respect of the estate of the Deceased.

27. In view of the above the applicant requested the Lands Tribunal to order that the Deceased's compensation is paid into the High Court in accordance with paragraph 17 of Schedule 6 to the Local Government Act, which will operate to discharge the compensation fund from all claims and interests in respect of which the compensation is payable.

The Tribunal

28. The Tribunal fully agrees with Ms Mulholland BL's submissions on behalf of the applicant and orders that:

- (i) The compensation due to the Deceased is £61,250.
- (ii) The compensation due is to be paid into the High Court.

31st May 2023

Henry Spence MRICS Dip.Rating IRRV (Hons)
LANDS TRIBUNAL FOR NORTHERN IRELAND