LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964

PLANNING BLIGHT (COMPENSATION) (NORTHERN IRELAND) ORDER 1981

IN THE MATTER OF REFERENCE

R/10/2011

BETWEEN

ANTHONY REILLY & MADELINE JANE REILLY - CLAIMANTS

AND

DEPARTMENT FOR REGIONAL DEVELOPMENT – RESPONDENT

Re: 215 Frosses Road, Cloughmills, County Antrim

PART 1

Lands Tribunal - Mr M R Curry FRICS Hon.Dip.Rating

Background

1. The Claimants, Mr and Mrs Reilly ("the Reillys") were the owner-occupiers of a house in a rural area at 215 Frosses Road, Cloughmills. They had lived there for some 15 years. The Frosses Road was a section of the A26 which formed part of the northern key transport route connecting Belfast and Coleraine via Ballymena and Ballymoney and continuing to Londonderry. The house was on the western side of the road. It was old and could have benefited from some modernisation but was a comfortable two storey, three bedroom family home with a large two storey workshop/garage, and gardens. The house was on a site of just over half an acre but it was sited very close to the road – about 6.5 metres from the edge.

2. The Regional Network Transport Plan 2015 had identified the need to improve this section, between Glarryford and the A44 Drones Road, to dual carriageway standard. The existing 7 km single 2-way carriageway carried traffic volumes of the order of 18,000 vehicles per day and the Department for Regional Development ("the Department") considered that there was a lack of safe overtaking opportunities. This resulted in vehicles regularly becoming caught behind slower-moving vehicles and the road suffering from traffic congestion at peak times on a daily basis. In August 2008 the Department announced a Scheme ("the Scheme") for conversion of this section into a dual carriageway. The proposals were still at a draft stage and could be changed before implementation but included a proposed vesting of a portion of the Reilly's front garden.

3. The Planning Blight (Compensation) (Northern Ireland) Order 1981 provides that, in certain circumstances, persons whose property is affected by a scheme, may serve on an appropriate authority, such as this Department, a blight notice requiring it to purchase their interest. Among other things, in order to succeed the owners must show that in consequence of the proposed scheme, they have been unable to sell that interest except at a price substantially lower than that for which it might reasonably have been expected to sell if there were no scheme. Where, as here, the authority proposes to acquire compulsorily part only of the property and they wish the Department to acquire the whole, the owners must show that the part cannot be acquired without causing material detriment to the house.

4. In June 2010 the Reillys put their property on the market but were unsuccessful in their efforts to find a purchaser and in December 2010 they served a blight notice on the Department. Briefly, they claimed that they had made reasonable endeavours to sell their interest and in consequence of the proposed Scheme they had been unable to do so. They also claimed that the part of the garden that the Department proposed to acquire could not be taken without material detriment to the house. In January 2011 the Department served a counter-notice objecting to the blight notice and in March 2011 the Reillys referred the matter to the Lands Tribunal.

5. Shortly before the Hearing the Department published a Notice of Intention to Make a Vesting Order.

Procedural Matters

6. John Coyle BL appeared for the claimants instructed by James L Russell & Son, solicitors. Donal Lunny BL appeared for the respondent instructed by the Departmental Solicitor's Office. The Tribunal received:
   - oral evidence from Mr Reilly;
   - oral and written evidence from Mr Bill Miller, an experienced civil engineer and project manager for the Scheme;
   - written evidence from Ms Agnes Sheridan, an environmental scientist, in collaboration with Dr Michael Bull, an air quality specialist, Mr Simon Hetherington, a noise specialist;
   - written evidence from Mr Stephen Hall in conjunction with Mr Ross Cullen, both experienced chartered civil engineers; and
   - written and oral expert evidence from Mr David McKinney and Mr Robert McCann, both experienced chartered valuation surveyors. Mr McKinney also had residential estate agency experience.

7. A hearing took place on 30th May 2012.

8. The Tribunal viewed the property and was shown the extent of the proposed land take, the proposed layout for the road and for the remodelled access.

Positions

9. The parties agreed that the issues were primarily matters of fact and opinion.

10. The Surveyors, Mr McKinney and Mr McCann, had prepared a joint memorandum. They agreed that the claimants had made a reasonable endeavour to sell their property at an appropriate marketing price. They disagreed as to whether the inability to sell was as a result of the proposed Scheme. They also disagreed as to whether there would be material detriment to the remainder of the property which is not to be vested.

Discussion

11. The tests for determining "material detriment" have been the subject of some debate in the past and, of particular relevance in this case, include considering whether the part could be taken without seriously affecting the amenity or convenience of the remainder or whether the extent of the effect on value of the remainder would be material or serious. The Tribunal must take into account the effect of the whole Scheme.

12. In this case, on the issue of material detriment, the focus of the Reillys' expert, Mr McKinney, was on amenity and the focus of the Department's expert, Mr McCann, was on the effect on value. On the issue of the inability to sell, Mr McCann was of the view that it flowed from the current difficult market conditions and the unattractiveness of the siting of the house so close to the existing road, rather than the Scheme itself.

Material detriment

13. The Department's proposals were for a high speed dual carriageway with no cross over facilities except at four major junctions. Based on his local knowledge Mr Reilly suggested that the predictions for the likely volume of traffic to be attracted to a dual carriageway were somewhat low. But otherwise the expert opinions that the Scheme would improve road safety and not result in any significant change in air quality, noise (assuming the installation and maintenance of low noise surfacing on the carriageway) and ground or airborne vibration were not significantly challenged.

14. Private accesses to the new dual carriageway would be restricted to the junctions and adjacent side roads or left-in/left-out for one direction of travel only. There would be no right-

turn traffic movements in and out of the property across the central reservation. So at this property journeys to the south would involve first travelling north to the A44 (Drones Road) junction, a round trip of about 1.2 miles, and from the north would involve travelling south to the Drumadoon Road junction before travelling back north to the property, a round trip of about 1.3 miles. Mr McCann accepted that there would be a degree of inconvenience and expense and, having considered journey times, fuel etc., concluded that the effect on the value of the property would be of the order of a few percent.

15. The direct access from the property onto the main road would be closed and replaced with a new access via a short private drive onto a minimal length of new side road that would also provide access to two neighbouring agricultural holdings. Mr McCann accepted that the shared access would adversely affect the value of the property and, based broadly on his knowledge of adjustments made in domestic rating cases for shared accesses, concluded that the effect on the value of the property would be of the order of five percent. Mr McKinney was of a different view. In his experience most potential buyers of homes in rural areas did not wish to share the lane to a house with agricultural users – they liked to see farm tractors but not on their lane. In his view the sharing of the access with agricultural users would be a very significant change and have a much more severe adverse impact.

16. The area to be taken would be only 0.0069 Ha (0.017 acres) but that would reduce the depth of the plot at the front of the house by about one third to about 4.2 metres at the northern corner and about 3.6 metres at the southern. The edge of the actual carriageway would be no closer to the house than the edge of the existing carriageway – running traffic would be further away but along the verge there would be a crash barrier and a public footpath where before there was none. This would run from a proposed bus stop at the A44 (Drones Road) junction to the north to another at Drumadoon Road junction to the south. There were only two other houses that would be on this section of footpath but there was already some use of the existing road and verges by pedestrians, including joggers and a walking group. The usual accommodation works relating to fencing etc. would be provided but, because the house was below road level and the new boundary would be so close to the house, any screening of sufficient height to protect the privacy of the front garden and ground floor rooms would have an adverse impact on the daylight in and attractiveness of those rooms. Based on settlements in other cases of injurious affection, Mr McCann concluded that the effect on value would be of the order of 5%.

17. Based on the expert evidence that road safety would be improved, Mr McCann considered that such improvement would offset the effect on value of these matters and the net extent of the injurious affection or detriment would be of the order of 10 per cent. The engineering and

environmental expert evidence was not challenged but based on his first hand knowledge, Mr Reilly would not agree that the proposed change from the existing access arrangements, which had been accident-free for 15 years and which would include slow and perhaps muddy farm machinery joining a fast dual carriageway in all weathers, were likely to reduce the risk of accidents.

18. Mr McKinney's approach was based mainly on an overall view of the effect of the Scheme rather than analysis of the individual factors. In his opinion there would be a radical change in the character of the property. It would be changed from a rural house on the roadside of a busy 2-lane road to a house overwhelmed by the presence of a 4-lane fast dual carriage way - only metres away. In his opinion the dominance by the new road also was confirmed by a photo montage that had been prepared by the Department. Mr McKinney's opinion was based on his long estate agency experience.

19. It was clear that there were likely to be both advantages and disadvantages flowing from the Scheme as it affected this property and the net effect on value of many aspects is debatable. The Tribunal doubts whether Mr McCann's approach, which was based on assessing the effect on value of discrete aspects, adequately captured, in this case, the impact of the Scheme as a whole, particularly the presence of a new 4-lane fast dual carriage way in close proximity to the family house. Overall the Tribunal prefers Mr McKinney's approach and primary conclusions. His view that the effect would include a highly detrimental change in character to the house as a consequence of the nature, scale and proximity of the new road was clearly supported by the impression gained by the Tribunal from its visit and the photo montage. The Tribunal accepts that the effect of this Scheme on this property would be exceptional, the part required for the Scheme could not be taken without seriously affecting the amenity or convenience of the remainder and the effect on value of the remainder probably would be material or serious.

20. The Tribunal concludes that there would be material detriment to the remainder of the property which is not to be vested.

Inability to sell

21. The question is whether the inability to sell was as a result of the proposed Scheme. In some cases that will depend very much on the degree of material detriment but that may not always be the case – there may be other reasons why a property has not sold.

22. Mr McKinney's firm, as the selling agent, had not referred to the Scheme in their brochures, web or printed advertisements. But, although the detail of the particular scheme would not

have been common knowledge, there would have been a general awareness of plans for the A26.

23. It was accepted that the residential property market had peaked around the summer of 2007 and that the value and volume of those sold since then had been in substantial decline. Although properties were being agreed for sale in the locality many properties had been on the market for a very long time. At June 2011, within 5 miles of the subject, there were 28 properties on the market, of these 7 had been on the market for more than 2 years, 11 between 1 and 2 years, and 9 for less than a year. Within the same area, sales in rural locations in 2010 were one fifth of what they were in 2006. Mr McKinney accepted that, in the difficult market, the effect of disabilities could be magnified. Mr McCann drew attention to another house similarly close to the road that had been sold. Mr McKinney said that it had been of an entirely different character – it had been a small semi-detached house in poor order, sold at a poor price, extended, refurbished and put back on the market - and was still on the market.

24. As a result of internet marketing of residential properties, persons may 'virtually' visit a property and carry out extensive research about it and its locality without communicating directly with the selling agent. In consequence, selling agents may not have the opportunity to obtain the same level of feedback from prospective purchasers that they used to get in the past. Mr McKinney's firm had however recorded some comments from those in the market who had asked to view the property and had been informed of the Scheme. Only one said he was put off by the Scheme. Three thought the house was already too close to the road (one referring to noise). There may have been others who informally expressed a view in conversation in the agent's office.

25. On balance the Tribunal is not persuaded that there is sufficient evidence that this already difficult property, so close to a busy road, probably would have been sold in this difficult market but for the proposed Scheme.

26. The Tribunal concludes that the Reillys have not shown that in consequence of the proposed scheme, they have been unable to sell their interest except at a price substantially lower than that for which it might reasonably have been expected to sell if there were no scheme. Therefore the Department's objection to the blight notice is upheld. But the Reillys have shown that the part that the Department proposes to acquire as part of the Scheme cannot be acquired without causing material detriment to the house.

ORDERS ACCORDINGLY

31st August 2012 **Michael R Curry FRICS Hon.Dip.Rating**
LANDS TRIBUNAL FOR NORTHERN IRELAND

Appearances

Claimants: John Coyle BL instructed by James L Russell & Son, Solicitors.

Respondent: Donal Lunny BL instructed by the Departmental Solicitor's Office.