

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

IN THE MATTER OF A REFERENCE

R/12/2010

BETWEEN

MR & MRS DAVID THOMPSON – APPLICANTS

AND

MR & MRS PAUL TWEMLow – RESPONDENTS

Re: 24 Old Cultra Road, Holywood

COSTS

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

Background

1. The applicants owned and occupied a dwelling at 24 Old Cultra Road, Holywood. They proposed to demolish and replace the existing dwelling and erect an additional dwelling. The respondents owned and occupied a neighbouring dwelling at 22 Old Cultra Road and were entitled to the benefit of covenants restricting development on the applicants' land.
2. The applicants applied to this Tribunal for modification of the covenants so as to permit development in accordance with their plans. The respondents opposed modification. Eventually, as a result of changed circumstances, the applicants agreed to withdraw their application on terms that they would pay the respondents' reasonable costs. The parties have been unable to reach agreement on such costs and have referred that issue only to this Tribunal for determination.

Procedural Matters

3. The Tribunal received written submissions from:
 - Mr Ciaran Tully of Tully & Co, solicitors on behalf of the applicants; and
 - Mr Richard Palmer of Peden & Reid, solicitors on behalf of the respondents.

Positions of the Parties

4. Mr Palmer claimed costs as follows:

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| a. Peden & Reid, Solicitors | £13,750 plus VAT; |
| b. David Thompson, Estate Agent | £13,200 plus VAT; |
| c. Brett Lockhart QC | £3,000 plus VAT; and |
| d. Peter Monaghan, Architect | £88.13 incl VAT. |
5. Mr Tully suggested that the hourly rate adopted for solicitors' costs was too high and too much time was spent on the case by both the solicitors and the estate agent. He questioned the necessity for the architect's work.
6. Note: Mr David Thompson, Estate Agent was a partner in McConnell, Chartered Surveyors and not connected with the applicants.

Discussion

7. The rate adopted for Mr Palmer for solicitors' costs was £150 an hour. That was the rate set out in the terms of engagement agreed with his client. Mr Tully suggested that a more appropriate rate would be £100 plus an uplift for care and conduct but did not put forward any suggested uplift. Mr Tully also suggested that any uplift should not be applied to travelling time. The travelling time was not recorded but, given the location of the various venues, was likely to be modest. The Tribunal considers that the rate was high in the circumstances of this case which did not appear to raise any novel or difficult legal issues and considers £125 to be more proportionate and reasonable.
8. Mr Tully questioned the reasonableness of the amount of routine items (over 600 letters/emails and telephone conversations and, in addition to itemised attendances, "numerous miscellaneous attendances with the clients and Mr Thompson, Estate Agent"). He suggested that the time allowed for dealing with outgoing routine items should include dealing with the incoming item. The Tribunal accepts that the time spent on itemised attendances and on experts' reports was justified. However the Tribunal considers there is merit in the other criticisms and, although in response Mr Palmer pointed out that he had abated the time expended by approximately 15% in calculating his fees and he may have provided his client with an exceptional level of service, the Tribunal considers some further abatement is justified in determining what is a reasonable basis for recoverable costs. The Tribunal concludes that £10,000 plus VAT would be appropriate.
9. The evidence of Mr Thompson, Estate Agent, would have been central to the case but the Tribunal agrees with Mr Tully that the time he devoted to some aspects appears

excessive eg the time spent surveying distances to the proposed new dwelling, taking photographs, discussions with the architect and client, and peripheral matters such as considering a Tree Preservation Order and research into other documents of title. But the Tribunal rejects the suggestion that the time he spent on research relating to planning decisions was unreasonable as such material would have been a relevant consideration. He may have provided his client with an exceptional level of service but the Tribunal considers that 60 hours would be reasonable as the basis for recoverable costs in the circumstances of this case. Mr Thompson, Estate Agent, had long experience of dealing with restrictive covenants and Mr Tully did not challenge his hourly rate. The Tribunal therefore concludes that £7,500 plus VAT would be reasonable.

10. Mr Tully did not strenuously oppose senior counsel's fee and the Tribunal is content to accept that as reasonable.
11. Although the amount claimed is very small, the Tribunal is not persuaded that it was necessary or reasonable to instruct an architect in this case.

Conclusions

12. The Tribunal therefore concludes that the respondents' reasonable costs are:
 - a. Peden & Reid, Solicitors £10,000 plus VAT;
 - b. David Thompson, Estate Agent £7,500 plus VAT;
 - c. Brett Lockhart QC £3,000 plus VAT; and
 - d. Architect Nil.
13. The Tribunal awards a lump sum of £20,500 plus VAT.

ORDERS ACCORDINGLY

13th September 2013

**Mr Michael R Curry FRICS Hon.Dip.Rating
LANDS TRIBUNAL FOR NORTHERN IRELAND**