

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/14/2021

BY

HENDERSON GROUP PROPERTY LIMITED - APPLICANT

Re: 94-100 Sunnyside Street, Belfast

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

Background

1. Henderson Group Property Limited (“the applicant”) is the registered owner of premises located at 94-100 Sunnyside Street, Belfast (“the reference property”). The reference property is held under a fee farm grant dated 31st May 1934 between Harold Vivian Coates of the one part and Joseph McMaster of the other part. The applicant became the registered owner of the fee farm grant on 15th July 2016.

2. The applicant had previously obtained planning permission LA04/2016/2543/F to “demolish the existing buildings and construct two retail units, six apartments and associated access parking, landscaping and other operational development”. The reference property is, however, subject to impediments contained in the fee farm grant which restrict development:

“AND ALSO that he/the Grantee his heirs and assigns will not at any time hereafter without the previous licence in writing of the Grantors use exercise or carry on or permit to be used exercised or carried on or followed in or upon the said hereby granted premises or any part thereof the trade or business or occupation of beershop or tavern keeper spirit dealer or vendor of intoxicating liquors of any kind or description under pain of forfeiture of this Grant.

AND ALSO will not carry on or suffer upon the said hereby granted premises or any part thereof or in any buildings to be erected as aforesaid thereon any offensive trade or business or occupation or other thing which shall or may become or grow to be a public nuisance or a danger disturbance annoyance or grievance to the Grantors or to any

occupier of land or buildings for the time being in the neighbourhood of the said hereby granted premises.”

3. The applicant seeks modification of the impediments to allow for the opening of an off licence at the supermarket/convenience store located at the reference property.

Procedural Matters

4. The applicant was represented by Mr David Wheeler, Solicitor, of Hewitt & Gilpin Solicitors. Mr Wheeler has helpfully submitted an affidavit detailing his attempts to contact any possible beneficiaries of the restrictive covenants, but to no avail. The Tribunal is satisfied that all reasonable attempts have been made.
5. On behalf of the applicant, the Tribunal has also received an expert report from Mr Stephen Boyd MRICS dealing with the issues contained in Article 5(5) of the Property (Northern Ireland) Order 1978 (“the Order”), which the Tribunal is statutory bound to take into account when considering modification of a covenant. Mr Boyd is an experienced Chartered Surveyor and the Tribunal is grateful to him for his helpful submission.

The Statute

6. Article 5(1) of 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.”

7. 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.”

8. Article 5(5) of the Order specifies the matters which the Tribunal must take into account, together with any other reasonable circumstances. These will now be considered in detail.

The Article 5(5) Issues

Mr Boyd

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

9. The impediments were created by the grant of the lease dated 31st May 1934. I have no direct knowledge of the circumstances in, or the purposes for which the impediments were created. However, the circumstances appear to have been the grant of three plots of land for the purpose of development and it is likely that the purpose was to exercise some control over the amenity and character of the area.

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

10. In this case I generally define the neighbourhood as being enclosed by the River Lagan to the north and west, the Ormeau Road to the east and Annadale Avenue to the south. Ordnance survey maps dating from 1931 and the present day have been submitted and these maps show the progression of development in the neighbourhood between these years.
11. In 1931, essentially, the subject lands comprised undeveloped greenfield lands, with some development to the east near Ormeau Road and the remainder comprising a building yard and two brick works with clay pits to the south.
12. I have ascertained that, with the exception of a workshop (53a), an office (55), the Rosario National School (70), a house with motor shop (110a) and a brickworks (80), all of the properties in Sunnyside Street, around 1934, were houses.

13. At some time, the date of which is not clear, the subject lands were developed with high density residential. The former brickworks have also been developed as predominately residential but they also include commercial and community uses, such as a supermarket at Annadale, trading as Dunnes Stores and Wellington College.
14. At present day the character remains one of predominately residential in nature but there are now some 13 properties in commercial use along Sunnyside Street.

5(5)(c) Any public interest in the land as exemplified by any development plan adopted under Part 3 of the Planning Order (Northern Ireland) 1972

15. No public interest issues arise. The Tribunal, however, considers the granted planning permission to be a public interest in the land.

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

16. Research of the planning register shows that there is a clear trend of planning permissions being granted for residential development but also for change of use to commercial along Sunnyside Street. Of 49 planning permissions listed 21 incorporate consents for commercial use.
17. For the subject planning permission the approval states that the retail units would help meet a local need within the established residential area. Condition 20 of the planning approval sets out and restricts the acceptable retail uses and these include food, drink and alcoholic drink.

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. So far as I can ascertain the impediments secure no practical benefit to any person entitled to the benefits of the covenants.

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

19. Nothing arises under this Article save that the Lessees obligation to expend at least £5,000 in the erection of dwelling houses which appears to have been met.

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

20. I am not aware of any such agreement or implication.

5(5)(h) Any other material circumstances

21. So far as I can ascertain there are no other material circumstances bearing upon the issues. I understand the beneficiaries of title have not been identified.

Mr Boyd's Conclusions

22. Mr Boyd concluded:
- (i) The covenant was created in 1934 upon the grant of the lease to enable development of greenfield lands.
 - (ii) The covenant was created for the benefit of the then lessors and is almost certain to have been for the purpose of exercising some control over the amenity and character of the area.
 - (iii) There has been considerable additional development and an increase in commercial uses in the neighbourhood since 1934.
 - (iv) The impediments unreasonably impedes the use and enjoyment of the land to the extent that they prevent the applicant from using the land in accordance with the planning permission.
 - (v) A consideration of the matters set out in Article 5 of the Order shows no apparent, present purpose for the impediments and the impediments do not appear to secure a practical benefit to any person.

- (vi) In my expert opinion, on the basis of the facts, the covenants should be extinguished or modified to the extent necessary to enable use in accordance with the planning permission or any variation thereof.

The Tribunal's Conclusions

23. The Tribunal notes the contents of Mr Boyd's submissions. The main issue for the Tribunal is do the impediments achieve some practical benefit and, if so, is it a benefit of such weight to justify their continuance without modification or extinguishment.
24. Based on Mr Boyd's submissions and in the circumstances of the subject reference, the Tribunal is satisfied that the subject impediments, if not modified or extinguished, would unreasonably impede the applicant's use and enjoyment of the reference property. The Tribunal agrees with Mr Boyd, the impediments do not confer any practical benefit on any person legally entitled to the benefit.

Decision

25. Having considered Mr Boyd's report dealing with the statutory issues in Article 5(5) of the Order, the Tribunal orders modification of the impediments to allow for off licence use on the reference property.

Compensation

26. The Tribunal may award compensation in accordance with Article 5(6)(b) of the Order. Mr Boyd's opinion was that modification of the covenants would not result in loss or damage to any person legally entitled to the benefit of the covenants nor were the impediments likely to have had any material affect in reducing the consideration for the land in 1934. For these reasons, in the event of modification or extinguishment of the impediments, Mr Boyd did not consider that any compensation was due.

27. The Tribunal agrees with Mr Boyd, the covenants do not confer any practical benefit on any person and as such no compensation is payable.

Objectors

28. Due to current 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 period of four weeks for any objectors to come forward, prior to issuing the Order of the Tribunal.

12th August 2022

Henry Spence MRICS Dip.Rating IRRV (Hons)

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