

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**PLANNING BLIGHT (COMPENSATION) (NORTHERN IRELAND) ORDER 1981**

**IN THE MATTER OF A REFERENCE**

**R/32/2012**

**BETWEEN**

**SEAMUS MURPHY – CLAIMANT**

**AND**

**NORTHERN IRELAND HOUSING EXECUTIVE – RESPONDENT**

**Re: 36 Stratheden Street, Belfast**

**COSTS**

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

**Background**

1. The subject property is located in part of Stratheden Street which is included in a proposed redevelopment scheme known as RDA145 Upper New Lodge.
2. On 16<sup>th</sup> July 2012 the claimant applied to the respondent to have his property purchased in advance of vesting under the Planning Blight (Compensation) (Northern Ireland) Order 1981. The respondent accepted the application on 5<sup>th</sup> October 2012 and negotiations commenced shortly thereafter. A written offer was forwarded to the claimant's agent on 29<sup>th</sup> October. This was rejected and an application to the Lands Tribunal was submitted the following day.
3. There were several mentions before the Tribunal:- 26<sup>th</sup> November 2012, 7<sup>th</sup> January 2013 and 11<sup>th</sup> March 2013. At the January mention the Tribunal issued directions for the submission of expert evidence and at the March mention a date was fixed for hearing. Following a revised and acceptable offer from the respondent, however, the claimant's agent wrote to the Tribunal on 22<sup>nd</sup> March applying for a withdrawal of the application "save as to costs" and reserving the right to apply for costs in the absence of agreement.
4. It is these costs which are the subject of this reference to the Tribunal.

**Procedure**

5. Written submissions were received from Mr Joe Allen, Chartered Surveyor and Cunningham & Dickey, Solicitors.

## Positions

6. Mr Allen submitted that in October 2012 negotiations were at an impasse and in order to progress the claimant's application for appropriate compensation he had no option other than to refer the matter to the Tribunal. He considered therefore that he was entitled to his costs of the reference even though the application was subsequently withdrawn following agreement between the parties.
7. The respondent's solicitors submitted that the application to the Tribunal was premature as negotiations were ongoing and the subsequent withdrawal of the claimant was tantamount to an acknowledgment of defeat. In their opinion costs should follow the event and the respondent should be entitled to its costs from the claimant or at the least the claimant should not be entitled to his costs from the respondent.

## Legal Basis

8. Rule 33 of the Lands Tribunal Rules (Northern Ireland) 1976 ("the Rules") provides that the costs of and incidental to any proceedings shall be at the discretion of the Tribunal.
9. Rule 34 further provides that in the absence of consent to a proposed withdrawal by all the parties to the proceedings, a party wishing to withdraw shall apply in writing to the Register under the provisions of Rule 12 that the Tribunal may permit withdrawal in such terms as to costs as it sees fit.

## Case Law

10. The Tribunal was referred to the following cases:
  - RTZ Pension Property Trust Ltd v ARC Property Developments Ltd & Anr (1999) 1 All ER 532 CA
  - Dolway Walkington v James Orr & Ella Orr (R/4/2000)
  - Purfleet Farm Ltd v Secretary of State for Transport, Local Government and the Regions [2002] EWCA Civ 1430

In Purfleet Farms Potter LJ at p374 stated the presumption that, under the compulsory purchase code, a claimant should be entitled to its costs in the absence of some special reason to the contrary. A tribunal not allowing such costs must be able to identify circumstances:

"in which the tribunal considers that an item of costs incurred, or an issue raised, was such that it could not, on any sensible basis, be regarded as part of the reasonable and necessary expenses of determining the amount of the disputed compensation.

... in which the claimant's conduct of, or in relation to, the proceedings has led to an obvious and substantial escalation in costs over and above those costs which it was reasonable to incur in vindication of his right to compensation."

Purfleet Farms was subsequently approved in the Blakes Estate case

- Brooks v Northern Ireland Housing Executive (R/27/2007)

"(3) There were two issues. The first was whether the reference to the Tribunal was premature..."

And

"(4) The point in time at which costs should be regarded as costs of and incidental to the proceedings (see Rule 32 of the Lands Tribunal (NI) Rules 1976) is a matter of judgment in all the relevant circumstances. In many cases it will depend on the question of when the dispute took on the character of contentious litigation or when the parties might no longer reasonably be expected to bear their own costs. In some of the work of the Tribunal the issue has to be addressed in the context of presumptions – for example ... in compulsory purchase cases, the acquiring authority will be presumed to be liable for the reasonable costs of a person whose land has been acquired."

- Tom Cotter & Caoimhe Cotter v Department for Regional Development (R/33/2008)
- Hanna Brothers v The Commissioner of Valuation (VR/12/2010)
- Madeline Johnston v Northern Ireland Housing Executive (R/48/2010)

The Tribunal also derives assistance from:

- Dawn Bell v South & East Belfast Health & Social Services Trust (R/10/2002)

"(5) However the Tribunal is of the view that in compensation references, the starting point is the presumption that the cost of determining disputed compensation should fall on the authority to whose use of compulsory powers the need to determine compensation was attributable. That has been the position since the time of the Land Clauses Consolidation Acts

1845 and probably before that. That view is wholly consistent with the principle of equivalence.”

And

“(7) ... The issue in the instant case was not about amount but, for example in regard to the consequences of offers to settle, special rules were made in the Acquisition of Land (Assessment of Compensation) Act 1919 at Section 5 and the subsequent Land Compensation (NI) Order 1982. And the Tribunal otherwise has a wide discretion. (See e.g. Emslie & Simpson Ltd v Aberdeen DC; English Property Corporation v Royal Borough of Kingston-Upon-Thames (1998) 77 P&CR 1; and the discussion in Purfleet Farms).”

- Donal & Vivienne O’Neill v Northern Ireland Housing Executive (R/49/2009)

“(13) The Tribunal agrees with Mr Gibson’s BL suggestion that in this case, although the claimants lost on the issue, there was no special reason to depart from the Purfleet presumption and the Claimants should have their reasonable costs.”

### **Discussion**

11. As in Purfleet Farms, Bell, Brooks and O’Neill the starting point for the Tribunal is the assumption that the costs of determining the disputed compensation should fall on the acquiring authority. Is there any reason in the subject reference to depart from that assumption?:-

#### ***Premature***

12. The respondent considered the reference to the Tribunal to be premature as negotiations were ongoing and their written offer of 29<sup>th</sup> October invited a response from the claimant’s agent and further discussions. The claimant’s agent did not take up the offer and made an application to the Tribunal the following day.

13. Mr Allen submitted that following acceptance of the blight notice he entered into negotiations with the respondent’s agent on 25<sup>th</sup> October 2012. He considered, however, following the meeting it was clear to him that the views of the two experts in relation to the choice of comparative evidence, sales evidence v settlements, were irreconcilable and he had no option other than to make reference to the Tribunal. In order to do so he requested a written offer from the respondent’s agent.

14. A mention was held before the Tribunal on 26<sup>th</sup> November and the parties consented to allow additional time for further negotiations. A meeting took place between the experts on 28<sup>th</sup> November but neither side had changed their stance and a further mention was held on 7<sup>th</sup> January 2013. At this mention the Tribunal made directions for the submission of expert evidence, prior to setting a date for hearing.
15. The Tribunal considers Mr Allen's application to the Tribunal to have been slightly premature as the respondent's written offer of 29<sup>th</sup> October had invited a response and further discussions. It was clear to the Tribunal, however, at the mention on 7<sup>th</sup> January negotiations had reached an impasse and directions were issued. At this point the dispute had taken on the character of contentious litigation.

***Withdrawal***

16. The respondent submitted that a withdrawal by the claimant was tantamount to a defeat and costs should follow the event. At the very least, it was submitted that the respondent should not have to pay the claimants costs.
17. Mr Allen considered that if the matter had not been referred to the Tribunal the claimant would not have succeeded in obtaining a significantly higher figure of compensation than that on offer prior to the application to the Tribunal. On that basis he submitted that the respondent should pay the claimants costs.
18. The Tribunal agrees with Mr Allen and considers that a withdrawal on the basis of the circumstances in the subject case does not displace the Purfleet assumption that the costs of determining the disputed compensation should fall on the acquiring authority.

**Conclusion**

19. The Tribunal awards the claimant his reasonable costs in the reference on and from 7<sup>th</sup> January 2013.

**ORDERS ACCORDINGLY**

**9<sup>th</sup> October 2013**

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