

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**LAND COMPENSATION (NORTHERN IRELAND) ORDER 1973**  
**LAND COMPENSATION (NORTHERN IRELAND) ORDER 1982**

**IN THE MATTER OF A REFERENCE**  
**R/35/2010**  
**BETWEEN**  
**PHYLLIS McLAUGHLIN - CLAIMANT**  
**AND**  
**DERRY CITY COUNCIL – RESPONDENT**

**Re: 116 Donnybrewer Road, Londonderry**

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

**Introduction**

1. In 2003 the Respondent decided to extend Derry City Airport. A vesting order, compulsorily acquiring land including 116 Donnybrewer Road, the Claimant's home, became operative in August 2007. The parties were unable to agree compensation and the matter was referred to this Tribunal.

**Procedural Matters**

2. The Tribunal received:
  - i. Written and oral evidence from Ms Phyllis McLaughlin;
  - ii. Written expert evidence from Mr Joe Allen, Mr Elliot Reynolds and Ms Michelle Henry, all experienced Chartered Surveyors; and
  - iii. Written submissions from Mr Keith Gibson BL and Mr Francis O'Reilly BL.

**Background**

3. The property at 116 Donnybrewer Road was a house that was part of a farm previously owned by the Claimant's father, Bernard McLaughlin and bequeathed to the Claimant's brother, Brian McLaughlin by virtue of his father's Will, subject to the following interest:

"Subject to the right of my daughter, Phyllis McLaughlin to reside in the dwelling house at Donnybrewer for the term of her life".

4. The Will was executed in 1977 with the Testator dying in or around 1980.
5. Mr Brian McLaughlin's claim has been settled. The Claimant, Ms McLaughlin was not involved in the process of reaching that settlement.
6. On foot of the Vesting, she vacated the property in or about 2008 and since that time has been living at a detached property at Eglinton ("the alternative accommodation") paying a rent of £9,600 a year.

### **Positions**

7. The parties agreed:
  - i. the market value of a freehold interest with vacant possession in the house at 116 Donnybrewer Road at the valuation date was £262,500;
  - ii. the rental value of the house then was £6,500 a year; and
  - iii. the then mean expectation of life of a person such as the Claimant was 17 years.
8. Mr Gibson BL suggested, primarily, that compensation should not be assessed on a market value basis but should instead be based on a lifetime annuity to provide a fixed monthly income to cover the rent in the alternative accommodation (£9,600 a year). That supported a claim in the region of £180,000. In response to the Tribunal he accepted that if such an approach were adopted, more expert actuarial expert evidence might be required.
9. Mr O'Reilly BL suggested that compensation should be based on two elements:
  - a. compensation for the loss of rent-free accommodation; and
  - b. as the sum of a. above and the value of Mr Brian McLaughlin's interest, subject to her right of residence, would be less than the value of the freehold property with vacant possession, a share of the additional value that would be released on a "merger of their interests".That would support compensation amounting to £97,250.
10. Any claim for the usual domestic removal disturbance items remains outstanding.

### **Discussion**

11. The Tribunal was referred to:
  - i. The Settled Land Acts 1882 – 1980;
  - ii. The Land Registration Act (Northern Ireland) 1970;

- iii. The Land Acquisition and Compensation (Northern Ireland) Order 1973;
- iv. The Land Compensation (Northern Ireland) Order 1982;
- v. National Bank v Keegan [1931] IR344;
- vi. Jones v Jones and others (2001 - unreported) ChD, Girvan J;
- vii. Re: Walker's application [1999] NI84;
- viii. Bracken v Byrne and another [2005] IEHC 80; and
- ix. Kerr v NIHE (2013) R/37/2010.

12. Article 6(1) of the Land Compensation (Northern Ireland) Order 1982 provides:

“Compensation in respect of any compulsory acquisition of land, shall, subject to the provisions of this Order and any other enactment, be assessed in accordance with the following Rules:-

(1) ...

(2) The value of land shall, subject to Rules 3-6, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise;

(3) ...

(4) ...

(5) ...

(6) The provisions of Rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of the land.”

13. Article 37 of the Land Acquisition and Compensation (Northern Ireland) Order 1973 provides:

“(1) Where a person is displaced from any land in consequence of—

(a) the acquisition of the land by an authority possessing compulsory acquisition powers;

(b)...

(c)...

(d)...

he shall, subject to the provisions of this Article, be entitled to receive a payment (in this Order referred to as a “disturbance payment”) from—

(i) where sub-paragraph (a) applies, the acquiring authority;

etc”

14. Ms McLaughlin had lived in the house all her life and after her father's death, she had carried out significant renovation works, probably mainly between 1982 and 1986. These included among other things: a new roof on part; replastering; replacement kitchen and bathroom; and improvements to the outhouses and garden.
15. Ms McLaughlin's interest in the house at 116 Donnybrewer Road was a right of residence and no more than that. It did not provide her with the sole or exclusive possession or occupation of the property. She did not have a "life interest" and could not exercise the powers granted to a life tenant under the Settled Land Acts 1882 – 1980. She could not have charged, or leased or sold her interest to a third party on the open market. But in this jurisdiction a right of residence confers a contractual licence which, in light of the modern willingness of the Court to protect contractual licences by equitable relief, in effect confers on the licensee a quasi-proprietary interest in the land beyond a mere personal interest to use the land in common with others. (See Jones v Jones & Ors (2001) and Re: Walker's application [1999].)
16. Correctly in the view of the Tribunal, Mr O'Reilly BL accepted that, for the purposes of this compulsory acquisition of her home, Ms McLaughlin had a compensatable interest in the property. As outlined earlier, he suggested that the assessment of her claim should be in two parts:
  - i. a sum to represent the value of Ms McLaughlin's rent-free contractual interest in the accommodation at 116 Donnybrewer Road; together with
  - ii. a share of the "merger value".
17. In regard to a sum to represent the value of Ms McLaughlin's rent-free contractual interest (i. above), both the rental value (£6,500 a year) and the mean expectation of life (17 years) as at the valuation date (August 2007) were agreed. Mr Reynolds adopted a yield of about 7% and arrived at a value of £62,000. Although Mr Allen did not agree with the approach in principle, his assessment would not differ materially. The Tribunal is content to adopt £62,000 as a sum to represent the value of value of Ms McLaughlin's rent-free contractual interest in the accommodation at 116 Donnybrewer Road.
18. The assessment of a sum to represent what she could expect to receive as a share of the merger value may be approached in three steps: the first step is to assess the value of the interest of Mr Brian McLaughlin. At this stage no regard is had to any

merger value that might be realised. The second step is to add that figure to the assessment of Ms McLaughlin's interest (as above) and compare the combined total with the value of a freehold interest with vacant possession. The difference is the merger value. The final step is to assess how that value should be shared between the two interested parties.

19. The market value of a freehold interest with vacant possession in the house at 116 Donnybrewer Road at the valuation date was agreed (£262,500). To arrive at a value assuming vacant possession would not be obtained until the end of the rent-free contractual occupation (estimated at 17 years); Mr Reynolds deferred that value for that term adopting a yield of about 4% and arrived at £130,000. Although Mr Allen did not agree with the approach in principle, he would have adopted a yield of about 9% which would support a value of about £60,500. The Tribunal prefers Mr Allen's yield because the conventional approach to the valuation of a reversionary interest has been to adopt a slightly higher yield than for that of the occupational interest. (Because of the modern lack of demand for valuation of life interests, older textbooks may be more helpful.) Mr Reynolds' approach, based on analysis of Bank of England Base Rates and gilts, was too far removed from the nature and scale of these circumstances and from what was likely to be in the minds of parties who might reasonably be expected to be involved.
20. The next step is to add that estimate of the value of Mr McLaughlin's interest (£60,500) to that of Ms McLaughlin's rent-free contractual interest (£62,000). That results in an estimated total value of the separate interests in the house at 116 Donnybrewer Road of about £122,500. But the market value of a freehold interest with vacant possession at the valuation date was agreed at £262,500 and so it follows that there was a "merger value" – the difference – of £140,000.
21. The final step is to assess how that merger value should be apportioned between Ms McLaughlin and Mr Brian McLaughlin. Mr Reynolds adopted a 50/50% split whereas Mr Allen would have adopted a 65/35% split. Mr Reynolds' estimate was based on long experience of sales of the reversionary interests to commercial sitting tenants within the extensive estate of the former Industrial Development Board. However, in the view of the Tribunal, those circumstances were rather different. They did not involve the occupier losing possession and, what is more in this case possession of her home, and also willingly selling at a level of value that would leave her in some difficulty in funding a replacement. An occupier in these circumstances would

reasonably be expected to drive a harder bargain for a buyout of his or her contractual interest. The Tribunal concludes that the split should be 65/35%. That results in a figure of £91,000 as Ms McLaughlin's share of the merger value.

22. The Tribunal therefore concludes that
  - i. a sum to represent the value of Ms McLaughlin's rent-free contractual interest in the accommodation at 116 Donnybrewer Road would be £62,000; and
  - ii. a sum to represent her share of the merger value that she could expect to receive on a sale of the property with vacant possession would be £91,000.That produces a total figure of £153,000.
  
22. Mr Gibson BL drew a parallel with circumstances in which the Court concludes that injunctive relief may not be practical or reasonable and then a value may have to be placed on a right of residence. He suggested that an annuity approach should be adopted and that there was support for that in National Bank v Keegan [1931], a decision of the Irish Supreme Court, and Bracken v Byrne and Another [2005], a decision of the Irish High Court. But the Tribunal does not agree that there is anything in those cases, both of which were in entirely different circumstances and under very different legislative provisions, that could safely be used as guidance in this case.
  
23. Mr Allen's approach would have been to rely on classifying Ms McLaughlin's interest as a "non-compensatable" interest such as is mentioned in Article 37 of the Land Acquisition and Compensation (Northern Ireland) Order 1973. He would then be driven to treat the purchase of an annuity as a disturbance claim but accepted the inherent difficulty of basing a disturbance claim directly on the value of land either under Article 37 of that order or Rule 6 of Article 6(1) of the Land Compensation (Northern Ireland) Order 1982. In the view of the Tribunal that difficulty is insurmountable. (See Kerr v NIHE (2013).) Even if an annuity approach should be adopted, and the Tribunal does not accept that it should, it would not reasonably be based on cost of exclusive possession of a much more valuable property.
  
24. The Tribunal assesses Ms McLaughlin's compensation at £153,000 together with an amount for the usual domestic removal disturbance items, such amount to be referred to the Tribunal if not agreed.

**ORDERS ACCORDINGLY**

**30<sup>th</sup> July 2013**

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