

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
LAND COMPENSATION (NORTHERN IRELAND) ORDER 1982
ELECTRICITY (NORTHERN IRELAND) ORDER 1992
IN THE MATTER OF A REFERENCE
R/49/2011
BETWEEN
MRS ARLENE CASSIDY – CLAIMANT
AND
NORTHERN IRELAND ELECTRICITY LIMITED – RESPONDENT

Re: Property at 3 Finsbury Crescent, Belfast

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

Background

1. Mrs Cassidy (“the claimant”) is the owner of a four bedroom, detached, one and a half storey house known as 3 Finsbury Crescent (“the reference property”) and which is located in the Cairnshill/Four Winds area, some 5 miles south of Belfast city centre. The house extends to some 175 square metres gross external area and a detached garage is located to the rear. A 275Kv Northern Ireland Electricity overhead power line, including 12 conductors (“the equipment”), runs just off the south east corner of the site, crossing over the garage.

2. The electric lines had been in place before the house was constructed in the 1980’s. At the date of purchase the reference property was subject to agreements to facilitate the presence of the electric lines under a Voluntary Wayleave agreement (“VWL”) made on 5th August 1968 and which was subsequently replaced by a similar VWL on the 3rd November 1992. Mrs Cassidy confirmed that she had purchased the house with the lines in place but received no discount from the developer at the time of purchase. These VWL

arrangements were terminated by a notice served on behalf of the claimant dated the 29th July, that led the respondent on the 4th March 2009 to make an application to the Department of Enterprise Trade and Investment (“DETI”) for a Necessary Wayleave (“NWL”) to retain its lines and that was granted on the 20th May 2011 (“the valuation date”).

3. The claimant now seeks compensation based upon the alleged diminution in market value of the reference property for the grant of the NWL, pursuant to schedule 4 paragraph 10 of the Electricity (Northern Ireland) Order 1992 (“the 1992 Order”) which gives the claimants a statutory right to “recover from the licence holder compensation in respect of the grant”.
4. This is the final case in an initial batch of four cases along similar lines and the subject case is the second one relating to residential property, the decision in the first residential case McKibben v Northern Ireland Electricity Limited R/52/2011 (“McKibben”), having already issued. The parties were agreed that similar issues arose in both cases, the main difference being that in McKibben there was a NIE pylon located in the side garden of the house.

Procedural Matters

5. The representatives were the same as for those in McKibben, Mr Niall Hunt BL represented the claimant and Mr Stephen Shaw QC represented the respondent. Expert valuation evidence was presented by Mr Frank Cassidy on behalf of the claimant and by Mr Kenneth Crothers on behalf of the respondent. Mr Cassidy and Mr Crothers are experienced Chartered Surveyors.
6. Mrs Arlene Cassidy gave factual evidence as to the impact of the respondent’s equipment on her property at 3 Finsbury Crescent.

Position of the Parties

7. The claimant sought compensation based upon the diminution in market value of the reference property caused by the grant of the NWL which permitted the continued presence of the respondent's lines over the reference property. Mr Cassidy had assessed the diminution in value at 7% of the un-encumbered value of the reference property.
8. The respondent's primary position was that there was no material difference between the "bundle of rights" under the previous voluntary wayleave and the new NWL. Consequently the respondent considered no compensation arose.
9. Alternatively, if the claimant's approach was correct, the respondent's opinion was that there was no market evidence to demonstrate there was a diminution in the market value of the reference property due to the grant of the NWL and as such no compensation was payable.

The McKibben Decision

10. In McKibben the Tribunal considered the respondent's primary approach to be flawed as it did not take account of the basic fact that the grant of the NWL had caused the claimants to lose their legal right to have the respondent's equipment removed from their property. The Tribunal subsequently decided that compensation, if any, should be based on the diminution in market value of the reference property caused by the grant of the NWL. This was assessed as the difference between the market value of the reference property with the equipment removed ("the un-encumbered value") and the market value with the equipment in place ("the encumbered value").
11. The facts in McKibben were that the reference property was over sailed by an 110Kv power line and a NIE pylon was sited in the claimant's side garden, some 4 metres from the house. The Tribunal having considered the market evidence submitted by both valuation experts decided that it was inconclusive as to the impact of the respondent's equipment. Using an intuitive approach,

however, the Tribunal awarded the claimants' compensation based on a 10% diminution in market value of the reference property. The Tribunal considered that the following factors would have an impact on the market value:

- (i) the visual impact of the pylon
- (ii) the "nuisance" factors associated with the equipment, as outlined by the claimants.
- (iii) the perceived health risks of living near such equipment. The Tribunal accepted that these had not been proven but there was a public perception which could impact on the value of residential properties.
- (iv) the lending policy of some of the institutions towards property where NIE equipment was present.

The Diminution in Market Value

The Un-Encumbered Value

12. Mr Cassidy assessed the un-encumbered value of the reference property on the valuation date at £250,000. This was based on the following market evidence which he submitted to the Tribunal:

- (i) 54 Finsbury Crescent, Belfast

Property Type	Detached
Bedrooms	4
Reception Rooms	3
Offer Status	Price agreed at £250,000 January 2011 (sale fell through)

No overhead conductors or towers.

- (ii) 20 Finsbury Crescent, Belfast

Property Type	Detached
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Bedrooms	4
Reception	2
Offer Status	Sold July 2011 for £249,000

No overhead conductors or towers.

(iii) 22 Finsbury Crescent, Belfast

Property Type	Detached
Bedrooms	4
Reception rooms	2
Offer status	Sold June 2012 for £225,000

No overhead conductors or towers.

13. Mr Crothers did not dispute Mr Cassidy's assessment of £250,000 for the un-encumbered value of the reference property and on that basis it is adopted by the Tribunal.
14. The Tribunal regrets, however, that Mr Cassidy did not explain how his comparable evidence led him to select a figure of £250,000 for the reference property. The Tribunal notes the difference of £24,000 in the sale prices of numbers 20 and 22 Finsbury Crescent, which Mr Cassidy considered to be broadly similar properties not impacted by the NIE equipment. Mr Cassidy did not detail the factors which had contributed to this difference in value.

The Encumbered Value – Mr Cassidy's Approach

15. In order to ascertain if there was a diminution in market value of the reference property due to the grant of the NWL, Mr Cassidy considered the following factors to be relevant:
 - (i) Comparables in the local area.
 - (ii) Comparables in West Belfast.
 - (iii) The approach to the matter in England.

- (iv) A previous Lands Tribunal case.
- (v) An academic study by Sally Simms and Peter Dent.
- (vi) Bank of Ireland published guidance note.

These were similar to the issues which Mr Cassidy considered to be relevant in McKibben.

(i) “Comparables in the Local Area”

16. Mr Cassidy provided the following evidence which, in his opinion, demonstrated that there was a difference between properties with overhead conductors and those not so impacted:

**Properties in Four Winds
Impacted by overhead lines**

Address	Value	Date Agreed/Sold
17 Windermere Drive	£140,000	May 2013
99 Ballylenaghan Heights	£145,000	August 2012
Glenholm Avenue	£151,000	May 2013

Not Impacted

Address	Value	Date Agreed/Sold	%
8 Windermere Green	£160,000	May 2012	12.5%
11 Laurelgrove Avenue	£155,000	May 2013	9.7%
39 Laurelgrove Avenue	£145,000	May 2013	3.45%
110 Laurelgrove Dale	£162,500	August 2012	10.76%

120 Laurelgrove Dale	£159,950	September 2012	9.3%
60 Baronscourt Road	£150,000	September 2012	6.45%
4 Delgany Avenue	£163,500	June 2012	7.6%
32 Burnside Avenue	£155,000	August 2012	2.6%

He further clarified his evidence:

“For the purposes of completeness the price of 120 Laurelgrove Dale was actually £153,000. If you compare this to 99 Lenaghan Heights at £145,000 the percentage reduction is 5.2% and not 9.3%.

The sale price of 8 Windermere Green has been revised to £162,500 and when compared with sale prices of 17 Windermere Drive this gives a difference in the prices of 13.8%. The average of this is 8.2%”.

17. Similar to his approach in McKibben, Mr Cassidy considered all of the percentage differences in value to be entirely down to the presence of the overhead lines. Mr Shaw QC suggested that there may be other factors at play such as condition, size of property, plot size, interior finish including bathroom and kitchen, state of repair and many more.
18. As in McKibben, in order to draw any meaningful conclusions from the small sample of sales submitted the Tribunal would have expected Mr Cassidy to have provided a much more in depth analysis of each of the sales. The Tribunal notes that there was no correlation between the percentage reductions, ranging from 3.45% to 12.5% and this would suggest that other factors could have played a part in the price differentials. The Tribunal agrees with Mr Shaw QC, many factors, other than overhead lines could have impacted on the sale prices and the onus was on Mr Cassidy to demonstrate they had not. The Tribunal considers that he has failed to do so and it was impossible to conclude, as Mr Cassidy did, that all of the percentage

differences were entirely down to the overhead lines. The Tribunal refers to paragraph 14 and in particular to the £24,000 difference in the sale prices of numbers 20 and 22 Finsbury Crescent both of which were “not impacted” properties and which were considered by Mr Cassidy to be broadly similar. Other factors, such as those suggested by Mr Shaw QC, must account for the difference in value between these properties. “The expert witness must disclose his detailed analysis to demonstrate the inferences he says can be drawn” (Janet Greer v Northern Ireland Housing Executive R/19/1996) and the Tribunal considers that Mr Cassidy has not provided sufficient detailed analysis to support his conclusions.

19. The Tribunal therefore considers this evidence to be inconclusive as it does not clearly demonstrate that there was a diminution in market value caused solely by the presence of overhead lines.

(ii) “Comparables in West Belfast”

20. Mr Cassidy provided the following evidence relating to sales of properties in West Belfast:

Impacted by overhead lines

Address	Value	Dates/Agreed/Sold
78 Gransha Park	£93,736	January 2013

Not Impacted by overhead lines

Address	Value	Date/Agreed/Sold	%
8 Shanlieve Road	£108,000	March 2013	13.2%
13 Benraw Road	£106,500	March 2013	11.9%
10 Glen Crescent	£100,000	March 2013	6.2%

Mr Cassidy considered all of these properties to be broadly similar and the percentage differences which he considered to be down solely to the presence overhead lines ranged between 6.2% and 13.2% (average 9.7%). Mr Cassidy considered that this evidence more or less fitted in with the pattern in the “Four Winds” area.

21. For the reasons outlined previously in its comments on the “Four Winds” comparables, the Tribunal considers that no meaningful conclusions can be drawn from this evidence.

(iii) “The Approach to the Matter In England”

22. Mr Cassidy submitted the following properties in England as comparables:

- (i) 37 Porrit Close, Banford, Rochdale
- (ii) 1 Spindlewood Close, Stratbridge, Great Manchester
- (iii) 36 Beechview Road, Kingsley, Cheshire

He confirmed that he had received details of these properties from his instructing company, Property Compensation Consultants Limited and had inspected them on the 20th November 2013. Mr Cassidy confirmed that the compensation settlements which were agreed in these cases ranged from 5% to 6.8% to reflect the proximity of power company overhead lines. He understood the relevant legislation in Northern Ireland to be identical to that which applied in England.

23. Mr Shaw QC did not consider this evidence to be market evidence rather he considered it recited details of the acquisition of easements in the fee simple, which had clearly different terms to the NWL in this jurisdiction, as the subject NWL conferred no property rights on the respondent whatsoever.

24. As in McKibben the Tribunal finds the transaction evidence relating to properties in England to be of little assistance for the following reasons:

- (i) This was not market evidence, rather the evidence related to transaction agreements between the property owner and the power company
- (ii) These transactions were for the acquisition of easements in fee simple rather than NWLS, which conferred no property rights.
- (iii) No in depth analysis had been carried out to compare these transactions with the subject NWL. In particular the different markets in which they were agreed and the effect of the different legal entities on value required much more detailed consideration.

(iv) “Previous Lands Tribunal Case”

25. Mr Cassidy directed the Tribunal to a 1979 rating appeal and as in McKibben the tribunal derived little assistance from this case. The onus was on the claimants to prove by market evidence that at the valuation date there was a diminution in market value of the reference property caused by the presence of the respondents overhead lines and this 1979 rating case provided little assistance in that regard.

(v) “An academic Study by Sally Simms and Peter Dent”

26. This 2004 study, which was also referred to in McKibben, found that in mainland UK the value of property within 100 metres of a high voltage overhead transmission line was reduced by 6% to 17%, an average of 11.5%. The Tribunal is not aware of any similar studies having been carried out in the jurisdiction but notes that the study established a general principle that NIE equipment could have an impact on value in mainland UK.

(vi) “Bank of Ireland Published Guidance Note”

27. This guidance note was also referred to in McKibben. Mr Cassidy considered that if a major lending institution like the Bank of Ireland would not wish to lend on properties where high power lines passed over the site this would have an impact on demand with a resulting decrease in price.
28. Mr Shaw QC submitted that Mr Crothers evidence showed that even in a recessionary market in 2011 there were 10 sales of impacted houses in the locality of the reference property and 14 sales of not impacted houses. He considered that it was fair to assume that all or most of these purchasers took a mortgage and made a choice, in a market awash with purchase opportunities to buy properties in the vicinity of NIE apparatus. He considered this to be the acid test.

Encumbered Value – Mr Crothers Approach

29. Mr Crothers referred to a spread sheet which he had previously submitted at the McKibben hearing and in which he collated all of the information available to him, including the claimant’s sales evidence and additional sales information from the “Four Winds” locality, provided by Land and Property Services (“LPS”).
30. Mr Crothers devalued all of the sales on a price per square metre basis which he considered would bring an additional factor of “size of property” in to the equation. In his opinion this additional analysis facilitated better comparison between properties. Lacking full particulars of not only the underlying circumstances of each sale but the individual characteristics of the houses, none of which were available to him or the claimants expert, he considered this to be the most objective analysis that may be undertaken.
31. He asked the Tribunal to note the following:
- The 2011 sales prices per m² of the “impacted” properties in Windermere were significantly higher than those achieved for “not impacted”

properties in Malvern. He considered Malvern to be close by and of similar style to Windermere.

- There was no demonstrable adverse effect of overhead lines on the “impacted” properties in Laurelgrove, the prices ranging from £1315 per m² and £1427 per m² compared to those not impacted, where the prices ranged between £1364 per m² and £1523 per m². By way of direct comparison the “impacted” house at 77 Laurelgrove Dale sold for £160,000. The “not impacted” houses of identical size at 16 Laurelgrove Crescent, 101, 110 and 120 Laurelgrove Dale achieved prices ranging between £153,000 and £165,000.
- The “impacted” semi-detached house at Finsbury sold for £1535 per m² compared to between £1378 and £1650 per m² for the 3 semi-detached Finsbury properties which were “not impacted”.
- At Croft Hill Cottages more or less the same price per m² was achieved for the properties cited, one “impacted” and one not.
- At Ballylenghan Heights the 2 “impacted” properties achieved a price per m² significantly above that achieved for the “not impacted” property.
- 10 Upper Malvern Crescent, which was “impacted” achieved a price of £1763 per m² compared to £1360 and £1790 per m² for similar detached bungalows in the vicinity which were “not impacted”.
- Glenholm Avenue was not dissimilar to 4 Delgany Avenue and each achieved a similar price per m². The former was “impacted”, the latter was not.

32. Based on this analysis Mr Crothers considered that whilst there were variances from case to case which could be explained by any number of factors, a view of the comparable evidence in the round did not demonstrate that the impact of oversailing electric lines was a cause of diminution in market value of the houses in the locality of the reference property. In his opinion this evidence

clearly demonstrated that the market value of the reference property had not been diminished as a result of the grant of the NWL.

33. Mr Cassidy considered the LPS data to be too blunt a tool to use as it was inaccurate and he referred the Tribunal to several inaccuracies in Mr Crothers database. He confirmed that he had been aware of their inaccuracies some two weeks prior to the hearing and the Tribunal regrets that he did not make Mr Crothers aware of his findings in this regard, in order that more accurate information could have come before the Tribunal.
34. Mr Cassidy noted in his expert report to the Tribunal that he could find “no discernable pattern” in the sales evidence provided by Mr Crothers but that was Mr Crothers point, that if there was no discernable pattern between “impacted” and “not impacted” houses in 2011, it was impossible to draw a sound conclusion that the presence of overhead lines caused a diminution in market value. As in McKibben the Tribunal considers the sales evidence and analysis provided by the valuation experts to be inconclusive as to the effect of overhead lines on value.

The Effect of the Equipment on the Claimant’s Property

35. Mrs Cassidy gave evidence as to the impact of the oversailing lines on her property. She considered the main issues to be the noise, the bird droppings and the “rumours” of the impact on health due to magnetic or electric fields. She also referred to the visual impact of having a pylon so close to the house and the lines over sailing the property. The Tribunal, however, cannot take into account the impact of the nearby pylon as it was not sited on Mrs Cassidy’s property and was not therefore subject to the grant of the NWL [see Stynes].

Discussion

36. Mr Cassidy’s position was that given there was an established and accepted principle in England of a percentage diminution in the value of property

because of the impact of overhead conductors he could see no good reason why this approach should not be adopted in Northern Ireland. This allied with his comparables in the Saintfield Road area and West Belfast led him to the conclusion that the diminution in value of the reference property due to the overhead conductors was between 5% and 9%, an average say of 7%. This was the basis of his £18,000 claim for compensation. The task for Mr Cassidy, however, was to prove conclusively by way of market evidence that on the valuation date the retention of the respondent's overhead lines had caused a diminution in market value of the reference property. For the reasons stated previously the Tribunal considers that he has failed to do so.

37. Mr Crothers approach was to ascertain whether there was any evidence that house prices in the vicinity of the reference property were reduced where the properties were impacted by electric lines. He considered that his analysis of all of the sales evidence, including Mr Cassidy's, demonstrated that there was not.
38. The evidence submitted by both experts demonstrated that many factors could have an impact on house sale prices and the comparable sales evidence showed that even fairly similar, "not impacted" properties could sell for significantly different prices. As in McKibben, without much more in-depth analysis of the sales evidence the Tribunal finds it to be inconclusive as to the impact of overhead lines on value.
39. In McKibben, however, even though the sales evidence was inconclusive, the Tribunal considered that a pylon in the side garden some, 4 metres from the house would have an impact on value. In those factual circumstances the Tribunal considered that compensation for the grant of the NWL should be based on a 10% diminution in the market value of the reference property. The circumstances in the subject case, that is overhead lines crossing the corner of the garden and the garage, are considerably less severe than those in McKibben. In the absence of conclusive market evidence to clearly

demonstrate that this set of significantly less severe circumstances would have an impact on market value, the Tribunal finds it inappropriate to award compensation in this case.

Conclusion

40. The Tribunal makes no award of compensation in respect of the grant of the NWL.

ORDERS ACCORDINGLY

16th October 2014

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

Appearances

Claimant: Mr Niall Hunt BL instructed by John F Gibbons, Solicitors.

Respondent: Mr Stephen Shaw QC instructed by NIE Solicitors.