

**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/5/2020**

**BY**

**EDWARD (NI) LIMITED – APPLICANT**

**Re: Plot of land 12A Albert Street, Lurgan and lands to the rere of 2-12 Albert Street, Lurgan**

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

**Background**

1. Edward (NI) Limited (“the applicant”) is the registered owner of lands at 12A Albert Street and lands to the rere of 2-12 Albert Street, Lurgan (“the reference lands”), contained in folio AR120258L, County Armagh. The applicant has been the owner of the reference lands since 27<sup>th</sup> December 2018.
2. The lands are subject to a lease dated 6<sup>th</sup> April 1931 for a term of 975 years from 1<sup>st</sup> May 1929, between Charles William Neill and John Ruddy.
3. The applicant has obtained planning permission, LA08/2020/1212/F, to erect two pairs of semi-detached houses. The reference lands are, however, subject to impediments which prohibit development:

“And the Lessee hereby covenants with the Lessor that he the Lessee will not without the prior Licence in writing of the Lessor erect or set up or suffer to be erected or set up on any part of the said premises hereby demised any messuage or buildings of any description other than and except the six messuages or dwelling houses already erected on the said premises or any dwelling houses that may be erected in substitution thereof and except outbuildings to be occupied and used therewith or suffer to be converted in to a dwelling house or use or cause or suffer to be used as a dwelling house and

building which may be erected and the said premises other than the dwelling houses already erected along the front of the said premises and not adjoining the building line.”

4. The applicant now seeks extinguishment of the covenant to allow for development in accordance with the granted planning permission.

### **Procedural Matters**

5. The applicant was represented by Ms Grace Rivers of Gallery & Campbell Solicitors, Lurgan. Ms Rivers provided an Affidavit detailing her efforts to identify any possible beneficiaries of the covenant, but to no avail. The Tribunal is satisfied that all reasonable efforts have been made.
6. In addition, on behalf of the applicant, Mr Simon McCullough MRICS had submitted an expert report dealing with the issues in Article 5(5) of the Property (Northern Ireland) Order (“the Order”), which the Tribunal must take into consideration. Mr McCullough is an experienced Chartered Surveyor and the Tribunal is grateful to him for his helpful report.

### **The Statute**

7. Article 5(1) of the Property (Northern Ireland) Order 1978 (“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.”

8. 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.”

9. Article 5(5) of the Order specifies certain matters which the Tribunal must take into account together with any other relevant circumstances.

### **The Article 5(5) Issues**

#### **Mr McCullough**

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

10. The impediment was created some 90 years ago at a time when the form and character of the residential area differed to that of the present day developments.

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

11. There has been a gradual change in the area over several years which has witnessed the development of garden space as residential development land. The proposed development scheme is in keeping with the change in character of the area and neighbourhood that has been ongoing.
12. Changes have included permission for the demolition and redevelopment of derelict property to provide modern residential dwellings and the residential development of unused lands.

#### **5(5)(c) Any public interest in the land**

13. In its current condition, the reference property detracts from the attractiveness of the neighbourhood and poses a potential health and safety risk to the surrounding residential area.
14. The Tribunal also considers the granted planning to represent a public interest in the land.

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

15. There have been several planning consents relating to the redevelopment of lands in the neighbourhood whereby the existing property has been demolished and redeveloped, or where lands surplus to the requirements of the owner have been sold and developed as residential sites. This is in keeping with the general change in the form and character of the area.

**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**

16. There have been comprehensive attempts made to identify any possible beneficiaries to the covenant. Following advertisements in local papers no objections have been raised.

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

17. Not applicable in the subject reference.

**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**

18. As the applicant has been unable to identify any beneficiaries this is not applicable.

**5(5)(h) Any other material circumstances**

19. The impediments created within the title were created at a time when the form and character of the neighbourhood around the reference property differed significantly from the present.
20. If the impediments were not modified or extinguished, this would be contradictory to changes that have been observed over the years with the development of surplus garden space, the redevelopment of unused commercial or ecclesiastical lands, or the conversion of existing residential dwellings to alternative residential forms.

21. In conclusion, Mr McCullough's opinion was that the proposed development of four semi-detached houses was in character with the surrounding area and due to the reference property at 12A Albert Street having been separated from the premises at 2-12 Albert Street for several years, there would be no loss of enjoyment to those properties if the lands were to be developed, even though they were not beneficiaries to the covenant. In addition there would be no loss of enjoyment to the Head Lessor.

### **Conclusion**

22. The issue for the Tribunal was did the impediment achieve some practical benefit and if so, was it a benefit of such weight to justify its continuance without modification or extinguishment?
23. Based on Mr McCullough's report and in the circumstances of the subject reference, the Tribunal is satisfied that the subject impediment, if not modified or extinguished, would unreasonably impede the applicant's use and enjoyment of the reference property. The Tribunal also considers that the subject outdated impediment does not confer any practical benefit to any person.

### **Decision**

24. Having considered in detail Mr McCullough's report on the issues listed in Article 5(5) of the Order, the Tribunal orders modification of the restrictive covenant to allow for development in accordance with the granted planning permission, LA08/2020/1212/F, or any variation thereof.

### **Compensation**

25. The Tribunal may award compensation in accordance with Article 5(6)(b) of the Order. The Tribunal considers, however, that modification of the covenant will cause no loss of practical benefit to any beneficiary and on that basis no compensation is payable.

## **Objectors**

26. Due to the current pandemic restrictions the Tribunal was reluctant to convene a public hearing of the subject reference. It will, now, therefore publish its decision and allow a further four week period for any objectors to come forward, prior to issuing the Order of the Tribunal.

**23<sup>rd</sup> November 2021**

**Henry Spence MRICS Dip.Rating IRRV (Hons)**

**LANDS TRIBUNAL FOR NORTHERN IRELAND**