

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/7/2022

BY

KOYAH LIMITED - APPLICANT

Re: 60 Wellington Park, Belfast

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

Background

1. Koyah Limited (“the applicant”) is the registered owner of premises located at 60 Wellington Park, Belfast (“the reference property”). The reference property is held under a lease dated 24th February 1984, for a term of 10,000 years from 1st November 1983. On 4th August 2021 the applicant became the registered owner of the reference property which is listed as folio AN262494L.

2. The applicant has obtained planning permission, LA04/2021/0961/F, to convert the existing guest house into 5 apartments, to include a single storey extension to the rere. The reference property is, however, subject to lease impediments which restrict/prohibit development, contained in clauses 2.3 and 2.4 of the lease:

“2.3 Not to erect or build or permit to be erected or built on the demised premises any building except the dwelling house now erected thereon and the necessary and suitable out offices in connection therewith except in accordance with plans specifications and elevations to be previously approved by the lessor his Agent or Agent’s architect or surveyor for the time being.

2.4 Not to use or permit the use of the said dwelling house or buildings or any other building which may during the said term be erected on the demised premises or any part thereof for the purposes of carrying on any trade manufacture or business or as a shop or hotel or for the sale of beer wine or spirituous liquors or for any other purpose than a private residence or offices in connection therewith.”

3. The applicant now seeks modification, or whole or part extinguishment of the lease impediments to allow for development in accordance with the granted planning permission.

Procedural Matters

4. The applicant was represented by Mr Max Nesbitt of Wilson Nesbitt, solicitors. Mr Nesbitt helpfully submitted an affidavit detailing his attempts to contact any possible beneficiaries of the covenants, but to no avail. The Tribunal is satisfied that all reasonable attempts have been made.
5. In addition, on behalf of the applicant, Mr Brian Patterson MRICS, has submitted an expert report dealing with the issues in Article 5(5) of the Property (Northern Ireland) Order 1978 (“the Order”), which the Tribunal is statutory bound to take into account. Mr Patterson 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 Patterson

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

9. I have no direct knowledge of the circumstances, or the purposes for which the impediments were created. I consider the covenants contained in the lease may have been imposed as standard clauses. These were common clauses in leases at that time.

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

10. Planning permission has been obtained for the subject development as described. Inspection of the surrounding properties in Wellington Park show a large variation in uses, the most common of which is the conversion of original dwelling houses to apartments. Close by the reference property is a modern office building.
11. The history of the reference property shows that some 18 months after the start of the lease planning permission was obtained for change of use to a guest house and operated as such until recently. A subsequent planning permission was obtained for "the construction of 4 no. garages in existing car park- of the guest house". Permission was granted in 1993.

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

12. No to our knowledge. The Tribunal considers, however, the granted planning permission to be a public interest in the land.

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

13. A list of planning permissions over the past 15 years in Wellington Park confirms the trend towards apartments, both by way of conversion of existing buildings and new build. The Tribunal agrees.

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

14. There is no relevant practical benefit to any person from the covenants as described. I am not aware of the lessors of the 1984 lease having any interest in adjoining or nearby property.

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

15. 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

16. I am advised by the solicitors acting for the applicant that they have used their best endeavours to trace the lessors but to no avail.

5(5)(h) Any other material circumstances

17. I am advised by the solicitors that there is no record of consent by the immediate landlord to the previous planning permissions for the change to a guest house and construction of four garages. This may explain why the relevant covenants were crossed out in the lease, as it is highly likely that at the time of the sale in 1984, the immediate landlords were aware of the purchasers intention to change the use to guest house.

Conclusion

18. The Tribunal notes the contents of Mr Patterson's submission. The main issue for determination by the Tribunal was did the impediments achieve some practical benefit and, if so, was it a benefit of such weight to justify their continuance without modification or extinguishment.
19. Based on Mr Patterson's report 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 Patterson, the impediments do not confer any practical benefit to any person.

Decision

20. Having considered Mr Patterson's report dealing with the issues raised in Article 5(5) of the Order, the Tribunal orders modification of the restrictive covenants contained in paragraphs 2.3 and 2.4 of the lease to allow for development in accordance with the granted planning permission, LA04/2021/0931/F, or any variation thereof.

Compensation

21. The Tribunal may award compensation in accordance with Article 5(6)(b) of the Order. Mr Patterson's opinion was that the modification of the covenants would have no detrimental effect on the market value of the reference property. The Tribunal agrees that the covenants do not confer any practical benefit to any person and as such, no compensation is payable.

Objectors

22. 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.

26th May 2022

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