

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/8/2021

BY

ROYCROFT DEVELOPMENTS LIMITED – APPLICANT

Re: Lands at 753 & 755 Antrim Road, Belfast

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

Background

1. Roycroft Developments Limited (“the applicant”) is the legal owner of premises at 753 & 755 Antrim Road, Belfast (“the reference property”). Number 753, which is currently in a derelict state, is held under a lease dated 4th December 1967 and a portion of land to the rear of number 755 Antrim Road is held under a lease dated 1st June 1961.

2. The applicant has obtained planning permission, LA04/2019/2255/F, to demolish the existing dwelling and construct four detached dwellings.

3. The lease dated 1st June 1961 contains a covenant:

“Not to build on the said premises any dwelling house of less cost or size than the dwelling house now erected thereon.”

4. The lease dated 4th December 1967 contains a covenant:

“That all buildings erected upon the said plot of ground shall be in accordance with plans elevations and specifications precisely to the building thereof submitted to and approved of by the Lessors.”

5. The applicant now seeks modification or extinguishment of the covenants to allow for construction as per the granted planning permission.
6. The Tribunal has received an affidavit detailing the applicant's attempts to identify any possible beneficiaries of the covenants but to no avail. The Tribunal is satisfied that all reasonable efforts have been made.

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

10. On behalf of the applicant, Mr Simon McCullough MRICS, has submitted an expert report dealing with the Article 5(5) issues. The Tribunal is grateful to Mr McCullough for his helpful report.

Mr McCullough

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

11. The subject impediments were created over fifty years ago at a time when the form and character of the residential dwellings on the Antrim Road was for larger bespoke dwellings with substantial gardens.

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

12. There has been a gradual change in the area over a period of several years which has witnessed the development of garden space as residential land. The proposed development scheme on the reference property is in keeping with the change in character of the area and neighbourhood that has been ongoing.
13. Changes have included permission for the demolition and redevelopment of larger, bespoke residential dwellings to purpose built apartment schemes, the development of unused church lands to residential dwellings and conversion of former church premises to residential use.

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

14. In its current condition, the reference property detracts from the attractiveness of the neighbourhood and poses a potential health and safety risk due to the dereliction of the residential dwelling at No. 753.

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 to a higher density, or where lands surplus to the requirement of the owner have been sold and developed as residential sites. This is in keeping with the general change in 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 1961 and 1967 leasehold titles. Following advertisements in local newspapers, no objections or claims have been made.

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

17. In regard to the impediment in the 1961 title, the obligation not to build any dwelling house of less costs or size of the existing dwelling may be considered to be unenforceable due to the changes in form and character of the neighbourhood.

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. Not applicable.

5(5)(h) Any other material circumstances

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

Conclusion

21. The issue for determination by 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?

22. 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 covenants do not confer any practical benefit on any persons due to the significant changes in the neighbourhood since the impediments were created.

Decision

23. Having considered in detail Mr McCullough's report and the issues listed in Article 5(5) of the Order, the Tribunal orders modification of the restrictive covenants to allow for development in accordance with the granted planning permission, LA04/2019/2255/F, or any variation thereof.

Compensation

24. The Tribunal may award compensation in accordance with Article 5(6)(b) of the Order. In the subject reference, however, the Tribunal finds the subject impediments to be obsolete and secure no practical benefit to any person. The Tribunal directs that no compensation is payable.

Objectors

25. Due to the current pandemic 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 four weeks period for any objectors to come forward, prior to issuing the Order of the Tribunal.

25th August 2021

Henry Spence MRICS Dip.Rating IRRV (Hons)

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