

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964
LAND COMPENSATION (NORTHERN IRELAND) ORDER 1982
IN THE MATTER OF REFERENCES
BETWEEN
R/8/2009
TERENCE PATRICK SOMERS & BRIDGET VERONICA SOMERS
R/9/2009
JOHN BRIAN REILLY
R/10/2009
VALERIE ANNE HYLANDS & FIONA JANE WATERMAN
- CLAIMANTS

AND
DEPARTMENT FOR REGIONAL DEVELOPMENT – RESPONDENT

Re: Lands at Windyhill Road, Limavady, County Londonderry

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

Background

1. The claimants were the owners of Nos. 2, 4 and 6 Windyhill Road, Limavady. The Windyhill Road is on the A2/A37 main route between Londonderry and Coleraine
2. When, in December 2001, the Respondent announced that a contract for the construction of the Limavady bypass had been awarded, plans showed that the existing accesses to these properties would be maintained. However, at an advanced stage of the works it became apparent that this would not, in fact, be possible and a different approach was adopted. Briefly, the consequences were as follows. Prior to the scheme the three properties fronted directly on to a major road – Windyhill Road. After the scheme the section of road on which the properties were located became a cul-de-sac that did not comply with modern standards of layout and design. That cul-de-sac was off Dowland Road close to its junction (a roundabout) with Windyhill Road. The circumstances are set out in a decision dated 21st May 2007 by Assembly Ombudsman Frawley. He found there had been maladministration which caused the claimants annoyance, inconvenience, frustration and disappointment. He awarded

compensation in respect of these matters to each claimant. He did not consider the question of injurious affection.

3. The claimants lodged claims under Article 18 of the Land Compensation (Northern Ireland) Order 1982.
4. The matter was listed for hearing on the issue of liability only but on the day of hearing an agreement was reached. This was termed an Agreed Statement of Facts, is dated 5th May 2011, and records as follows:
 1. The parties agree that the claimants premises at 2, 4 and 6 Windyhill Road have been subject to injurious affection within the meaning of Article 18 of the Land Compensation (NI) Order 1982;
 2. the said injurious affection consists of the following:-
 - a. the access road junction with the Dowland Road is outwith the requirements of [Development Control advice Note] 15;
 - b. the gradient of the access to the claimants premises at the junction with Dowland Road is excessively steep which causes difficulties in terms of access for larger bin lorries and further poses a road safety issue (unless the claimants manually put down salt) in icy road conditions;
 - c. the claimants no longer enjoy direct access from their premises to the Windyhill Road;
 - d. the new road layout and presence of the cul-de-sac presents difficulties for the claimants in securing access to their premises for larger vehicles which are unable to turn and must either drive up from and reverse out to the Dowland Road or vice-versa;
 3. the parties agree that their respective valuer shall assess the appropriate compensation (if any) which is due to be paid in consequence with the injurious affection as is set out above in accordance with principles set out within Article 18 of the Land Compensation (NI) Order 1982; and
 4. not relevant.
5. The parties have been unable to agree the appropriate compensation.

Procedural Matters

6. The Tribunal received written and oral expert evidence from Thomas T Donaghy and John V Martin, both experienced Chartered Surveyors.

7. The Tribunal received oral submissions from Michael Humphreys QC and David Dunlop BL.
8. The Tribunal has visited the location.

Positions

9. Following an exchange of expert evidence and a meeting of experts they were able to agree the market values, in the *no scheme world* (i.e. before injurious affection) of the three properties at the agreed relevant date (10th December 2003):
 - 2 Windyhill Road - £140,000;
 - 4 Windyhill Road - £150,000; and
 - 6 Windyhill Road - £118,000.
10. The valuers were not, however, able to agree figures for the injurious affection as defined by the Agreed Statement of Facts. Mr Donaghy estimated the injurious affection to Nos. 2 and 4 Windyhill Road at 25% and No. 6 Windyhill Road at 30%. Mr Martin estimated the injurious affection at 10% for all three.

Discussion

11. The Tribunal was referred to:
 - The Land Compensation (Northern Ireland) Order 1982;
 - Argyle Motors (Birkenhead) Ltd v Birkenhead Corporation [1975] AC 99;
 - Gray v Ministry of Development [1966] R/12/1966 LTNI; and
 - Flanagan v Stoke-on-Trent City Council [1982] 1EGLR 205.
12. The Tribunal accepts that the appropriate compensation is limited to some loss of value of land or some damage to lands and not for any loss which was personal to the owner (see Argyle Motors v Birkenhead [1975]).
13. In the minutes of a meeting of experts the valuers recorded:

“It is difficult to assess an appropriate amount for injurious affection as there are very few guidelines or decided cases. One case considered by the valuers is:

“Flanagan v Stoke-on-Trent City Council [1982]”
14. Despite the experience of the valuers they were unable to find any evidence that would support their opinion of a percentage diminution in value. The Tribunal accordingly received opinions which were based on an intuitive approach with no comparative evidence to support them.

15. In the view of the Tribunal, the factors set out in 2(a) and (b) of the Agreed Statement of Facts may be regarded as relating to the junction with Dowland Road; 2(c) relating to the fact of being located on the cul-de-sac rather than the main Windyhill Road; and 2(d) relating to the design and layout of the cul-de-sac.
16. In his oral evidence Mr Martin declined to make any apportionment of his 10%. Mr Donaghy attributed 10% (of his 25% and 30%) to the junction with Dowland Road.
17. The Tribunal regards the difficult junction (2(a) and (b)) as a significant disability affecting the three houses and adopts Mr Donaghy's 10%.
18. In the absence of any evidence analysing the general effect of location on a cul-de-sac as opposed to a main road, the Tribunal is not persuaded that the mere fact of being located on the cul-de-sac rather than the main Windyhill Road (2(c)) had any measurable affect on their value. The address may cause some confusion but that could be easily remedied by a change of street name and the Claimants have elected not to do so.
19. The design and layout of the cul-de-sac (2(d)) falls below modern standards. But, in the view of the Tribunal, Mr Donaghy's estimate of the effect on value is too extreme and the market for these properties would not have been as adversely affected by the layout as he thought. It accepts that the end property was slightly more adversely affected by the layout and allows 5% for Nos. 2 and 4 and 7% for No 6.

Conclusions

20. The Tribunal therefore concludes that the appropriate allowances for injurious affection in accordance with Article 18 of the Land Compensation (NI) Order 1982 and the Agreed Statement of Facts are:
 - 2 Windyhill Road - 15% of £140,000 i.e. say £21,000;
 - 4 Windyhill Road - 15% of £150,000 i.e. say £22,500; and
 - 6 Windyhill Road - 17% of £118,000 i.e. say £20,000.
21. The Tribunal wonders whether, instead of focussing on seeking comparable evidence for the amount of injurious affection, it might have been better to focus on seeking comparable evidence to value the three properties, as they now stand as affected by the scheme (with any injurious affection) at the valuation date. Some of the data assembled for the assessment of capital values for all domestic properties, at a valuation date about one year later, for the General Revaluation for rating purposes might have been helpful. Some end adjustment

might have been required if those figures reflected matters outwith the Agreed Statement of Facts.

ORDERS ACCORDINGLY

27th January 2012

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

Appearances

Claimants: Michael Humphreys QC instructed by Martin King French & Ingram, Solicitors.

Respondent: David Dunlop BL instructed by Departmental Solicitor's Office.