

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**RATES (NORTHERN IRELAND) ORDER 1977**

IN THE MATTER OF AN APPEAL

VR/11/2019

BETWEEN

EXCIP LIMITED – APPELLANT

AND

THE COMMISSIONER OF VALUATION – RESPONDENT

Re: Unit 12, 7a The Docks, Ringmackilroy, Warrenpoint, Newry

**PART 3 - COSTS**

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

**Background**

1. Excip Limited (“the appellant”) was the occupier of premises at Unit 12, 7a The Docks, Ringmackilroy, Warrenpoint (“the reference property”). In 2017 the reference property was entered separately for rates purposes in the 2015 Valuation List. It has since been demolished.
2. Prior to 2017 the rates assessment for the reference property had always been included in the overall rates assessment for the Warrenpoint dock undertaking and had been included as such when the relevant 2015 Valuation List was compiled.

3. The appellant had lodged an appeal with the Lands Tribunal contending that the reference property rates assessment should remain within the rates assessment for the dock undertaking.
4. The issue, therefore, to be decided by the Lands Tribunal: was the Commissioner of Valuation (“the respondent”) correct in 2017 in allocating a separate rates assessment to the reference property. The Tribunal found in favour of the respondent and the appellant’s appeal therefore failed.
5. As the “winner” the respondent is now seeking its costs in the reference.

### **Procedural Matters**

6. On behalf of the respondent the Tribunal received a written submission from Ms Maria Mulholland BL. Mr Gareth Maguire, a director of the appellant company, also provided a submission. The Tribunal is grateful to both parties for their helpful submissions. The Tribunal will make its decision on costs based on the written submissions and a further hearing is not necessary.

### **The Statute**

7. Rule 33 of the Lands Tribunal Rules (Northern Ireland) 1976 (“the Rules”) provides:

“(1) Except in so far as section 5(1), (2) or (3) of the Acquisition of Land (Assessment of Compensation) Act 1919 applies and subject to paragraph (3) the costs of and incidental to any proceedings shall be in the discretion of the Tribunal or the President in matters within his jurisdiction as President”.
8. In Oxfam v Earl & Ors [1995] BT/3/1995 the Tribunal clarified how it should exercise its discretion (at page 8):

“The Tribunal must exercise that discretion judicially and the starting point on the question of costs is the general presumption that, unless there were special circumstances, costs follow the event, i.e. that in the ordinary way the successful party should receive its costs.”

And

“The next question for a Tribunal is whether there were special circumstances which would warrant a departure from the general rule. But these must be circumstances connected with the proceedings, for example, to reflect an unsuccessful outcome on a major issue.”

### **The Respondent’s Submissions**

9. On behalf of the respondent Ms Mulholland BL made the following submissions:
  - (i) Costs should follow the event in the ordinary way and as the “winner”, the respondent should be awarded its costs in the reference.
  - (ii) The appeal involved a considerable amount of work over and above a standard appeal, largely by reason of discovery requests made by the appellant which culminated in an unsuccessful contested discovery application, requiring lengthy written submissions and a written decision of the Tribunal.
  - (iii) The appeal also involved the parties filing two statements of case and replying statements of cases in order to address points raised by the appellant in respect of the numbering allocated to the reference property in the Valuation List, a point that ultimately proved unsuccessful for the appellant.
  - (iv) The appeal also involved numerous reviews.
  - (v) The appeal went to a fully contested oral hearing involving the oral evidence of the respondent’s expert witness adding additional costs for the respondent.
  - (vi) The appellant was unsuccessful in all aspects of the appeal.
  - (vii) In all the circumstances the respondent contends that it is fair and just for the appellant to be ordered to pay the respondent’s costs and the respondent

respectfully invites the Lands Tribunal to exercise its discretion and make such an order.

### **The Appellant's Submissions**

10. On behalf of the appellant company Mr Maguire submitted:

- (i) The appellant is disappointed with the respondent's continued aggressive behaviour with regard to costs, given the circumstances.
- (ii) The appellant has always been open and honest in its firmly held view that the hereditament was in paramount control of Warrenpoint Port.
- (iii) The appellant is a self-litigant and not a legal expert.
- (iv) The appellant is a small company with limited resources and this ongoing issue has caused significant disruption and detriment to the company.
- (v) In January 2017 a valuation exercise took place without the appellant's knowledge following an external complaint. The appellant had no contact with either the landlord or the respondent until it received its first rates bill.
- (vi) In May 2017 the respondent obtained a copy of the appellant's lease without consent or communication and prior to any appeal, formal or otherwise, by the appellant.
- (vii) Both the respondent and Warrenpoint Harbour Authority as landlords, have consistently refused to supply any supporting information upon request, causing significant delay and extra work. Indeed the appellant had to resort, as the Tribunal is aware, to FOI requests and subsequent applications to the Information Commissioner. In both cases the Information Commissioner agreed that both the respondent and Warrenpoint Harbour Authority were in breach of their statutory obligations and an order was received.
- (viii) Since May 2017 and the receipt of the first rates bill, the appellant has been completely open and honest in all communications with the respondent.

- (ix) The appellant has made every effort imaginable over the period to resolve the matter without the necessity of a Tribunal hearing, however this fell considerably on deaf ears.
- (x) It was the decision of the respondent to proceed to Tribunal not the appellant.
- (xi) The appellant at no stage delayed any proceedings without good reason and all of which is a matter of court record. The appellant even agreed a ten month adjournment to support Ms Mulholland BL's maternity leave.
- (xii) The respondent has always insisted in following the appeal process. The appellant did not wish to follow the appeal process as it felt it could be dealt with more simply. The appellant was left with no option other than to follow the appeal process which has now ended in the Tribunal proceedings.
- (xiii) At the request of the Tribunal the respondent was asked to furnish evidence of hereditament entries. The respondent therefore delayed the proceedings to produce that information.
- (xiv) This information had been requested by the appellant on numerous occasions including via FOI and was refused. Again, the appellant agreed to this delay, and a spreadsheet was subsequently produced at Tribunal. This differed from the live register furnished in the bundle from the appellant, obtained subsequent to an order of the Information Commissioner, following an FOI.
- (xv) The respondent took four years and up to the day of the Tribunal hearing to admit that Warrenpoint Harbour Authority were deemed to be in paramount control of the hereditament. Warrenpoint Harbour Authority were deemed to have been in paramount control for 46 years. This non admission was the reason why the Tribunal requested a second statement of case as the Tribunal was now concerned with "was the entry to the 2015 list made in 2017 a valid entry" and this issue alone.
- (xvi) The respondent took four years and finally under cross-examination admitted that the sole reason for the exercise by the respondent in January 2017 was subsequent to a formal complaint and it did not concern the appellant.

- (xvii) The appellant feels that an award of costs to the respondent would serve only to deter self-litigants and or those with limited means raising genuine matters of concern, and if so awarded would not be in the spirit of the Tribunal process.

### **The Tribunal**

11. The respondent was the successful party and as such, as per the general rule, should be awarded its costs in the reference. The further question for the Tribunal, however, is, were there any special circumstances connected with the proceedings that would warrant a departure from the general rule.
12. The Tribunal finds the following facts to be significant:
- (i) The reference property was described as “Unit 8” in the appellant’s lease with Warrenpoint Harbour Authority but the respondent had entered it in the 2015 Valuation List as “Unit 12”. The respondent is entitled to use whatever numbering system it sees fit for the Valuation List but this was very confusing for the appellant, as he considered that the respondent had not entered the correct property. The issue was not resolved until a joint inspection, on site, on 29<sup>th</sup> May 2018.
  - (ii) The first time the appellant knew anything about the January 2017 rates revision was when it received a rates bill. No prior explanation had been given by the respondent.
  - (iii) The reference property had been included in the cumulo rates assessment for the dock authority for over 40 years. This was the situation since the appellant’s occupation in 2011 and this was the situation in 2015 when the relevant Valuation List was compiled. Circumstances had not changed in 2017 when the reference property was given a separate rates assessment for the first time. Again this was very confusing for the appellant and the only conclusion that the Tribunal can draw is that the reference property had been incorrectly entered in the Valuation List as part of the docks cumulo rates assessment for some considerable time, certainly from 2011.

13. Based on these circumstances the Tribunal directs that the appellant should pay its own costs and 50% of the respondent's costs. Such costs to be taxed by the Tribunal in default of agreement.

**17<sup>th</sup> June 2022**

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