

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**LANDS TRIBUNAL RULES (NORTHERN IRELAND) 1976**  
**RATES (NORTHERN IRELAND) ORDER 1977**  
**IN THE MATTER OF APPEALS**  
**VR/14 & 15/2019**

**BETWEEN**

**WOODHILL HOLDINGS LIMITED – APPELLANT**

**AND**

**THE COMMISSIONER OF VALUATION – RESPONDENT**

**Re: Units A & B, 6 Loy Street, Cookstown**

**Part 2 - Costs**

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

**Background**

1. This is an application by the Commissioner of Valuation (“the respondent”) for costs following an Order of the Lands Tribunal, dated 15<sup>th</sup> June 2020, which held that Woodhill Holdings Limited (“the appellant”) appeals were out of time with no exceptional circumstances existing to warrant an extension of time. The Order therefore directed that the appellant’s appeals should be dismissed.
2. The circumstances were that, on 13<sup>th</sup> November 2019, the respondent filed a reply to the appellant’s Statement of Case to the Lands Tribunal, highlighting two preliminary issues which arose in respect of the subject appeals, the first issue being the appellant’s delay in making the appeals.

3. In the Part 1 hearing the preliminary issue, therefore, to be decided by the Tribunal was whether to accept the appellant's application for an extension of time to lodge its appeals.
4. The appellant's position was that it had lodged two appeals, on 23<sup>rd</sup> May 2018, to the Northern Ireland Valuation Tribunal (NIVT) and receipt was acknowledged on 30<sup>th</sup> May. The appellant therefore considered the appeals to have been lodged to the correct Tribunal and on time.
5. The respondent accepted that there was some confusion around the submission of the appellant's original appeals in May 2018 but his position was that the appellant had failed to give any reason for its delay of eight months in lodging a Notice of Appeal to the Lands Tribunal, following receipt of a letter from the Registrar, dated 10<sup>th</sup> January 2019, requesting that a Notice of Appeal be submitted.
6. Following a hearing, the Tribunal refused the appellant's application for an extension of time due to:
  - (i) the length of the delay;
  - (ii) the lack of satisfactory explanation;
  - (iii) the potential prejudice to the respondent; and
  - (iv) the strong public interest in good administration.
7. The respondent was now seeking its costs in the reference.

## **Procedural Matters**

8. Ms Maria Mulholland BL provided a written submission on behalf of the respondent. Mr Sean MacMahon, personal litigant, provided a written submission on behalf of the appellant.

## **The Law**

9. Rule 33(1) of the Lands Tribunal Rules (Northern Ireland) 1976 (“the Rules”) provides:

“33.-(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.”

10. The “discretion” of the Tribunal was considered in a Business Tenancies case, Oxfam v Earl & Ors (BT/3/1995). The following extracts relating to the Tribunal’s discretion under Rule 33 are relevant to the subject reference:

“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.” [Page 8]

And

“The next question for a Tribunal is whether there were special circumstances which would warrant a departure from that general rule. But these must be circumstances connected with the proceedings, for example, to reflect an unsuccessful outcome on a major issue.” [Page 8]

## **The Respondent’s Submission**

11. Ms Mulholland referred to the decision of the Tribunal which confirmed the Tribunal papers recorded that:

- (i) No Form AB, Notice of Appeal, was received in the Lands Tribunal on or around May 2018.
  - (ii) Following the Registrar's letter of 10<sup>th</sup> January 2019 requesting a Form AB Notice of Appeal, telephone messages were left with the solicitors for the appellant on 15<sup>th</sup> February 2019 and 28<sup>th</sup> March 2019. No response was received.
  - (iii) A letter was sent to the appellant's solicitors on 2<sup>nd</sup> April 2019 and a response was received on 12<sup>th</sup> April 2019 advising that "we shall submit all paperwork within the next number of days". It was not received until 12<sup>th</sup> September 2019.
12. On 15<sup>th</sup> June 2020 the Tribunal issued an Order dismissing the appeals. As a result of these out of time appeals Ms Mulholland submitted that the respondent had incurred the following expenses:
- (i) The costs of dealing with the out of time appeals and the additional costs involved in dealing with the extension of time application to the Tribunal.
  - (ii) This had an adverse impact on the delivery of Land & Property Service ("LPS") business and responsiveness to other customers especially those with ongoing appeals.
  - (iii) During the tenure of the subject reference the appellant had failed to pay rates and LPS had to stay enforcement proceedings. The appellant's failure to pay rates had an adverse impact on local and central government finances.
13. Ms Mulholland concluded that in all the circumstances it was fair and just for the appellant to be ordered to pay the respondent's costs of the subject appeals and she invited the Tribunal to exercise its discretion to make such an order.

### **The Appellant's Submission**

14. Mr MacMahon asked the Tribunal to note that this was a difficult and convoluted case where the appellant did not always have the advantage of legal assistance.

15. He accepted the decision of the Tribunal but to the best of his knowledge he believed the appropriate forms had been lodged within the appropriate time limit and had been mislaid by the receiving party.
16. Mr MacMahon submitted, therefore, that it would be unduly penal to fix the appellant with the respondent's costs in the circumstances of the subject reference.
17. He asked the Tribunal to note that in his costs submission the respondent accepted there were circumstances where time limits may be extended.
18. In conclusion Mr MacMahon submitted that the respondent was well used to dealing with appeals of this type on a daily basis whereas the appellant was not. He considered that to make an order for costs against the appellant in such circumstances would be unfair.

## **Conclusion**

19. The Tribunal refers to the following paragraphs from its Part 1 decision:
  - "26. It was accepted by the respondent, that the appellant, as a litigant in person had been confused about which forms should be returned to which Tribunal, despite the fact the respondent's decision letters clearly advised the correct forms to be used and which Tribunal they should be sent to.
  27. In order to rectify this issue, the Registrar forwarded the correct forms to the solicitor for the appellant on 10<sup>th</sup> January 2019. The wording on the back of the forms clearly stated that there was a 28 day time limit for submission. If there was any confusion the solicitors could have contacted the Registrar.
  28. In addition, despite reminders in February, March and April the solicitors failed to submit the correct forms until 12<sup>th</sup> September 2019. The forms eventually

submitted by the solicitors had requested an extension of time, so they were clearly aware that the forms were out of time.”

20. The “winner” in the subject reference was clearly the respondent and in the normal course of events they should be awarded their costs in the reference. The Tribunal does not consider that there were any “exceptional circumstances” in which to depart from that rule. The respondent accepted that, initially, the appellant had been confused about which forms should be sent to which Tribunal but it should have been clear from the Registrar’s letter of 10<sup>th</sup> January 2019 to the appellant’s solicitor what the correct procedure and time limits for submitting the appeals were.
  
21. The Tribunal therefore awards the respondent his costs in the reference as and from 10<sup>th</sup> January 2019, such costs to be taxed in the absence of agreement.

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

**Lands Tribunal for Northern Ireland**

**28<sup>th</sup> October 2020**