

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964

RATES (NORTHERN IRELAND) ORDER 1977

IN THE MATTER OF AN APPLICATION FOR COSTS

VT/1/2018

BETWEEN

WILLIAM YOUNG – APPELLANT

AND

THE COMMISSIONER OF VALUATION – RESPONDENT

Re: 39A Carrowdore Road, Greyabbey

PART 2

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

Background

1. Mr William Young (“the appellant”) constructed a dwelling house at 39A Carrowdore Road, Greyabbey (“the reference property”) around 2004 and he has been in occupation ever since.

2. The planning authorities, however, considered that the house, as built, did not comply with the granted planning permission and the reference property was therefore classified as “unauthorised development” in the context of the Planning Order.

3. The appellant was subsequently served with an Enforcement Notice which required, among other things, the removal of the unauthorised dwelling. At the date of hearing the appellant

had failed to comply with the Enforcement Notice and there still remained a statutory obligation on him to demolish the reference property.

4. In the meantime the District Valuer had entered the reference property in to the Valuation List with a capital value rates assessment of £370,000.
5. In 2015, despite having previously paid the rates on the reference property, the appellant appealed his rates assessment on the grounds that “there could not be a capital value on a property which had been illegally constructed and subject to an Enforcement Notice to demolish”. The appeal process culminated in a hearing before the Lands Tribunal on 25th October 2019. Having considered the evidence the Tribunal upheld the previous decision of the Northern Ireland Valuation Tribunal to dismiss the appeal.
6. The Commissioner of Valuation (“the respondent”) now seeks its costs in the reference.

Position of the Parties

7. The Tribunal received a written submission from the Departmental Solicitor’s Office (“DSO”) on behalf of the respondent. The DSO submitted:
 - (i) The respondent was the successful party in the reference and costs should ordinarily follow the event.
 - (ii) The subject reference was an “appeal of an appeal” and the respondent had been successful twice.
 - (iii) There was a great deal of work involved in dealing with the appeals, at the expense of public finances and the respondent was duty bound on behalf of the taxpayer to seek its costs for successfully responding to the appeals.

8. Mr Young also provided a written submission. He considered the issue before the Tribunal in the Part 1 hearing to be a novel one and it was in the public interest to determine the respondent's responsibility in applying statutory presumptions, albeit the Tribunal determined the respondent was correct in making the presumption that the appellant had complied with the statutory requirement in respect of planning permission.

The Law

9. 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.

(2) If the Tribunal orders that the costs of a party to the proceedings shall be paid by another party thereto, the Tribunal may settle the amount of the costs by fixing a lump sum or may direct that the costs shall be taxed by the registrar on a scale specified by the Tribunal, being a scale of costs for the time being prescribed by rules of court or by county court rules."

10. 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."

Discussion

11. In the subject reference the appellant's appeal was dismissed by the Tribunal and the respondent was clearly the successful party.

12. In Oxfam v Earl the Tribunal also directed, under the heading of “Special Awards”:

“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.”

13. The issues in the Part 1 reference arose out of the appellants “illegal” occupation of the reference property by failing to comply with several demolition orders issued by the planning authorities. The respondent was successful twice in the appeal, having “won” at both NIVT and Lands Tribunal. This was not a “novel” or “public interest” issue, as put forward by the appellant. The respondent had correctly applied the valuation assumptions numerous times in compiling and maintaining the current valuation list, which was introduced in 2005 and the respondent had correctly applied them in the subject reference. The Tribunal, therefore, does not consider there are any “special circumstances” in the subject reference whereby the respondent should not be awarded its costs.

Conclusion

14. The Tribunal, therefore, awards the respondent its costs in the reference, such costs to be taxed in default of agreement.

27th April 2021

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