

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
BUSINESS TENANCIES (NORTHERN IRELAND) ORDER 1996

IN THE MATTER OF AN APPLICATION

BT/71 & 72/2022

BETWEEN

MAGELL LIMITED – APPLICANT

AND

FERHAT EKICI – RESPONDENT 1

ALI NASSAR - RESPONDENT 2

Re: 46 & 48 Upper Queen Street, Belfast

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

Background

1. Magell Limited (“the applicant”) is the owner of property at 46-52 Upper Queen Street and 11 Wellington Street, Belfast (“the site”). Mr Ferhat Ekici (“respondent 1”) is the tenant of 46 Upper Queen Street, Belfast (“reference property 1”) and Mr Ali Nassar (“respondent 2”) is the tenant of 48 Upper Queen Street, Belfast (“reference property 2”).
2. The applicant has served each of the respondents with a Notice to Determine their respective tenancies of the reference properties. The Notices are based on “redevelopment grounds” contained in Article 12(1)(f) of the Business Tenancies (Northern Ireland) Order 1996 (“the Order”).
3. The site was originally owned by a Mrs Anne Hegan and on 9th December 2013, a lease of reference property 1 was granted to respondent 1. The lease demised the premises for a term expiring on 31st January 2016 at an annual rent of £12,000.

4. On 14th December 2012 Mrs Hegan also granted a lease of reference property 2 to respondent 2, which expired on 31st December 2015. The annual rent was £7,000.
5. In or around 2016 Mrs Hegan transferred the reference properties to a company named Hegan & Co Ltd.
6. In autumn 2021 the applicant agreed to purchase the site from Hegan & Co Ltd and at that time the reference properties were vacant. The applicant had been advised that the respondents had permanently vacated the reference properties but shortly prior to the respondent purchasing the site, the respondents moved back in.
7. The sale of the site to the applicant, which comprised lands in Folio AN 221742 County Antrim, completed on 3rd December 2021. The applicant has advised the Tribunal that since that time the respondents have refused to pay any rent and arrears have accumulated.
8. Following the service of the applicant's Notices to Determine on 11th March 2022, the applicant made tenancy applications to the Lands Tribunal on 7th July 2022, seeking Orders that the respondents were not entitled to the grant of new tenancies on the reference properties. This is the issue to be decided by the Tribunal.

Procedural Matters

9. The applicant was represented by Mr Douglas Stevenson BL, instructed by Shoosmiths (Northern Ireland) LLP, solicitors. On behalf of the applicant factual evidence was provided by Mr Ryan Walker, a director of the applicant company. The respondents, despite having previously been legally represented, appeared at hearing as litigants in person. The Tribunal is grateful to all for their submissions.

The Statute

10. Article 12 of the Order details the grounds on which a landlord can oppose the grant of a new tenancy. In particular Article 12(1)(f) provides:

“12.-(1) ...

(f) that on the termination of the current tenancy the landlord intends –

(i) to demolish a building or structure which comprises, a substantial part of the holding; and

(ii) to undertake a substantial development of the holding.

and that the landlord could not reasonably do so without obtaining possession of the holding.”

11. Article 13(1) of the Order provides:

“13.-(1) Where the landlord relies on the ground specified in Article 12(1)(f) the Lands Tribunal shall require the landlord to furnish evidence that any permission required under any statutory provision has been granted to him in respect of the demolition and development which he intends to undertake.”

The Applicant's Intentions

12. The applicant must prove to the Tribunal its intentions with regard to the demolition and substantial development of the reference properties.

The Applicant's Submissions

Mr Walker gave evidence:

13. The applicant intends to carry out a major redevelopment of the site, involving the construction of a ground floor retail unit with offices above. A board minute recording the applicant's decision to proceed with the proposed redevelopment has been submitted to the Tribunal.
14. The site currently enjoys the benefit of a planning permission, LA04/2016/2359/F ("the existing planning permission"). It can be seen from the existing planning permission that the redevelopment necessarily involves the complete demolition of the reference properties.
15. The existing planning permission also fixed the height of the proposed building at 7 storeys, which was in keeping with the height of the adjoining building. That building, however, has since undergone a substantial redevelopment with its height being increased to 9 storeys.
16. As a result of the increase in height of the adjoining building, the applicant has applied for planning permission to increase the height of its proposed building to 9 storeys. This planning application is nearing completion and the applicant has been given a strong verbal indication that it will be granted. In any case, if it is turned down, the applicant will revert to the existing planning permission and construct a 7 storey building.
17. The applicant is an experienced property development company and it owns an office building on the opposite side of Upper Queen Street, the Eagle Star building, which it redeveloped and it now lets out as serviced offices.
18. The applicant has provided the Tribunal with a financial cost plan for the proposed redevelopment. The applicant's last filed statutory accounts up to March 2022 show that the

applicant has net assets of £28M. The applicant has also provided a bank statement showing that it has cash available of £6.2M and it does not have to resort to borrowing to fund the project. The Tribunal is satisfied that ample funds are available.

19. The applicant has appointed a full professional team to carry out the redevelopment. This comprises:

- (i) Like – lead Architect
- (ii) Turley – Planning Consultants
- (iii) Hollis – Project Manager and Quantity Surveyor
- (iv) Stephen Clarke Consultancy – M & E Consultant
- (v) B W Murray – Structural and Civil Engineers
- (vi) Kingston Lafferty Design – Interior Design
- (vii) Jenson Hughes – Fire Engineer

Mr Stevenson BL

20. In conclusion Mr Stevenson BL submitted that given the applicant:

- (i) Holds planning permission for a redevelopment and will shortly be given permission for an enhanced redevelopment.
- (ii) Has ample funds to complete the redevelopment.
- (iii) Is an experienced property developer which has carried out similar redevelopments.
- (iv) Has engaged a full professional team to carry out the redevelopment.

It has clearly established that it has the requisite intention to redevelop the reference properties within the statutory requirements of Article 12(1)(f) of the Order.

The Respondents' Submissions

21. Despite being given the opportunity to do so, the respondents failed to submit any challenges as to the bona fides of the applicant's intentions.

The Tribunal

22. The Tribunal is satisfied that the applicant has proved its grounds of opposition, under Article 12(1)(f) of the Order to new tenancies being granted to the respondents. The Tribunal, therefore, directs that the respondents should vacate the reference properties within 10 weeks of the date of this decision.

16th February 2023

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