

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
PROPERTY (NORTHERN IRELAND) ORDER 1978

IN THE MATTER OF A REFERENCE

R/13/2021

BY

RYANS PRESBYTERIAN CHURCH – APPLICANTS

Re: 5 Finnard Road, Rathfriland, Co Down

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

Background

1. Ryans Presbyterian Church (“the applicant”) is the lessee of the manse at 5 Finnard Road, Rathfriland (“the reference property”) which was held under a Fee Farm Grant dated 10th September 1896. The lessor at that time was Albert Stratford George Channing.
2. The applicant now wishes to sell the reference property as it is no longer required as a manse. The lease, however, contains a covenant that the lessee:

“and the Lessees further covenant with the Lessor his heirs and assigns that they shall not use the said buildings for any purpose other than as a manse in connection with the said Congregation.”.
3. The applicants now seek modification of the covenant to allow for use as a single residential dwelling house.

Procedural Matters

4. The applicant was represented by Gordon Bell & Son, Solicitors. The solicitors have detailed their attempts to contact any possible beneficiaries of the covenant but to no avail. The Tribunal is satisfied that all reasonable attempts have been made.

5. On behalf of the applicant, the Tribunal has also received an expert report from Mr Brian Clarke FRICS NDEA of Best Property Services, dealing with the issues contained in Article 5(5) of the Property (Northern Ireland) Order 1978 ("the Order"), which the Tribunal is statutorily bound to take into account when considering modification or extinguishment of a covenant. Mr Clarke is an experienced chartered surveyor and the Tribunal is grateful to him for his helpful submissions.

The Statute

6. Article 5(1) of the Order provides:

"Power of Lands Tribunal to modify or extinguish impediments

5.-(1) The Lands Tribunal, on the application of any person interested in land affected by an impediment, may make an order modifying, or wholly or partially extinguishing, the impediment on being satisfied that the impediment unreasonably impedes the enjoyment of the land or, if not modified or extinguished, would do so."

7. Article 5(5) of the Order specifies the matters which the Tribunal must take into account, together with any other reasonable circumstances. These will now be considered in detail.

The Article 5(5) Issues

Mr Clarke

5(5)(a) The period at, the circumstances in, and the purposes for which the impediment was created or imposed

8. The impediment was imposed in the lease of 10th September 1896. At that time there was a sizeable congregation in the immediate area. The purpose was to provide residential accommodation for the minister of the nearby Ryans Presbyterian Church.

5(5)(b) Any change in the character of the land or neighbourhood

9. The local congregation has depleted and is now associated with Downshire Presbyterian Church, Newry and there is now no longer a need for a manse in the area.
10. The development of a better roads system with increased use of vehicles has meant people are more mobile and are able to travel greater distances to attend services.

5(5)(c) Any public interest in the land as exemplified by any development plan adopted under Part 3 of the Planning Order (Northern Ireland) 1972

11. I am not aware of any public interest in the land.

5(5)(d) Any trend shown by planning permissions ...

12. The overall trend shown by planning permissions shows a decline in one off residential consents coupled with an expansion of nearby towns.

5(5)(e) Whether the impediment secures any practical benefit to any person and, if it does so, the nature and extent of that benefit

13. The successors in title to the original lessor have not been traced despite extensive efforts. The person entitled to the benefit of the covenant is the applicant.

5(5)(f) Where the impediment consists of an obligation to execute any works ...

14. Not applicable.

5(5)(g) Whether the person entitled to the benefit of the impediment has agreed, expressly or by implication, by his acts or omissions, to the impediment being modified or extinguished

15. Not applicable.

5(5)(h) Any other material circumstances

16. There are no other material circumstances to be considered.

Mr Clarke's Conclusions

17. I do not believe that the alteration of the impediments will adversely affect the beneficial occupation or cause any loss of amenity to any adjoining properties. It is my opinion therefore that the covenant can be modified.
18. It is also my opinion if not modified or extinguished the impediment would unreasonably impede the applicant's use and enjoyment of the reference property.

The Tribunal

19. The Tribunal notes the contents of Mr Clarke's submissions. The main issue for the Tribunal is does the impediment achieve some practical benefit, and, if so, is it a benefit of such weight to justify its continuance without modification.
20. Based on Mr Clarke's report and in the circumstances of the subject reference the Tribunal concludes that due to the passage of time the covenants are of no practical benefit and unduly restrict the applicant's use and enjoyment of the reference property. In addition no person entitled to the benefit has come forward.

Decision

21. The Tribunal orders modification of the covenant to allow for use as a single residential dwelling. For completeness the Tribunal also orders extinguishment of covenants 2(a) and (b) of the lease relating to insurance and repair of the original buildings. These are now obsolete.

Compensation

22. The Tribunal may award compensation in accordance with Article 5(6)(b) of the Order. Mr Clarke's opinion was that no compensation should be payable. As the impediment does not secure any practical benefit to any person no compensation is payable.

Objectors

23. As the subject reference was decided by way of written submissions only and a public hearing was not held, the Tribunal will allow a further period of four weeks from the date of publication of its decision for any objectors to come forward, prior to issuing an Order of the Tribunal.

16th December 2022

Henry Spence MRICS Dip.Rating IRRV (Hons)

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