

**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/13/2022**

BETWEEN

GORDON & SONIA BENSON – APPLICANTS

AND

JOAN COOKE – RESPONDENT 1

ALAN & CAROLINE JOHNSTON – RESPONDENTS 2

Re: Right of Way adjacent to 62 Moybrone Road, Letterbreen

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

**Background**

1. Gordon and Sonia Benson (“the applicants”) are the registered owners of lands comprising folio numbers FE8035 and FE92390 Co Fermanagh (“the subject folios”), which are burdened with easements favouring a number of dominant folios. The applicants became the registered owners of the subject folios on 2<sup>nd</sup> October 1997.
  
2. The easement was created by the 12<sup>th</sup> September 1997 deed and is expressed:

“... a right of way reserved in the favour of the registered owner his successors and assigns across that portion of the lands comprised in folio 9823 Co Fermanagh more particularly set forth on the map attached hereto and thereon coloured yellow for the purpose of pedestrian and light vehicle use only.”
  
3. The dominant land has subsequently been subdivided and the Tribunal has been advised that the present registered owners with benefit of the easements are:

- (i) FE7268 and FE61202: Anne Beattie.
  - (ii) FE5466, FE90876 and FE9384: Richard and Lucia Turner.
  - (iii) FE9823: John Gilmore.
  - (iv) FE9543: Joan Cooke.
  - (v) FE90379: Alan and Caroline Johnston
4. The applicants seek to have the easements extinguished as appurtenant to all dominant folios save those which have a legitimate and genuine interest in having the easements maintained for their benefit.
5. This is required as the applicants have agreed to sell their interests in the subject folios but it is a condition of sale that the easements are removed.
6. The applicants have successfully reached agreement with the registered owners at (i) to (iii) above and now seek the assistance of the Lands Tribunal with regard to folios FE9543, registered to Joan Cooke and FE90379, registered to Alan and Caroline Johnston.
7. The Tribunal has been advised that It has not been possible for the applicants to make contact with Ms Cooke or Mr and Mrs Johnston, despite advertising in the local press and various searches being carried out. The applicants now seek extinguishment of the right of way benefitting the Cooke and Johnston folios.

### **Procedural Matters**

8. The Tribunal received a written submission from Mr Graham Watt BL on behalf of the applicants. Mr Watt BL was instructed by Gibson Solicitors, Lisnaskea. The Tribunal also received an expert report from Ms Geraldine Maguire BSc (Hons) MRICS of Smyth Leslie & Co. The Tribunal is grateful to Mr Watt BL and to Ms Maguire for their helpful submissions.

## **The Law**

9. The application was brought under Article 5 of the Property (Northern Ireland) Order 1978. Article 5(1) provides:

“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.”

10. By Article 3(1)(c) “impediment” includes an easement. 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 Watt BL**

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

11. This is evident from the transfer deed itself. The terms of the right of way limit its use to “pedestrian and light vehicle use only”. It therefore serves domestic purposes only and benefits only dwelling houses at the terminus of the laneway.

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

12. This criteria is relevant only to the subdivision of the dominant folios. Even then, the subdivisions of these folios does not really have a bearing on the right of way given the fact that only a very small part of the original dominant folios were really intended to gain a practical benefit from the right of way.

**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**

13. This is not relevant.

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

14. This is submitted not to be relevant, at least not in its application to the only folios in relation to which orders are sought. It is difficult to envisage any circumstances in which planning approvals for those folios would be influenced by the existence or otherwise of the right of way.

**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**

15. This is submitted to be the most important criteria. The property in folio FE90379 (Johnston) is a residential property: (i) some 160 yards to the north of the point where the right of way meets the county road (ii) on the other side of the county road and (iii) with its own distinct entrance. It is submitted that the property obtains no practical benefit whatsoever from the right of way. Folio FE9543 (Cooke) is similarly positioned opposite the Johnston lands and some 160 yards from where the right of way meets the county road and it also has its own separate access to the country road. It obtains no practical benefit whatsoever from the right of way.

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

16. This is not relevant.

**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**

17. No such agreement has been forthcoming from the respondents.

**5(5)(h) Any other material circumstances**

18. Ms Maguire's expert opinion was that there would be no material detrimental effect on the market value of the Cooke or Johnston properties should the right of way be extinguished.

**The Tribunal's Conclusion**

19. The Tribunal is satisfied that all reasonable attempts have been made to contact the respondents but to no avail.
  
20. The Tribunal notes the contents of Mr Watt BL'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 extinguishment.
  
21. Based on Mr Watt BL's submissions and in the circumstances of the subject reference the Tribunal is satisfied that the right of way, if not extinguished, would unreasonably impede the applicants' use and enjoyment of their property, as they could not sell it without removal. The Tribunal agrees with Mr Watt BL, the right of way does not confer any practical benefit on Folios FE9543 and FE90379 and on that basis the Tribunal orders extinguishment of the right of way in relation to those two folios.

**Compensation**

22. The Tribunal may award compensation in accordance with Article 5(6)(b) of the Order. Ms Maguire's opinion was that no compensation should be awarded as the removal of the right of way would have no impact on the market value of the subject folios. The Tribunal agrees, the right of way in relation to the subject folios is obsolete, confers no practical benefit on the respondents and as such 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.

**16<sup>th</sup> December 2022**

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

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