

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

IN THE MATTER OF A REFERENCE

R/14/2020

BY

BAR NONE NI LIMITED – APPLICANT

Re: 48-54 Upper Charleville Street, Belfast

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

Background

1. Bar None NI Limited (“the applicant”) is the legal owner of a disused public house situated at 48/54 Upper Charleville Street, Belfast (“the reference property”).
2. On 20th July 2020 the applicant obtained planning approval, reference LA/04/2019/2332/F, for change of use from a disused public house to three 2 bedroom apartments and one 1 bedroom apartment. A copy of the planning approval has been submitted to the Tribunal.
3. The reference property is held by the applicant under a lease dated 3rd June 1927, made between (1) Robert McCarroll and (2) Robert Hugh McCarroll for a term of 900 years subject to the annual rent of £45.00 (“the lease”). A copy of the lease has been submitted to the Tribunal.
4. The applicant holds the property under Folio No AN245877L Co Antrim and a copy of the folio and map has been submitted to the Tribunal. The applicant also owns the adjoining freehold property which has been included in the planning approval.

5. The lease, however, contains a covenant at page 2 which restricts development:

“And also will during the said term so long as the necessary licence can be obtained use the said premises for carrying on therein the business of a Beer Dealer and Spirit Merchant only.”

6. The applicant now seeks modification of the covenant to allow for development in accordance with the planning approval. The Tribunal has received an affidavit from Mr Peter Conlon of Joseph Donnelly & Co Solicitors detailing his attempts to contact any beneficiaries of the covenant. The Tribunal is satisfied that all reasonable attempts have been made to identify any possible beneficiaries, but to no avail.

The Statute

7. Article 5(1) of the Property (Northern Ireland) Order 1978 (“the Order”) provides:

“Power of Lands Tribunal to modify or extinguish impediments

5.-(1) The Land 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 lands or, if not modified or extinguished, would do so.”

8. Article 3 of the Order defines the scope of “enjoyment”:

“3(3) In any provision of this part – ‘enjoyment’ in relation to land includes its use and development.”

9. Article 5(5) of the Order specifies certain matters which the Tribunal must take in to account together with any other relevant circumstances.

The Article 5(5) Issues

10. On behalf of the applicant Mr David Thompson, property consultant, has submitted an expert report dealing with the Article 5(5) Issues.

Mr Thompson:

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

11. The requirement to use the premises for the business of “beer dealer and spirit merchant” was imposed at the date of the commencement of the lease, in 1927, to protect the ground landlord’s interest in the valuable liquor licence.

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

12. The Victorian terraced houses in the locality have been replaced with Northern Ireland Housing Executive (“NIHE”) and Housing Association properties in the 1970’s. There were many public houses which previously served the high density Victorian terrace housing. The vast majority of these no longer exist.

5(5)(c) Any public interest in the land ...

13. The main public interest in the land is the granting of planning permission LA/04/2019/2332/F which allows for the proposed development.

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

14. Much of the land in the vicinity of the reference property comprises 1970s NIHE dwellings. A list of former public houses in the locality which have converted to residential use has been submitted.

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. In 1927 the impediment was imposed to protect the ground landlord's ability to collect the rent of £45 per annum which was significantly more than a residential ground rent. This is roughly the equivalent of £6,300 per annum in today's terms. The impediment therefore secures no practical benefit as a rent of £45 per annum will be well secured by the 4 apartments to be built.

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

16. There is no obligation to undertake any works.

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

17. The applicant is not aware of any act or omission by any beneficiary which would indicate their consent to the impediment being modified or extinguished.

5(5)(h) Any other material circumstances

18. The applicant is not aware of any.

Conclusion

19. Even if the beneficiaries of the impediment could be identified, Mr Thompson's expert opinion was that the covenant were obsolete and conferred no practical benefit on any person.
20. The issue for determination by the Tribunal was, did the impediment achieve some practical benefit and if so, was it a benefit of sufficient weight to justify its continuance without modification?

21. The Tribunal is satisfied that the subject impediment, if not modified, would unreasonably impede the applicant's use and enjoyment of the reference property in that it could not legally carry out development in accordance with the granted planning permission. Having considered the issues listed in Article 5(5) of the Order, the Tribunal agrees with the applicant's expert, that any purpose for which the impediments were created no longer existed.

Decision

22. Based on the applicant's experts submissions the Tribunal grants modification of the restrictive covenant contained within the lease to allow for development in accordance with planning permission reference LA/04/2019/2332/F, or any variation thereof.

Compensation

23. It was Mr Thompson's expert opinion that no compensation was warranted.
24. The Tribunal may award compensation in accordance with Article 5(6)(b) of the Order. The Tribunal agrees with Mr Thompson, however, in the subject reference the impediment is obsolete and secured no practical benefit to any person. The Tribunal directs that no compensation is payable.

Objectors

25. Due to the current pandemic the Tribunal has been unable to convene a public hearing of the subject reference. It will now, therefore, publish the decision and allow a four week period for any possible objectors to come forward, prior to issuing the Order of the Tribunal.

8th January 2021

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