

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/5/2021

BY

HAMPTON HOMES (NI) LIMITED – APPLICANT

Re: Lands adjacent to 1 Belmont Park, Belfast

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

Background

1. Hampton Homes (NI) Limited (“the applicant”) is the legal owner of land and premises adjacent to 1 Belmont Park, Belfast (“the reference property”).

2. The applicant has obtained planning permission, LA04/2019/1069/F, to erect a 2 storey dwelling on the site. The reference property is, however, subject to lease impediments which prohibit development:

i. A covenant in a deed of assignment dated 13th June 1931 not to:

“erect any buildings or erections on the piece or parcel of ground ... save and except for a greenhouse or summer house as provided for in said Indenture of Lease”

Being a lease dated 10th May 1923.

ii. Lessee’s covenant (3) in a sub-lease dated 24th December 1992:

“Not to erect or build or permit to be erected or built on the demised premises any building or structure whatsoever save for a boundary fence provided always that whilst Vera Elizabeth Nevin is or remains the owner of the reversion hereof no part of the fence on the boundary marked “R” on the attached map shall

exceed three feet in height and save also for a garage greenhouse and/or garden shed the plans specifications whereof and the location whereof has been previously approved in writing by the Lessor such approval not to be unreasonably delayed or withheld"

iii. Lessee's covenant (4) in the same lease:

"Not to use or permit the use of the demised premises or any part thereof ... for any purpose other than as a garden for recreational purposes"

3. The applicant now seeks modification of the covenants to allow for construction in accordance with the granted planning permission.

Procedural Matters

4. The applicant was represented by Mr James Dowling of Peden & Reid solicitors. Mr Dowling has advised the Tribunal that he approached Mr James Cockcroft of Johns Elliot solicitors who act on behalf of the estate of Vera Nevin. Mr Cockcroft has confirmed to the Tribunal, by email of 11th May 2021, that his clients did not propose to raise any objection to the subject application.

5. In addition, on behalf of the applicant, Mr Brian Kennedy submitted an expert report dealing with the issues in Article 5(5) of the Property (Northern Ireland) Order 1978 ("the Order"). Mr Kennedy is an experienced chartered surveyor and the Tribunal is grateful to him for his helpful report.

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 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.”

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

The Article 5(5) Issues

Mr Kennedy

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

9. The impediments were imposed in 1931 and 1992. It seems likely they were intended to preserve residential amenity.

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

10. The neighbourhood remains largely residential but has seen some increase in development density, as is typical in many of Belfast’s suburbs. An apartment scheme (Kingsley Court) has been developed approximately 50 metres directly east of the reference property and a townhouse scheme (Belmont Grange) developed just over 40 metres from its western boundary.
11. The neighbourhood has also seen some increase in non-residential uses. A substantial, former residential property at 193 Belmont Road, abutting the western boundary of the reference property, has been extended and converted to a veterinarian hospital. That building now has

a gross floor area of 8,400 sq ft and a planning application has been submitted to further extend the premises.

12. At 215 Belmont Road, some 50 metres west of Belmont Park, a large, modern primary school occupying a site of approximately 1.3 acres was opened in 1999, to replace an old school that had occupied a site of 0.3 acres slightly further from the reference property, at the junction of the Belmont Road and Belmont Church Road.

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

13. The reference property is located within the Belmont Area of Townscape Character. The Tribunal also considers the granted planning permission to be a public interest in the land.

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

14. Planning applications in the immediate vicinity in recent years:

193 Belmont Road -	Application lodged to extend the veterinarian hospital. LA04/2021/0173F
3 Belmont Park -	Full planning permission granted on 13 th May 2021 for “single storey side and rear extension with dormer to the rear and velux to the front”. LA04/2020/2087F
63 Belmont Park -	Full planning permission was granted on 6 th June 2019 for “single storey side and rear extension”. LA04/2019/0888F
59 Belmont Park -	Full planning permission was granted on 22 nd June 2018 for “roofspace conversion”. LA04/2018/0481/F
24 Belmont Park -	Full planning permission was granted on 23 rd January 2018 for “demolition of rear conservatory to facilitate single storey replacement extension”. LA04/2017/2395/F

43 Belmont Park -	Full planning permission granted on 4 th July 2017 “dormer to the rear of the property to allow for roof space conversion”. LA04/2017/0715/F
10 Belmont Park -	Full planning permission granted on 27 th October 2016 for “conversion of garage and single storey rear extension”. LA04/2016/1658/F
44 Belmont Park -	Full planning permission granted on 15 th May 2014 for “single storey side and rear extension”. Z/2014/0170/F
14 Belmont Park -	Full planning permission was granted on 28 th January 2014 for “2 storey rear extension and alterations”. Z/2013/1194/F
41 Belmont Park -	Full planning permission was granted on 7 th February 2013 for “erection of single storey rear/side extension to dwelling”. Z/2012/1273/F
12 Belmont Park -	Full planning permission was granted on 6 th November 2012 for “detached garage and utility room”. Z/2012/1064/F
22 Belmont Park -	Full planning permission was granted on 25 th January 2011 for “roofspace conversion to dwelling house”. Z/2010/1323/F

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. The plot size and development density on completion of the proposed dwelling would be consistent with the general pattern on Belmont Park. The 2020 planning report on the reference property, prepared in connection with the now approved planning application, observed “the site is unique in this case as it is a significant size and can be considered a gap site”.
16. The proposed development would not have any material effect on the privacy or amenity of neighbouring properties. The closest property will be No. 1 Belmont Park which is a 3 bedroom

semi-detached house. The reference property is located to the side of No.1 and that property's gable wall has few windows facing the site.

17. Further, the spacing between No. 1 and the house proposed on the reference property would be consistent with the spacing between the adjacent semi-detached properties at Nos. 3 and 5 and between No. 7 and the church hall at No. 9 and with most of the other semi-detached properties on Belmont Park.
18. Having regard to these factors the impediments do not secure any practical benefit to any person.

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

19. Not applicable in the subject reference.

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

20. The executors of the estate of Vera Elizabeth Nevin, who was a legal beneficiary under the 1992 lease, have confirmed that they are not objecting to the reference to the Lands Tribunal.

5(5)(h) Any other material circumstances

21. None.
22. Mr Kennedy concluded that the applicant had obtained planning permission for the development of the reference property and was prevented from implementing that permission by impediments in the title. His opinion was that the impediments did not secure any practical benefit to any person and they unreasonably impeded the applicant's enjoyment of the reference property, defined in Article 3 of the Order to include its "use and development".

Conclusion

23. The issue for determination by the Tribunal was did the impediments achieve some practical benefit and if so, was it a benefit of such weight to justify their continuance without modification or extinguishment?

24. Based on Mr Kennedy's report and in the circumstances of the subject reference, the Tribunal is satisfied that the subject impediments, if not modified or extinguished, would unreasonably impede the applicant's use and enjoyment of the reference property. The Tribunal agrees that the impediments do not confer any practical benefit to any person and indeed, the person identified as the beneficiary has not raised any objections.

Decision

25. Having considered in detail Mr Kennedy's report on the issues listed in Article 5(5) of the Order, the Tribunal orders modification of the restrictive covenants to allow for development in accordance with the granted planning permission, LA04/2019/1069/F, or any variation thereof.

Compensation

26. The Tribunal may award compensation in accordance with Article 5(6)(b) of the Order. Mr Kennedy's opinion was that no compensation should be payable as modification would cause no loss of practical benefit to any person. The Tribunal agrees and directs that no compensation is payable.

Objectors

27. Due to the current pandemic restrictions the Tribunal was unable to convene a public hearing of the subject reference. It will now, therefore, publish its decision and allow a further four weeks period for any objectors to come forward, prior to issuing the Order of the Tribunal.

2nd November 2021

Henry Spence MRICS Dip.Rating IRRV (Hons)

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