

**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/21/2016**

**BETWEEN**

**NORMAN MENARY - APPLICANT**

**AND**

**PAUL BOLTON, ADRIAN MARTIN, NEVILLE FERSON, PAULINE COOPER,  
SAMUEL FERSON, FERSON BROTHERS LIMITED AND  
JACQUELINE MARY SHORT – RESPONDENTS**

**Re: Laneway at Old Coach Lane, Moneymore Road, Cookstown**

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

**Background**

1. The applicant is the owner of a residential development site at Moneymore Road, Cookstown. Lying to the south of the development site is a laneway known as “Old Coach Laneway”.
2. The laneway is used by the named respondents to access their properties. None of the respondents enjoy any documented right of way over the laneway but the applicant accepts that the respondents may have acquired a right of way over the laneway by prescription, that is by ‘long user’.
3. The applicant has obtained planning permission on his development site [1/2011/0106F] and to comply with the planning stipulations the applicant is required to slightly reconfigure the entrance to the laneway where it meets the Moneymore Road.
4. The applicant therefore seeks modification of the prescriptive right of way to facilitate development in accordance with the planning permission.

**Procedural Matters**

5. At hearing Alistair Fletcher BL instructed by Doris & MacMahon, Solicitors represented the applicant. Mr Declan P Cosgrove MSc Consulting Engineer provided an expert

report on behalf of the applicant. Although notified of the hearing, the respondents did not take any part in the proceedings.

### **Position of the Parties**

6. The applicant seeks an Order from the Tribunal to the effect that any rights which any party enjoys over the laneway are modified to permit realignment of the laneway, as required by the planning permission.
7. One of the respondents, Mr Ferson, had submitted a written objection to any modification of the right of way but post the hearing, Mr Ferson's barrister, Mr Mark Haywood BL, advised the Tribunal that the objection had been withdrawn. The remaining respondents had raised verbal objections but did not put forward any submissions.

### **The Legislation**

8. The relevant statutory provisions are found in Articles 3 and 5 of the Property (Northern Ireland) Order 1978 ("the Order"):

"3.-(1) Subject to paragraph (2), the provisions of this Part apply to any of the following impediments to the enjoyment of land (whether the impediment exists at the commencement of those respective provisions or comes into existence thereafter, and whether the land affected by the impediment is registered or unregistered):

- (a) ...
- (b) ...
- (c) an easement;"

And

"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."

9. Article 5(5) sets out the matters which the Tribunal shall take into account in determining whether an impediment affecting any land might be modified or extinguished.

**Consideration of the Article 5(5) issues**

10. **5(5)(a) The period at, the circumstances in, and the purposes for which the impediment was created**

Mr Cosgrove accepted that any rights of way over Old Coach Lane had undoubtedly existed over many years with the possible exception of access to No. 50 Moneymore Road.

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

The neighbouring land had remained largely unchanged for many years, being residential along the Moneymore Road frontage and agricultural behind. However, Mr Cosgrove confirmed that over the past 19 years much of the agricultural land had been proposed by the Planning Authorities for residential development.

**5(5)(c) Any public interest in the land particularly as exemplified by any development plan adopted under Part III of the Planning (Northern Ireland) Order 1991 for the area in which the land is situated, as that plan is for the time being in force**

Mr Cosgrove advised the Tribunal that there did not appear to be any public interest in the land or general vicinity under the Strategic Planning (Northern Ireland) Order 1999 or any other development plan.

**5(5)(d) Any trend shown by planning permissions (within the meaning of that Planning Order) granted for land in the vicinity of the land, or by refusals of applications for such planning permissions, which are brought to the notice of the Tribunal**

Mr Cosgrove referred the Tribunal to the following recent planning permissions:

- An application for demolition of No. 54 Moneymore Road and alteration to No. 56 to provide 10 detached dwellings. This application was made on 31<sup>st</sup> March 2008 and was refused on 9<sup>th</sup> September 2009. The reasons for refusal were

not stated on the planning portal but Mr Cosgrove speculated that they were likely to be density based.

- Application for redevelopment of Nos. 26 and 28 Moneymore Road to provide an apartment development was made on 29<sup>th</sup> July 2010 and was approved on 12<sup>th</sup> November 2010.
- An application for 2 detached dwellings and garages in the front garden of No. 56 Moneymore Road was made on 12<sup>th</sup> March 2012 and was approved on 2<sup>nd</sup> July 2013.
- An application for the extensive development of the applicant's lands which was made on 15<sup>th</sup> July 2011 and was approved on 14<sup>th</sup> May 2012.

In conclusion Mr Cosgrove considered that the general trend appeared to have been to grant appropriate planning applications in the locality.

**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**

Mr Cosgrove accepted that any rights of way over the laneway were clearly of benefit to all the users thereof. For some it was simply an added convenience which provided a supplementary access but other users were reliant upon it. Mr Cosgrove considered, however, that the proposed works did not detract from the utility of the laneway and in his opinion they would greatly improve it.

**5(5)(f) 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**

Mr Cosgrove confirmed that some party, in modern times, had undertaken to surface the laneway with good quality bitmac. Accordingly, in his opinion, there would be no unduly onerous or otherwise, cost/benefit issues arising.

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

It was Mr Cosgrove's opinion that the proposed alteration to the laneway could only improve access between the main part of the laneway and Moneymore Road. On that basis he did not consider any objection to be reasonably founded. This was

particularly the case for any parties wishing to bring larger vehicles along the laneway as he considered that they would benefit most by having egress from the laneway and access to it in both directions on Moneymore Road. Furthermore, he considered that the left turn from the proposed laneway end on to the Moneymore Road would be a considerably safer and easier route following the proposed modifications.

### **Conclusion**

11. The Tribunal is satisfied, having considered the relevant matters in Article 5(5) of the order, that the impediment unreasonably impedes the enjoyment of the applicant's land or if not modified or extinguished would do so.
12. The Tribunal therefore orders modification of the right of way to allow for the granted planning permission or any variation thereof.

### **Compensation**

13. The Tribunal has a discretion under Article 5(6) of the Order to direct payment of compensation.
14. The Tribunal agrees with Mr Cosgrove, however, that the proposed modification of the right of way greatly improves the access between the main part of the laneway and Moneymore Road. On that basis the Tribunal directs that no compensation is payable to any person.

### **ORDERS ACCORDINGLY**

**2<sup>nd</sup> November 2016**

**Mr Henry M Spence MRICS Dip.Rating IRRV (Hons)  
LANDS TRIBUNAL FOR NORTHERN IRELAND**

### **Appearances:**

**Applicant - Mr Alistair Fletcher BL instructed by Doris & MacMahon, solicitors.**