

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**LOCAL GOVERNMENT ACT (NORTHERN IRELAND) 1972**

**IN THE MATTER OF A REFERENCE**

**R/5/2015**

**BETWEEN**

**SAMUEL BROWN, VIOLET BROWN AND ELEANOR BROWN – APPLICANTS**

**AND**

**DEPARTMENT FOR INFRASTRUCTURE –RESPONDENT**

**Re: Lands at 135-137 Mill Street, Newtownards**

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

**Background**

1. On 2<sup>nd</sup> May 2007 the Department for Infrastructure (formerly the Department for Regional Development) (“the respondent”) vested the lands at 135-137 Mill Street, Newtownards (“the vested lands”) and which were then in the ownership of Samuel Brown, Violet Brown and Eleanor Brown (“the applicants”). The scheme, however, did not commence until 2<sup>nd</sup> June 2008 and the applicants remained in occupation of the vested lands until in or around the beginning of April 2008. No payments were made by the applicants for their use and occupation of the vested lands post vesting.
2. On 21<sup>st</sup> June 2007, however, the applicants had received an advance payment of compensation in the sum of £585,000 plus interest at £4,615.89.
3. Following discussions and negotiations over a protracted period the parties were unable to agree the correct amount of compensation to be paid and on 19<sup>th</sup> May 2015 the matter was referred to the Lands Tribunal for determination.

4. The case was listed for hearing on 30<sup>th</sup> October 2017 but on 31<sup>st</sup> October 2017 the parties subsequently agreed to settle compensation in the sum of £877,400, on the basis that interest and costs would be determined thereafter.
  
5. This reference is solely to determine the correct amount of interest to be paid.

### **Procedural Matters**

6. The parties had agreed to deal with the issue of interest by way of written submissions. Ms Jacqueline Simpson QC, instructed by McIlldowies Solicitors, wrote on behalf of the applicants. Ms Jo-anne Devine of the Departmental Solicitor's Office provided a submission on behalf of the respondent. The Tribunal is grateful to the legal representatives for their submissions.

### **The Legislation**

7. The relevant statutory provisions are detailed in Schedule 6 of the Local Government Act (Northern Ireland) 1972 ("the Act") at paragraph 18 which provides:

“(1) The [Department] shall pay interest upon the compensation money from the date of the vesting of the land in respect of which the compensation is payable until the time of the payment of the money and interest to the party entitled thereto, or, where such compensation is paid to the Court, then until the sum with such interest is paid in to Court accordingly.”

8. Paragraph 18 further provides at:

“(2) The rate of interest payable under this paragraph shall be such rate as is determined by order by the [Department] of Finance.”

9. Schedule 6 of the Act was modified by Schedule 7 of the Roads (Northern Ireland) Order 1993. For the purposes of interest, however, modifications by the 1993 Order are immaterial, other than any reference to the “Council” should be replaced by reference to the “Department”.

10. It was clear, therefore, from the legislation and the parties were agreed that:
- (i) interest was payable at the statutory rate in respect of the “compensation money” from the operative date of vesting until payment, as per paragraph 18(1) of the Act.
  - (ii) as per paragraph 18(2) and the Compulsory Acquisition (Interest) Order (Northern Ireland) 1996, interest was payable at the rate of 0.5% below the bank base rate, up to 1<sup>st</sup> August 2013. From 1<sup>st</sup> August 2013 onwards, by virtue of the Compulsory Acquisition (Interest) (Amendment) Order (Northern Ireland) 2013, interest was payable at 0.5% below the bank base rate or 2%, whichever was greater.

### **Discussion**

11. The applicants sought interest on the balance of the compensation monies, £292,400, which they calculated at £45,329.93, based on the statutory provisions.
12. Ms Devine asked the Tribunal to note that the applicants had remained in occupation of the vested lands at no cost until about the beginning of April 2008. She submitted that payment for the disturbance element of interest should therefore run from the beginning of April 2008. She considered this to be consistent with Article 37(7) of the Land Acquisition and Compensation (Northern Ireland) Order 1973 which provided that a disturbance payment should carry interest: - “from the date of displacement or as the case may be, the giving up of occupation until payment”. On that basis she submitted that there had been an overpayment of interest on the disturbance element of the advance payment in the sum of £1,420.27, which would need to be offset against the balance of interest due.
13. The Tribunal agrees with Ms Devine, based on the fact that, in this case, the applicants had not been “disturbed” from their occupation of the vested lands until April 2008 and had remained there free of charge, interest on the disturbance element of the compensation monies should only be payable from that date.

14. The respondent had agreed the rates of interest for the various dates as submitted by the applicants, except the rate for 5<sup>th</sup> July 2007-5<sup>th</sup> December 2007, which they considered should be 5.25%. As this is greater than the rate of 4.5% proposed by the applicants for that period, the Tribunal is content to accept the rate of 5.25% as calculated by the respondent.

### **Summary**

15. Following the direction of the Tribunal the parties agreed interest at £40,770.11.
16. In their submission to the Tribunal the applicants had sought the “reserved” costs from a review of the reference on 19<sup>th</sup> October 2017. The respondent objected to this submission and requested that the issue of costs should be dealt with at a hearing on costs when the respondent would set out its position in detail.
17. The Tribunal agrees with the respondent, the issue of costs will be dealt with at a subsequent hearing, if the parties are unable to reach agreement.

### **ORDERS ACCORDINGLY**

**17<sup>th</sup> January 2018**

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