LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964

LANDS TRIBUNAL RULES (NORTHERN IRELAND) 1976

BUSINESS TENANCIES (NORTHERN IRELAND) ORDER 1996

PLANNING ACT (NORTHERN IRELAND) 2011

IN THE MATTER OF AN APPLICATION

BT/123/2020

BETWEEN

POUNDLAND LIMITED – APPLICANT

AND

SDI (STRABANE) LIMITED – RESPONDENT

Re: Units B & C Lesley Retail Park, Strabane

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

Background

1. Poundland Limited ("the applicant") is the tenant of Units B & C Lesley Retail Park, Strabane ("the reference property") under a lease which commenced on 5th February 2010 ("the lease") between Beechdale Properties Limited and the applicant. The lease, which has now expired, was for a term of 10 years and at an initial rent of £150,000 per annum.

2. On 9th June 2016 SDI Strabane ("the respondent"), a subsidiary of Frasers Group PLC, purchased the reference property from Beechdale Properties Limited for a sum of £4,975,000.

3. The applicant made a request for a new tenancy on 26th June 2020. In response, the respondent replied indicating that it was not willing to grant a new tenancy, citing the grounds of opposition detailed in Article 12(1)(f) of the Business Tenancies (Northern Ireland) Order 1996 ("the Order"). These grounds are commonly known as "redevelopment" grounds.

4. Thereafter, on 1st September 2020, the applicant made a tenancy application to the Lands Tribunal, as it wished to continue its tenancy and occupation of the reference property.

5. The issue for the Tribunal is, has the respondent satisfied the grounds of opposition to a new tenancy, as detailed in Article 12(1)(f) of the Order?

Procedural Matters

6. The respondent was represented by Mr Keith Gibson BL, instructed by Eversheds Sutherland, Solicitors. On behalf of the respondent the Tribunal also received expert witness evidence from Mr Warwick McCullough, managing director of HPA Architecture and from Mr Tom Stokes, director of TSA Planning.

7. In addition, Mr Alistair Dick, director of SDI Strabane Limited, Mr James Mallon, estates manager of Fraser Group in Northern Ireland and Mr Ryan Kee of Lambert Smith Hampton, appeared as witnesses of fact on behalf of the respondent.

8. The applicant was represented by Mr Richard Shields BL, instructed by DWF Solicitors. Mr Wayne Storey, managing director of Wayne Storey Associates, provided expert evidence on behalf of the applicant and Mr Ben Wall, head of portfolio management Poundland, appeared as a witness of fact.

9. The Tribunal is grateful to all of the participants for their helpful submissions.

Position of the Parties

The Respondent

10. The respondent's position was that matters had moved well beyond the tentative and provisional stage of redevelopment. There were no difficulties either procedurally or technically to the respondent's proposed development being carried out. The respondent had the necessary statutory permissions, had the professional team properly briefed, a contractor prepared to go and the funding available. No obstacles or impediments to the redevelopment proceeding had been identified by the applicant.

The Applicant

11. The applicant's position was that the respondent's objection to a new tenancy was flawed both evidentially and conceptually. The Tribunal was, therefore, invited to proceed with the applicant's substantive tenancy application and to grant a new lease to the applicant.

The Statute

12. The following Articles from the Order are relevant to the subject reference:

Article 2(2) defines "the holding":

> "'the holding', in relation to a tenancy to which this Order applies, means (subject to Article 16(2)) the property comprised in the tenancy, there being excluded any part thereof which is occupied neither by the tenant nor by a person employed by the tenant and so employed for the purposes of a business by reason of which the tenancy is one to which this Order applies."

And

Article 12 details the ground on which a landlord may oppose a new tenancy:

> "Opposition by landlord to new tenancy
>
> 12.-(1) The grounds on which a landlord may make a tenancy application, or may oppose a tenancy application by the tenant, are such of the following grounds as

may be stated in the landlord's notice to determine under Article 6, or as the case may be, in the landlord's notice under Article 7(6)(b), that is to say –

(a) …

(b) …

(c) …

(d) …

(e) …

(f) that on the termination of the current tenancy the landlord intends –

(i) to demolish a building or structure which comprises or forms a substantial part of the holding and to undertake a substantial development of the holding; or

(iii) to carry out substantial works of construction on the holding or part of it;

and that the landlord could not reasonably do so without obtaining possession of the holding."

And

Article 12(2) defines "development"

"12(2) In paragraph 1(f) 'development' has the same meaning as in the Planning Act (Northern Ireland) 2011."

And

Article 13 details provisions supplemental to Article 12

"13(2) Where the landlord relies on the ground specified in 12(1)(f) the Lands Tribunal shall not hold that he could not reasonably carry out the demolition and development, or the works of construction, intended without obtaining possession of the holding if –

(a) the tenant agrees to the inclusion in the terms of the new tenancy of terms giving the landlord access and other facilities for carrying out the

work intended and, given that access and those facilities, the landlord could reasonably carry out the work without obtaining possession of the holding and without interfering to a substantial extent or for a substantial time with the use of the holding for the purposes of the business carried on by the tenant; or

(b) the tenant is willing to accept a tenancy of an economically separable part of the holding and either sub-paragraph (a) is satisfied with respect to that part or possession of the remainder of the holding would be reasonably sufficient to enable the landlord to carry out the intended work."

13. Section 23 of the Planning Act (Northern Ireland) 2011 defines "development" for the purposes of the Order:

"23(1) In this Act, subject to subsections (2) to (6), 'development' means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

(2) For the purposes of this Act 'building operations' includes –

(a) demolition of buildings'

(b) rebuilding;

(c) structural alteration of or addition to buildings; and

(d) other operations normally undertaken by a person carrying on business as a builder.

(3) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land –

(a) the carrying out of works for the maintenance, improvement or other alteration or any building, being works which affect only the interior of the building or which do not materially affect the external appearance of the building; …

(4) …

(5) …

(6) …".

Authorities

14. The Tribunal was referred to the following authorities:

(i) Atkinson v Bettison [1955] 1 WLR 1127 at page 1130 and 1131

(ii) Fisher v Taylors Furnishing Stores [1956] 2 WLR 985

(iii) Romulus Trading Co Limited v Henry Smith's Charity Trustees [1990] 2 EGLR 75

(iv) Barth v Pritchard [1990] 1 EGLR 109 (Court of Appeal) at 111

(v) Peter Goddard & Sons v Hounslow LBC [1992] 1 EGLR 281

(vi) Stewarts Supermarkets v Dunwoody BT/109/1993

(vii) Douglas v Hunter BT/9/1005

(viii) Pumperninks of Piccadilly Ltd v Land Securities and Others [2002] CH 337 CA

(ix) Rosemary Gawn Solicitors v E & O Investments Limited BT/7/2018

(x) S Frances Limited v Cavendish Hotel (London) Limited [2019] AC 249

15. And to the following text:

(i) Reynolds and Clark: Renewal of Business Tenancies, 6th edition paras 7-092 to 7-189

The Relevance of the English Statute

16. The respondent had referred the Tribunal to authorities from the jurisdiction in England, which he accepted was "slightly" different to the Northern Ireland jurisdiction. In relation to the English authorities, Mr Shields BL asked the Tribunal to note that ground 12(1)(f) in the Northern Ireland legislation was different in both content and form to the equivalent GB legislation.

17. The legal test set out in the NI legislation comprised two distinct gateways. At least one of those gateways must be satisfied by a landlord seeking to oppose a new tenancy. In contrast, section 30(1)(f) of the GB Landlord and Tenant Act 1954, provides for a single "rolled-up" test:

> "30(1)(f) That on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof and that he could not reasonably do so without obtaining possession of the holding."

18. In contrast, Mr Shields BL submitted that the NI legislation was both structured differently and compelled a different assessment and there was an important additional requirement in the NI legislation, absent from the GB legislation.

19. In this jurisdiction, when the landlord relied upon "demolition" [12(1)(f)(i)], Mr Shields BL submitted there was a necessity for the landlord to further demonstrate that he will "undertake a substantial development of the holding" following demolition and there was no such requirement in the GB legislation.

20. Given the different legislative framework in NI, the heavy reliance by the respondent in the subject reference upon GB caselaw and the analysis of ground "(f)" in a GB textbook, Mr Shields BL submitted that the respondent's reliance on these was misplaced and incorrect.

21. Also, given the differently structured NI legislation, comprising two separate gateways rather than a single test, Mr Shields BL submitted that the respondent was in error to ask the Lands Tribunal to adapt an approach of standing back and assessing the "totality" of the works, as the NI legislation required the landlord to identify what works, precisely, he relied upon to satisfy either gateway and required the Tribunal to identify whether either gateway was satisfied.

22. Mr Gibson BL accepted that the wording in the GB legislation was "slightly" different from the NI legislation. He also accepted that there were two aspects to the NI legislation. He did, however, consider that the principles set out in the GB case law and texts with regard to consideration of "demolition", "substantial development" and "substantial works of construction" applied equally to the NI jurisdiction, regardless of the differences in the respective statutes.

23. As submitted by Mr Shields BL, the Tribunal notes the differences in the respective statutes but also agrees with Mr Gibson BL, the principles set out in the GB case with regard to the consideration of significant construction, demolition, development etc may still have relevance to NI.

The Existing Lease

24. It was generally accepted that the proposed works could not be carried out by the respondent under the terms of the existing lease.

Consideration of Article 12(1)(f)

25. Article 12(1)(f) of the Order stipulates:

> "(f) that on the termination of the current tenancy the landlord intends –

(i) to demolish a building or structure which comprises, or forms a substantial part of the holding and to undertake a substantial development of the holding; or

(ii) to carry out substantial works of construction on the holding or part of it;

and that he could not reasonably do so without obtaining possession of the holding."

"Intends"

26. It was not generally disputed that the respondent intended to carry out the proposed works.

27. Mr Shields BL, however, referred the Tribunal to Peter Goddard & Sons v Hounslaw LBC [1992] 1EGLR 281 in which it was established that it was essential for a landlord to prove it had sufficient funds available to enable the development to be implemented.

28. Given the importance of this proof, he considered it surprising that the key witness for the respondent, Mr Mallon, gave evidence that there were no documents in existence in relation to the supposed intercompany loan that would fund the works.

29. Mr Shields BL also asked the Tribunal to note that on the respondent's own published accounts it did not hold sufficient funds to finance the proposed works, costing approx. £200,000. The respondent's last accounts, filed at Companies House, for the period ended 29th April 2021, indicated an operating profit of £72,651 and for the previous year the operating profit was £70,500.

30. He concluded, therefore, that the respondent had not adduced an essential and important proof as to the finance for carrying out of the works.

31. Mr Gibson BL asked the Tribunal to note:

(i) The undertaking given by Mr Dick, director of the respondent company, both orally and in a witness statement confirming the ability to provide funding. He made it clear that the parent company, Frasers Group PLC, was in a position to provide any funding required.

(ii) The "comfort" from the respondent's parent company, the Frasers Group PLC, was given by a director of that company and this "guarantee" mirrored the guarantee which had a statutory footing under Section 479 of the Companies Act 2006 and as can be found at Companies House. The respondent is a subsidiary of Frasers Group PLC and its obligations are guaranteed by the Frasers Group PLC, as evidenced by the audit exemption guarantee at Companies House. If, therefore, the respondent failed to pay its builders the Frasers Group PLC would be obliged to pay.

32. Given (i) the undertaking by Mr Dick (ii) the undertaking by a director of Frasers Group PLC (iii) the statutory undertaking under Section 479 of the Companies Act 2006, the Tribunal is satisfied that adequate funds are available to the respondent to carry out the proposed works.

"To Demolish…. a Structure"

33. The applicant's expert witness, Mr Wayne Storey, had accepted that certain works could be considered as demolition works to a substantial part of the holding and this was not contested.

"And to Undertake a Substantial Development of the Holding"

34. The parties were agreed that there must be development within the meaning of the Planning Act (Northern Ireland) 2011 and the development must be substantial.

35. Mr Gibson BL submitted that "development", for the purposes of the Order, was clearly defined Article 23(1) of the 2011 Planning Act as "the carrying out of building, engineering, mining or other operations in, on, over or under or the making of any material change in the use of any buildings or other land".

36. The applicant's position was that the entirety of Section 23 of the 2011 Planning Act must be taken into account when considering the definition of development. Mr Gibson BL submitted that this ignored the following:

(i) "Development", with regard to the Order, can be defined entirely within the ambit of Section 23(1) of the 2011 Planning Act.

(ii) The Order does not refer to Section 23 of the 2011 Planning Act. If there had been an intention to define the word "development" within the entirety of Section 23 then the legislation could have been worded to make it clear that development had the same meaning as Section 23 of the 2011 Planning Act.

(iii) The meaning of "development" is consistent with the provisions of the foregoing legislation, namely the Planning (Northern Ireland) Order 1991 ("the 1991 Order"). However, if one goes further, as the applicant suggests, the remainder of Article 11 in the 1991 Order is different to the remainder of Section 23 in the 2011 Planning Act. The point was, therefore, that whilst, for the purposes of the Order, the definition of "development" as the carrying out of building, engineering, mining or other operations in, over or under land or the making of any material change in the use of any buildings or other land was consistent, the remainder of the relevant Article and Section were and are very different.

(iv) Why the Tribunal should not import subsections (2) to (6) of Section 23, which in any event are defined as being restricted to the Planning Act, is put starkly in to focus by the example of works to premises within a shopping centre or office space. It was impossible to imagine how there could ever be "substantial development" of the holding in any material change to the exterior of the premises. This issue was not addressed by the applicant, instead defecting to

suggest that a landlord in such circumstances could rely on the second ground in 12(1)(f).

(v) The respondent accepts the principle that statute must be construed as a whole. It has no application, however, to the task which the Tribunal has to adopt in the subject reference, which is interpreting the meaning of "development" as defined in the Order with reference to development within the 2011 Planning Act. Indeed if one reads down Sections 2 to 6 of the 2011 Planning Act, it is apparent they are not applicable to the Business Tenancies legislation. In particular Article 23(3)(a) which provides for matters not to be taken to involve development.

(vi) The question is whether or not the word "development" can survive without subsections 2 to 6 and the answer was clearly that it can.

37. Mr Shields BL also referred the Tribunal to Section 23(3) of the Planning Act:

"23(3) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land –

(a) the carrying out of works for the maintenance, improvement or other alteration of any building, being works which affect only the interior of the building or which do not materially affect the external appearance of the building."

38. The respondent argued that the Tribunal should ignore sub-paragraphs 2 to 6 of Section 23. Mr Shields BL submitted that the respondent was wrong to advance that submission and that it would lead the Tribunal into error.

39. He submitted that a cannon of statutory construction was that a statute was to be read as a whole and there was no basis either in the Order, the 2011 Planning Act or in the law relating to statutory interpretation, for excluding part of the relevant section of the 2011 Planning Act.

40. The Tribunal was referred by Mr Shields BL to the decision in Customs and Excise Commissioners v Zielinski & Partners Ltd [2004] UKHL 7, [2004] 2 All Er 141 at [38] in which Lord Walker referred to the "universally acknowledged need to construe a statute as a whole".

The Tribunal

41. The Order could not have envisaged the definition of "development" as contained in the 2011 Planning Act as it was enacted some fifteen years later. At the time of drafting the Order, the Planning (Northern Ireland) Order 1991 was the relevant legislation. This Order, at Article 11, defined development as:

> "11.-(1) In this Order, subject to paragraphs (2) to (4), 'development' means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land."

This is almost identical to Section 23(1) of the current legislation, the 2011 Planning Act.

42. Article 11(2) goes on to list operations which do not involve development of land. In particular Article 11(2)(a) states that the following is not development:

> "11.-(2)(a) The carrying out of works for the maintenance, improvement, or other alteration of any building, being works which affect only the interior of the building or which do not materially affect the external appearance of any building."

This is identical to Section 23(3)(a) of the 2011 Planning Act.

43. When drafting the 1996 Business Tenancies legislation it would be unconscionable to think the legislators were not aware that the definition of "development" was "subject to paragraphs (2) to (4)" of the 1991 Planning Order. If they wanted to ignore paragraphs (2) to

(4) they could have incorporated the basic definition of "development" as contained in Article 11(1) of the 1991 Planning Order, leaving out the references to paragraphs (2) to (4).

44. The definition of "development", as contained in the 2011 Planning Act, is clearly subject to paragraphs (2) to (6). The Tribunal agrees, therefore, with Mr Shields BL, as per Section 23(3)(a) the following operations "… works of the maintenance, improvement or other alteration of any building, being works which affect only the interior of the building or which do not materially affect the exterior of the building" are not development.

45. If the Tribunal ruled against the respondent on this particular issue, Mr Gibson BL contended that there would, in any case, be a material change to the exterior of the premises based on the following:

    (i) There was the evidence from of the respondent's architect, Mr McCullough, which was unchallenged.

    (ii) The best evidence that the respondent satisfied the development requirement within the 2011 Planning Act was the fact that it was required to obtain planning permission.

    (iii) The "development" aspect only applied to the demolition and substantial development limb of 12(1)(f). The respondent was also entitled to rely on the second limb of 12(1)(f) in that it intended to carry out substantial works of construction on the holding.

46. Mr McCullough detailed the proposed works which he considered to be external development:

    (i) Three new entrance door sets/frames.

    (ii) Final testing and commissioning.

    (iii) Landlord's formation of new door opening.

    (iv) Security roller shutter to opening.

(v) Former tenant's sineage box to be retained.

(vi) Replacing fire doors.

(vii) Making opening for roller shutter.

(viii) New goods-in roller shutter.

47. Mr Shields BL summarised these works as the replacement of the existing and the installation of a roller shutter on the side and a door to the rere. He considered the costs of these works to be modest indeed and in a building of this size and character he submitted that they could not be construed as substantially affecting the exterior of the building.

48. Mr Shields BL asked the Tribunal to note that, in cross-examination, Mr McCullough agreed that these works could not be regarded as works of "substantial development" and Mr Stokes also agreed that these works were simply minor works and would not be significant from a planning point of view.

49. The Tribunal agrees with Mr Shields BL, the external works, as proposed by the respondent, could not be construed as works of "substantial development" in relation to a building of the size of the reference property. As such the Tribunal finds that the respondent has failed to prove ground 12(1)(f)(i) of the Order.

"To Carry Out Substantial Works of Construction to the Holding or Part of it"

50. In relation to "substantial works of construction" Mr Gibson BL noted that, at hearing, certain aspects of the works were concentrated on:

(i) The removal of the party/dividing wall between the Unit A and the reference property to form an enlarged combined retail floor space.

(ii) The grinding of the floor and the removal of all existing floor coverings.

(iii) The removal of the amenity/welfare walls to the rere of the reference property.

(iv) Three new bi-parting automatic entrance door sets/frames to be constructed with a cost of approximately £18,000.

51. Mr McCullough had identified the following works which he considered to be works of construction:

Internal

(i) Three new entrance door sets/frames.

(ii) Final testing and commissioning.

(iii) Respondent's formation of new door opening.

(iv) Security roller shutter to opening.

(v) Former tenant's sineage box to be retained.

(vi) Replacing fire doors.

(vii) Making opening for roller shutter.

(viii) New goods-in roller shutter.

External

(ix) Existing party wall to be demolished.

(x) Tenant's fittings to be removed.

(xi) Tenant's HVAC systems to be removed.

(xii) Oil tank to be removed.

(xiii) All existing floor and lighting systems to be taken down.

(xiv) All floor coverings to be removed and cleaned.

(xv) Grinding of floors.

(xvi) Respondent to remove amenity block walls.

(xvii) Services to be terminated in one unit.

52. Mr Gibson BL then referenced the Tribunal to a number of principles which were discerned by the authors in Reynolds and Clarke, at paragraphs 7-128:

(i) **Work for which either the landlord or the tenant is responsible under the terms of a lease, e.g. works of repair to remedy dilapidations will not be qualifying work.**

The demolition of the internal walls and the grinding and reconstruction of the floor are not works which either the landlord or tenant are responsible for under the lease.

(ii) **Work which the landlord is entitled to carry out under the terms of the lease pursuant to a right of entry is not qualifying work.**

The rights of the landlord in this particular lease to re-enter are fixed almost entirely out of a failure of the tenant repair.

(iii) **The installation of fittings and equipment within an existing building is not qualifying work**.

The respondent does not so claim.

(iv) **Partitions, however extensive, are unlikely to constitute works of construction.**

Not relevant.

(v) **The removal of partitions or the sealing up of openings and structural walls is qualifying work.**

This is to be read disjunctively so that the removal of partitions is qualifying works.

(vi) **The provision of new toilets is work of installation, not work of construction** …

Not relevant.

(vii) **Installing pipe work and cables underneath and through floors is not a work of construction save that such works will need to be considered as part of the whole works**.

In the subject reference they are ancillary to the whole works.

(viii) **Interference with floor slabs or floorboards will be qualifying work**

This applies in the subject reference.

(ix) **Installation of new staircases or removal of such will be qualifying work**.

Not relevant in the subject reference.

(x) **The provision of new accommodation within an existing structure e.g. by the creation of new brick partitions will be qualifying work**.

Not relevant in the subject reference.

(xi) **The fitting of fire lobbies or doors is not qualifying work**.

The simple replacement of a door would not be considered as qualifying work but the installation of a door which requires a structural element should be considered as qualifying work.

53. In conclusion Mr Gibson BL submitted that the works listed by Mr McCullough amounted to substantial works of construction to the holding and the respondent, therefore, had satisfied ground 12(1)(f)(ii) of the Order.

54. Mr Shields BL submitted that the evidence heard by the Tribunal did not establish or demonstrate what was proposed amounted to "substantial works of construction on the holding". Mr Shields BL:

(i) **The replacement of the swing doors**

The current doors at the premises are electric although they are operated manually. These are to be replaced. The respondent originally sought to contend that these were substantial works of construction. However, when Mr McCullough, the respondent's expert, was cross-examined on this point, he said that he adopted this description because he was only given a choice by counsel for the respondent of either repair or construction.

Mr McCullough quite properly accepted that "installation" would be a more appropriate description of the work as it did not involve a substantial work of construction to a building of this type.

Mr McCullough also accepted the installation of a door was a small part of the overall works being proposed and would not amount to substantial construction.

The respondent was wrong in its closing submission to attempt to claim that Mr McCullough, in re-examination, stuck with his evidence that this was construction. Mr McCullough properly changed his mind when he was given more options than simply "repair" or "construction"

(ii) **The roller shutters**

Mr McCullough in his cross-examination agreed that this would not be "substantial" construction. Notably, the respondent's planning consultant, Mr Stokes, in cross-examination, also agreed that the two doors and service accesses were "minor" external works. He said that the work would not be significant from a planning perspective.

(iii) **The removal of air-conditioning**

Mr McCullough in cross-examination said these works were more akin to stripping-out works. When pressed as to why he referred to them in his evidenced-in-chief as works of construction, his response again was that counsel for the respondent had only given him two choices, that of "repair" or "construction", but, in fact, his evidence now was that the works were more akin to demolition. This was another concession by Mr McCullough.

(iv) **The grinding of the floors**

The evidence given in cross-examination by Mr McCullough was that this was demolition rather than construction.

The respondent was therefore wrong and incorrect in its closing submissions to classify this as a work of construction. The respondent here seems to have overlooked the clear concession given by Mr McCullough on this issue in his cross-examination.

55. In conclusion Mr Shields BL submitted that no other potential works of "construction" were identified by the respondent and it was clear, therefore, that the respondent could not rely upon Article 12(1)(f)(ii).

56. Having considered the evidence in detail the Tribunal finds that the only work items which could possibly be considered as construction were the grinding of the floors, the new entrance doors and the roller shutter. Even then it was debatable whether these were works of construction.

57. The Tribunal agrees with Mr Shields BL, in cross-examination Mr McCullough, changed his original position that these were works of construction.

58. In any case, in the context of the reference property, a substantial retail warehouse of 1200m^2 costing in the region of £5 million, these works could not possibly be construed as "substantial works of construction".

59. The Tribunal therefore finds that the respondent has failed to prove the ground of opposition listed in Article 12(1)(f)(ii) of the Order.

Article 13(2)(a)

60. For completeness, if it is wrong in its findings re Article 12(1)(f), the Tribunal will now consider Article 13(2)(a) of the Order. This Article does not permit the landlord to rely on the grounds in Article 12(1)(f) if the tenant is willing to include in the terms of the new tenancy, a condition giving access to the landlord to carry out the proposed works.

61. Late on in the original hearing, Mr Wall, on behalf of the applicant had offered to vacate the reference property for a period of six weeks to allow the works to be carried out. The Tribunal then asked for submissions re this proposal and reconvened the hearing.

62. Mr McCullough, on behalf of the applicant, gave evidence that an accelerated programme of six weeks would incur the respondent with additional costs of around £36,000. When questioned by Mr Shields BL he advised the Tribunal that a period of eight weeks would result in no additional costs to the respondent.

63. Following this, Mr Wall gave evidence that, as a term of the new tenancy, the applicant would vacate the reference property for a term of eight weeks to allow the works to be carried out at no additional cost to the respondent.

64. The Tribunal considers this to be reasonable and in compliance with the term of Article 13(2) of the Order. On that basis the respondent cannot, therefore, rely on the grounds contained within Article 12(1)(f) to obtain possession of the reference property.

Conclusion

65. The Tribunal finds that the respondent has not satisfied the grounds of opposition to a new tenancy under Article 12(1)(f) of the Order. In addition, under Article 13(2) of the Order, the applicant has agreed to incorporate a term in the new lease giving the respondent eight weeks to carry out the proposed works at no additional cost. On that basis the Tribunal directs that the parties should now proceed with the applicant's tenancy application.

15th February 2023

Henry Spence MRICS Dip.Rating IRRV (Hons)

Lands Tribunal for Northern Ireland