

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**BUSINESS TENANCIES (NORTHERN IRELAND) ORDER 1996**

**IN THE MATTER OF AN APPLICATION**

**BT/26/2013**

**BETWEEN**

**READY USE CONCRETE COMPANY LIMITED – APPLICANT**

**AND**

**ALG DEVELOPMENTS LIMITED – RESPONDENT**

**Re: Lands at Inchanny, Strabane**

**Belfast – 12<sup>th</sup> March 2014**

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

**Background**

1. The respondent is the owner of an 8.82 acre self contained site on the outskirts of Strabane which is used for the making of ready mix concrete and the manufacture of concrete products. Access is off the Knockroe Road and production is limited to some 5.5 acres of the site.
2. The applicant occupies the premises under a lease commencing 1<sup>st</sup> April 1992 between Backtown Farm Limited and Sean Quinn Concrete Limited and Sean Quinn Group Limited. By a deed of assignment dated 6<sup>th</sup> October 1994 the lease was subsequently assigned to the applicant.
3. The terms of the lease relevant to the current reference are:
  - i. The lease demised the premises for a term of 21 years from 1<sup>st</sup> April 1992. The contractual term of the lease therefore expired on 31<sup>st</sup> March 2013.
  - ii. Clause 4 of the lease restricts the use of the premises to “the making of ready mix concrete and the stock piling of materials necessary in connection with the making of ready mix concrete and in addition of the manufacture of concrete products and the stock piling thereof and all items ancillary thereto”.

4. The initial rent was £6,500 per annum and this was subject to periodic retail price index increases culminating in a rent of £9,467 per annum at the date of termination of the current lease.
5. On 18<sup>th</sup> October 2012 the respondent served a Landlord's Notice to Determine. On 28<sup>th</sup> March 2013 the applicant made a tenancy application to the Lands Tribunal.
6. Prior to hearing the parties had agreed a 5 year lease with all other terms remaining the same apart from the rent. It is the rent which the Tribunal has been asked to determine.

### **Procedural Matters**

7. Mr Douglas Stevenson BL appeared for the applicant instructed by Carson McDowell, Solicitors. Mr Elvin Thompson appeared for the respondent. Mr Thompson is the Managing Director of ALG Developments Limited. The Tribunal received written and oral expert evidence from Mr Michael Burke an experienced Chartered Surveyor. The applicant also called Mr Nigel Galbraith to give evidence as to the history of the development of the site and Mr Brian Thompson to provide evidence of the decline in production on the site.

### **Position of the Parties**

8. The parties have failed to agree the rent payable under the terms of the new lease. Mr Burke assessed the rent at £8,000 per annum. Mr Thompson considered the rent should be £40,000 per annum.

### **Statutory Framework**

9. The relevant provisions are contained in Article 18 of the Business Tenancies (Northern Ireland) Order 1996 ("the Order"):

"(2) In the absence of agreement the rent should be such as may be determined by the Lands Tribunal to be that at which, having regard to the terms of the tenancy (other than those relating to rent), the holding might reasonably be expected to be let in the open market by a willing lessor, there being disregarded—

- (a) any effect on rent of the fact that the tenant has or his predecessors in title have been in occupation of the holding;
- (b) any goodwill attached to the holding by reason of the carrying on thereof of the business of the tenant (whether by him or by a predecessor of his in that business);

(c) any effect on rent of any improvement—

(i) carried out by the tenant or a predecessor in title of his; or

(ii) where the tenant or a predecessor in title of his has remained in occupation of the holding during two or more tenancies, carried out by him or that predecessor in title during a tenancy other than the current tenancy;

other than in pursuance of an obligation to the immediate landlord;

.....

(4) Where the Lands Tribunal fixes the amount of rent under this Article, it may by order direct—

(a) that the rent shall be payable in that amount from such date (including a date then past), and

(b) that interest shall be payable on rent in arrear (including rent in arrear by virtue of a direction under sub-paragraph (a)) at such rate,

as the Lands Tribunal considers proper in all the circumstances.”

## **Authorities**

10. The Tribunal was referred to the following authorities:

- Gorleston Golf Club v Links Estate (1959) 173 EG 298; (1959) 109 LJ 140

In this County court decision the premises were valued on the basis of the only use permitted by the user clause, rather than (as the landlord contended) on the basis of the most profitable use to which they could be put in the absence of such a user clause.

- Plinth Property Investments Ltd v Mott, Hay & Anderson [1979] 1 EGLR 17 CA

In this rent review case the lease contained a clause restricting use of the premises to that of offices of consulting engineers. The landlords argued that, in assessing the rent, the arbitrator should take in to account the possibility that the landlord might agree to a variation of that user clause so as to mitigate the depressing effect on rent of such a narrow restriction. The Court of Appeal held that this was not permissible, and that the premises had to be valued upon the assumption that the landlords would strictly enforce their rights under the lease.

11. The Tribunal also derived assistance from:

- DX Network Services Limited v Belfast International Airport (BT/4/2007)

The following quotes are relevant to this reference:

“(16) Article 2(2) of the 1996 Order defines terms including ‘predecessor in title’:

‘predecessor in title’ in relation to ... a tenant means any person through whom ... the tenant, ..., has derived title;”

“(27) It is clear that the expression ‘predecessor in title’ refers to previous holders of the leasehold estate, not the business. (See Pasmore v Whitbread [1953]) ...”

“(29) ... The Tribunal concludes that the answer to the first question is that the expression ‘predecessor in title’ in the 1996 Order is not to be interpreted in its strict conveyancing sense.”

“(33) ... However the Tribunal agrees that the expression is not wide enough to include each and every person who at some time has held some interest in the premises.”

### **Discussion**

12. Mr Burke on behalf of the applicant had assessed the rental value of the premises at £8,000 per annum. Mr Thompson was of the opinion that the rent should be £40,000 per annum. This wide variation in rent was due to the parties disagreement on:

- i. What improvements were to be included in the rental assessment.
- ii. The “user clause”.
- iii. The comparable evidence.

### **Improvements**

13. Article 18(2)(c) of the Order requires the Tribunal to disregard the effect on rent of any improvement carried out by the tenant or a predecessor in title. Mr Galbraith who had been an employee at the site since February 1984 gave a timeline of the improvements carried out since the opening of the plant in 1984:

- i. The site 1984:
  - the majority of the site was waste ground.

- entrance was via an old laneway.
- approximately 50m<sup>2</sup> of concrete base had been laid to support a concrete batching plant.

ii. “Kyle’s” tenancy

- 1985 1½ acres of the site concreted.
- 1986 first phase of offices constructed.

iii. “Lafferty’s” tenancy

- 1988 offices finished off and toilet facilities added.
- 1988 garage and storage yard constructed.

iv. “Quinn’s” tenancy

- 1992 major construction works
  - laneway access upgraded
  - 4 aggregate stores added (1 large store to house 4000 tonnes)
  - concrete yard extended by an additional 2 acres.
  - canteen and additional toilet facilities added to the office block.
  - batching plant extended.
  - underground hopper added.

v. “Ready Use” tenancy

- construction of wash out facility for trucks to comply with environmental requirements.
- electricity cables moved underground and ducts for computer terminals installed.
- 60% of the old yard re concreted.
- concrete yard extended by approximately 1½ acres.
- septic tank for the offices replaced.
- aggregate storage bins replaced and extensive plant refurbishment carried out.

14. Mr Thompson was in agreement with Mr Galbraith’s timeline but in his opinion it was irrelevant as he considered all of the improvements should revert to the landlord at lease renewal and as such they should be included in the current rental assessment.

15. Mr Burke had based his rental assessment on the assumption that the “Quinn” and “Ready Use” improvements should be excluded. Mr Stevenson BL considered this was consistent with the directions in Article 18(2)(c) of the Order.

16. The Tribunal agrees with Mr Stevenson BL. The current lease was assigned from the Quinn Group in 1994 to the current tenants and the Tribunal is satisfied that the Quinn Group was a “predecessor in title” to the current tenants (see “DX Network Services Limited” paragraphs 16, 27 and 29). On that basis Article 18(2)(c) of the Order directs that both the “Quinn” improvements and the “Ready Use” improvements should be excluded from the current rental assessment.
17. For the purposes of assessing the rent the premises therefore comprise:
- 8.82 acres of mainly waste ground accessed via an old laneway.
  - 50m<sup>2</sup> of concrete base to house a batching plant.
  - 1½ acres of concrete yard.
  - small block of offices with toilet facilities.
  - garage and storage yard.

### **User Clause**

18. As detailed previously in paragraph “3” there is a clause in the lease restricting use of the premises to the making of ready mix concrete and the manufacture of concrete products.
19. Mr Thompson considered that the landlord had the power to waive the user clause. In his opinion the rent should be based on any use of the premises which he permitted and should not be restricted as per the user clause.
20. Mr Stevenson BL disagreed. He referred the Tribunal to Gorleston Golf Club v Links Estate and Plinth Property Investments Ltd v Mott, Hay & Anderson.
21. The Tribunal agrees with Mr Stevenson BL. The case law direction is clear, the premises must be valued on the assumption that the landlords would strictly enforce their rights under the lease. The rental assessment is therefore to be based on the assumption that the use of the premises will be restricted to that permitted in the user clause i.e. the making of ready mix concrete and the manufacture of concrete products.

### **The Comparable Evidence**

22. Mr Thompson provided evidence of lettings of what he considered to be similar sites in various locations throughout Northern Ireland. He analysed this evidence on a price per acre basis

and then applied an average price per acre to the subject site to give a rental of £40,000 per annum. Mr Thompson confirmed that he had obtained this evidence from a variety of sources but mainly from the internet and a search he had commissioned from a surveying firm. He had not requested the firm of surveyors to be present at the hearing to give evidence.

23. Mr Burke did not consider Mr Thompson's comparable evidence to be acceptable as:

- some of the properties were used for activities other than for the manufacture of concrete products and this was at variance with the user clause in the lease.
- rental dates were mainly 2008 and 2010, some considerable time prior to the date of the subject lease renewal, 1<sup>st</sup> April 2013.
- there was no validation of the rents or property details provided.
- some of the transactions were between related parties.
- the properties were located mainly in the Greater Belfast area which was a significantly different location to that of the subject site.
- full lease details had not been provided and there was no way of knowing what exactly was included in any of the rents. Proper analysis of any the comparables was not therefore possible.

24. The Tribunal agrees with Mr Burke, full lease details were not provided for any of the comparables and there was no evidence before the Tribunal to validate any of the information provided. It may have been possible to adjust validated rents for time and location but without knowing precisely what was included in the rent for each property, proper analysis was not possible. The Tribunal therefore, regretfully, derives no assistance from Mr Thompson's evidence.

25. Mr Burke confirmed that he had researched the market throughout Northern Ireland but in his opinion the only available comparable evidence was for a similar site at Glasgort Road in Aghadowey, a rural location some 30 miles from the subject site. He had noted in his expert evidence, however, that he: "did discover evidence within the Greater Belfast area demonstrating higher passing rentals per square foot, albeit we were of the opinion this was not directly comparable". It is regrettable that Mr Burke did not put this evidence before the Tribunal as it may have been possible to make adjustments to reflect the relative advantages/disadvantages of each site. As a consequence the Tribunal is restricted to very limited comparable evidence.

26. Mr Burke provided details of the site at Glasgort Road, Aghadowey:

Demise: 3.85 acres/167,706 sq ft to include 11,700 sq ft of open sided roofed shed  
Passing Rental: £6,240 per annum  
Term: 1 year from 1<sup>st</sup> April 2013

Analysis:	11,700 sq ft @ £0.25 per sq ft	£2,925
	156,006 sq ft @ £0.0213 per sq ft	<u>£3,315</u>
	TOTAL	£6,240

27. He then applied the comparable evidence to the subject premises:

Hard standing yard	241,758 sq ft @ £0.033 per sq ft	£7,978
		Say £8,000 per annum

28. Mr Thompson considered the Glasgort Road site to be inferior to the subject premises as it was in a poor location and the current use was for agriculture. In his opinion the subject site was far superior.

29. Mr Burke gave evidence that he had been involved in the letting of the Glasgort Road site. He confirmed that it had been marketed as a “secure industrial yard” and the tenant had listed the use of the site as agriculture merely for convenience purposes. He also gave evidence that the site had previously been occupied by “Ready Use” as a concrete batching plant.

30. Mr Brian Thompson, Director of Operations “Ready Use” gave evidence as to the decline and disadvantages of the subject site:

- In 2005 65% of all production was for projects in the South of Ireland. At this peak of the market some 26 staff were employed on site.
- A steady decline in the business commenced in 2007. This was due to a combination of the recession and the introduction of an aggregate tax in the North of Ireland. As the subject site was located only 2 miles from the border, the effect of the aggregate tax was that the company could not compete with similar operators in the South of Ireland.
- In 2011 block production ceased on site.
- Only one staff member remains on site in 2014.



31. The Tribunal considers that, based on the limited and competing evidence available, the relative advantages and disadvantages of each site makes them broadly similar as regards rental potential.

### **Rental Value**

32. Based on the sole comparable available, Mr Burke has assessed the rental value of the subject site at £8,000 per annum, for the “hard standing yard”. This is his independent expert opinion and there is no valid evidence before the Tribunal to suggest this figure is incorrect. He has not, however, included an amount for the other structures which were present on the site prior to the commencement of the current tenancy in 1992 (listed previously at paragraph 17), mainly the small block of offices with toilet facilities and the garage.

33. The Tribunal assesses the rental value of the subject premises at:

Hard standing yard	£8,000
Add 10% to reflect small office block and garage	<u>£800</u>
TOTAL	£8,800 per annum

### **Conclusion**

34. The Tribunal assesses the rent in accordance with the Order at £8,800 per annum and exercising its discretion under Article 18(4) of the Order, the Tribunal directs that this rent is to be backdated to the determination date of the contractual expiry of the lease, 1<sup>st</sup> April 2013.

### **ORDERS ACCORDINGLY**

3<sup>rd</sup> April 2014

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

### **Appearances:**

**Applicant/Tenant – Mr Douglas Stevenson BL instructed by Carson McDowell, Solicitors.**

**Respondent/Landlord – Mr Elvin Thompson of ALG Developments Limited.**