

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964

IN THE MATTER OF A REFERENCE

R/1/2016

BETWEEN

EDWARD WALLACE – APPLICANT

AND

DEPARTMENT FOR REGIONAL DEVELOPMENT – RESPONDENT

Re: 244 Frosses Road, Cloughmills, Ballymena

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

BACKGROUND

1. The Department for Regional Development (“the respondent”) had vested a portion of land at Mr Wallace’s (“the applicant”) property at 244 Frosses Road, Cloughmills (“the reference property”). This was to facilitate the construction of a new dual carriageway on the A26 between Ballymena and Ballymoney. The negotiations between the parties with regard to the compensation payable for the vesting were still ongoing.

2. The respondent had proposed to construct a new laneway access to the reference property as part of the accommodation works. In the meantime the applicant had referred to the Tribunal for a determination:- “that due to the construction of the new A26 dual carriageway by DRD which passes the Claimant’s Residence, i.e. 244 Frosses Road, Cloughmills, a ‘shortened version’ of the new proposed long driveway to the Claimant’s Residence be constructed in lieu of the long driveway”.

3. The applicant was not therefore in favour of the long driveway access as proposed by the respondent. Rather he preferred a much shorter, direct access to the dual carriageway and he was seeking a determination from the Tribunal that the accommodation works should be along the lines of his proposed “shortened” access. For road safety reasons the respondent advised the Tribunal that they could not agree to the applicant’s proposals, but they had agreed to hold a further meeting to discuss the issues.

PROCEDURAL MATTERS

4. Mr Wallace appeared as a litigant in person. Ms Jo-Anne Devine from the Departmental Solicitor’s Office appeared for the respondent.

POSITION OF THE PARTIES

5. Ms Devine’s position was that the Lands Tribunal did not have statutory jurisdiction to adjudicate on the issue of accommodation works, other than in relation to the compensation payable (if any) for such works. Mr Wallace considered that the Lands Tribunal did have jurisdiction. The Tribunal subsequently requested written submissions from the parties re the jurisdiction issue.

STATUTE

6. Section 6 of the Lands Tribunal and Compensation Act (Northern Ireland) 1964 (“the Act”) deals with the “Jurisdiction of the Lands Tribunal”:-

“6(2) As from the date of coming in to operation of subsection (1), there shall be referred to and determined by the Lands Tribunal, in so far as they are not required by subsection (1) to be so referred and determined, –

- (a) any question of disputed compensation for the severance or injurious affection of any land, arising under the Land Compensation (Northern Ireland) Order 1982 or under the Lands Clauses Consolidation Acts, on or in connection with the acquisition of, or the execution of any works

on, any land of the exercise in relation to any land or any powers conferred by any statutory provision;

(b) ...

6(6) The Lands Tribunal may also act as arbitrator under a reference by consent relating to any matter affecting the value or the use or development of any land ...”

AUTHORITIES

7. The Tribunal finds the following quote from a previous decision in William R Mahood v Department of the Environment for Northern Ireland R/33/1983 to be of some assistance: “Whilst it is generally more satisfactory if accommodation works are agreed and carried out during the reconstruction of the road it must be borne in mind that the acquiring authority is under no obligation to carry out such works and certainly ought not to do so without the owner’s consent. In the absence of such consent the authority can leave the owners to make their own arrangements for reinstatement and claim the cost thereof (taking into account betterment, if any) as part of the compensation.”
8. Mahood was a case about the correct amount of fees payable to a surveyor for negotiating accommodation works.

DISCUSSION

9. The applicant considered that the “Lands Compensation Act 1973, Lands Acquisition and Compensation (Northern Ireland) Order 1973 and Planning Blight (Compensation) (Northern Ireland) Order 1981”, provided the Lands Tribunal with the statutory authority to adjudicate on the issue of what accommodation works should be provided by the respondent. He did not, however, refer to any particular sections of the above statutes which gave specific direction to the Tribunal.

10. In his Notice of Reference to the Lands Tribunal the applicant did not state, as requested at section 2 of the reference form, the statutory provisions under which his reference was made. Ms Devine submitted that the onus was on the applicant, since this was his application, to provide details of the relevant statutory provision.
11. Ms Devine then referred to Section 4 of the applicant's Notice of Reference and she asked the Tribunal to note that the reference was not for compensation, rather it sought a determination that the respondent provide a "shortened version" of the proposed driveway access at the reference property.
12. Section 6 of the Act sets out the circumstances in which the Lands Tribunal has jurisdiction. Ms Devine submitted that sub-paragraph (2) did not apply since the applicant had made it clear in his Notice of Reference that there was no question of disputed compensation, or as to whether compensation fell to be assessed. She also did not consider that this was a reference by consent under sub-paragraph (6). Furthermore she confirmed that there was no statute of which she was aware that required the respondent to undertake the works which the applicant was seeking. In conclusion Ms Devine submitted that this was not a matter which was properly referable to the Lands Tribunal for determination.
13. The Tribunal agrees with Ms Devine, this was not a compensation dispute which could be considered under 6(2) of the Act nor was it a reference by consent under 6(6). The Tribunal also cannot find any statute which gives it the authority to make directions as to what accommodation works should be provided in the subject reference. In Mahood the Tribunal was clear that the acquiring authority was under no obligation to carry out accommodation works. The value effect of accommodation works provided or not provided can, however, be taken in to account in assessing the correct amount of compensation payable for the vesting. Although, in the subject reference, this was for a later date, as the parties had not yet exhausted their compensation negotiations.

CONCLUSION

14. The Tribunal finds that it has no statutory authority to act in the subject reference.

ORDERS ACCORDINGLY

10th March 2016

Mr Henry Spence MRICS Dip.Rating IRRV (Hons)

Lands Tribunal for Northern Ireland

Appearances:

Applicant: Ed Wallace, LIP.

Respondent: Jo-anne Devine, Departmental Solicitor's Office