

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964
PLANNING BLIGHT (COMPENSATION) (NORTHERN IRELAND) ORDER 1981

IN THE MATTER OF APPLICATION FOR COSTS

R/10/2011

BETWEEN

ANTHONY REILLY & MADELINE JANE REILLY - CLAIMANTS

AND

DEPARTMENT FOR REGIONAL DEVELOPMENT – RESPONDENT

Re: 215 Frosses Road, Cloughmills, County Antrim

PART 2

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

Background

1. In December 2010 the Reillys served the Department with a blight notice requiring it to purchase their interest in the property 215 Frosses Road, as they had advance notification of a pending road scheme. In January 2011 the Department served a counter-notice objecting to the Reilly's blight notice.
2. In order to succeed the Reillys had to show that they were unable to sell their interest except at a price substantially lower than that for which it might reasonably have been expected to sell if there were no scheme. In addition, as the authority was proposing to acquire compulsory part only of the property and the Reillys wished the Department to acquire the whole, they had to show that the part could not be acquired without causing material detriment to the remainder.
3. By a decision dated 31st August 2012 the Tribunal upheld the Departments objection to the Reillys blight notice. The Reillys did, however, show that the part the Department proposed to acquire as part of the scheme could not be acquired without causing material detriment to the remainder.

Procedure

4. Written submissions were received from Mr Donal Lunny BL and Mr John Coyle BL.

Positions

5. Mr Lunny submitted that the Department was entitled to all of its costs of the reference.
6. Mr Coyle submitted in this case the Tribunal should not visit the instance of costs upon the Reillys.

Discussion

7. Mr Lunny submitted that the key issue in the instant case was the validity of the Department's counter-notice. The Reillys argued that the counter-notice ought not to be upheld. The Department considered that it should be upheld and, in that regard, the Department was victorious. The Department was the winner.
8. He referred the Tribunal to Oxfam v Earl (BT/3/1995) and the Departments primary position is that as winner costs should follow the event and the losers should pay.
9. In the expectation, however, that the Reillys would argue for an issue based approach to costs, he concluded that:
 - the onus is on the Reillys to establish the special circumstances necessary to justify a departure from the normal "costs follows the event" practice.
 - even if (which was not admitted) some account must be taken of the Reillys victory on the material detriment issue, the greatest effect that this should have is a reduction in the costs recoverable by the Department from the Reillys.
10. On that basis he referred the Tribunal to Cox v Clancy (BT/14/2010 Part III Costs) but still maintained in all of the circumstances the Department seeks its costs of the reference.
11. Mr Coyle agreed costs normally follow the event and the event is usually regarded as a success on the main or a central issue.
12. He pointed to the fact that there was late agreement by the parties before the hearing that the Reillys marketing strategy and efforts to sell were appropriate. He considered this a success for the Reillys.
13. He also argued that material detriment was a core, clearly interlinked issue and on that issue the Reillys were successful. He submitted therefore that this was a sufficient success to allow departure from the usual rule that costs follow the event.

14. Further guidance, he suggested, is obtained from paragraph 13 of the Tribunal's decision on costs in Fujitsu Telecommunications Europe Ltd v Brunswick (9 Lanyon Place) Ltd (BT/90/2002 Part II):-

“The Tribunal accepts that the respondent/landlord has succeeded and in the ordinary way the successful party should receive its costs. However the Tribunal concludes that the respondent/landlord's unsuccessful pursuit of this major intertwined issue is a special circumstance that warrants a departure from the general rule.”

In this instance the Tribunal ordered the applicant/tenant to pay one half of the respondent/landlord's costs.

15. For the reasons outlined previously Mr Coyle submitted that these were sufficient grounds, which were exceptional, to depart from the usual rule. In these circumstances he considered the Tribunal should not visit the instance of costs upon the Reillys.

Conclusion

16. In Oxfam the Tribunal concluded:

“... the starting point on the question of costs is the general presumption that, unless there were special circumstances, costs follow the event, i.e. that in the ordinary way the successful party should receive its costs.”

And

“The next question for a Tribunal is whether there were special circumstances which would warrant a departure from that general rule. But these must be circumstances connected with the proceedings, for example, to reflect an unsuccessful outcome on a major issue.”

17. It is clear the Reillys succeeded in the major interlinked issue of material detriment. Indeed this will have consequences when vesting takes place and may shorten any future dispute removing the issue from contention. Section 8(7) of the Lands Tribunal & Compensation Act 1964 empowers the Tribunal to make an order for costs or any part of the costs of the proceedings.
18. The Tribunal concludes that the Department's unsuccessful pursuit of this major interlinked issue is a special circumstance that warrants a departure from the general rule.
19. Taking a broad view the Tribunal therefore concludes that the Reillys should pay their own costs and one half of the Departments costs.

ORDERS ACCORDINGLY

18th January 2013

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

Appearances

Claimants: John Coyle BL instructed by James L Russell & Son, Solicitors.

Respondent: Donal Lunny BL instructed by the Departmental Solicitor's Office.