

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
PROPERTY (NORTHERN IRELAND) ORDER 1978
IN THE MATTER OF A REFERENCE
R/12/2021
BETWEEN
STEPHEN McKENNA – APPLICANT
AND
THE SUCCESSORS IN TITLE TO ALEXANDER BASIL WILSON (DEC'D) - RESPONDENTS

Re: 731-739 Lisburn Road, Belfast

Lands Tribunal for Northern Ireland – Henry Spence MRICS Dip.Rating IRRV (Hons)

Background

1. The property at 731-739 Lisburn Road, Belfast (“the reference property”) is held under a number of long leases which in turn are subject to a Fee Farm Grant, dated 5th February 1883, between Alexander Basil Wilson (1) and John Laird (2), subject to the annual rent of Seventeen Pounds and Five Shillings.
2. Mr Stephen McKenna (“the applicant”) currently owns the landlord’s interest in the leases for numbers 735-739 Lisburn Road and is in the process of acquiring the landlord’s interest in 731-733 Lisburn Road. The Tribunal has been advised that, once completed, the leases will be merged in the freehold reversion and the premises will be held under the Fee Farm Grant.
3. The Fee Farm Grant is split into two sections. The subject reference is in relation to section no. 1 (731-739 Lisburn Road). Section no. 2 comprises 743-753 Lisburn Road.
4. The applicant has obtained planning permission, LA04/2019/1100/F, for mixed used commercial and residential development to provide 79 apartments with associated amenity

space, approximately 9,000 sq ft retail space in 6 units, approximately 7,000 sq ft gym, 67 car parking spaces, bin storage, associated site and access works and public realm improvements.

5. There is, however, a covenant in the Fee Farm Grant which restricts development:

“And the said John Laird doth hereby for himself his heirs exors admors and assigns further covenant with the said Alexander Basil Wilson his heirs and assigns that the said John Laird his heirs or assigns shall and will within two years from the date hereof lay out and expend in building upon the said premises good and substantial dwelling houses with the necessary out office and appurtenances thereto belonging the sum of five hundred pounds at the least and further that all such houses to be built on the said premises shall be either detached or semi-detached houses and shall be in accordance with the plan hereon endorsed and further that he the said John Laird his heirs and assigns shall and will from time to time and at all times hereafter during the continuance of this Grant keep the said premises and all building erections and improvements to be made thereon in good and substantial order repair and condition.”

6. The applicant now seeks modification of the covenant to allow for development in accordance with the granted planning permission, LA04/2019/1100/F, or any variation thereof.

Procedural Matters

7. The applicant was represented by Mr John McKenna, Solicitor. Mr McKenna has detailed his attempts to contact any possible beneficiaries of the covenant, including the successors in title to Alexander Basil Wilson, but to no avail. The Tribunal is satisfied that all reasonable attempts have been made.
8. On behalf of the applicant the Tribunal has also received an expert report from Mr Brian Wilkinson BSc (Hons) MRICS of McKibbin Commercial, Chartered Surveyors, dealing with the issues contained in Article 5(5) of the Property (Northern Ireland) Order 1978 (“the Order”), which the Tribunal is statutory bound to take into account when considering modification of a

covenant. Mr Wilkinson is an experienced Chartered Surveyor, and the Tribunal is grateful to him for his helpful submission.

The Statute

9. Article 5(1) of the Order provides:

“5.-(1) The Lands Tribunal, on the application of any person interested in land affected by an impediment, may make an order modifying, or wholly or partially extinguishing, the impediment on being satisfied that the impediment unreasonably impedes the enjoyment of the land or, if not modified or extinguished, would do so.”

10. Article 3 of the Order defines the scope of “enjoyment”:

“3.-(3) In any provision of this Part – ‘enjoyment’ in relation to land includes its use and development.”

11. Article 5(5) of the Order specifies the matters which the Tribunal must take into account, together with any other reasonable circumstances. These will now be considered in detail.

The Article 5(5) Issues

Mr Wilkinson

5(5)(a) The period at, the circumstances in, and the purposes for which the impediment was created or imposed

12. The impediment was created to oblige the grantee to construct houses within a set time frame. It would seem that the impediment, created in 1883, related to how the property should be developed initially and that arguably it did not impose an obligation beyond the initial construction of the houses.

5(5)(b) Any change in the character of the land or neighbourhood

13. The character of the reference property and neighbourhood has changed significantly since 1883 when the Lisburn Road was undeveloped and a semi-rural/residential area. This was evidence by the 1991 ordnance survey map. By that time houses had been erected on the reference property.
14. The Lisburn Road has now been transformed into one of the main arterial routes linking South Belfast with the City Centre.
15. The reference property is currently used for commercial purposes and has been for over 20 years.

5(5)(c) Any public interest in the land as exemplified by any development plan adopted under Part 3 of the Planning Order (Northern Ireland) 1972

16. The granted planning permission is a public interest in the reference property. It is, therefore, in the public interest to carry out development in accordance with the granted planning permission.

5(5)(d) Any trend shown by planning permissions ...

17. There is a clear trend of planning permissions being granted for similar uses in the area.

5(5)(e) Whether the impediment secures any practical benefit to any person and, if it does so, the nature and extent of that benefit

18. The applicant has been unable to find the owner of the grantor's interest under the Fee Farm Grant. Given, however, that the impediment arguably only extended to the initial construction of houses, that parts of the reference property has been used for retail purposes for over a hundred years and that no person has come forward to oppose the planning application, the impediment does not secure any practical benefit to any person.

5(5)(f) Where the impediment consists of an obligation to execute any works ...

19. There is no positive obligation to execute any works etc.

5(5)(g) Whether the person entitled to the benefit of the impediment has agreed, expressly or by implication, by his acts or omissions, to the impediment being modified or extinguished

20. All searches have taken place and the subject application will be unopposed.

5(5)(h) Any other material circumstances

21. There are no other material circumstances.

Mr Wilkinson's Conclusions

22. On the basis of the facts outlined and his observations Mr Wilkinson concluded:

- i. The applicant's proposed development has been granted planning permission and is in keeping with the character of the neighbourhood.
- ii. The impediment does not serve any practical purpose nor secure any practical benefit to any person.
- iii. The covenant interferes with the applicant's enjoyment of the reference property.
- iv. Modification of the covenant will involve no loss to the grantors.

The Tribunal

23. The Tribunal notes the contents of Mr Wilkinson's submissions. The main issue for the Tribunal is does the impediment achieve some practical benefit, and, if so, is it a benefit of such weight to justify its continuance without modification?

24. Based on Mr Wilkinson's submissions and in the circumstances of the subject reference, the Tribunal is satisfied that the subject impediments, if not modified, would unreasonably impede the applicants' use and enjoyment of the reference property. The Tribunal agrees with Mr Wilkinson, the impediment does not confer any practical benefit on any person.

Decision

25. The Tribunal orders modification of the impediment to allow for development of the reference property in accordance with the granted planning permission, LA04/2019/1100/F, or any variation thereof.

Compensation

26. The Tribunal may award compensation in accordance with Article 5(6)(b) of the Order. Mr Wilkinson's opinion was that no compensation was payable, as modification would cause no loss to any possible beneficiary.
27. The Tribunal agrees with Mr Wilkinson, the covenant does not confer any practical benefit on any person and as such no compensation is payable.

Objectors

28. As the outcome of the subject reference was decided by way of written submissions and a public hearing was not held, the Tribunal will allow a further period of four weeks from the date of publication of its decision for any objectors to come forward, prior to issuing an Order of the Tribunal.

4th November 2022

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