

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/18/2021

BY

BRIEGE McQUAID - APPLICANT

Re: 38/48 Clifton Street, Belfast

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

Background

1. The subject premises at 38-48 Clifton Street, Belfast (“the reference property”) comprises a petrol filling station, convenience store and car wash located on Clifton Street/Trinity Street close to its junction with Carlisle Circus/Antrim Road, Carrick Hill/Millfield and access to the Westlink.
2. Title to the reference property is split between the petrol filling station fronting Clifton Street (“the Clifton property”) and the carwash fronting Trinity Street (“the Trinity property”). The root of the Trinity property title is a lease dated 20th November 1919 between Andrew Millar and Company Limited of the one part and J C Mayers and Company Limited of the other part (“the 1919 superior deed”). The root of the Clifton property title is a lease dated 14th December 1932 made between Thomas Brough Cox & Dunn Limited of the one part and Robert Dunn of the other part (“the 1932 superior deed”). These superior deeds are relevant in the context of the subject reference as they both contain covenants restricting the sale of alcohol from the reference property.
3. By a lease dated 16th November 1987 made between Isobel Elizabeth Dunn and Edna Mary Dunn (Lessor) and Malcolm McGarrity and Deirdre McGarrity (Lessee), the Clifton property was demised for a term of 800 years from 18th May 1986 on payment of a premium of £31,500 and an annual rent of £100. By a second lease made between the same parties the

Trinity property was demised for a term of 800 years from 16th November 1987 on payment of a premium of £3,500 and an annual rent of £50.

4. Terence McQuaid then became the owner of the reference property by way of two deeds of assignment. In respect of the Clifton property the deed of assignment is dated 20th December 1999 made between John Joseph Tohill (1) and Terence McQuaid (2). In respect of the Trinity property the deed of assignment is dated 17th March 2000 and is made between the same parties. Ms Briega McQuaid (“the applicant”) is the successor in title to Mr Terence McQuaid who is now deceased.
5. By a lease for the term of six years from 1st January 2020 (“the occupational lease”) the applicant demised the reference property to Woods Property Limited (“the tenant”) to occupy and use as a petrol filling station and shop.
6. The Clifton property and Trinity property leases both contain restrictive covenants:

“AND the Lessee to the intent to the obligations may continue throughout the term hereby created hereby covenants with the Lessor as follows:-

Not to use or permit to be used the premises hereby demised or any part thereof or any building or erection thereon for the sale of intoxicating or alcoholic liquor or for the purposes of any noisy noisome or offensive trade business or occupation.”

7. The applicant now seeks the removal of the covenants from both leases to allow an application to be made by the tenant to the County Court for the grant of a liquor licence.

Procedural Matters

8. The applicant was represented by Ms Andrea McCann of McKees Solicitors. Ms McCann has helpfully submitted an affidavit detailing her attempts to contact any possible beneficiaries of the restrictive covenants, but to no avail. The Tribunal is satisfied that all reasonable attempts have been made.

9. On behalf of the applicant the Tribunal has also received an expert report from Mr Chris Callan FRICS of CBRE NI, dealing 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 or extinguishment of a covenant. Mr Callan is an experienced Chartered Surveyor and the Tribunal is grateful to him for his helpful submissions.

The Law

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

“Power of Lands Tribunal to modify or extinguish impediments

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.”

11. 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.”

12. 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 Callan

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

13. The restriction on the sale of alcohol from the reference property in the 1919 superior deed and again in the 1932 superior deed states:

“... and also shall not permit or suffer any building to be erected thereon to be used as a shop or a place for sale of spirituous or fermented liquors ...”.

14. The prohibition or the sale and/or the consumption of alcohol is not an uncommon feature of the title to land and property across Northern Ireland, especially in Victorian and Edwardian times. The public’s attitude to the consumption of alcohol is significantly more relaxed now than before and this has been reflected in the opening up of a statutory licensing framework. The current legislation contained in the 1996 Order resulted in the relaxation of the sale of alcohol in the province.

15. It is interesting to note that when the 1987 leases were created it would not have been legally permitted to retail alcohol from the reference property since off-licences were only permitted as stand-alone retail shops, whereas, after the 1996 Order, mixed retailing from the same premises was permitted. Indeed, in recent years, there has been a significant expansion in the number of convenience stores incorporating off-licence facilities.

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

16. There has been little or no change in the character of the reference property or the neighbourhood since the impediments in title were created in 1987. The property is to all intents and purposes the same as when it was transferred to the applicant. More recently, the vicinity has witnessed some regeneration with new social housing units constructed in Stanhope Street to the north west of Trinity Street.

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

17. I am not aware of any public interest in the reference property. While the sale of alcohol doesn’t require a planning application, the applicant will be required to satisfy the Courts in relation to various aspects of the 1996 Order, including proving a need for the retailing of alcohol and the fitness of the applicant to hold an intoxicating liquor licence.

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

18. Planning permission is not required to enable the sale of alcohol from the reference property.

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

19. A number of enquiries and investigations have been carried out by the instructing solicitor to trace the legal beneficiaries of the covenants. None, however, have been identified.
20. Even if any beneficiaries were identified, in my opinion, the sale of alcohol from the premises does not secure any practical benefit.

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

21. This section is not applicable.

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

22. Since the applicant has been unable to identify any beneficiary, this section is not applicable.

5(5)(h) Any other material circumstances

23. The circumstances of this application are unusual in that the applicant does not require planning permission in order to realise its plan to include an off-licence area within the existing convenience store. The tenant wishes to commence the process of purchasing a subsisting liquor licence. It is for this reason that the applicant, as a first step, seeks an Order from the Tribunal extinguishing/modifying the covenants.

24. In addition I am instructed that the tenant cannot apply for a liquor license unless it can show title, which it cannot with the impediments in the lease.

The Tribunal

25. The Tribunal notes the contents of Mr Callan's submissions. The main issue for the Tribunal is do the impediments secure some practical benefit and, if so, is it a benefit of such weight to justify their continuance without modification or extinguishment.

26. In the circumstances of the subject reference and based on Mr Callan's submissions, the Tribunal is satisfied that the subject impediments, if not modified or extinguished, would unreasonably impede the applicant's use and enjoyment of the reference property. The Tribunal agrees with Mr Callan, the impediments do not confer any practical benefit on any person legally entitled to the benefit.

Decision

27. Having considered Mr Callan's report dealing with the statutory issues contained in Article 5(5) of the Order, the Tribunal orders modification of the impediments to allow for off-licence use on the reference property.

Compensation

28. The Tribunal may award compensation in accordance with Article 5(6)(b) of the Order. Mr Callan's expert opinion was that no compensation should be payable in respect of the subject reference. The Tribunal agrees, the covenants do not confer any practical benefit on any person and as such no compensation is payable.

Objectors

29. Due to current policy the Tribunal was unable to convene a public hearing of the subject reference. It will now, therefore, publish its decision and allow a further period of four weeks for any objectors to come forward, prior to issuing the Order of the Tribunal.

12th August 2022

Henry Spence MRICS Dip.Rating IRRV (Hons)

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