

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/2/2016

BY

OVERDALE MUSHROOMS LIMITED – APPLICANT

Re: Lands at 15 & 19 Old Grand Jury Road, Saintfield

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

BACKGROUND

1. The subject property comprises a development site at Old Grand Jury Road, Saintfield (“the reference property”) which is currently in the ownership of Overdale Mushrooms Limited (“the applicant”).

2. The lands are contained in two folios:
 - i. DN142305L County Down being leasehold lands known as 15 and 19 Old Grand Jury Road, Saintfield and held on foot of a conveyance and assignment dated the 5th March 1956 between Hugh McConnell and Robert James McBriar and another and a headlease for 10,000 years from the 18th December 1907.

 - ii. DN142287 County Down being freehold land registered in the name of the applicant on the 26th April 2006.

3. The reference property is to be sold for development purposes but the applicant cannot locate the lease dated the 18th December 1907 and no successor to the landlord can be identified. The lands are therefore affected by the lack of certainty concerning any impediments which may restrict their future development.

4. The applicant now seeks an Order from the Tribunal:

“That the reference property is not subject to any impediment pursuant to the lease dated the 18th December 1907 or otherwise.

Further, and in the alternative, the applicant seeks an Order that any impediment pursuant to the lease dated the 18th December 1907 does not impede the use of the said lands and does not restrict the enjoyment or development of the said lands by the applicant or its heirs or assigns in any manner whatsoever.”

PROCEDURAL MATTERS

5. Mr David Dunlop BL directed the Tribunal to an affidavit from Ms June Watson of W G Maginess Solicitors, which was submitted on behalf of the applicant.

HISTORY OF TITLE TO THE REFERENCE PROPERTY

6. The applicant company is owned by Mr Eric Patterson and his family and is the registered owner of the lands comprised in the folios DN142305L County Down and DN142287 County Down. Ms Watson provided the Tribunal with a record of title to the reference property:

“(i) Robert James McBriar and Sarah Margaret McBriar (the aunt and uncle of the said Eric Patterson) purchased a parcel of ground in the Townland of Drumnaconnell, Saintfield, County Down containing four acres two roods and ten perches or thereabouts from Hugh McConnell by way of a Deed of

Assignment (incorrectly referred to in the Deed as a Deed of Conveyance) on the 5th March 1956.

- (ii) A portion of the land in the 1956 Assignment was transferred to James Kinghan on the 4th December 1964 by way of a lease for the term of 8,500 years. This property is now known as number 181 Listooder Road, Saintfield.
- (iii) A further portion of the said land was transferred on the 30th June 1967 to Robert McClenaghan by way of a lease for the term of 8,500 years. This property is now known as number 183 Listooder Road.
- (iv) On the 30th March 1976 a further portion was transferred to the said Eric Patterson by way of a 8,500 year lease. This property is now known as 19 Old Grand Jury Road, Saintfield.
- (v) On the 23rd February 1981 the said Robert James McBriar and Sarah Margaret McBriar transferred the remaining land comprised in the 1956 Deed, except for number 15 Old Grand Jury Road, Saintfield to Overdale Mushrooms Limited.
- (vi) On the 9th October 1984 Overdale Mushrooms Limited transferred a further portion of the original land in the 1956 Deed to Kenneth and Jean Spence. This property is now known as 183A Listooder Road.
- (vii) On the 6th February 1990 the said Mr & Mrs McBriar transferred to Eric Patterson the remaining lands which they held under the 1956 Deed i.e. number 15 Old Grand Jury Road, Saintfield.
- (viii) On the 8th December 1993 the said Mr & Mrs McBriar and Overdale Mushrooms Limited entered into a Deed of Enlargement under Section 65 of the Conveyancing Act 1881 declaring that Overdale Mushrooms Limited now held its lands in fee simple.

- (ix) Over the next number of years Overdale Mushrooms Limited sold further portions of the original lands comprised in the 1956 Deed at Creevy Close, Saintfield to various parties.
- (x) On the 12th May 2000 Overdale Mushrooms Limited entered into a Deed of Exchange with Mr & Mrs Dowd in respect of site 6 Creevy Close regarding rectification of the boundary.
- (xi) On the 9th May 2000 Eric Patterson transferred numbers 15 and 19 Old Grand Jury Road, Saintfield into the joint names of himself and his wife as Tenants in Common in equal shares.
- (xii) In 2006 Mr & Mrs Patterson applied for Compulsory First Registration of the properties at 15 and 19 Old Grand Jury Road, Saintfield in the Land Registry. The Leasehold Title was registered in Folio DN142305L County Down. In 2008 the land in the said folio was transferred to Overdale Mushrooms Limited. In 2006 Overdale Mushrooms Limited applied for Compulsory First Registration of the Freehold Title of the remaining land in the 1956 Assignment and this was registered in Folio DN142787 County Down.”

MS WATSON'S AFFIDAVIT

7. Ms Watson further confirmed in her affidavit to the Tribunal:

- (i) Overdale Mushrooms Limited has now entered into an agreement to sell the lands comprised in Folios ND142305L County Down and DN142287 County Down to Dromara Developments Limited, subject to good and marketable title being produced.
- (ii) The land in the 1956 Assignment is held for 10,000 years under a Deed dated the 18th December 1907. No further information regarding the 1907 Deed is provided in the 1956 Assignment. A copy of the 1907 Deed cannot be located despite strenuous efforts.

- (iii) The firm of W G Maginess & Son, Solicitors acted for Mr & Mrs McBriar when they purchased the property in 1956 and the firm was involved in the various sales and transfers as specified in paragraph 6. An exhaustive search has been made of the firms storage facility but a copy of the 1907 Deed cannot be located. Ellis Law Searchers were instructed to carry out a search in the Registry of Deeds in Dublin to ascertain whether or not a copy of the 1907 Deed was ever registered at the Registry of Deeds. Unfortunately there was no record of the 1907 Deed having been registered at the Registry of Deeds. This was not uncommon because, as a result of the Four Courts fire, many Registry of Deeds pre-1922 records were destroyed.
- (iv) Mr Eric Patterson has advised that no ground rent demands have ever been made in respect of the reference property by any party since McBriar/Patterson acquired the lands in 1956 and neither has any party claiming to derive title from the 1907 Deed raised any objection to the development of the land. Accordingly the identity of the person entitled to the Lessor's interest is unknown.
- (v) Various portions of the original lands were transferred in the 1960s, 1970s and 1980s and were subsequently developed by the building of private dwelling houses. The land retained by the applicant in Folio DN142287 County Down was used for many years for commercial purposes while two dwelling houses were built on the land in Folio DN142305L County Down.

STATUTE

8. Article 4 of the Property (Northern Ireland) Order 1978 outlines the 'Power of the Lands Tribunal to define scope, etc, of impediments':

"4.-(1) The Lands Tribunal, on the application of any person interested in land, may make an Order declaring –

- (a) whether or not the land is, or would in any given event be, affected by an impediment;
 - (b) the nature or the extent of the impediment;
 - (c) whether the impediment is, or would in any given event be, enforceable and, if so, by whom.
-”

CONCLUSION

9. The Tribunal is satisfied that all reasonable efforts have been made to locate the 1907 Deed and to identify any possible beneficiaries thereof.
10. It is also clear from Ms Watson’s affidavit that significant portions of the reference property have been developed on various occasions from 1964 onwards. None of these developments have been subject to objection from any parties claiming to be beneficiaries of any covenants restricting the development of the lands. Based therefore on the evidence before it, the Tribunal is satisfied that the reference property is not affected by any impediments.

DECISION

11. In accordance with Article 4(1)(a) of the Property (Northern Ireland) Order 1978 the Tribunal makes an Order directing that the reference property is not affected by any impediment.

ORDERS ACCORDINGLY

22nd March 2016

Mr Henry Spence MRICS Dip.Rating IRRV (Hons)

Lands Tribunal for Northern Ireland