

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
LOCAL GOVERNMENT ACT (NORTHERN IRELAND) 1972
THE ROADS (NORTHERN IRELAND) ORDER 1993

IN THE MATTER OF A REFERENCE

R/22/2013

BETWEEN

**BEATRICE YVONNE DEUXBERRY, MARK RUSSELL DEUXBERRY CURRY AND
LYNNE CAROLINE CURRY - CLAIMANTS**

AND

DEPARTMENT FOR INFRASTRUCTURE – RESPONDENT

Re: Land at Victoria Road, Burndennett, Strabane

PART 1 - COSTS

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

Background

1. The A5 is part of the main road between Londonderry and Dublin. Over the years the Department for Infrastructure (“the respondent”) and its predecessor, the Department for Regional Development, have carried out several small improvement schemes along various parts of the route. One such scheme involved the acquisition of land at Victoria Road, Burndennett, Strabane (“the reference land”) which was owned by Beatrice Yvonne Deuxberry, Mark Russell Deuxberry Curry and Lynne Caroline Curry (“the claimants”). The reference land was subject to a vesting order made on 13th April 1999, with an operative date of 24th May 1999. In all of the negotiations connected with the acquisition the claimants were represented by Mr Matthew McAlister, an experienced chartered surveyor.
2. Despite protracted negotiations the parties were unable to reach agreement on the correct amount of compensation to be paid for the vesting. Subsequently, on 9th March 2006, the respondent made, in writing, a “formal offer of full and final compensation in the sum of £17,000, plus interest from the operative date of vesting, plus any reasonably incurred legal and agents fees”.

3. By letter of 14th March 2006 Mr McAlister accepted the respondent's formal offer on behalf of the claimants.
4. In its formal offer the respondent had agreed to pay "any reasonably incurred ... agents fees" but the parties have been unable to reach agreement on the correct amount of fees to be paid. This is the issue to be decided by the Tribunal.

Procedural Matters

5. The parties were agreed that the fees dispute should be decided by way of written representations. Submissions were received from Mr McAlister on behalf of the claimants and Mr Patrick Bradley, an experienced chartered surveyor from Land & Property Services ("LPS"), on behalf of the respondent. The Tribunal is grateful to the surveyors for their detailed submissions.

Position of the Parties

6. Mr McAlister had submitted an invoice for agents fees:

Description		TOTAL
Road improvement on Route A5 at Burdennett, Strabane		
My Client: Mrs Deuxberry, 4 Lisdivin Road, Strabane		
Professional Fees in connection with the above Road Scheme		
Year 1999 – Meetings, letters etc.,	6.0 hours	
Year 2000 – Letters, phone calls etc.,	2.5 hours	
Year 2001 – Letters etc.,	1.5 hours	
Year 2002 – Letters, meeting, phone calls	4.0 hours	
Year 2003 – Letters, meetings, phone calls etc.,	14.25 hours	
Year 2004 – Letters, phone calls etc.,	7.25 hours	
Year 2005 – Letters, meeting etc.,	9.0 hours	
Total	44.5 hours	
44.5 hours @ £100/hour =	£4,450	
Total mileage 330 miles @ 50p/mile =	£165	
Total Fee	£4,615	£4,615.00
	TOTAL	£4,615.00

Mr McAlister had also provided a detailed and itemised breakdown of all of his activities connected with the negotiations.

7. Mr Bradley had made a “fee offer” on behalf of the respondent at £1,640 based on the following:

15.50 hours @ £100/hour	=	£1,550.00
200 miles x £0.45/mile	=	£90.00

He also recommended an addition of £110 to reflect the value of accommodation works and Mr McAlister’s contribution to those works.

Statute

8. The following legislative extracts confirm the Lands Tribunal statutory authority to deal with the outstanding compensation issues in the subject reference:

Roads (Northern Ireland) Order 1993

“Vesting Orders

113(2) Schedule 6 to the Local Government Act (Northern Ireland) 1972(1) shall ... apply for the purposes of the acquisition of land by means of a vesting order made under this Article in the same manner as it applies to the acquisition of land by means of a vesting order made under that Act.”

And

Schedule 6 of the Local Government Act (Northern Ireland) 1972

“Acquisition of Land by Vesting Order

11(1) As soon as a vesting order has become operative, any question of disputed compensation arising between the council and any person who—

- (a) has an estate in any land to which the vesting order relates or would have such an estate if the order had not become operative, or
- (b) has an estate in any land injuriously affected by the works proposed to be carried out by the council,

shall be referred to and determined by the Lands Tribunal.”

Authorities

9. The applicant referred the Tribunal to the following extracts from its decision in Throne v Department for Regional Development R/70/2006 “Costs”:

“12. In Purfleet Farms Ltd v Secretary of State for Transport, Local Government and the Regions [2002] EWCA Civ 1430, Potter LJ stated the presumption that, under the compulsory purchase code, a claimant should be entitled to its costs in the absence of some special reason to the contrary. A Tribunal not allowing such costs must be able to identify circumstances:

‘in which the tribunal considers that an item of costs incurred, or an issue raised, was such that it could not, on any sensible basis, be regarded as part of the reasonable and necessary expenses of determining the amount of the disputed compensation.

... in which the claimant’s conduct of, or in relation to, the proceedings has led to an obvious and substantial escalation in costs over and above those costs which it was reasonable to incur in vindication of his right to compensation.’ ”

And

“17. ... Mr Bradley did not point to any of the items set out in Mr McAllister’s detailed schedule of time spent and identify them as wasted...”

10. Mr Bradley referred the Tribunal to a Royal Institution of Chartered Surveyors (RICS) Guidance Note “the calculation of fees relating to the exercise of statutory powers in connection with land and property”. He considered the following extract to be relevant:

“the fee in all cases should be proportionate to the size and complexity of the claim and be commensurate with the time, effort and expertise to deal with the case.”

Discussion

11. The Tribunal concurs with the RICS Guidance Note and the issue for the Tribunal is therefore, was Mr McAlister’s claim for £4,615 fees reasonable and proportionate in relation to the compensation agreement at £17,000?

12. Throne was a similar small road improvement scheme on the A5 and in that case the Tribunal considered 15 hours 15 minutes to be a reasonable amount of time for negotiating a typical small road scheme.

13. The Tribunal notes that in the subject reference final settlement was only reached following protracted discussions and negotiations over a significant period of years. Mr McAlister pointed to the following issues which he considered protracted the negotiations and increased their complexity:
 - flooding of the new underpass which occurred on his client's side of the river.
 - a problem affecting the river bank on his clients land which required discussions with the Rivers Agency.
 - failure of LPS to properly engage in negotiations relating to his client's claim for compensation.
 - mis-information put forward by LPS.

14. In response Mr Bradley pointed to the following factors which he considered should be taken into consideration in assessing the correct amount of reasonable agents fees.
 - much of the 14 hours of time claimed by Mr McAlister for the period 20/01/99 to 27/11/2002 duplicated the landowner time dealing with the same issues and was in excess of what could be considered proportionate and reasonable in the circumstances.

 - this was not a case with complex issues, and the amount of time spent in direct negotiations was disproportionate. In support of his conclusion he provided a table of compensation settlements and associated agent's fees for similar small roads schemes in the Strabane area. The Tribunal has abbreviated Mr Bradley's table for ease of reference:

SCHEME	TOTAL COMPENSATION	AGENTS FEES	YEAR	COMMENTS
Burndennett Bridge	£7,000	£1,250	2003	Same scheme as subject. Similar issues.
Ligford Road	£5,500	£1,080	2006	Verge strengthening scheme.
Lisky Road	£7,000	£558	2005	Road widening on edge of town.
Moyagh Road	£6,000	£1,250	2005	Verge strengthening scheme.
Main Street, Plumbridge	£17,500	£912.50	2007	Road and footpath scheme affecting house and outbuildings.
Scraghy Road, Castlederg	£3,250	£1,018	2006	Verge strengthening.
Girvan Road, Sion Mills	£10,000	£620	2010	Footpath scheme affecting house.
Learden Road, Newtownstewart	£18,000	£925	2007	New junction alignment through middle of field.

- the issues raised in the subject reference were similar to those in an adjoining case, with the exception of a land measurement anomaly. The agent's fee in that case was based on 12.5 hours at £100 per hour.
- at various stages during the compensation negotiations LPS made offers to facilitate a meeting involving all the stakeholders so that the many issues raised in the compensation claim could be dealt with in a more open and effective manner which could have saved much time in correspondence, telephone calls and clarifying of issues. Those offers to meet were declined by Mr McAlister.

15. The level of agents fees agreed in similar small road schemes in the Strabane area, as submitted by Mr Bradley, is noted by the Tribunal. Having considered the submissions the Tribunal is also of the opinion that negotiations could have been handled in a more efficient and cost effective manner by both parties. The Tribunal, however, also notes the additional issues associated with the subject reference i.e. the construction of the new underpass and the problems affecting the river bank.

Conclusion

16. Taking account of the additional issues associated with this reference, as put forward by Mr McAlister, but also applying the RICS guidance (as confirmed by numerous authorities) that agents fees should be proportionate to the size and complexity of the claim, on balance the Tribunal assesses the agent's reasonable fees at:

25 hours at £100 per hour	=	£2,500
330 miles at 50 per mile	=	<u>£165</u>
		£2,665

ORDERS ACCORDINGLY

18th October 2016

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