LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964

ELECTRICITY (NORTHERN IRELAND) ORDER 1992

LAND COMPENSATION (NORTHERN IRELAND) ORDER 1982

IN THE MATTER OF A REFERENCE

R/26/2011

BETWEEN

JOHN RICHARD CUTHBERT – CLAIMANT

AND

NORTHERN IRELAND ELECTRICITY LIMITED – RESPONDENT

Re: Lands at 10 Maydown Road, Londonderry

Part 1

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

BACKGROUND

1. This is the second of four references whereby land and property owners are claiming compensation from Northern Ireland Electricity Limited for the grant of Necessary Wayleaves. In the subject case, on the 23rd May 2011 ("the valuation date"), in accordance with paragraphs 10 and 12 of Schedule 4 to the Electricity (Northern Ireland) Order 1992 ("the 1992 Order") the Necessary Wayleave ("the NWL") granted consent to the respondent to retain its lines and pylons ("the equipment") on the claimant's land. The decisions (Parts I and II) in the first case to come before the Tribunal concerning Brickkiln Waste Limited v Northern Ireland Electricity (R/41/2009) have already issued.

2. The Reference Property is located off the Maydown Road some 4 miles north east of Londonderry city centre and the area affected by the NIE equipment ("the Reference Land") comprises some 37.4 acres of undeveloped land. Approximately 25.2 acres of the land lies to the west of Maydown Road ("the Reference Land West") and the remaining 12.2 acres lie to the east of the road ("the Reference Land East"). Both areas of land have substantial road frontage.

3. The land is currently used for agricultural purposes, but is zoned for "proposed industry" in the Derry Area Plan 2011. It is bounded by the existing Maydown Industrial estate, the DuPont factory and Coolkeeragh power station and offers good access to the port and main road network.

4. A dwelling house and farm buildings, known as 10 Maydown Road, are also located on the lands.

5. The Reference Land West is traversed by three sets of 110Kv transmission power lines, together with 6 towers. The Reference Land East is traversed by one set of 275Kv transmission power lines, with a single tower. An 11Kv overhead line, supported by wooden poles, traverses the Reference Land West but this is not part of the current NWL as arrangements between the claimant and the respondent in respect of this line have not been terminated. The 11Kv line is not therefore considered for compensation under this reference.

PROCEDURAL MATTERS

6. As in Brickkiln the reference was conducted on behalf of the claimant by Mr Mark Orr QC and Mr Barry Denyer-Green BL while Mr Stephen Shaw QC represented the respondent. Each party provided evidence from expert valuers with regard to the compensation to be paid. Mr Brian Kennedy (industrial) and Mr Eoin Doherty (residential) provided expert valuation evidence on behalf of the applicant and Mr Kenneth Crothers on behalf of the respondent. All of the valuers are experienced chartered surveyors.

7. Expert planning evidence was also submitted to the Tribunal. As in Brickkiln, Ms Jemma Jobling presented evidence on behalf of the claimant and Mr Terence McCaw presented evidence on behalf of the respondent. Ms Jobling is an experienced planner and Mr McCaw is an experienced planner and architect.

8. Mr Huw Williams of Powerline Compensation Limited had submitted written factual evidence to the Tribunal prior to the hearing and at the request of Mr Shaw QC he gave oral evidence at the hearing. Mr Williams confirmed that he was a director and

shareholder of Powerline Compensation Limited and that the company had been employed by Mr Cuthbert following an approach from one of their sales persons, on a "no win no fee basis", with the company receiving 15% of any future compensation payout. The Tribunal derives no assistance from Mr Williams' evidence and Mr Orr QC confirmed that the claimant did not rely on any expression of opinion in Mr Williams' witness statement, other than the claimant had informed Mr Williams of his intention to sell the Reference Land if the price was right.

9. The Tribunal is grateful to the legal representatives and experts for their detailed submissions and evidence. It is worth noting the "hot tubbing" technique which was initiated in the Brickkiln hearing continued to be used in the subject reference. The Tribunal is grateful to the parties for their participation.

THE INTERIM (PART I) DECISION IN BRICKKILN

10. The findings of the Part I decision in Brickkiln which are relevant to this reference are summarised in paragraph 24 of that decision:-

> "24(i) Schedules 3 and 4 of the 1992 Order clearly distinguish between the compulsory acquisition of land and other interests in land by the licence holder and the acquisition of NWLS. The former are dealt with in a schedule headed 'Compulsory Acquisition of Land' while the latter may be found in the schedule entitled 'Other Powers' of licence holders. Schedule 4 does not include any equivalent application of the compulsory purchase provisions of Schedule 6 to the 1972 Act which are included in Schedule 3. In our view this simply reflects the acceptance by Parliament that a NWL does not involve the acquisition of an interest in land – see Stynes.
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> (ii) Horn was a standard case of the acquisition of freehold farming land by a local authority in which the court calculated compensation in accordance the principle of equivalence. Turris also involved a compulsory purchase order and a Deed of Grant of a permanent easement. In McLeod the Lands Tribunal rejected the submission that compensation for an NWL should be assessed not only by reference to paragraph 7 of Schedule 4 to

the 1989 Act (the equivalent paragraph 10 of Schedule 4 to the 1992 Order) but also by specific reference to legislation relating to compensation for compulsory purchase. However, despite such rejection in that case the Tribunal went on to have regard to the principle of equivalence in accordance with the approach adopted in Turris. As noted above in Welford the Court of Appeal confirmed that compensation for wayleaves should be assessed on the general principles applicable to the payment of compensation for compulsory acquisition of land.

(iii) In our view, there should be no difficulty in applying the principle of equivalence to compensation in that the claimant should be paid neither less nor more than his loss provided that, in the course of doing so, the relevant statutory framework is applied and the specific facts of the case are properly taken into account.

(iv) In this case the claimant's advisers seek compensation based on the open market value of the reference land upon the hypothesis that the land was the subject of compulsory purchase and completely unencumbered by the presence of any of the respondent's equipment. When the Tribunal suggested to Mr Denyer-Green BL during the course of his closing submissions that such a hypothesis was somewhat unreal in the total absence of any suggestion that the claimant intended to put the land on the market he responded by observing that compulsory purchase was "frequently unreal". In our view the Tribunal should be assiduous to avoid, if possible, carrying out any excerise that could be properly described as "unreal" and we do not consider that the principal of equivalence, properly understood, requires the Tribunal to do so.

(v) By virtue of paragraph 11 of the 4th Schedule to the 1992 Order the claimant is entitled to compensation in respect of the grant of the NWL to which the Department has now consented in accordance with the provisions of paragraph 10. The claimant has owned the Reference Land for approximately 10 years. During the whole of those 10 years the equipment of the respondent has been present on the Reference Land.

Prior to purchase by the claimant, the equipment was present in accordance with voluntary wayleave agreements dating back to 1959. During the period of its ownership of the Reference Land the claimant has not been significantly inhibited from completing any of the development that it has sought to carry out. There are no extant applications for planning permission that would be inhibited by the presence of the equipment. The respondent has not obtained nor has the claimant lost any land or interest in land.

(vi) The claimant requires to be compensated 'in respect of the grant'. The respondent has obtained a continuing licence or consent to the equipment remaining upon the Reference Land which is now statutory. As a consequence of the NWL the claimant has lost his legal right to determine the respondent's licence and require the respondent to remove the equipment from its land. It is to the measurement of that loss that the principle of equivalence is to be applied. The loss of that right is of some significance because of the nature and extent of the respondent's equipment on the land. The claimants own valuer has accepted that there is no evidence of any previous refusal of an application for an NWL by DETI. Unlike the Arnold White case in which the local planned review had made clear the local councils preference that the relevant equipment should be removed, there was no objective evidence in this case to suggest that the claimant's application to have the equipment removed was likely to be successful. However that should not detract from the significance of a right of property ownership being compulsorily terminated by the executive.

(vii) It seems to us that the real problem in this case is ascertaining the particular circumstances peculiar to this case upon the basis of which statutory compensation is to be calculated. There is no evidence of any desire or attempt to place the Reference Land on the open market. It has been zoned for industrial use but, apart from a general reference to building height restrictions, there is little specific evidence of the extent to which the claimant has been significantly impeded in carrying out any specific development. It does not appear that Mr Kennedy was given any

detailed information which would have enabled him to financially assess the planned development which is said to be inhibited or any of the alleged consequences set out at paragraph 13 of the claimant's case. Mr Kennedy conceded that he had never previously considered a similar case and accepted that the 50% discount to which he referred at paragraph 42 of his report related to grants of easements rather than NWL's. He also agreed that he had made no allowance for the specific easement permitting the presence of gas pipes. Mr Kennedy has expressed the view that the market would have little regard for the significance of condition 7 of the NWL but, for the claimant, the history of positive liaison between the claimant and the respondent might be a factor to be considered. Any other relevant factor would have to be taken into account."

11. Following the Part I hearing the Tribunal decided that further consideration of the valuation evidence needed to take place and this was addressed in the Part II hearing.

12. The claimant and the respondent reserved their positions on the Part I Decision pending the final determination by the Tribunal.

THE PART II <u>BRICKKILN</u> DECISION

13. In the Part II <u>Brickkiln</u> decision the Tribunal outlined what it considered to be the correct basis of assessment of compensation for statutory NWLS:

> "19. As a consequence of the grant of the NWL the claimant has lost his legal right to determine the respondent's licence and have its equipment removed. It is the measurement of that loss to which the principle of equivalence applies. The Tribunal agrees with Mr Orr QC, the measurement of that loss is the diminution in market value of the claimant's lands, that is the difference in market value with the equipment removed ("un-encumbered") and the equipment in place ("encumbered"). That is the measurement of compensation agreed and confirmed in all of the decided UK authorities.
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> 20. The assessment of compensation must, however, reflect the terms of the relevant statutory framework in this jurisdiction. Although the language of the English Statute is similar to the 1992 Order the terms of the NWL in each jurisdiction differ and in particular condition 7 of the subject NWL which allows for either the removal of the equipment or the payment of

compensation when a ‘‘bona fide’ intention to develop the lands have been hindered by the presence of the equipment.”

THE AUTHORITIES

14. The Tribunal was referred to the following authorities which were considered in detail during the Part I Brickkiln hearing.

- Horn v Sunderland Co–operation [1941] 2KB26
- Turris Investments Ltd v Central Eelctricity Generation Board [1981] 1 EGLR
- Macleod v National Grid Co PLC [1988] 2 EGLR 217
- Brown Construction Ltd v SP Transmission Ltd [LTS/Comp/2002/2]
- Welford and others v EDF Energy Networks (LPN) [2007] EWCH CIV 293
- Arnold White Estates Limited v National Grid Electricity Transmissions PLC [2013] UKUT 005 LC

15. The Tribunal also derived assistance from:

Stynes and Stynes v Western Power [2013] UKUT (LC) 0214 and at the Part II Brickkiln hearing the Court of Appeal decision in Arnold White had become available. (National Grid Electricity Transmission PLC v Arnold White Estates Limited [2014] EWCA CW 216).

POSITION OF THE PARTIES

16. The claimant had assessed the diminution in market value of the Reference Land at £530,000. This excluded the dwelling house at 10 Maydown Road and a further £15,440 diminution in market value was claimed in respect of that property.

17. The respondent considered the “bundle of rights” enjoyed by the claimant before and after the grant of NWL and found that there was such a degree of overlap and replication between the two arrangements that there was no practical difference in terms of value. As an alternative the respondent’s expert valuer considered the claimant’s “diminution in market value” approach but in his opinion there was no material difference between the un-encumbered and encumbered values.

DIMINUTION IN MARKET VALUE - THE REFERENCE LAND

18. Mr Kennedy assessed the diminution in market value of the Reference Land as follows:

Land to the West of Maydown Road

Un-encumbered value (on the basis that no wayleave had been granted and the electrical apparatus had been removed)

25.23 acres @ £50,000		£1,261,500	
Encumbered value (subject to the retention of the respondent's equipment)			
13.23 acres unrestricted @ £50,000	£661,500		
9.2 acres restricted wayleave area @ £10,000	£92,000		
less allowance for pylons 5%	(£4,600)		
2.8 acres severed by wayleave @ £9,000	£25,000		
		£774,100	
Diminution in value			£487,400

Land to the East of Maydown Road

Un-encumbered value			
12.1 acres @ £40,000		£484,000	
Encumbered value			
9.72 acres unrestricted @ £40,000	£388,800		
Less injurious affection on say ½ of unrestricted area @ 5%	(£9,720)		
0.58 acre with max 10 metre height restriction @ £16,000	£9,280		
1.73 acre with 10 to 15 metres height restriction (net of pylon base and exclusion zone @ £30,000)	£51,900		
		£440,260	
Diminution in value			£43,740
Total Diminution in Value			£531,140

Say £530,000

19. Mr Kennedy provided the following notes to his valuation:

- "I have adopted a lower agricultural value on the 'severed area' in the site to the west of Maydown Road than on the abutting wayleave area because of the site topography – this area falls away toward the northern boundary of the site.
- Similarily, I have adopted a lower valuation rate on the land to the east of Maydown Road because of site topography.
- The allowance for injurious affection that I have applied to the land to the east of Maydown Road reflects the fact that the power line and wayleave traverse the lower end of the site.
- I have not made any allowance for injurious affection to the land to the west of Maydown Road because I have valued the wayleave and 'severed' areas as agricultural land only.
- The above valuations effectively reflect a permanent impairment of the property. I think that would be the assessment of the market as any development would have to accommodate the wayleave restrictions and the prospect of any future reconfiguration or further development on the determination of the wayleave is likely to be viewed as a remote prospect."

20. Mr Kennedy based the prices per acre used in his valuations on the following comparable evidence:

Address	Event	Analysis	Comment
11a Carrakeel Drive, Maydown, Londonderry	Offer to purchase @ £350K May 2011	6.68 ac @ £52K/ac	6.68 acre site comprising former factory social club, parking and open space – zoned for industrial use. On the market in 2011 at an asking price of £115K per acre. Offer for £350K refused by vendor in May 2011.

Carrakeel Drive, Maydown, Londonderry	Sold £90K	1 ac @ £90K	Industrial site sold by Invest NI.
Drumsurn Road, Limavady	Sold £140K Sept 2011	2.25 ac at £60,222/ac	House with former builder's yard/industrial development site.
63a Garryduff Rd, Ballymoney	Sold £70K Dec 2011	0.88 ac @ £79,545/ac	Zoned while land. Concrete yard suitable for open storage or development.
Maydown Industrial Estate, Maydown Road, Londonderry	Sold £62,500 June 2010	0.5 ac @ £125K/ac	Industrial site sold by Invest NI.
25 Lough Yoan Rd, Killyhevlin Industrial Estate, Enniskillen	Sold £720K c June 2009	5.75 ac @ £125K/ac	Site occupied by small office and poor quality warehouse – probably a redevelopment site.
1 Edenavy's Industrial Estate, Armagh	Sold £1.95M c May 2009	10 ac @ £195K/ac	Un-surfaced site with planning permission for business park. Purchaser – Invest NI
Knockmoyle Drive, Greystone Rd, Antrim	Offers April 2009 - £250K subject to planning or £220K unconditionally	1.16 acres £190K 1 ac on unconditional basis	2 acres while land within Antrim development limit. Asking £350K. Offers made through Osborne King.

21. Mr Crothers considered that Mr Kennedy's "Comparative Evidence" contained a brief outline summary of, including analysis, of alleged property sales in respect of what appeared to be a disparate range of properties located throughout Northern Ireland. He was unable to verify the accuracy of this evidence but in his opinion it merely indicated that industrial land attracted prices ranging between £52,000 per acre and £195,000 per acre in the 2009/11 period. Given the geographical spread of the sites and the very wide disparity in the analysed figures, he did not consider that he was able to draw any useful conclusion or place any good reliance on the material.

22. To a large extent the Tribunal agrees with Mr Crothers, Mr Kennedy had not provided a "link" between the comparable evidence he submitted and his assessment of the

market value of the Reference Land. He failed to consider the individual characteristics of each of his comparable sales, detail how these sites compared to the Reference Land and in particular how this evidence led him to select a pricing of £50,000 per acre for the Reference Land. In Janet Greer v Northern Ireland Housing Executive (R/19/1996) the Tribunal commented:

> "The Tribunal cannot carry out its own research, it must rely primarily on the evidence before it. In analysing other transactions it is for the experts to use their expertise to decide what factors they think are appropriate and communicate their criteria and reasons for that to the Tribunal. It is not sufficient simply to drop a bundle of comparisons or other observations on the table; the expert witnesses must discuss their analysis to demonstrate the references they say can be drawn".

23. Mr Crothers put forward one piece of comparative evidence which comprised a site of 12 acres at Maydown Road being offered for sale by Mr Kennedy's firm. Mr Crothers provided a brochure of the property which was being offered for sale originally at £600,000 in 2011, reduced to £400,000 in 2012 (£33,000 per acre) and more recent sales particulars indicated that the asking price had been further reduced to "offers" over £225,000 (£18,750 per acre).

24. Mr Crothers confirmed that this site was located in the same industrial zone as the Reference Land and was situated directly north of the Reference Land East and on the directly opposite side of the Maydown Road from the Reference Land West.

25. Mr Crothers considered that this "offering for sale" provided a fair indicator of the price anticipated for industrial development land in the immediate locality of the Reference Land. Mr Kennedy confirmed that this property was put on the market in 2012 at £400,000 and was later reduced to £225,000 but he asked the Tribunal to note that this was a "forced sale" situation. Mr Kennedy confirmed that he did not include the property as a comparable because it came on the market after the valuation date, it was not a transaction, there had been no sale and it was difficult to analyse.

26. The Tribunal considers this "offering for sale" to be very relevant as to the demand and value of industrial land is the locality of the Reference Land, regardless of the fact that it was a "forced sale". There were still "no takers" even at the reduced prices.

27. Mr Kennedy conceded that he had been unable to find any direct evidence to assist in quantifying the impact of over-sailing power lines on Land Values. He considered, however, that the impact of easements for underground services was well recognised in property valuation and that these easements generally prohibited building and use of the area comprised in the easement, restricting it to parking, circulation or open storage. He submitted that a valuation discount of at least 50% was routinely agreed to reflect such a restriction. He provided details of the following easement arrangements as comparable evidence:

"EASEMENT EVIDENCE"

Property	Transaction	Analysis	Comment
Maydown Rd, Londonderry	Sale £50K in 2012	unrestricted area 0.5 ac @ £50K wayleave area 0.1 ac – nil value	Total site 0.6 acre site with frontage to both Maydown and service road, sold by Invest NI. 0.1 acre wayleave for underground services. No value attached to wayleave area.
Plot 44 Boucher Crescent, Belfast	Ground rent review 1 June 2008 – concluded at £84,725 pa	unrestricted area 1.927 acres @ £40,500/ac wayleave area 0.330 acres @ £20,250/ac	Site 2.257 acres including 0.33 acres of culvert over Blackstaff River suitable for parking/circulation only. 125-year Belfast City Council lease.
Plot 55 Boucher Crescent, Belfast	Ground rent review 1 January 2008 – concluded at £34,750 pa	unrestricted area 0.704 acres @ £44K/ac = 30,976 wayleave area 0.175 acres @ £22K/ac = 3,850	Total site area 0.879 acres including sewer wayleave area of 0.175 acres. 10m wide wayleave runs along NE boundary of site. 125-year Belfast City

			Council lease.
Plat 2 Boucher Crescent, Belfast	Ground rent review 1 May 2007 – concluded at £49K pa	1.3 acres @ £42,500/ac = £55,250 less 11.28% for wayleave	Total site 1.3 acres bisected by sewer wayleave. 125-year Belfast City Council lease.

28. Mr Crothers considered that these easements contrasted with the terms of NWL in three respects:

    (i) they were permanent and were not capable of being brought to an end by the landowner in any circumstances;

    (ii) they precluded any building on the affected areas;

    (iii) whatever restrictions may apply, now or in the future, the landowner has no route to compensation.

29. The Tribunal agrees with Mr Crothers and considers this evidence to be of little assistance in assessing the effect on value, if any, of the subject NWL which only restricted the height of the buildings which could be constructed under the equipment. Mr Kennedy had failed to compare and contrast the valuation effect of the NWL with the permanent easements and detail how this evidence directed him to the pricings he used in his assessment of the encumbered value of the Reference Land.

DISCUSSION

30. The valuation experts were generally agreed that any diminution in market value of the Reference Land should be based on the restriction on development, if any, of the land caused by the equipment. Detailed planning evidence as to the future development prospects of the Reference Land was provided by Ms Jobling and Mr McCaw.

31. Ms Jobling concluded:

    (i) The land was located in a strong location within an industrial zoning with good access to strategic transport routes.

(ii) The industrial land assessment would indicate that whilst there was still sufficient provision within the wider district area this area was focused for growth.

(iii) The site was conducive to a variety of land uses. In particular it would lend itself to storage and distribution due to the proximity to the port and road network; manufacturing due to the strong transport links and proximity to heavy industries and skills base.

(iv) The overhead power lines traversed substantial portions of the subject land and in doing so constrained the development potential of the land. Whilst some infrastructure could be developed beneath the power lines, the very nature of industrial land uses were more likely to require sufficient building height.

32. Mr McCaw submitted that:

(i) The overhead electricity lines did not restrict development on the ground below them provided the required clearance was provided by the buildings constructed.

(ii) Ample lands were available that offered major flexibility to prepare a master plan which would accommodate a variety of industrial uses evident in the vicinity of the Reference Land including tall, short, big, and small industrial units throughout the entirety of the site.

(iii) The planning authorities had demonstrated, when considering their approval for a dwelling constructed on the Reference Land, a concern for the visual impact height might have due to the exposed nature of the lands.

(iv) The industrial use of the Reference Land was acceptable within current planning policy subject to normal planning material considerations.

(v) The site's location was within easy access of a regional transportation network including land, sea, air.

(vi) The form of constraint, if one existed, had not been demonstrated in the report of Ms Jobling.

33. At hearing the planners were agreed that most of the land under the Equipment had a clearance in excess of six metres and there were some areas which had a clearance in excess of 10 metres.

34. The Tribunal agrees with Mr McCaw, such a large area of land (37.4 acres) could incorporate a wide variety of industrial layouts which could be constructed without interference from the equipment. The onus was on the claimant to prove otherwise and the Tribunal considers that the claimant had failed to clearly demonstrate how the continued presence of the equipment would be a constraint on future development of the Reference Land which would result in a diminution in market value. The Tribunal therefore makes no award of compensation for the grant of the NWL on the Reference Land.

35. If, however, at some future date the equipment prohibits specific "bona fide" development of the Reference Land the claimant or his successor in title will have recourse to condition 7 of the NWL which will require the removal of the equipment to allow development to take place or ensure that compensation based on diminution in market value will be paid.

DIMINUTION IN MARKET VALUE - 10 MAYDOWN ROAD

36. The property at 10 Maydown Road comprised a three bedroom detached bungalow, built in the 1970's which measured approximately 182 square metres gross external area.

37. Mr Doherty conceded that he did not have any direct evidence to assist in quantifying the impact of over-sailing power lines and views of metal pylons on residential property values in Northern Ireland. He noted in his written evidence to the Tribunal:- "the land is traversed by 3 no. 110Kv and 1 no. 275Kv NIE electrical power lines with associated metal pylons approximately 400 metres from the residential property at their nearest point." It was his opinion, however, that the continued presence of the equipment which he considered to be clearly visible and which he calculated was some 400 metres from the property, would generate a 7% loss in the value of the property if it were placed on the open market without the equipment being removed. He assessed the un-encumbered and encumbered values at the valuation date 20th May 2011:

UNENCUMBERED VALUE	-	£236,000
ENCUMBERED VALUE	-	£220,560
DIMINUATION IN VALUE	-	£15,440 (7%)

38. Mr Doherty submitted comparable evidence, which, in his opinion substantiated the 7% diminution in market value:

Address	**Distance Tower**	**Distance Line**	**Encumbered Value**	**Unencumbered Value**	**Loss %age**
153 The Old Fort	40m	10m	£76,000	£94,000	19%
111 The Old Fort	100m	8m	£58,000	£90,000	35%
125 The Old Fort	40m	Overhead	£67,000	£75,000	10%
25 Dissertowen Road	112m	Overhead	£195,000	£220,000	11%
12 Red Brae Road	97m	75m	£125,000	£147,000	15%
57 Templetown Park	20m	Overhead	£155,000 unsold	£199,000	22%
44 Templetown Park	50m	20m	£87,000	£94,000	7.4%
68 Marshallstown Road	44m	42m	£89,950 unsold	£147,000	38%

39. The Tribunal makes the following observations on Mr Doherty's evidence:

(i) The lines and towers in his comparable evidence were substantially closer to the respective properties than the subject lines/towers which by his calculation were some 400 metres from the Reference Property at their nearest point.

(ii) The un-encumbered values were his estimates of market value not actual sales. Mr Doherty did consider the sales of not impacted properties in the locality of his comparisons to arrive at these estimates. The Tribunal, however, would have expected much more detailed analysis of the sales of the encumbered properties in comparison to the un-encumbered properties to "strip out" other factors which may have contributed to the differences in value such as size, location, plot size, repair, internal finish and fit out etc.

(iii) There was no correlation between the distance of the equipment from the property and the percentage reduction. For example, the property at 111 Old Fort Road had a tower 100 metres away which generated a 35% "loss" whereas the property at 44 Templeton Park had a tower 50 metres away but which only generated a 7.4% "loss". This would suggest that factors other than the equipment had also played a part in the sales price differentials.

40. Mr Doherty also provided the following examples from England of agreements between power companies and landowners for the acquisition of permanent easements:

Address	**Distance Tower**	**Distance Line**	**Price Paid for Easement**	**Unencumbered Value at Time Easement**	**Loss %age**
Walton Farm	360m	360m	£20,000	£1.1m	2%
Edge View Barn	144m	44m	£49,250	£750,000	6.5%
Hawkshaw Hall	109m	52m	£127,500	£1.275m	10%
Higher House Farm	104m	100m	£46,480	£775,000	5.75%

41. These examples, however, referred to the acquisition of permanent easements, not NWLS, and without much more detailed analysis of these voluntary transactions, including an assessment of the prevailing market conditions at the time of the easement agreement the Tribunal is unable to draw any meaningful conclusions from this evidence.

42. Mr Crothers provided a schedule which included the house sales evidence provided by Mr Doherty and which was expanded to include the house styles and sizes for each property. Mr Crothers considered that this additional analysis would ascertain whether there was any evidence that house prices in the vicinity were reduced where the properties were impacted by electric lines, by comparison with those not impacted.

43. Absent the full particulars of not only the underlying circumstances of each sale but the individual characteristics of the houses, none of which was available to him or apparently the applicant's expert, Mr Crothers considered that this was the most objective analysis that could be undertaken.

44. Mr Crothers concluded that his evidence demonstrated that other subjective matters had a bearing upon the prices paid for individual houses and this was likely to result in variations from property to property.

45. Mr Crothers compared a semi-detached house at The Old Fort and a semi-detached house at Pelham Road. The former (which was impacted by lines) achieved a price of £915 per square metre and the latter £959 per square metre. Mr Crothers considered the 4.5% difference could be accounted for by a number of factors for example, in his opinion, the "Pelham" house was better located and visually more attractive.

46. Mr Crothers also noted that the sale of a (impacted) detached house at Templeton Park achieved a higher price per square metre than comparable (but not impacted) detached properties at Mallory Park and Alderbrook. In Mr Crothers opinion this did not support a conclusion that the value of the Templeton property was adversely affected by the lines. He also noted that a direct comparison between the price per square metre of Thornlea Gardens (impacted) and Alderbrook (not impacted) showed a price differential of 5.75% in favour of the impacted property. Viewed in the aggregate Mr Crothers calculated that the impacted detached houses sold at prices per square metre of between £851 and £1010 (a simple average of £933 per square metre) while the not impacted houses sold at £836 and £903 per square metre (a simple average of £870 per square metre).

47. On the basis of this evidence Mr Crothers concluded that there was no market evidence of the adverse impact of electric lines on house values in the subject location.

48. The Tribunal agrees with Mr Crothers, without much more detailed information and analysis being available about the individual characteristics of each property which

could impact on value, it was impossible to conclude from the evidence supplied by Mr Doherty that house prices in the locality were generally impacted to the extent of 7% by the presence of overhead lines.

49. On inspection 10 Maydown Road the Tribunal noted:

    (i) the metal tower which was directly visible from the front of the subject dwelling was not located on lands owned by the claimant (this was confirmed by the solicitors who were in attendance at the inspection) and as such the impact of this tower, if any, could not be taken in to consideration as it was not part of the subject NWL [see Stynes].

    (ii) Mr Doherty had calculated the lines and pylons to be some 400 metres from the Reference Property at their nearest point. Mr Crothers had calculated the 110Kv line on the Reference Land West to be some 270 metres from the Reference Property at its nearest point and the 275Kv line on the Reference Land East to be some 140 metres from the Reference Property with the nearest pylon being some 200 metres away. The Tribunal considers Mr Crothers assessment of the proximity of the lines and pylons to be more accurate.

50. The Tribunal considers that the claimant has failed to clearly demonstrate in the circumstances of the subject case, with the lines and pylons being some 140 to 270 metres from the Reference Property at their nearest points, the market evidence points to a diminution in market value.

CONCLUSION

51. In the factual circumstances of the Reference Property the Tribunal makes no award of compensation for the grant of the NWL.

ORDERS ACCORDINGLY

9th October 2014 **Mr Henry M Spence MRICS Dip Rating IRRV (Hons)**

Lands Tribunal for Northern Ireland

Appearances

Claimant: **Mr Mark Orr QC and Mr Barry Denyer-Green BL instructed by Hampson Harvey Solicitors.**

Respondent: **Mr Stephen Shaw QC instructed by NIE solicitors.**