

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/3/2022

BY

DARREN McGOVERN & KATE McGOVERN - APPLICANTS

Re: 50 Old Newry Road, Banbridge, Co Down

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

Background

1. Darren McGovern and Kate McGovern (“the applicants”) are the registered owners of the leasehold estate of premises located at 50 Old Newry Road, Banbridge (“the reference property”). The lease commenced on 13th April 1964 and the applicants became the registered owners on 11th August 2021.
2. The applicants have obtained planning permission, LA08/2022/0549/F, for the “erection of a replacement dwelling, integral garage and associated site works”. The lease, however, contains a covenant: “Not during the said term to erect on any part of the determined premises any buildings or erection without the consent in writing of the lessor”.
3. The applicants now seek modification or extinguishment of the impediment to allow for development in accordance with the planning permission.

Procedural Matters

4. The applicants were represented by Mr Paul Ferris of Ferris & Co, solicitors. Mr Ferris has detailed his attempts to contact any possible beneficiaries of the restrictive covenant, but to no avail. The Tribunal is satisfied that all reasonable attempts have been made.

5. On behalf of the applicants, the Tribunal has also received an expert report from Mr Brian Clarke FRICS NDEA of Best Property Services, dealing with the issues contained in Article 5(5) of the Property (Northern Ireland) Order 1978 (“the Order”), which the Tribunal is statutorily bound to take into account when considering modification or extinguishment of a covenant. Mr Clarke is an experienced chartered surveyor and the Tribunal is grateful to him for his helpful submission.

The Statute

6. 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.”

7. 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.”

8. 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 Clarke

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

9. The impediment was imposed in the lease of the 13th April 1964. At that time the immediate area was rural interspersed with one-off houses. The probable purpose was to preserve residential amenity.

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

10. Banbridge town has expanded and most adjacent areas are now developed. The area remains largely residential, but there has been some increase in development density. Residential estates have been developed in some adjacent greenfield areas to include Foxleigh Fields, Ranchview and the Lotus development at Newry Road.
11. The closest properties are 44 and 52 Old Newry Road, which are of a similar age and type, but have been upgraded.
12. The neighbourhood has also seen an increase in non-residential users. This would include the outlet retail park and the Bridgewater Park industrial development.

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

13. I am not aware of any public interest in the land.
14. The Tribunal considers the granted planning permission, LA08/2022/0549/F, to be a public interest in the reference property.

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

15. The trend shown by planning permissions in recent years in this location has been toward extension or enlargement of the existing housing and development of adjacent vacant fields for housing development.

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

16. The proposed redevelopment of the existing dwelling would not have any material affect on the privacy or amenity of neighbouring properties.

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

17. The persons entitled to the benefit of the impediment cannot be traced.

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

18. Not applicable.

5(5)(h) Any other material circumstances

19. There are no other material circumstances to be considered.

Mr Clarke's Conclusions

20. Mr Clarke does not consider that the modification of the impediments would adversely affect the beneficial occupation or cause any loss of amenity to any adjoining properties. It was his expert opinion that the impediment should be modified.

21. It was also his opinion that if the impediment was not modified or extinguished it would unreasonably impede the applicants' use and enjoyment of the reference property.

The Tribunal's Conclusion

22. The Tribunal notes the contents of Mr Clarke'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 or extinguishment?

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

Decision

24. Having considered Mr Clarke's expert report dealing with the statutory issues in Article 5(5) of the Order, the Tribunal orders modification of the impediment to allow for development of the reference property in accordance with the granted planning permission, LA08/2022/0549/F, or any variation thereof.

Compensation

25. The Tribunal may award compensation in accordance with Article 5(6)(b) of the Order. Mr Clarke's opinion was that no compensation should be awarded as he considered modification would cause no interference, or no loss would result from the removal.

26. The Tribunal agrees with Mr Clarke, the covenant does not secure any practical benefit on any person and as such no compensation is payable.

Objectors

27. As 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 for any objectors to come forward, prior to issuing an Order of the Tribunal.

14th October 2022

Henry Spence MRICS Dip.Rating IRRV (Hons)

LANDS TRIBUNAL FOR NORTHERN IRELAND