

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/3/2023

BY

KIERAN CULLINAN – APPLICANT

Re: 16 New Forge Grange, Belfast

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

Background

1. Mr Kieran Cullinan (“the applicant”) is the current registered owner of a leasehold interest in property at 16 New Forge Grange, Belfast (“the reference property”) which is held under Folio AN138786L County Antrim.
2. The root title is an indenture of lease dated 1st December 1982 for a term of 10,000 years from 1st May 1973, between Crowburn Properties Limited of the one part and Gerard and Veronica McClure of the other part. The applicant acquired the reference property when he inherited it from the estate of his late brother in May 2006.
3. The applicant was granted planning permission, reference LA04/2020/0022/F on 18th September 2020, for the erection of an additional detached dwelling with basement garage, on the grounds of the reference property.
4. The lease however, contains the following covenant on the part of the Lessee:

“Not at any time during the continuance of this demise to erect or place any additional building or erection on any part of the demised premises without the previous consent

and approval in writing of the Lessor first had and obtained which consent shall not be unreasonably withheld.”

5. The particulars of title held with the documents of title also contain the following:

“By Lease (hereinafter called ‘The second Lease’) dated 15th November 1957 made between Progressive Building Society of the first part Clanrye Estates Limited of the second part and Vincent Benjamin Evans of the third part. Portion of the property comprised within the Conveyance dated 12th March 1957 and coloured pink on the map attached where demised to the said Vincent Benjamin Evans for the term of 10000 years from 1st November 1957 at the yearly rent of one penny.”

6. This lease also contains covenants restricting building for the period of 75 years from the date thereof, 1st November 1957.

7. The applicant now seeks modification or extinguishment of the impediments to allow for development in accordance with the granted planning permission.

Procedural Matters

8. The applicant was represented by Ms Robina McCaughern, solicitor of John J McNally & Co. Ms McCaughern provided an affidavit which confirmed:

- (i) Search of Registry of Deeds re Hampton Properties NI Limited.
- (ii) Search of Registry of Deeds re Crowburn Properties.
- (iii) The Crown Solicitor’s Office has no interest in the property.
- (iv) Crowburn Properties Limited is now dissolved.

The application is therefore unopposed.

9. The Tribunal is grateful to Ms McCaughern for her helpful affidavit.

10. On behalf of the applicant the Tribunal also received an expert report from Mr Rory Alexander Clark of McConnell Chartered Surveyors and Property Consultants, dealing with the issues contained in Article 5(5) of the Property (Northern Ireland) Order 1978 (“the Order”). The Tribunal is statutory bound to take these issues into account when considering modification or extinguishment of a covenant. Mr Clark is an experienced chartered surveyor and the Tribunal is grateful for his helpful submissions.

The Statute

11. 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.”

12. 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.”

13. Article 5(5) of the Order specifies the matters which the Tribunal must take into account together with any other reasonable circumstances. Mr Clark’s submissions on these will now be considered in detail.

The Article 5(5) Issues

Mr Clark

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

14. The impediments were created under the 1982 lease but the effective date of the term is 1st May 1973. The additional impediment was created in 1957 for the benefit of the Lessee.

15. In 1973 and more particularly 1957, it was common practice by landowners and developers to insert restrictive covenants within the lease in order to protect the amenity of the area by way of controlling the type and density of development. In 1957 and 1973 there was very little development.

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

16. Prior to 1982 it is clear from the Ordnance Survey Map of that time that Newforge Lane was an area comprising mainly detached houses with significant gardens although there were two blocks of terrace houses along the southern side of Newforge Lane.

17. The current Ordnance Survey map shows that the terrace housing no longer exists and there are now a series of detached dwellings in their place. More significantly the area immediately surrounding the reference property has been developed into a series of medium density detached houses including Malone Grange, Newforge Dale, Newforge Grange and Forest Hill.

18. The plot sizes in the immediate area vary from 550m² to 1200m² and the proposed subdivision of the reference property will create two plots of approximately 900m² which is within the existing range.

19. It is clear that the planners have facilitated intensification and increased density in this location.

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

20. I am not aware of any public interest in the land. The Tribunal, however, considers the granted planning permission to be a public interest in the land.

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

21. I am not aware of any particular planning refusals in the vicinity that would negatively impact the current proposal for an adjoining dwelling.

22. The proposed development is in keeping with the general character and planning consents on the surrounding areas.

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

23. The purpose of the impediments were to control development in 1973 and 1957. Since then the immediate surrounding area has changed considerably with a number of housing developments.

24. In relation to the 1957 lease, it is likely that the only reason to impose the restriction at that time was to control building density and perhaps visual amenity, however, the density in the area has increased significantly since then and there is now a row of very tall mature trees along the shared boundary between 1b Newforge Grange and 2a Newforge Lane which obstructs any possible view of the proposed new dwelling, negating the need for any further visual amenity.

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

25. I do not consider this to be relevant in this case.

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

26. I am not aware of any such agreement.

5(5)(h) Any other material circumstances

27. I am not aware of any other material circumstances which are relevant.

Mr Clark's Conclusions

28. In my opinion the impediments unreasonably restrict the applicant's use and enjoyment of the reference property and would prevent him from developing the land.

29. I believe that the continued operation of the covenants secures no practical benefit for any person and that the covenants should be modified or extinguished to enable the development to take place in accordance with the granted planning permission.

The Tribunal

30. The Tribunal notes the contents of Mr Clark's submissions. The main issue for the Tribunal is does the impediment secure some practical benefit, and, if so, is it a benefit of such weight to justify its continuance without modification or extinguishment.

31. Based on Mr Clark'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 applicant's use and enjoyment of the reference property. The Tribunal agrees with Mr Clark, the impediments do not confer any practical benefit on any such person entitled to that benefit.

Decision

32. Having considered Mr Clark's expert report dealing with the statutory matters in Article 5(5) of the Order, the Tribunal orders modification of the impediments to allow for development of the reference property in accordance with the granted planning permission LA04/2020/0022/F, or any variation thereof.

Compensation

33. The Tribunal may award compensation in accordance with Article 5(6)(b) of the Order. Mr Clark's expert opinion was that no compensation was payable as he considered modification would cause no interference and no loss would result from the modification.
34. The Tribunal agrees with Mr Clark, the covenant does not confer any practical benefit on any person and as such no compensation is payable.

7th September 2023

Henry Spence MRICS Dip.Rating IRRV (Hons)

Lands Tribunal for Northern Ireland