**LANDS TRIBUNAL FOR NORTHERN IRELAND**

**LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964**

**LAND COMPENSATION (NORTHERN IRELAND) ORDER 1982**

**IN THE MATTER OF A REFERENCE**

**BETWEEN**

**R/34/2012**

**DOMINIC BRADLEY & ELAINE BRADLEY – CLAIMANTS**

**Re: 21 Clanchattan Street, Belfast**

**R/35/2012**

**GERARD MULVENNA – CLAIMANT**

**Re: 39 Queen Victoria Gardens, Belfast**

**AND**

**NORTHERN IRELAND HOUSING EXECUTIVE – RESPONDENT**

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

## BACKGROUND

1. The claimants have raised a preliminary issue in these references as to whether the respondent should accept that it is liable for vandalism which caused damage to the properties in question and subsequently should compensation be based on the value of the property ignoring the damage caused by vandalism. The issues were similar for both references and for convenience the parties agreed that they should be heard together.

2. Both properties were located in redevelopment areas, RDA 141 Fortwilliam/Queen Victoria, RDA 142 Parkhead and some time prior to the notice of intention to vest they each suffered significant vandalism.

## PROCEDURAL MATTERS

3. Mr Joe Allen, Chartered Surveyor, represented both sets of claimants. Mr Michael Potter BL appeared for the respondent, instructed by Geo L Maclaine & Co, solicitors. Miss Carla Gould, a valuer from Land & Property Services gave expert opinion evidence. Mr Vallely, Northern Ireland Housing Executive (NIHE) Land and Property Manager for Belfast Council District gave evidence with regard to NIHE Board policy on their advance purchase scheme. The Tribunal is grateful to all parties for their written and oral submissions.

## POSITION OF THE PARTIES

4. Mr Allen's position was that the vandalism had been caused by:

i. the respondent's delay in implementing the scheme.
ii. the respondent's refusal to acquire the properties in advance of vesting.

5. Mr Potter submitted that the respondent was guilty of no act or omission which could give rise to liability for loss as sought by the claimants. He considered that the respondent had acted properly and expediently in all the circumstances in accordance with relevant law, policy, procedure and practice.

6. The parties were agreed:

i. any decrease in value attributed to the scheme underlying the acquisition should be ignored.
ii. the references should be decided on the individual circumstances pertaining in each case.

**STATUTORY FRAMEWORK**

7. The jurisdiction of the Lands Tribunal to assess compensation is founded in Schedule 3 of the Land Compensation (Northern Ireland) Order 1982 ("the Order").

8. The Housing (Northern Ireland) Order 1981 ("the Housing Order") gives NIHE the power to acquire land:

> **"**87-(1) The Executive may, for the purposes of its functions, acquire land by agreement or compulsorily."

**AUTHORITIES**

9. The Tribunal was referred to the following authorities:

- Pointe Gourde Quarrying and Transport Company Limited v Sub-Intendent of Crown Lands [1947] AC 565

  "It is well settled that compensation for the compulsory acquisition of land cannot include an increase in value that is entirely due to the scheme ..."
- Wilson v Liverpool Corporation [1971] 1 WLR 302

  Lord Denning ML: "A scheme is a progressive thing. It starts vague and known to few. It becomes more precise and better known as time goes on. Eventually it becomes precise and definite and known to all. Correspondingly, its impact has a progressive effect on values. At first it has little effect because it is so vague and uncertain. As it becomes more precise and better known, so its impact increases

until it has an important effect. It is this increase, whether big or small, which is to be disregarded at the time when the value is to be assessed."

- Macdonald v Midlothian County Council [1974] SLT (Lands Tr) 24
- Arrow v London Borough of Bexley [1971] 1 WLR 302

"The Point Gourde principle did not apply in the present case, as the decrease in the value of the house due to vandalism was not entirely due to the scheme underlying the acquisition, it being for the claimant to decide whether the house was to be kept empty or not, as he had the option of putting the public health nuisance (which was minor) right and reletting."

And

"The claimant did nothing to minimise the risks flowing from his decision not to relet as he took it to be the Council's responsibility, but in this he was wrong since on compulsory purchase the risk of damage does not pass until either the authority takes possession or compensation is determined."

And

"The principle, usually referred to as Point Gourde, that compensation for compulsory acquisition of land cannot include an increase or decrease in value which is entirely due to the scheme underlying the acquisition, is one which is fundamental to the compensation code, but I do not think it can be prayed in aid on the facts in the present case. The decrease in value of 22 Cray Road as a result of vandalism was not entirely due to the scheme underlying the acquisition."

And

"If the house were to be relet, after remedying the nuisance complained of, then it would in all probability remain vandal free."

And

"On the evidence, the claimant did little to minimise the risks flowing from his decision not to relet."

And

"Whilst seeking to deter the activities of the vandals, the claimant took no positive action himself."

And

"In respect of a property being compulsory acquired, the risk of damage (be it from vandalism or from fire or from some other cause) does not pass until either the acquiring authority has taken possession or the compensation is determined. In the interim the acquiring authority have neither any duty nor any right to look after the property. A dictum of Lord Reid in Birmingham Corporation v West Midland Baptist (Trust) Association at page 1064 is relevant: 'It does not at all follow from the fact that the owner cannot so act as to increase the burden on the providers, that the

burden on the providers may not be diminished by events later than the notice to treat'."

- Lewars v Greater London Council [1981] 259 EG 500
- Gately v Central Lancashire New Town Development Corporation [1984] 1 EGLR 195

  "The general rule is clear; the risk or loss or destruction of property acquired compulsorily is on the owner and does not pass to the acquiring authority until entry or the date of determination of compensation (if that event preceeds entry) ....

  While that is the principle, an acquiring authority is, in my view, not entitled to increase the risk borne by the owner. Nevertheless, the extent to which an acquiring authority can be held responsible for vandalism of properties subject to compulsory purchase is a difficult question. The vandals are third persons over which the authority has no direct control and the authority is plainly not to be treated as though it were liable in negligence or trespass for the activities of the vandals ....

  The question in the present case is in truth not whether the authority is liable for such activities but whether the owner of the reference property must bear all the diminution in its value which is attributable to vandalism. Put in another way, the question is whether the acquiring authority ought to bear all or some of that loss ....

  Between early 1982 and the end of July in that year the acquiring authority demolished many houses in the block but left the reference property and no 37 (for a time) standing alone amidst rubble and desolation.

  In my opinion, by the manner in which it implemented the scheme (the method of implementation was no doubt itself part of the scheme), the authority gave encouragement to vandals who, it must be accepted in the modern age, thrive in such conditions and in justice the authority ought to bear some part of the loss attributable to the damage caused by vandals to the house."

- Blackadder v Grampian Regional Council [1992] 48 EG; [1992] 49 EG 107

  "The question then is whether the loss occasioned to Mr & Mrs Blackadder as a result of damage done by intruders was to any extent due to the scheme."

  And

  "It must also be kept in mind that until an acquiring authority take possession ... the risk of destruction of, or damage to, property remains with the owner. It is for the owner to take whatever steps may be necessary to safeguard it and to preserve its value."

  And

  "The Tribunal are satisfied, therefore, that prior to the date of valuation in March 1990 the scheme was responsible for increasing the risk of damage being done to the subjects at 12 Powis Terrace.

The questions remain whether the damage and theft and the consequent loss in the value of the property were nevertheless avoidable. Neither Mr Blackadder nor the council were in any way directly responsible for the damage. The council could certainly take no pre-emptive action prior to the date of taking possession. The question, therefore, is whether Mrs Blackadder herself had taken sufficient precautions to eliminate or reduce the incidence of damage."

And

"In summary, therefore, although eventually the scheme underlying the compulsory acquisition was a factor contributing to the risk of damage being done by intruders at 12 Powis Terrace, the real reason for the house being damaged in the way that it was damaged was that Mrs Blackadder had left it lying empty...."

**DISCUSSION**

10. As outlined in the Gately and Blackadder decisions the risk of damage to property which is being acquired compulsorily is on the owner and does not pass to the acquiring authority until the date of taking possession. The acquiring authority is not, however, entitled to increase the risk borne by the owner.

**Did the respondent increase the risk of vandalism to the subject properties?**

11. Mr Allen submitted:
    i. The vandalism to the subject properties was entirely due to the respondent because of:
        - the length of time take to implement the scheme.
        - the respondents refusal to acquire tenanted properties under the advance purchase scheme.
    ii. In most schemes there was usually a relatively short period between Executive Board approval and the operative date of vesting. In the subject case, however, Board approval was granted in 2005 but vesting did not happen until 2011. Under the threat of vesting the applicants' found it impossible to sell or let their properties when the existing tenants vacated in 2006 and 2008 respectively. The properties were therefore lying vacant for some considerable time prior to vesting.
    iii. Had the respondent acquired the properties under the advance purchase scheme when requested to do so no vandalism would have occurred. The Board policy of only acquiring owner occupied properties under advance purchase and subsequently boarding them up contributed to the decline in the locality and this increased the risk of vandalism to the subject properties.

12. Mr Vallely, NIHE Land and Property manager for the Belfast Council District confirmed that the Board of NIHE had taken the decision to apply a non statutory scheme to the subject

redevelopment areas which mirrored the "blight" procedure but without the onerous requirements of having to put the property on the market and proving that it could not be sold. As "blight" procedure only applied to owner occupied properties he confirmed that tenanted properties were not eligible for advance purchase under the Boards scheme. He did concede, however, that NIHE had the statutory power to acquire tenanted properties under Article 87 of the Housing Order.

13. Mr Vallely did not consider that NIHE had contributed to the decline in the area rather they had intervened in 2005 to stop the decline which was already there. In his opinion further decline and vandalism would have occurred without NIHE intervention.

14. With regard to the amount of time taken to implement the scheme. He considered that the Department for Social Development had the legitimate right to consider the NIHE proposals for the area in detail and this took considerable time.

15. Taking all of the circumstances into account the Tribunal is satisfied that the length of time taken to implement the scheme and the NIHE Board policy of only acquiring owner occupied properties under advance purchase increased the risk of vandalism to the subject properties.

16. It was recognised, however, in the previously quoted authorities that the extent to which an acquiring could be held responsible for vandalism of properties subject to pending acquisition was a difficult question. In Gately the question boiled down to should the owners of the reference properties bear all of the diminution in value which was attributed to the vandalism or should the acquiring authority bear all or some of that loss.

17. Mr Allen submitted that in the absence of the scheme the claimants would have had no difficulty in finding new tenants when the previous one left and the properties would have continued to be occupied and they would not have been vandalised and they would not therefore have suffered any loss. He considered the vandalism was entirely due to the scheme and was occasioned by the way in which the respondent went about implementing the scheme.

18. Mr Potter submitted that the person who owns the property is primarily responsible and liable up to date of vesting, as detailed in the submitted authorities. He considered the key issues for the Tribunal were did the claimants do enough to prevent the damage and what was the real reason for the damage.

19. The Tribunal agrees with Mr Potter, as in Blackadder the questions which remain for this Tribunal are: did the claimants take sufficient precautions to eliminate or reduce the incidence of damage and was the damage and subsequent loss avoidable?

**Could the claimants have taken steps to avoid the loss due to vandalism?**

20. Miss Carla Gould gave evidence on the two properties:

**21 Clanchattan Street**

i. At date of vesting in 2011 five of the twenty-seven properties in the street were tenanted including No. 23 which was next door to the subject property. Mr Allen submitted that in the absence of details regarding the status and tenure of these tenants, this information was of limited assistance and could be misleading. No evidence to the contrary was available to the Tribunal, however, and the Tribunal considers it relevant that five of the properties were tenanted at date of vesting.

ii. Miss Gould referred to an email from Ms Elaine Bradley dated 4th May 2012 which was submitted in evidence by Mr Allen. In her opinion this email confirmed:

- In 2006 some £2,500 worth of damage was caused by the tenants themselves.
- The property was vacated in 2006 but was not properly secured until 2008. The property was vandalised in this intervening period.
- Loss of rent up to date of vesting was estimated by the claimant to be £26,400.

iii. Miss Gould also considered that the claimants had not been transparent in their dealings with the insurance company who had provided insurance for the property. The insurance policy renewal notice, which was submitted in evidence confirmed "reason for unoccupancy, pending sale" and also stated that the property was "in a good state of repair and so maintained by the proposer". In addition the policy stated that malicious damage cover would be excluded after the first 30 days.

21. Based on the submitted documents (the email from Ms Bradley dated 4th May 2012 and the insurance renewal notice) and the evidence provided by Miss Gould, the Tribunal is satisfied the claimants could have taken steps to avoid the loss due to vandalism to 21 Clanchattan Street:

i. At date of vesting some five properties in Clanchattan Street were tenanted, including No. 23, the house next door to the subject property. The claimant could have taken the decision to spend £2,500 repairing the property in 2006 and continued to let it up to date of vesting. By their own estimate this would have given a return of £26,400 by date of vesting in 2011.

ii. The premises were damaged by the previous tenants but a criminal damage claim was never pursued. The respondent could hardly be held responsible for this damage.

iii. The property was vacated in 2006 but the claimant did not take steps to properly secure it until 2008. The email confirmed the property was vandalised in this interim period.

iv. The claimants should have been transparent in their dealings with the insurance company and could have sought to obtain a policy which covered the property against malicious damage for more than 30 days.

22. The Tribunal finds that the claimants should bear the loss due to the damage done to their property by vandals and the respondent should bear none of that loss.

23. **39 Queen Victoria Gardens**

i. At the date of vesting in 2011 nine of the thirty-five properties in Queen Victoria Gardens were tenanted. As per Clanchattan Street Mr Allen disputed the usefulness and validity of this information but the Tribunal finds it to be of relevance.

ii. Documentation submitted confirmed that the tenants vacated in mid March 2008 and the property was vandalised a few days later. A police report confirmed that malicious damage had occurred but the claimant did not take steps to properly secure the property until September 2008. This was confirmed by an invoice dated 11th September 2008 which was submitted as evidence.

iii. An insurance claim is still being actively pursued by the claimant. Documentation submitted confirmed that an offer to settle had been made to the claimant but this was declined. This claim was still actively being pursued by the claimant's legal representatives, although Mr Allen advised that the claim had been ongoing for several years and he considered there was little likelihood of success.

24. Based on this evidence the Tribunal finds that the claimant could have taken steps to avoid the damage to the property at 39 Queen Victoria Gardens:

i. He could have sought new tenants for the property when it became vacant in 2008. Miss Gould gave evidence that nine properties in Queen Victoria Gardens remained tenanted at date of vesting in 2011. The Tribunal notes that the property was vandalised a few days after being vacated in March 2008. The claimant had the option, however, of repairing the property and re-letting but he did not avail of this option. This could have provided a substantial return up to date of vesting in 2011.

ii. The property was vacated in March 2008, but it was not properly secured by the claimant until September 2008.

iii. An insurance claim is still actively being pursued.

25. For the above reasons the Tribunal is satisfied that the respondent should not bear any of the loss due to vandalism of the property at 39 Queen Victoria Gardens.

**DECISION**

26. The Tribunal orders that compensation for the properties at 21 Clanchattan Street and 39 Queen Victoria Gardens should be based on their physical condition at date of vesting, 10th October 2011.

**ORDERS ACCORDINGLY**

**15th January 2014** **Henry M Spence MRICS Dip.Rating IRRV (Hons)**
**LANDS TRIBUNAL FOR NORTHERN IRELAND**

**Appearances:**

**Claimant - Mr Joe Allen, Chartered Surveyor.**

**Respondent - Mr Michael Potter BL instructed by Geo L Maclaine & Co, Solicitors.**