

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/4/2023

BETWEEN

TREVOR CROTHERS, JOAN GREEN, ELIZABETH LYONS, JOHN T PATTERSON, SAMUEL SOMMERVILLE
BEING TRUSTEES OF BALLYNAHINCH CHRISTIAN WORKERS' UNION – APPLICANTS

AND

JOANNA PEAKE - RESPONDENT

Re: Hall at Windmill Hill, Ballynahinch

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

Background

1. The current Trustees of Ballynahinch Christian Workers' Union ("CWU") are Trevor Crothers, Joan Green, Elizabeth Lyons, John Patterson and Samuel Sommerville ("the applicants").

2. On 30th November 1932 Andrew McCarthy of Ballynahinch transferred a portion of land at Windmill Hill, Ballynahinch ("the reference property"), which is close to the centre of Ballynahinch, to the original Trustees of Ballynahinch CWU, namely Thomas Weir, the said Andrew McCarthy, John Green, David John Wallace, Edwin Patterson, Hugh William Murdock and Robert John Graham.

3. The land transferred by the Deed of Conveyance dated 30th November 1932 was described as:

"all that plot ground being portion of the premises hereinbefore recited containing in front 66 feet and in the rear 66 feet and from front to rear on the north side 79 feet and on the south side 80 feet, be said admeasurements more or less lying between the

Windmill Hill Road and the Belfast and County Down Railway as now in the occupation of Andrew McCarthy and situate in the town of Ballynahinch Parish of Magheradroll, Barony of Kinclarty and County Down.”

4. In effect the reference property is located on Windmill Lane beside the Ballynahinch Lidl and opposite Drumlins Integrated Primary School. The grantor, Andrew McCarthy, lived at 1 Crossgar Road, Ballynahinch.
5. One of the current Trustees, Dr John Patterson, is a grandson of one of the original Trustees, namely the said Edwin Patterson and he has been involved with Ballynahinch CWU since he was a child. The other Trustees are long standing residents of the Ballynahinch area and have been involved with Ballynahinch CWU, in most cases, for well over 50 years.
6. Prior to the Deed of Conveyance dated 30th November 1932, the applicants advise that a Hall was erected on the portion of land which was subsequently transferred to them. The Hall was known and continues to be known as Ballynahinch Christian Worker’s Union Hall.
7. The 1932 Deed of Conveyance contained a number of restrictive covenants:
 - “(1) That the Hall erected upon the premises thereby conveyed shall be called “The Christian Worker’s Hall”.
 - (2) That the said Hall be used for aggressive work for God and the extension of his kingdom.
 - (3) That the said Hall shall be governed by the Trustees, four of whom in meeting assembled and properly convened shall form a quorum whose authority shall be sufficient for the management, upkeep, repairs, meetings or any other use whatsoever and shall have power to make such bylaws as shall appear to them to be necessary or expedient and when signed by the majority of the Trustees shall be binding.
 - (4) That the Hall shall not be let or used for concerts, dances or political meetings neither for religious meetings by individuals or religious bodies who are not sound on the fundamentals viz:

- (a) The Divine inspiration and absolute authority of the scriptures of the Old and New Testaments as the Word of God.
- (b) The utter depravity of human nature as a consequence of the Fall.
- (c) The truth of everlasting conscious punishment as taught in the Scriptures.
- (d) The Virgin Birth and Deity of Our Lord and Saviour Jesus Christ.
- (e) The validity of the Atonement.
- (f) The Triumph of the Resurrection.
- (g) The work of the Holy Spirit in Conversion, Regeneration and Sanctification.”

8. From the date of the said Conveyance until the Covid 19 pandemic the reference property was used for regular monthly Church Services and also prayer meetings. It was also historically used as a Sunday School and Youth Work for local children and teenagers in the Ballynahinch area. However, over the last number of years, the membership of the reference property has declined and all of its Trustees are presently in their 80s. The pandemic has had a dramatic effect on the regular Church Services which were previously held in the reference property and these have now ceased. Given the age of the Trustees and the lack of new youthful members, the applicants have reluctantly come to the decision that the original purposes of the reference property would be better served by transferring the premises to another Protestant Christian organisation focused upon young people.
9. “The Edge” is a youth and community centre with a Christian ethos that aims to work with the local churches in Ballynahinch area. It was set up in or around 20 years ago. The Trustees are drawn from all of the main Protestant Churches in the area. It is a registered charity and is focused on young people of all denominations in the Ballynahinch area. Its mission statement is “empowering young people and the wider community to achieve their full potential spiritually, mentally, socially and physically”. The applicants have unanimously passed a resolution, on 10th March 2022, proposing to transfer the reference property to “The Edge” for no consideration.

10. The Trustees of “The Edge” have some concerns about the following restrictive covenants in the 1932 Deed of Conveyance. They advise:
- (a) **“The Name”** – the Trustees of the Edge feel that it is vital to their work to rename the reference property as “The Edge” as it has become a trusted brand among young people.
 - (b) **“Aggressive work for God”** – the Trustees of “The Edge” would not choose to use those words to communicate such an intent today.
 - (c) **“Concerts, dances and political use”** – the Trustees of “The Edge” are concerned that a prohibitive clause of this nature would limit some potentially fruitful work in “The Edge” as they may wish to host a Worship/Praise Band in the premises. They also foresee potentially arranging dance lessons, for example, for young women who may be suffering from health or wellbeing issues. In relation to political meetings, “The Edge” may, in the future, arrange meetings between young people and local councillors on local issues concerning young people or local services or schools.
11. The applicants submit that some of the terminology in the 1932 Conveyance is very much of its time and is not reflective of how Church worship and Christian praise is expressed in the 21st century. They, therefore, seek an Order from the Tribunal for the extinguishment of the covenants in the 1932 Conveyance numbers 1, 2, 3, 4(1), 4(2), 4(3), 4(4), 4(5), 4(6) and 4(7).
12. The said Joanna Peake (“the respondent”) is the person whom the applicants believe has succeeded to the estate and interest of Andrew McCarthy. The respondent has been contacted by the solicitors representing the applicants but no response has been received.

Procedural Matters

13. The applicants were represented by Ms Jane Watson, solicitor of W G Maginess, Lisburn. The Tribunal is grateful to Ms Watson for her detailed and informative affidavit.

The Statute

14. Article 5(1) of the Property (Northern Ireland) Order 1978 (“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.”

Conclusion

15. The main issue for determination by the Tribunal is do the impediments achieve some practical benefit and, if so is it a benefit of such weight to justify their continuance without modification or extinguishment.
16. In the circumstances of the subject reference the Tribunal is satisfied that the impediments, if not modified or extinguished, would unreasonably impede the applicants’ use and enjoyment of the reference property.
17. Ms Watson, on behalf of the applicants has submitted that the impediments, originating in 1932, are not reflective of how Christian Worships and Praise is expressed in the 21st century.
18. The Tribunal agrees with Ms Watson and considers that the impediments are obsolete and of no practical benefit to any person.
19. The Tribunal orders extinguishment of the impediments 1, 2, 3, 4(1), 4(2), 4(3), 4(4), 4(5), 4(6) and 4(7) listed in the 1932 Deed of Conveyance, as requested by the applicants.

Compensation

20. The Tribunal may award compensation in accordance with Article 5(6)(b) of the Order. The Tribunal, however, finds that the impediments are obsolete, of no practical benefit to any person and therefore no compensation is payable.

14th July 2023

Henry Spence MRICS Dip.Rating IRRV (Hons)

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