LANDS TRIBUNAL FOR NORTHERN IRELAND LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964 PROPERTY (NORTHERN IRELAND) ORDER 1978

IN THE MATTER OF A REFERENCE

R/43/2010

BETWEEN

MARGARET JOHNSTON - APPLICANT

AND

JOEANN DAWSON & ROBIN PRINCE - RESPONDENTS

Re: Land Adjacent to 289B Upper Road, Greenisland

Part 2 - Costs

Lands Tribunal - Mr M R Curry FRICS Hon.Dip.Rating

Background

- In 2010, the Applicant applied to the Tribunal for modification or extinguishment of a covenant so as to permit development to the rear of the Respondents' home. By a Decision dated 4th November 2011 (R/43/2010 Part 1) the Tribunal refused the application. Written and oral expert evidence had been received from Kenneth Crothers and Christopher J Callan, both experienced Chartered Surveyors. The Applicant accepted that costs should be allocated against her but disputed the amount of the costs of the Respondents' expert witness Mr Callan.
- 2. The costs claimed by the Respondents were, in summary:

•	Mr Callan	44.42 hours @ £150 per hour	£6,663.00
•	Ms Scott (who assisted Mr Callan)	5.25 hours @ £40 per hour	£210.00
•	Outlays		£176.50
	TOTAL		£7,049.50

Procedural Matters

- 3. The Tribunal received written submissions only from Ms Emma Cooper and Ms Jennifer M Hill, the solicitors for the parties.
- 4. The Tribunal also received a note of the terms of engagement, timesheets, outlays and hourly rates of both expert witnesses.

Positions of the parties

- 5. Ms Hill suggested that the hourly rate claimed by Mr Callan was too high instead of £150 per hour, it should have been in the region of £100 to £120 per hour.
- 6. Ms Hill also suggested that perhaps her client should not be responsible for Mr Callan's costs incurred in connection with:
 - Confirming willingness to act and settling terms of engagement (45 mins);
 - Preliminary work done prior to settling terms of engagement (1hour 40 mins);
 - Attendance at a 'Without Prejudice' meeting with Mr Crothers (1 hour 30 mins);
 - Reviewing a previous Decision of the Tribunal and Planning Appeals Commission Decision relating to the location (15 mins);
 - Discussing internal inspection arrangements for Mr Crothers with client and solicitor (30 mins);
 - Reviewing draft and finalised affidavits of client and solicitor (30 mins); and
 - Attendance at a Mention at the Lands Tribunal (30 mins).

Discussion

- 7. The Tribunal agrees with Ms Cooper that this was a suitable case in which to employ an expert with the experience and skills of Mr Callan. The hourly rate was well supported by that adopted by Mr Crothers in his terms of engagement and there was no evidence to suggest that a lower rate was appropriate for such an expert. The Tribunal adopts £150 per hour.
- 8. In the view of the Tribunal, confirming willingness to act and settling terms of engagement are matters to be regarded as administrative overheads and treated as already reflected in the hourly charging out rate. The Tribunal agrees with Ms Hill's suggestion and does not allow these items.
- 9. The Tribunal agrees with Ms Cooper's suggestion that it was reasonable for Mr Callan to carry out preliminary investigations and discuss the case before formalising terms of engagement. The Tribunal allows these items.
- 10. The Tribunal has no hesitation in agreeing with Ms Cooper that Mr Callan's attendance at a 'Without Prejudice' meeting with his opposite number, Mr Crothers, was reasonable. It encourages such meetings as they often may resolve disputes without the time, expense and stress of a hearing. The Tribunal allows this item.

- 11. The Tribunal agrees with Ms Cooper that a previous Decision of the Tribunal and the Planning Appeals Commission Decision relating to the location could be important and it was reasonable for Mr Callan to give them some consideration. The Tribunal allows this item.
- 12. The Tribunal has reservations about the need for discussing internal inspection arrangements for Mr Crothers with client and solicitor. Ms Cooper suggests other aspects of the case were discussed. On balance the Tribunal allows 15 mins instead of 30 mins.
- 13. Ms Cooper explained that Mr Callan had not been involved in drafting the affidavits of witnesses of fact but had had been invited to review them as drafts. On the one hand it is important that an expert witness should not coach such witnesses in what to say. But on the other hand it is important that their evidence both includes all relevant factual material on which the expert intends to rely but on which he is not in a position to give evidence; and also does not contain material of which he was unaware and which might have affected his opinion and/or advice. The Tribunal accepts that it was reasonable for Mr Callan to give them some consideration. The Tribunal allows this item.
- 14. Finding a date at which <u>all</u> the participants may attend for a Hearing can be difficult. The choice of what turns out to be an unsuitable date is likely to cause avoidable delay. Whilst not essential, often it is helpful if key personnel such as expert witnesses attend a brief Mention at the Lands Tribunal at which it is intended that final arrangements would be made. The Tribunal accepts that it was reasonable for Mr Callan to attend. The Tribunal allows this item.

Conclusion

15. The Tribunal awards the Respondents their expert witness costs as follows:

Mr Callan 43.42 hours @ £150 per hour £6,513.00
 Ms Scott (who assisted Mr Callan) 5.25 hours @ £40 per hour £210.00
 Outlays £176.50
 TOTAL £6,899.50 plus VAT

ORDERS ACCORDINGLY

31st August 2012

Michael R Curry FRICS Hon.Dip.Rating
LANDS TRIBUNAL FOR NORTHERN IRELAND

Appearances:

Applicant: Ms Jennifer M Hill of Skelton & Co, Solicitors.

Respondents: Emma Cooper of Carson McDowell, Solicitors.