

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

1. 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.

Appearances:

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

Respondents: Emma Cooper of Carson McDowell, Solicitors.