

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
LAND COMPENSATION (NORTHERN IRELAND) ORDER 1982
ELECTRICITY (NORTHERN IRELAND) ORDER 1992

IN THE MATTER OF A REFERENCE

R/52/2011

BETWEEN

MR ROY AND MRS IVY McKIBBEN – CLAIMANTS

AND

NORTHERN IRELAND ELECTRICITY LIMITED – RESPONDENT

Re: Property at 45 Glenholm Park, Belfast

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

BACKGROUND

1. Mr and Mrs McKibben (“the claimants”) are the owners of 45 Glenholm Park (“the reference property”). The property comprises a two storey, semi-detached, three bedroom house located in a primarily residential area known as the “Four Winds”, some 4 miles south of Belfast city centre. There are two small extensions to the rear of the property and adjoining is a single detached garage of similar construction to the house. The property is stated to be in good repair throughout and it has gardens which are significantly larger than normal for the locality. A 110Kv overhead electricity line comprising six conductors and one earth wire “over sail” the property and a Northern Ireland Electricity tower stands in the side garden, some 4 metres from the house.

2. The claimants bought the reference property in 1965 and following acquisition they entered into several voluntary wayleave agreements with Northern Ireland Electricity Limited (“the respondent”) to allow the respondents’ lines and pylon (“the equipment”) to remain on the property. The most recent voluntary wayleave, which was made on the 4th May 1993, was terminated by a notice dated the 29th January 2009 and the claimants subsequently requested the respondent to remove its equipment from the reference property. On the 4th March 2009 the respondent made an application to the Department of Enterprise, Trade and Investment (“DETI”) seeking retention of its equipment on the reference property, by way of a Necessary Wayleave (“the NWL”), in accordance with the provisions of schedule 4 paragraph 10 of the Electricity (Northern Ireland) Order 1992 (“the 1992 Order”).

3. The NWL was subsequently granted on the 19th May 2011 (“the valuation date”). The claimants have referred to the Tribunal for assessment of a claim for compensation from the respondent which is grounded upon paragraph 11(1) of schedule 4 of the 1992 Order which grants the claimants a statutory right to “... recover from the licence holder, compensation in respect of the grant”.
4. This is the third of four initial cases to come before the Tribunal, the Brickkiln (Part I), Brickkiln (Part II) (R/41/2009) and Cuthbert (R/26/2011) decisions have already issued.

PROCEDURAL MATTERS

5. The reference was conducted by Mr Niall Hunt BL on behalf of the claimants and by Mr Stephen Shaw QC on behalf of the respondent. Each party provided evidence from an expert valuer with regard to the compensation to be paid. Mr Frank Cassidy provided expert valuation evidence on behalf of the claimants and Mr Kenneth Crothers provided expert valuation evidence on behalf of the respondent. Both valuers are experienced chartered surveyors. Mrs Ivy McKibben gave factual evidence as to the effect of the respondent's equipment on the reference property.
6. The Tribunal is grateful to the parties for their detailed submissions and factual evidence and also to their continued participation in the “hot tubbing” exercise which had facilitated the joint presentation of expert evidence in the Brickkiln (Part II) and Cuthbert hearings.

POSITIONS OF PARTIES

7. The claimants sought compensation based upon the diminution in market value of the reference property caused by the grant of the NWL, pursuant to schedule 4 paragraph 11(1) of the 1992 Order. Mr Cassidy considered this diminution in market value to be 20% of the “un-encumbered” value of the Reference Property.
8. The respondent's primary position was that there was no material difference between the bundle of rights under the previous voluntary wayleave and the new NWL. Consequently it considered that no compensation arose except that which was and is due/paid under the voluntary wayleave and now NWL. Alternatively if the claimants approach was correct the respondent considered that there was no market evidence to demonstrate that there was a

diminution in value of the reference property due to the grant of the NWL and as such no compensation was payable.

The Brickkiln (Part 1) Decision

9. The findings of the Tribunal following the Part 1 Brickkiln hearing are summarised in paragraph 24 of the Part 1 decision.

- “(i) Schedules 3 and 4 of the 1992 Order clearly distinguish between the compulsory acquisition of land or other interests in land by the licence holder and the acquisition of NWLS. The former are dealt with in a schedule headed ‘Compulsory Acquisition of Land’ while the latter may be found in a Schedule entitled ‘Other Powers’ of licence holders. Schedule 4 does not include any equivalent application of the compulsory purchase provisions of Schedule 6 to the 1972 Act which are included in Schedule 3. In our view this simply reflects the acceptance by Parliament that a NWL does not involve the acquisition of an interest in land – see Stynes.
- (ii) Horn was a standard case of the compulsory acquisition of freehold farming land and a Deed of Grant of a permanent easement. In McLeod the Lands Tribunal rejected the submission that compensation for a NWL should be assessed not only by reference to paragraph 7 of Schedule 4 to the 1989 Act (the equivalent of paragraph 10 of Schedule 4 to the 1992 Order) but also by specific reference to legislation relating to compensation for compulsory purchase. However, despite such rejection in that case the Tribunal went on to have regard to the principle of equivalence in accordance with the approach adopted in Turris. As noted above, in Welford the Court of Appeal confirmed that compensation for wayleaves should be assessed on the general principles applicable to the payment of compensation for compulsory acquisition of land.
- (iii) In our view, there should be no difficulty in applying the principle of equivalence to compensation in that the claimant should be paid neither less nor more than his loss provided that, in the course of doing so, the relevant statutory framework is applied and the specific facts of the case are properly taken into account.
- (iv) In this case the claimant’s advisers seek compensation based on the open market value of the reference land upon the hypothesis that the land was the subject of compulsory purchase and completely unencumbered by the presence of any of the respondent’s equipment. When the Tribunal suggested to Mr Denyer-Green BL

during the course of his closing submissions that such a hypothesis was somewhat unreal in the total absence of any suggestion that the claimant intended to put the land on the market he responded by observing that compulsory purchase is 'frequently unreal'. In our view the Tribunal should be assiduous to avoid, if possible, carrying out any exercise that could properly be described as 'unreal' and we do not consider that the principle of equivalence, properly understood, requires this Tribunal to do so.

- (v) By virtue of paragraph 11 of the 4th Schedule to the 1992 Order the claimant, is entitled to compensation in respect of the grant of the NWL to which the Department has now consented in accordance with the provisions of paragraph 10. The claimant has owned the Reference Land for approximately 10 years. During the whole of those 10 years the equipment of the respondent has been present on the Reference Land. Prior to purchase by the claimant, the equipment was present in accordance with voluntary wayleave agreements dating back to 1959. During the period of its ownership of the Reference Land the claimant has not been significantly inhibited from completing any of the development that it has sought to carry out. There are no extant applications for planning permission in respect of development that would be inhibited by the presence of the equipment. The respondent has not obtained nor has the claimant lost any land or interest in land.
- (vi) The claimant requires to be compensated 'in respect of the grant'. The respondent has obtained a continuing licence or consent to the equipment remaining upon the Reference Land which is now statutory. As a consequence of the NWL the claimant has lost his legal right to determine the respondent's licence and require the respondent to remove the equipment from its land. It is to the measurement of that loss that the principle of equivalence is to be applied. The loss of that right is of some significance because of the nature and extent of the respondent's equipment on the land. The claimant's own valuer has accepted that there is no evidence of any previous refusal of an application for a NWL by DETI. Unlike the Arnold White case in which the local planning authority had made clear the local council's preference that the relevant equipment should be removed, there was no objective evidence in this case to suggest that the claimant's application to have the equipment removed was likely to be successful. However, this should not detract from the significance of a right of property ownership being compulsorily terminated by the executive.
- (vii) It seems to us that the real problem in this case is ascertaining the particular circumstances peculiar to this case upon the basis of which statutory compensation

is to be calculated. There is no evidence of any desire or attempt to place the Reference Land on the open market. It has been zoned for industrial use but, apart from a general reference to building height restrictions, there is little specific evidence of the extent to which the claimant has been significantly impeded in carrying out any specific development. It does not appear that Mr Kennedy was given any detailed information which would have enabled him to financially assess the planned development which is said to be inhibited or any of the alleged consequences set out at paragraph 13 of the claimant's case. Mr Kennedy conceded that he had never previously considered a similar case and accepted that the 50% discount to which he referred at paragraph 42 of his report related to grants of easements rather than NWLs. He also agreed that he had made no allowance for the specific easement permitting the presence of the gas pipe. Mr Kennedy has expressed the view that the market would have little regard for the significance of condition 7 of the NWL but for the claimant, the history of positive liaison between the claimant and the respondent might be a factor to be considered. Any other relevant factor would also have to be taken into account."

In the Part I Hearing the Tribunal decided that further consideration of the valuation evidence needed to take place and this was addressed in the Part II Hearing.

10. Both the claimants and the respondent reserved their positions on the Brickkiln Part 1 decision pending the final determination by the Tribunal.

AUTHORITIES

11. The Tribunal was referred to the following authorities which were considered in detail during the Brickkiln (Part I) Hearing.

Horn v Sunderland Co-Operation [1941] 2 KB 26

Turriss Investments Ltd v Central Electricity Generating Board [1981] 1 EGLR

Macleod v National Grid Co PLC [1988] 2 EGLR 217

Welford & Others v EDF Energy Networks (LPN) [2007] EWCA Civ 293

Arnold White Estates Ltd v National Grid Electricity Transmission PLC [2013] UKUT 005LC

12. The Tribunal was also referred to RJJ Killen Ltd v Department for Regional Development (R/38/2011). This was an application under the Land Compensation (Northern Ireland) Order 1982 whereby the claimants sought compensation for severance of part of their lands. The Tribunal noted "...compensation for severance and injurious affection therefore represents the difference between the value of the land retained with and without the scheme".
13. Post the Brickkiln (Part 1) Hearing the Court of appeal upheld the Upper Tribunals decision in Arnold White Estates Ltd (National Grid Electricity Transmission PLC v Arnold White Estates Limited [2014] EWCA Civ 216).

BASIS OF COMPENSATION

The Brickkiln (Part II) Decision

14. In the Brickkiln (Part II) decision the tribunal outlined what it considered to be the proper basis of assessment of compensation for NWL cases in this jurisdiction:-
 - “19. As a consequence of the grant of the NWL the claimant has lost his legal right to determine the respondents licence and have its equipment removed. It is the measurement of that loss to which the principle of equivalence applies. The Tribunal agrees with Mr Orr QC, the measurement of that loss is the diminution in market value of the claimants lands, that is the difference in market value with the equipment removed ('un-encumbered') and the equipment in place ('encumbered'). That is the measurement of compensation agreed and confirmed in all of the UK decided authorities.
 20. The assessment of compensation must, however, reflect the terms of the relevant statutory framework in this jurisdiction. Although the language of the English statute is similar to the 1992 Order the terms of the NWL in each jurisdiction differ and in particular condition 7 of the subject NWL which allows for either the removal of the equipment or the payment of compensation when a 'bona fide' intention to develop the lands have been hindered by the presence of the equipment.”
15. This was the measurement of compensation subsequently applied by the Tribunal in Brickkiln and Cuthbert and this was the approach adopted by the claimant's valuation expert in the

subject reference. Mr Cassidy did not, however, consider loss of development value to be a relevant consideration at this stage as in his opinion it could adequately be dealt with under condition 7 of the NWL if specific development was prevented at a later date.

16. Mr Crothers primary approach was to consider the “bundle of rights” enjoyed by the claimants before and after the grant of the NWL and in his opinion there was no material difference in terms of value. The tribunal is satisfied there was little difference between the “old” and “new” wayleave arrangements but this approach did not take account of the basic fact that the claimants had lost their legal right to have the respondent remove its equipment from the reference property. As an alternative Mr Crothers considered the claimants’ approach but he concluded that there was no market evidence of the adverse impact of electric lines and pylons on house values in the subject location.

17. As in Brickkiln and Cuthbert the Tribunal considers the proper basis of compensation to be the diminution in market value of the reference property caused by the grant of the NWL. That is the difference between the un-encumbered and the encumbered values.

DIMINUTION IN MARKET VALUE

Un-Encumbered Value

18. Mr Cassidy had assessed the un-encumbered value of the reference property at the valuation date at £155,000. This was based on the following comparable sales evidence which he submitted to the Tribunal:
 - (i) 8 Chartwell Park, Belfast

3 Bedroom, 1 reception semi-detached, double glazed pvc windows, small extension

Sold April 2011 for £165,000

No towers or overhead conductors nearby

 - (ii) 100 Glenholm Park, Belfast

3 Bedroom, 1 reception, pvc double glazed windows, small extension.

Sold September 2011 for £153,000.

No towers or conductors nearby

(iii) 5 Alt-Min Avenue, Belfast

3 bedroom, 1 reception, semi-detached, double glazed pvc windows, small extension

Sold November 2011 for £148,000

No towers or overhead conductors nearby

(iv) 33 Glenholm Park, Belfast

3 Bedroom, 2 reception, semi-detached home, small extension. Double glazed pc windows

Sold December 2011 for £168,000.

19. The Tribunal regrets that Mr Cassidy did not explain in his evidence to the Tribunal how this disparate range of values, £148,000 to £168,000, for apparently similar properties led him to select a figure of £155,000 as the un-encumbered value of the reference property.

20. Mr Crothers also noted the disparate range of values for broadly similar properties but in his evidence he did not dispute Mr Cassidy's assessment of £155,000 and on that basis the Tribunal adopts this figure as the un-encumbered value.

Encumbered Value – Mr Cassidy's Approach

21. Mr Cassidy conceded that one of the problems in dealing with the subject matter was that at the valuation date, May 2011, the market was relatively 'thin' and not a lot of transactions were taking place. In order to assess the encumbered value, however, he considered the following factors to be relevant:-

- (i) comparables in the general area
- (ii) comparables in East Belfast
- (iii) the approach to the matter in England
- (iv) previous Lands Tribunal cases
- (v) an academic study by Sally Simms and Peter Dent

(vi) Bank of Ireland published guidance note

Comparables in the general area

22. Mr Cassidy provided the following sales evidence which he considered demonstrated that there was a difference in value of approximately 24% for properties with a tower in their garden and those not so impacted.

Properties in Four Winds Impacted by Nearby Tower

Address	Value	Date Agreed/Sold
26 Ballylenaghan Heights Tower 20 Metres away	£124,950	July 2012
49 Laurelgrove Dale Tower 21 Metres away	£167,000	September 2012

Properties in Four Winds not impacted

Address	Value	Date Agreed/Sold	% Reduction
32 Glendale Avenue South	£169,950	September 2012	26.4%
43 Cotswold Avenue	£163,000	July 2012	23.3%
9 Rossdale Road	£159,000	June 2012	21.4%
142 Laurelgrove Dale	£228,000	August 2012	26.7%

23. Mr Cassidy considered the first three of the “not impacted” properties to be similar to 26 Ballylenaghan Heights (“impacted”) and the fourth “not impacted” property to be similar to 49 Laurelgrove Dale. It was Mr Cassidy’s opinion that all of these percentage differences in value were entirely down to the presence of towers and overhead conductors. Mr Shaw QC suggested that there may be other factors at play such as location, size of property, plot size, interior finish and fit out, state of repair and many more. Mr Cassidy re-iterated that he

considered all of the apparent difference in value to be down to the presence of the equipment.

24. In order to draw any meaningful conclusions from this small sample of sales the Tribunal would have expected Mr Cassidy to have provided a much more in depth analysis of each sale. The Tribunal agrees with Mr Shaw QC many other factors could have impacted on the sale prices and the onus lay with Mr Cassidy to prove they had not. This the Tribunal considers he has failed to do. The Tribunal noted previously at paragraph 18 the disparate range of figures, £148,000 to £168,000, for properties which Mr Cassidy considered to be broadly similar. None of these properties were impacted by NIE equipment so other factors, such as those suggested by Mr Shaw QC, must have affected their value. In Janet Greer v Northern Ireland Housing Executive (R/19/1996) the Tribunal commented:

“The Tribunal cannot carry out its own research, it must rely primarily on the evidence before it. In analysing other transactions it is for the experts to use their expertise to decide what factors they think are appropriate and communicate their criteria and reasons for that to the Tribunal. It is not sufficient simply to drop a bundle of comparisons or other observations on the table; the expert witness must disclose their analysis to demonstrate the inferences they say can be drawn”.

25. The Tribunal therefore considers this evidence to be inconclusive.

Comparables in East Belfast

26. Mr Cassidy provided the following evidence of sales of what he considered to be similar properties in East Belfast.

Impacted

Address	Value	Date Sold/Agreed
18 Hanna Grove	£125,000	May 2013

Not Impacted

Address	Value	Date Sold/Agreed	%
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20 Wendrum Gardens	£159,000	May 2013	21.4%
30 Kirkiston Gardens	£174,000	June 2013	28.1 %

He noted the difference in the sale prices of the “impacted” and “not impacted” properties which ranged between 21.4% and 28.1%, an average of 24.5% diminution in value, which was very close to the “Four Winds” figure which he had assessed at 24.5%.

27. For the reasons outlined in its comments on the “Four Winds” evidence the Tribunal considers that no meaningful conclusions can be drawn from this evidence without much more detailed analysis being carried out. As with per the “Four Winds” comparables Mr Cassidy had failed to clearly demonstrate that all of the apparent differences in market value were solely down to the presence of NIE equipment. Many other factors could have impacted on the sale prices.

The approach to the matter in England

28. Mr Cassidy included in his evidence to the Tribunal details relating to the acquisition of easements in fee simple for power company towers in England:

- 100 Spring Parklands, Dudley, West Midlands
- 1 Woodside Lane, Morely, Leeds
- 1 Obern Crescent, Barnsley

He confirmed that he had received details of these properties from his instructing company Property Compensation Consultants Limited and had inspected them on 20th November 2013. In all of the cases Mr Cassidy confirmed that the transactional agreements were based on a reduction of 20% in the value of the properties due to the presence of power company towers. He understood the relevant legislation in Northern Ireland to be identical to that which applied in England.

29. Mr Shaw QC did not consider this evidence to be market evidence; rather he considered it recited details of the acquisition of easements in fee simple that had been provided by the party instructing Mr Cassidy.

30. Mr Cassidy confirmed to the Tribunal that the dates of these agreements were 2006, 2007 and 2008 respectively and the Tribunal finds this evidence to be of little assistance for the following reasons:

- The Tribunal agrees with Mr Shaw QC this was not market evidence, rather they were agreements between the property owner and the power company.
- They were for the acquisition of easements in fee simple not NWL's.
- The valuation date for the subject NWL was 2011, a recessionary period. These easements were acquired 2006 to 2008 in a significantly different market.

Previous Lands Tribunal Cases

31. Mr Cassidy provided details of a 1979 appeal against a valuation for rating purposes concerning Mr James Roy McKibbin and the Commissioner of Valuation. In this case the Lands Tribunal accepted the appellant's submission that some recognition had had to be made in the valuation exercise for the special disability of having an obstruction in the middle of a side garden and made a reduction in the NAV to reflect this.

32. The Tribunal derives little assistance from this 1979 rating decision. What the claimants had to prove with market evidence was that in 2011 there was a diminution in market value of the reference property caused by the presence of the respondent's equipment.

An academic study by Sally Simms and Peter Dent

33. Mr Cassidy provided the Tribunal with a study carried out by Sally Simms and Peter Dent. The authors investigated the effect of electricity distribution equipment, in particular high voltage overhead transmission lines on the value of residential property in England. Their conclusion was that the value of the property within a 100 metres of a high voltage overhead transmission line was reduced by 6%-17%, an average of 11.5% while the presence of a tower had a more significant input and reduced the value by up to 20.7%.

34. The Tribunal notes the findings in the report which were not disputed by the respondent and considers them to be of significance in establishing a general principle that NIE equipment could have an impact on residential values.

Bank of Ireland Published Guidance Note

35. Mr Cassidy provided an extract from the Bank of Ireland Published Guidance Note to panel surveyors, dated June 2013. In the subsection "Overhead Transmission Lines/Sub Stations" the guidance note stated:

"Despite many years of research, conflicting advice remains regarding the impact of electromagnetic magnetic fields (EMF) and public health. Reference should be made to current advice and guidance from the National Radiological Protection Board (NRPB). Public perception is likely to lead market resistance and combined with the visual impact in many cases, may have an effect on market value where properties are in close proximity. This should be commented on in Section 8 'Specific Remarks' and the Bank would not wish to lend on properties where high power lines pass over the house or garden site, except in exceptional circumstances".

36. Mr Cassidy therefore concluded that if a major lending institution such as the Bank of Ireland was saying that they would not wish to lend on properties where high power lines pass over the house or garden/site except in exceptional circumstances this would have an impact on demand and the availability of finance which would result in a reduction in price. Mr Cassidy's opinion was, that from a Bank of Ireland lending perspective, a tower in the side garden, such as in the subject case, would be even more problematic.

37. Mr Shaw QC referred to Mr Crothers evidence which he considered demonstrated that in 2011, in a thoroughly depressed market with a paucity of transactions generally, there were 10 sales of impacted houses in the neighbourhood of the subject property and 14 sales of non-impacted properties. He considered it was fair to assume that all or most of the purchasers took a mortgage and made a choice, in a market awash with purchase opportunities, to buy properties in the vicinity of NIE apparatus. He submitted that this was the acid test.

En-Cumbered Value – Mr Crothers Approach

38. Mr Crothers collated all of the information which was available to him and provided the Tribunal with a spreadsheet. This spreadsheet included the claimants' sales evidence and additional sales information from the "Four Winds" locality provided by Land and Property Services ("LPS").

39. Mr Crothers compared similar house types in similar locations and provided an analysis based upon a price per square metre, which he considered to be a valid devaluation tool, rather than a method of valuation.
40. In particular he drew the Tribunals attention to the sales of three similar semi-detached chalet-style houses, 72 Laurelgrove Dale (impacted – tower to the rear 26 metres away) £160,000, 16 Laurelgrove Crescent (not impacted) £165,000 and 101 Laurelgrove Dale (not impacted) £165,000. Mr Crothers considered these to be identical in style and size but on the face of it the price of the impacted house was only 3% below the price of the non-impacted houses and in his opinion the 3% difference could have been down to any number of factors other than the equipment.
41. Mr Crothers also referred to the sale prices of numbers 13, 15 and 21 Finsbury Drive all of which were broadly similar and not impacted but they sold at prices ranging between £142,000 and £170,000. In his opinion this demonstrated conclusively that house prices could vary due to any number of factors and it was quite impossible and inappropriate to ascribe, as Mr Cassidy did, reduced house prices solely to the presence of NIE equipment.
42. Mr Hunt BL submitted that it was inappropriate to value houses on a price per square metre basis. Mr Cassidy confirmed that in his many years' experience he had never valued a residential property on that basis. The Tribunal does not agree, Mr Crothers had simply used a price per square metre analysis as a devaluation tool to compare the relative sales information, rather than a method of valuation. The Tribunal accepts that this was a rather "blunt" valuation tool but it did bring an additional factor, size of property, in to the equation, which Mr Cassidy did not do.
43. Mr Cassidy considered the LPS valuation and survey data to be inaccurate and he referred the Tribunal to several inaccuracies in Mr Crothers database. Mr Cassidy confirmed that he had been aware of these inaccuracies some two weeks prior to the hearing. The Tribunal regrets that Mr Cassidy did not make Mr Crothers aware of his findings in this regard in order that accurate information could have come before the Tribunal.
44. Setting aside the data inaccuracies the Tribunal agrees with Mr Crothers, there was no evidence in the database, which included the sales information submitted by Mr Cassidy, to

conclude there was a diminution in market value caused solely by the presence of the respondent's equipment. Much more detailed analysis was required to "strip out" other factors which could have played a part in the differences in sale prices.

45. Mr Cassidy noted in his expert report to the Tribunal that he could find "no discernable pattern" in the sales evidence provided by Mr Crothers but that was exactly Mr Crothers point, that if there was no discernable pattern between impacted houses and not impacted houses in 2011, one could not draw a professionally sound conclusion that the presence of equipment caused a diminution in value.

The Effect of the Equipment

46. Mrs McKibben gave evidence as to the impact of NIE equipment on her property. Her main concerns related to birds swarming, bird droppings, noise, "singing" of the lines, interference with telecommunications, not being able to use the garden to its fullest and most importantly the perceived health risks of living near such equipment. Mrs McKibben considered that all of these factors severely impacted on her use and enjoyment of the property.

DISCUSSION

47. Mr Hunt BL submitted the proven facts which supported Mr Cassidy's evidence that the demand would be weak and would continue to be weak for houses affected by towers/power lines was:-

- (i) The market evidence of the claimants
- (ii) The financial institutions refusal to lend
- (iii) The academic research including the report by Simms and Dent
- (iv) The very negative health impact issues/perceptions which were also considered relevant by the DETI wayleave officer in his report.

He considered that all of this evidence pointed to a 20% diminution in value of the reference property caused by the grant of the NWL and this was the compensation due to claimants.

48. Mr Shaw QC submitted that if the primary approach of Mr Crothers, informed by the decision in Brickkiln (Part 1), was followed then there was no dispute the "bundle of rights" before and

after the grant of the NWL as analysed by Mr Crothers, the unchallenged conclusion was that the grant did not occasion loss to the claimants. Consequently, no compensation arose save what was due/paid under the previous voluntary wayleave and now NWL.

49. Mr Shaw QC further submitted that in the alternative, if the approach by Mr Cassidy was correct, then it was Mr Crothers who had undertaken it properly and followed the evidence to the correct conclusion, however surprising or counter intuitive, that there was no compensation payable save what was and is due/paid upon the previous voluntary wayleave and now NWL.
50. To some degree the Tribunal agrees with Mr Shaw QC, the market evidence as submitted to the Tribunal by both valuation experts, was inconclusive as to the effect of the NIE equipment on residential market values in this jurisdiction. Much more in depth analysis would have been required to “strip out” factors other than the equipment which could have impacted on the individual house sale prices.
51. The 2004 “Simms and Dent” report, as presented by the claimants, considered the effect of electricity distribution equipment in particular high voltage overhead transmission lines (HVOTLS), on the value of residential property in England. They considered this issue to be relatively unexplained due, in part to the lack of transaction data for analysis. The paper compared the results of two UK studies, the first was a national survey of property valuers perceptions (Chartered Surveyors and members of the National Association of Estate Agents) of the presence of distribution equipment in close proximity to residential property. The results of this study were then compared with an analysis of transaction data from a case study in Scotland. This study indicated that the value of property within 100 metres of HVTOLS was reduced by 6% to 17%. The presence of a pylon was found to have a more significant impact and could reduce value by up to 20.7 % compared with similar property sited 250 metres away.
52. The Tribunal is not aware of any similar studies having been carried out in this jurisdiction and accepts that the “Simms and Dent” report was carried out in a different residential sales market. Nonetheless the Tribunal considers that it established a general principal that NIE equipment, particularly towers, could have an impact on residential values.

53. The Tribunal considers that the following factors could have an impact on the market value of the reference property:

- (i) The visual impact of the Tower.
- (ii) The “nuisance” factors as outlined by Mrs McKibben.
- (iii) The perceived health risks. The Tribunal accepts that these never have been proven but there is a public perception which could impact on the value of residential properties.
- (iv) The lending policy of some financial institutions.

54. Mr Cassidy considered that his evidence pointed to a 20% diminution in market value of the reference property caused by the grant of the NWL. The Tribunal, however, considers that there was no evidence to suggest that all or any of the apparent differences in sales prices were down to the equipment. The submitted evidence of both experts, even for non-impacted properties, clearly pointed to other factors, not identified by Mr Cassidy, as having a bearing on sale price. Nonetheless, adopting a “stand back and look” approach, the Tribunal considers that any prospective purchaser would reduce their bid for the reference property to reflect the presence of the pylon in the side garden. The Tribunal, however, considers the diminution in value to be somewhat less than the 20% proposed by Mr Cassidy which had not been proven. Based on an intuitive approach, the Tribunal considers that on the valuation date, the grant of the NWL caused a 10% diminution in market value of the reference property.

55. The Tribunal therefore assesses compensation:

Un-encumbered value of the reference property	- £155,000
Diminution in Market value caused by the grant of the NWL	<u>X 10%</u>
	£15,500

CONCLUSION

56. The Tribunal awards the claimant, £15,500 compensation in respect of the grant of the NWL.

ORDERS ACCORDINGLY

10th October 2014

Mr Henry M Spence MRICS Dip.Rating IRRV (Hons)

Lands Tribunal for Northern Ireland

Appearances

Claimants: Mr Niall Hunt BL instructed by John F Gibbons

Respondent: Mr Stephen Shaw QC instructed by NIE Solicitor