

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

IN THE MATTER OF A REFERENCE

R/6/2023

BETWEEN

MESSRS PATRICK AND JONATHAN BEATTY – APPLICANTS

AND

HEIRS AND ASSIGNS OF SIR RICHARD WALLACE - RESPONDENTS

Re: “Ben View”, 2 Antrim Road, Lisburn

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

Background

1. Messrs Patrick and Jonathan Beatty (“the applicants”) are the attorneys of George Edward Christopher Beatty who holds the property known as “Ben View”, 2 Antrim Road, Lisburn (“the reference property”) in fee simple, pursuant to Indenture of Conveyance dated 20th February 2007 and made between (1) George Edward Christopher Beatty and (2) George Edward Christopher Beatty and Evelyn Anne Beatty.
2. The applicants’ father and mother obtained planning permission on 14th August 2020, LA05/2019/0575/F, for the erection of a dwelling to the rear of the reference property, together with associated site access and landscaping works.
3. The applicants seek modification or extinguishment of restrictive covenants contained in a Lease in Fee, dated 17th August 1888, to allow for development to take place in accordance with the granted planning permission. The Lease in Fee was made between (1) Sir Richard Wallace as Lessor and William Norwood as Lessee, and the covenants are as set out below:

“AND THE LESSEE doth hereby for his heirs, executors, administrators and assigns, COVENANT with the lessor, his heirs and assigns, that he the lessee his heirs or assigns will during the continuance of this demise:”

AND

“AND will not erect or build on any part of the said premises hereby demised, any houses or building, except those requisite for the accommodation of the lessee or other occupier for the time being of the said messuage or dwellinghouse And if at any time any back dwellinghouse or house, or building of any kind whatsoever other than the said dwellinghouse and the necessary outhouses and offices shall be erected on the said premises hereby demised without the written consent of the lessor his heirs or assigns first had and obtained, then ... these presents and the demise hereby made shall cease, determine and become void.”

AND

“AND ALSO use the said messuage or dwellinghouse only as private dwellinghouse and use the residue of the said parcel of ground and premises only as the site of the offices, outbuildings ... except such as shall have been previously approved of in writing by the lessor ...”

Procedural Matters

4. The applicants were represented by Mr Andrew Brown BL instructed by Thompson Mitchell Solicitors. Mr Christopher H Mitchell solicitor has submitted an affidavit detailing his attempts to contact any possible beneficiaries of the covenants but to no avail. The Tribunal is satisfied that all reasonable attempts have been made.

5. On behalf of the applicants the Tribunal has also received an expert report from Mr Chris Callan BSc DipSurv FRICS MCI Arb, dealing with the issues contained in Article 5(5) of the Property (Northern Ireland) Order 1978 (“the Order”), which the Tribunal is statutory bound to take into account when considering modification or extinguishment of a covenant. Mr Callan is a very experienced chartered surveyor and the Tribunal is grateful to him for his helpful submission.

The Statute

6. Article 5(1) of 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.”

7. Article 3 of the Order defines the scope of “enjoyment”:

“3.-(3) In any provision of this Part – ‘enjoyment’ in relation to land includes its use and development.”

8. Article 5(5) of the Order specifies the matters which the Tribunal must take into account, together with any other reasonable circumstances. These will now be considered in detail.

The Article 5(5) Issues

Mr Callen

5(5)(a) The period at, the circumstances in, and the purposes for which the impediment was created or imposed

9. The impediment was created in 1888 when the Lessor, Sir Richard Wallace, was selling off plots of land within the Wallace Estate for residential development. The 1888 indenture was in effect a building agreement requiring the purchaser, William Norwood, a local builder, to construct no more than two dwellings on the one acre site.
10. It appears the purpose of the impediment was twofold, firstly to ensure that the land was developed within the stipulated twelve month period (a very common requirement under a building lease) and secondly to control the relatively low density (at around one house per half acre) of development, planning control of its time. It seems reasonable the Wallace Estate

wished to ensure that only large, detached dwellings were constructed in this location thereby ensuring premium prices from other purchasers as more plots were sold off.

5(5)(b) Any change in the character of the land or neighbourhood

11. In order to assist the Tribunal historic maps of the neighbourhood or vicinity in which the reference property is situated have been provided. While Ordnance Survey NI has made many historic maps available online, unfortunately the map which is closest in date to the 1888 indenture (6" to 1 mile 1900/1932) is not. Extracts from OS sheets 64 and 68 (1900 to 1932) have been submitted, as the boundary between the two map sheets passes through the lands originally demised.
12. It is noted from the historic maps that the subject section of the Antrim Road, Lisburn, at its junction with North Circular Road, comprised several very large detached and semi-detached dwellings on extensive sites. In references such as the subject it can occasionally be difficult to identify the extent of the "neighbourhood" within which the reference property is situated. In this instance I believe the neighbourhood is defined as the lower reaches of the Antrim Road and adjoining South Circular Road. I note that the large dwelling immediately to the south-east of the reference property is numbered 44 South Circular Road.
13. It is obvious from an inspection of the neighbourhood that there has been significant changes in the character of the land over the 135 years since the impediment was created. Indeed, one only needs to look at the adjacent property, formerly known as Annadale, the second dwelling permitted under the 1888 Indenture, as confirmation of intensification of development.
14. Like Ben View, Annadale originally comprised a substantial dwelling on a generous 0.6 acre site. The original Annadale dwelling was demolished to be replaced with a dwelling of similar footprint in or around 2016. Around the same time another detached dwelling, 29 Clonevin Park, was constructed in the former back garden of Annadale. In addition, probably in or around the 1970s, two more detached dwellings were constructed in the back garden of 4

Antrim Road, now known as 25 and 27 Clonevin Park. In summary, this property, which for decades comprised a single detached dwelling, now contains four detached dwellings.

15. In addition to this increase in the number of houses on small sites immediately adjacent to the reference property there are a number of other examples in the vicinity which illustrate the significant increase in development. For example, a number of dwellings (including apartments) have been constructed on lands at 30/34 South Circular Road. Directly opposite the reference property, at the corner of Benson Street and Antrim Road, a substantial office block has been built on what was previously a school and shirt factory.
16. The applicants' development proposal is for a single additional dwelling on the site compared to three additional dwellings on the other portion of the lands forming part of the 1888 Indenture. Therefore, the applicants' proposal represents a doubling of the original density which is still a good deal less than a number of other developments in the vicinity.
17. The historic OS map 64 shows that even by the 1930s the southern side of Clonevin Park remained mostly undeveloped. I have also identified a large detached property at 23 Antrim Road. This was known as Tonagh Lodge, situated on a site of more than 2 acres. In recent decades this property and lands were replaced by a double roundabout to the newly created Bentrin Road, where a major Tesco store is now located. The surplus land was subsequently developed as Trinity Gate.
18. In conclusion, while there are still large detached and semi-detached dwellings dating from the Victorian period in the vicinity of the reference property, there is ample evidence that the neighbourhood has changed significantly from that which pertained in the latter decades of the 19th century.

5(5)(c) Any public interest in the land ...

19. I am not aware of any public interest in the reference property, other than the fact that a planning application has been lodged, considered by the local statutory authorities and in due course granted for an additional dwelling.

5(5)(d) Any trend shown by planning permissions ... Granted for land in the vicinity ...

20. In relation to 4 Antrim Road planning permission was granted for 2 additional dwellings in December 2015.
21. In relation to 6 Antrim Road planning permission was granted in 2013 for 7 no. two bedroom apartments, having previously been refused in 2009.
22. The properties known as 30, 32, and 34 North Circular Road have been significantly redeveloped in the past 20 years.
23. The back garden of 28 North Circular Road, a large semi-detached dwelling, was developed in or around 2000 with a similar form of development to that now proposed for the reference property. In addition the formerly referenced Tonagh Lodge now comprises a gated development of 10 no. housing units known as Trinity Gate.
24. In summary, there are multiple examples of planning applications having been granted which illustrates the significant levels of intensification of residential use in the neighbourhood.

5(5)(e) Whether the impediment secures any practical benefit to any person and, if it does so, the nature and extent of that benefit

25. The solicitors for the applicants have been unable to trace any beneficiaries of the covenant.

26. Even if any beneficiary were to be identified in my opinion the significant intensification of development in the immediate vicinity of the reference property means the impediment secures no practical benefit whatsoever to any person. In my opinion the original purpose of the covenants created in 1888 is no longer relevant. Since the current beneficiary of the covenants cannot be identified it must be assumed that the Wallace Estate (or its successors in title) have no economic or strategic interest in limiting the density of development, not least because all of the lands in the neighbourhood which previously formed part of the Wallace Estate have long since been built upon.

5(5)(f) Where the impediment consists of an obligation to execute any works ...

27. Not applicable.

5(5)(g) Whether the person entitled to the benefit of the impediment has agreed, expressly or by implication, by his acts or omissions, to the impediment being modified or extinguished

28. Since the applicants have not been able to identify any beneficiary, this section is not applicable.

5(5)(h) Any other material circumstances

29. I am not aware of any other material circumstances.

The Tribunal's Conclusions

30. The Tribunal notes the contents of Mr Callan's expert report. The main issue for the Tribunal is does the impediment achieve some practical benefit, and, if so, is it a benefit of such weight to justify its continuance without modification or extinguishment.

31. Based on Mr Callan's submissions and in the circumstances of the subject reference, the Tribunal is satisfied that the subject impediments, if not modified or extinguished would unreasonably impede the applicants use and enjoyment of the reference property. The

Tribunal also agrees with Mr Callan, the impediments do not confer any practical benefit on any person entitled to that benefit.

Decision

32. Having considered Mr Callan's submissions on the Article 5(5) issues, the Tribunal orders modification of the impediments to allow for development of the reference property in accordance with the granted planning permission, LA05/2019/0575/F, or any variation thereof.

Compensation

33. The Tribunal may award compensation in accordance with Article 5(6)(b) of the Order. Mr Callan's opinion was that no compensation should be awarded as he considered modification would cause no interference, or no loss would result from the removal.
34. The Tribunal agrees with Mr Callan, the covenant does not secure any practical benefit on any person and as such no compensation is payable.

Objectors

35. As the subject reference was not opposed and was decided by way of written submissions and a public hearing was not held, the Tribunal will allow a further four week period for any objectors to come forward, prior to issuing the formal Order of the Tribunal.

6th December 2023

Henry Spence MRICS Dip.Rating IRRV (Hons)

LANDS TRIBUNAL FOR NORTHERN IRELAND