

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

**IN THE MATTER OF REFERENCES**

**R/7 & 8/2020**

**BY**

**PHALCON LIMITED – APPLICANT**

**Re: 79/81 Stockmans Lane, Belfast**

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

**Background**

1. Phalcon Limited (“the applicant”) had purchased property at 79/81 Stockmans Lane, Belfast (“the reference property”) which comprised a pair of derelict semi-detached houses. No 79 is held under a 9900 year lease from the 31<sup>st</sup> March 1953 and No 81 is held under a 10000 year lease from the 1<sup>st</sup> December 1932.
  
2. On the 26<sup>th</sup> November 2020, the applicant obtained planning approval, reference LA/04/2019/2726/F, for change of use from two dwellings to “six apartments with three storey rear extension and associated works”. A copy of the planning approval has been submitted to the Tribunal.
  
3. Both leases, however, contained covenants which restricted development:

**No 79 Covenant 4**

“Not without the consent of the lessor to use or permit to be used the demised premises or any part thereof or any building thereon for the manufacture or sale of any alcoholic liquor or for any purposes other than as a private dwelling house and conveniences attached thereto and will not do or suffer anything to be done on the demised premises

which may grow to the annoyance of the lessor or his tenants or the occupiers of adjoining property.”

**No 79 Covenant 5**

“No building shall be thereafter erected or built on the demised premises save as one dwelling house with garage except to such plans as shall have been approved by the lessor or his agent and no dwelling house or semi-detached dwelling house shall without the previous consent of the lessor be of a lesser value than the adjoining premises.”

**No 79 Covenant 6**

“To keep the demised premises and all buildings and extensions erected or to be created thereon and all appurtenances thereto and fences in good substantial and proper tenantable order repair and condition and at the expiration or sooner determination of the said term to so leave and yield up the same.”

**No 81 Covenants**

“Any dwelling house hereinafter erected in substitution for the dwelling house at present erected thereon shall be of the same poor law valuation at least and upon the same building line frontage.”

And

“That the lessee shall and will at all times during the said term well and sufficiently repair uphold support maintain and keep in good repair and condition the said house buildings and appurtenances so to be erected built on the said demised premises and will so deliver up the same to the lessors on any termination of this demise.”

And

“And further that the lessee will not nor will at any time or times during the demise use or occupy the said demised premises or any part thereof or permit the same or any part thereof to be used or occupied for the carrying out of any trade or business or otherwise than used as a private dwelling house without the consent in writing of the lessors first hand and obtained ....”

4. The Solicitor for the applicant, Mr Damian McCrink of Luke Curran & Co, Solicitors, has submitted an affidavit detailing his attempts to contact any beneficiaries of the covenants.

The Tribunal is satisfied that all reasonable attempts have been made to identify any possible beneficiaries but to no avail.

5. The applicant now requests the Tribunal to modify or extinguish the restrictive covenants contained in the leases to allow for development in accordance with the granted planning permission.

### **The Statute**

6. Article 5(1) of the Property (Northern Ireland) Order 1978 (“the Order”) provides:

“Power of the 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 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 certain matters which the Tribunal must take in to account together with any other relevant circumstances.

### **The Article 5(5) Issues**

9. On behalf of the applicant, Mr John Maguire MRICS MSCSI has submitted an expert report dealing with the Article 5(5) issues. The Tribunal is grateful to Mr Maguire for his detailed submissions. Mr Maguire:

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

10. When the lease was created in 1953, the location was a semi rural area awaiting further urban development and it was reasonable to expect that the area surrounding the reference property would develop as a residential neighbourhood in a similar manner to that between Lisburn Road and Malone Road, some 750 yards to the east.
11. The covenants which restricted use to a “private dwelling” sought to control development rather than prevent it. The lease did not prohibit other development. Rather it sought to control development putting an onus on the tenant to seek consent from the landlord and set out the criteria on which such consent would be assessed.

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

12. Originally the reference property fronted a secondary country road in a mixed use location of fields and some ribbon development.
13. The reference property is now sandwiched between a very busy thoroughfare, the A55 Outer Ring Road (Stockmans Lane) that links the M1 to Boucher Road and Lisburn Road and a busy commercial area just off Boucher Road.
14. The north side of Stockmans Lane between Boucher Road and the M1 motorway is predominantly residential and is characterised by a mixture of detached and semi-detached dwellings.
15. The neighbourhood and character of the location has therefore changed dramatically and it would be reasonable to state that the location is now out of keeping with the residential and amenity character anticipated at the commencement of the lease. The removal of the restrictive covenants and use of the premises as apartments would not be out of keeping with the now mixed character of the area

5(5)(c) Any public interest in the land, particularly as exemplified by any development plan for the district in which the land was situated.

16. The relevant statutory development plan is the Belfast Urban Area Plan 2001 and in which the reference property is not zoned. Under this plan, however, planning permission [LA04/2019/2726F] was granted for the demolition of the reference property and construction of apartments. This demonstrated that the reference property was deemed suitable for use as more than a single residential unit and increased density, in accordance with planning policy.

5(5)(d) Any trends shown by planning permissions

17. A schedule of relevant planning approvals have been submitted to the Tribunal. These approvals demonstrate increased development activity in the locality.

5(5)(e) Where the impediment secures any practical benefit to any person and if so the nature and extent of that benefit.

18. The applicant does not consider that the impediments secure any practical benefit to any person, nor would the amenity of adjoining residential occupiers be unduly affected by the modification of the covenants to allow for development in accordance with planning permission. Indeed, the removal of the restrictive covenants would have a positive rather than detrimental impact on the lessor's reversion.

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

19. The covenants impose obligations to keep the demised premises and all buildings and erections in good substantial order.

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

20. Not applicable as the applicant has been unable to identify any possible beneficiaries.

5(5)(h) Any other material circumstances

21. Due to significant change in the character of the locality since the granting of the leases the covenants are considered to be obsolete. Modification of the covenants will cause no loss or damage to the beneficiaries and it will lead to an increase in the market value of the reference property. It will also have a positive impact on the locality by converting a vacant and derelict “eyesore” into a vibrant residential building once again.

**Conclusion**

22. Even if the beneficiaries of the impediments could be identified Mr Maguire’s expert opinion was that the covenants were obsolete and granted no practical benefit to any person.
23. The consideration for the Tribunal was did the impediments achieve some practical benefit and if so, was it a benefit of sufficient weight to justify their continuance without modification?
24. The Tribunal is satisfied that the impediments, if not modified, would unreasonably impede the applicant’s use and enjoyment of the reference property in that it could not legally carry out development in accordance with the granted planning permission. Having considered the issues listed in Article 5(5) of the Order the Tribunal also agrees with the applicant’s expert, that any purpose for which the impediments were created no longer exists.

**Decision**

25. The Tribunal therefore grants modification of the restrictive covenants contained within the leases to allow for development in accordance with planning permission reference LA04/2019/2726/F, or any variation thereof.

### **Compensation**

26. Mr Maguire considered that modification of the impediments to permit implementation of the applicant's planning consent would have no material affect on, or cause any detriment to, the lessors, even if they could be identified, and thus no compensation was warranted.
  
27. The Tribunal may award compensation in accordance with Article 5(6)(b) of the Order. The Tribunal agrees, however, with Mr Maguire, in the subject reference the impediments were obsolete and secured no practical benefit to any person. The Tribunal directs that no compensation is payable.

### **Objectors**

28. Due to the current pandemic the Tribunal has been unable to convene a public hearing of the subject reference. It will now, therefore, publish the decision and allow a four week period for any possible objectors to come forward, prior to issuing the Order of the Tribunal.

**21<sup>st</sup> December 2020**

**Mr Henry M Spence MRICS Dip.Rating IRRV (Hons)  
Lands Tribunal for Northern Ireland**

### **Appearances**

**Applicant: Mr Damian McCrink of Luke Curran & Co, Solicitors**