LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964

LAND COMPENSATION (NORTHERN IRELAND) ORDER 1982

IN THE MATTER A OF REFERENCE

R/8/2004

BETWEEN

JULIE NOBEL – CLAIMANT

AND

NORTHERN IRELAND HOUSING EXECUTIVE – RESPONDENT

Re: 157 Glasgow Street, Belfast

Lands Tribunal – Mr Michael R Curry FRICS IRRV MCI.Arb Hon.FIAVI

Belfast – 27th July 2004

1. Julie Nobel owned and lived at 157 Glasgow Street, Belfast, a mid-terrace dwelling with no garden. The house lay within a redevelopment area and was vested by the Northern Ireland Housing Executive ("the Executive") on 12th April 1999. Mrs Nobel moved to a new built dwelling close by at 17 Arosa Crescent. The new dwelling has front and rear gardens. Much of Ms Nobel's claim to compensation has been settled but part of the price of having gardens is the need for maintenance with gardening tools and somewhere to keep them. So, she claims the purchase costs of a garden shed and gardening equipment as "a natural and reasonable consequence of the applicant's dispossession". Although the amount of compensation is not agreed, both parties are hopeful that this could be agreed. So the issue for the Tribunal is whether Mrs Nobel is entitled to be compensated in respect of these costs as part of her disturbance entitlement.

2. Mr Joe Allen, an experienced Chartered Surveyor, appeared for Mrs Nobel, by leave of the Tribunal. Mr Paul Buggy, solicitor appeared for the Executive.

3. Mr Brian McFaul, who is employed by the Executive as Assistant District Manager for Belfast 4, gave evidence about the scheme and the locality.

4. This claim concerns expenditure on items that clearly are reasonably required in consequence of attributes of the particular alternative accommodation (the gardens) to which the family removed. Although the claim relates to expenditure on chattels, it is in the nature of extra costs of occupation.

5. The Tribunal should adopt a broad rather than an over technical approach and in accordance with the principle of equivalence. Such expenditure may not be too remote and may be the natural and reasonable consequences of the dispossession and rehousing of the owner. So compensation could be awarded for these items if Mrs Nobel had no alternative to incurring the extra costs but as a result obtained no benefit, over and above those that she enjoyed at her former dwelling, which would have made them worthwhile (see Director of Buildings and Lands v Shun Fung Iron Works Ltd [1995] 2 AC 111; Waters and Anr v Welsh Development Agency [2004] UKHL 19; Harvey v Crawley Development Corporation [1957] 1 All ER 504 CA; Bibby & Sons Ltd v Mersey County Council [1977] 2 EGLR 154; (1979) 39 P&CR 53 CA and Halsbury's Vol. 8(1) at para 296).

6. Two decisions of the Lands Tribunal for Scotland to which the Tribunal was referred (Cahill v Monklands District Council [1992] unreported and Beattie v Monklands District Council [1992] unreported) would appear to be consistent with these principles.

7. Mr Allen suggested that where Mrs Nobel lived was a small enclave (broadly the Grove Renewal Area). She had lived there for some 35 years and it had been the family home for some 60 years. She is married with 3 children aged 12, 10 and 6 who go to local schools. He suggested that the new build dwelling within the enclave, and to which she was relocated was the only reasonable option available. Mr Allen suggested there was no suitable accommodation without gardens available and so Mrs Nobel had no alternative but to take the house with its gardens. Mr Allen said that there were approximately 300 dwellings within the Grove Renewal Area. The occupants of these dwellings needed to be re-housed and it would not have been logistically possible to provide them all with suitable alternative accommodation similar to that from which they were displaced, i.e. properties with no gardens. Mr McFaul explained that there were about 158 houses vested and some three-quarters of these

were occupied at the time. A survey of the households within the vesting scheme was carried out, Ms Nobel took part in that survey and her signed response was put before the Tribunal. In common with some others, she indicated she "would consider purchasing". Mr McFaul said that the Executive does not build new dwellings itself but within the scheme an area was made available to a private developer on terms that required him to provide an appropriate number of affordable homes. It is a policy of the Executive to encourage a mixture of tenure in any regeneration scheme so sufficient affordable dwellings were provided to allow all those who indicated they wished to purchase to do so. In new build developments it is normal to provide dwellings with gardens.

8. The Tribunal accepts that in many ways Belfast is a city of villages and the reality of current circumstances is that the neighbourhood within which such a dispossessed family may reasonably be expected to relocate may be restricted in its geographic extent. However the Tribunal accepts Mr McFaul's view that the relevant neighbourhood was much wider than that suggested by Mr Allen and includes some housing further to the North as far as Seaview Football Ground and some to the West in the Gainsborough and Mountcollyer areas. There is no evidence that there were no houses, other than new houses with gardens, available within the existing stock elsewhere in the neighbourhood, and that as a consequence Mrs Nobel had no choice.

9. If suitable alternative residential accommodation on reasonable terms was not otherwise available the Executive was under a general duty to secure that Mrs Nobel was provided with it (see Article 40 of the Land Acquisition and Compensation (NI) Order 1973). Mr Allen suggested that the Executive had provided her with the particular accommodation in the new development under this statutory duty. But the undisputed evidence of Mr McFaul is that it was a Committee of the relevant Housing Association - the Grove Housing Association Ltd - that had dealt with the allocation of the affordable homes to particular families, not the regional housing authority – the Executive. There is no evidence that the duty was relied upon by Mrs Nobel or that the Executive was directly involved in the allocation of the specific property and thereby limited her choice or exerted any degree of compulsion so as to leave her with no alternative.

10. A house with gardens has advantages over a house without any garden. Mrs Nobel did not give evidence and there is no evidence that she would have preferred not to have any garden or that she had no option but to accept a house with gardens. There is no evidence that, for any reason peculiar to Mrs Nobel and her family, the gardens were not a benefit to her over and above the benefits enjoyed at their old house.

11. The Tribunal concludes that the dwelling she bought was not a result of anything other than the exercise of her own choice. Taking a broad view and bearing in mind the principle of equivalence, the Tribunal is not persuaded that Mrs Nobel had no alternative and no benefit over and above those that she enjoyed at her old house as a result. The head of claim is not therefore allowed. Mrs Nobel is not entitled to be compensated in respect of these costs as part of her disturbance entitlement.

ORDERS ACCORDINGLY

16th August 2004 **Mr M R Curry FRICS IRRV MCI.Arb Hon.FIAVI**
LANDS TRIBUNAL FOR NORTHERN IRELAND

Appearances:

Joe Allen, Chartered Surveyor appeared for the Claimant.

Mr Paul Buggy, Solicitor, of the Legal Department, Northern Ireland Housing Executive appeared for the Respondent.