LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964

LAND ACQUISITION & COMPENSATION (NORTHERN IRELAND) ORDER 1973

IN THE MATTER OF A REFERENCE

R/81/2006

BETWEEN

LISA TRUESDALE – APPLICANT

AND

NORTHERN IRELAND HOUSING EXECUTIVE – RESPONDENT

Re: 33 Ainsworth Drive, Belfast

Lands Tribunal - Mr M R Curry FRICS IRRV MCI.Arb Hon.Dip.Rating Hon.FIAVI

Background

1) The issues in this case concerned the measure of compensation for domestic disturbance. They related to a move from temporary accommodation to permanent accommodation. The items in question were floor coverings, window dressings and decoration costs ('the items').

2) The Claimant, Ms Lisa Truesdale, had been a tenant of a 2 bedroom house at 35 Bainesmore Drive ('the original accommodation') for a period of 4 years, under a furnished tenancy. She said that she had provided all the carpets and curtains and decorated all the rooms in the house.

3) As a temporary measure she moved, in April 2002, to a 2 bedroom house at 33 Ainsworth Drive, ('the temporary accommodation') under a furnished tenancy. She said she thought she would be there for 2 years. She said that she had provided vinyl floorings in the living room, kitchen and bathroom and a cheap carpet in one bedroom; a roller blind in the living room and curtains in the 2 bedrooms; and redecorated the living room.

4) Some 4 years later she moved to a 3 bedroom house at 108 Ainsworth Avenue ('the permanent accommodation'). This time she occupied the property under an unfurnished tenancy. She had sought a 3 bedroom house. The landlord had

provided flooring in the bathrooms and kitchen. She said she had provided laminate flooring in the hall and living room, vinyl flooring in the 3 bedrooms and in the kitchen (this had been damaged but she said she intended to replace it); vertical blinds on all windows; and decorated throughout.

Procedure

5) The Tribunal received:

- written and oral evidence from Ms Lisa Truesdale;
- written evidence from Mr Michael Hanna, a Chartered Surveyor employed by Lands & Property Services ('L&PS'), who had dealt with the claim for the move to temporary accommodation on behalf of the Respondent, the Northern Ireland Housing Executive ('NIHE'), at that earlier stage;
- oral evidence from Mr Kevin Flanagan of NIHE;
- expert evidence from Mr Joe Allen and Mr Alan Ferguson, both experienced Chartered Surveyors; and
- submissions from Mr Rory McNamee BL and Mr Neil Phillips BL.

Position of the Parties

6) The NIHE accepted that, in regard to this displacement, Ms Truesdale qualifies under Article 37 of the Land Acquisition and Compensation (NI) Order 1973 ('the 1973 Order') for a disturbance payment to be assessed in accordance with Article 38 of that Order. It also has accepted that disturbance was recoverable on both moves.

7) Usually, window dressings and floor coverings should be adapted, as necessary, and refitted after the move. The cost of doing that is recoverable as an expense. In this case it was not suggested that the floor coverings or window dressings should have been adapted and refitted in the permanent accommodation so one must fall back on an alternative approach.

8) Mr Ferguson's approach was to arrive at a gross figure based on the cost of providing the items in the *temporary accommodation* to the extent that the Ms Truesdale had provided them there. To arrive at a measure of her loss he then made a deduction based on their condition.

9) Mr Allen's approach was to arrive at a gross figure based on the cost of providing the items in the *permanent accommodation*, to the extent that the Ms Truesdale had already or intended to provide them, including the cost of additional floor coverings for additional accommodation. To arrive at a measure of her loss, in his view:

a) in regard to window dressings there should be no deduction;
b) in regard to floor coverings any deduction should be based on the condition of the floor coverings at *the original accommodation*; and
c) in regard to decoration, if there were any deduction, the labour cost element should not be included.

Discussion

The relationship between Article 38 compensation and the compulsory purchase code generally

10) Article 38 of the 1973 Order provides that:

"(1) The amount of a disturbance payment shall be an amount equal to –

(a) the reasonable expenses of the person entitled to the payment in removing from the land from which he is displaced; and

(b) if he was carrying on a trade or business on that land, the loss he will sustain by reason of the disturbance of that trade or business consequent upon his having to quit the land; …"

Article 38(3) also includes provision to include the reasonable expenses of equivalent reinstatement of structural modifications made for meeting the special needs of a person entitled to assistance under Article 15 of the Health and Personal Social Services (NI) Order 1972.

11) The claim is made under Article 38(1)(a).

12) Despite the distinction in wording between 38(1)(a) and 38(1)(b) and between the former and judicial decisions about disturbance payments under the compulsory purchase code, the Court of Appeal in England and Wales and the Court of Session in Scotland, on different reasoning, have equated the right to compensation under the legislation corresponding to the 1973 Order as equivalent to that under that code.

13) In Prasad & Another v Wolverhampton Borough Council [1983] 2 All ER 140, CA. Stevenson LJ said:

"I have already read the relevant provisions of Sections 37 and 38. The language of these provisions is, to my mind, like enough to the language in which judges have stated the principle of fully compensating owners dispossessed by compulsory acquisition of their property to indicate the intention of Parliament to give to those classes of persons not previously entitled to compensation for disturbance the same right as those previously entitled to it enjoyed, not a reduced or lesser right."

14) In its *Final Report: Towards a Compulsory Purchase Code: (1) Compensation* Law Com No 286, at 4.15, the Law Commission having reviewed the leading authorities, including Horn v Sunderland Corporation [1941] 2 KB 26, CA and Harvey v Crawley Development Corporation [1957] 1QB 485, CA, concludes that Wrexham Maelor Borough Council v MacDougall [1993] 2 EGLR 23, CA must be taken as binding Court of Appeal authority for the proposition that in relation to a claim by a person with a compensatable interest:
    (1) compensation under the second part of Rule 6 is not limited to loss to occupiers;
    (2) it is not limited to claim for costs or expenses; and
    (3) it extends to any loss attributable to the compulsory acquisition subject only to the ordinary principles of causation and reasonableness.

15) Similarly, in Scotland, it has been held that a disturbance payment should include those expenses which, as a matter of circumstance and degree, were reasonably incurred as a direct and natural consequence of the removing, in addition to the expenses strictly referable to the removal itself. (See Glasgow Corporation v Anderson [1976] SLT 225, Ct of Session and *The Law of Compulsory Purchase* 2008 at Division E Chapter 9 [3364].)

16) In light of the conclusions that have been reached in these other jurisdictions, this Tribunal is content to adopt a similar view in this jurisdiction, and it accepts, in principle, that the compulsory purchase code on compensation for disturbance also applies to claims under Article 38 of the 1973 Order. That is subject to the special provision for the reasonable expenses of equivalent reinstatement only where Article 38(3) applies. The Tribunal further concludes that the measure of loss under Article 38 of the 1973 Order should not be limited to costs or expenses strictly referable to the

removal itself and it should be no more and no less than that which would be allowed under the compulsory purchase code generally.

The relevance of the items at the temporary accommodation

17) Ms Truesdale has already settled her claim and received compensation for what she provided in the original accommodation after the first move. She provided less floor coverings, window dressings & decoration in the temporary accommodation. What Ms Truesdale additionally has lost now, as the natural and direct consequence of the second move, is the residual value of those items that she provided but left behind at the temporary accommodation only.

18) The Tribunal accepts Mr Ferguson's approach. He based his assessment on each item that was present and which had to be left behind at the temporary accommodation.

19) The Tribunal notes that it would appear to follow that, if the extent of items provided by claimants at the original and temporary accommodation were the same as that provided by them at the permanent accommodation, both Mr Ferguson's and Mr Allen's approaches to a gross figure would be the same. In this case they are not the same, primarily because the extent of items provided by Ms Truesdale at the temporary accommodation was limited and, in the view of the Tribunal that limit must be reflected correspondingly in the assessment of any loss she suffered.

20) As the Tribunal has accepted Mr Ferguson's approach, which is one based on the *temporary accommodation*, the condition of the items at the *original accommodation* is irrelevant.

21) There may be exceptional circumstances in which regard may be had to the original accommodation. But that should be a supplementary step. In this case there were no such exceptional circumstances.

Reinstatement cost

22) The approach of both parties incorporates an element of reinstatement – Mr Ferguson based his assessment on current replacement cost of the items at the temporary accommodation and Mr Allen based his on adjusting the cost of providing the items in

the permanent accommodation. In Harvey v Crawley Development Corporation [1957] 1 All ER 504, CA the Court held that the mere fact that expenditure for which compensation was claimed involved some element of reinstatement did not disqualify it from being allowed as compensation for disturbance.

23) But it does not follow that claimants are entitled to equivalent reinstatement for the items. That view is reinforced by the specific provision in Article 38(3) to include equivalent reinstatement of structural modifications made for meeting the needs of a person with special needs.

24) It is well established that where, or to the extent that, expenditure in connection with new accommodation is something for which a claimant receives value for money, it is not recoverable. (See e.g. Harvey v Crawley Development Corporation [1957] and Service Welding Limited v Tyne and Wear County Council (1979) 38 P&CR 352, CA.)

25) In this case Ms Truesdale rented a completely unfurnished and undecorated new, larger house. The cost of fitting that out with carpets, curtains and decorating is an expense but it is not a loss and she has not displaced the presumption that she received value for money in that expenditure.

26) Mr Ferguson's approach was to assess the current replacement cost of each item that was present and which had to be left behind at the temporary accommodation. In practice that is a robust rather than a precise assessment and is based on guideline current prices. He then adjusted those figures to reflect differences between the value of the items being assessed and a new equivalent. The adjustments mainly take into account the physical condition of the items. The net figure reflects the value of the useful life remaining and, therefore in the view of the Tribunal, what the owner has lost. In a sense it is the loss on forced sale on the presumption that the items would have a nil market value on a disposal. There may be a further deduction from the net figure if some value was realised on such a disposal.

27) The Tribunal therefore prefers Mr Ferguson's approach, which much more closely measures what has been lost, to Mr Allen's approach, which was based on reinstatement cost, even though in regard to some items he did make a deduction for his estimate of betterment.

28) The Tribunal further rejects Mr Allen's inclusion of the cost of items for the additional accommodation – the 3rd bedroom. In Julie Nobel v NIHE [2004] LT this Tribunal held that compensation could be awarded for the full cost of items if the Claimant 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. The evidence was that Ms Truesdale sought a 3 bedroom house and the Tribunal concludes she obtained a worthwhile benefit from her expenditure on the items in that room.

29) The Tribunal does not accept Mr Allen's suggestion that putting coats of paint on a surface is the equivalent of fitting carpets. The Tribunal considers that the labour and materials elements of painting are better treated as inseparable.

The consequences of the earlier claim

30) The move from the original accommodation to the temporary accommodation was the subject of a disturbance payment that included the items in the former and was based on the approach which was adopted by Mr Ferguson in this case. The applicant was represented by Mr Allen at that time also. A figure of £650 was agreed. Mr Allen agreed that he had made the claim for the move to the temporary accommodation on the basis adopted by Mr Ferguson. That was also the basis on which the claim was settled.

31) Although it was suggested that Mr Allen had reserved a right to re-open the claim in consequence of any subsequent move to permanent accommodation and that may have been in his mind, the Tribunal is satisfied that he did not do so and that neither L&PS nor NIHE had agreed to do so. That claim was settled and paid.

32) Mr Allen said that, since about the time of this claim, he always had claimed on the basis of the cost of these items in the new accommodation less a deduction for betterment.

33) The Tribunal agrees with Mr Phillips' suggestion that the move from the original accommodation to the temporary accommodation was irrelevant, as in regard to that

move, a disturbance payment had already been paid and accepted in full and final settlement of that claim.

Tribunal decisions in other jurisdictions

34) Mr Allen drew the attention of the Tribunal to examples of decided cases, which he suggested were consistent with his approach. Although the Tribunal has referred to them below, it has reservations about the helpfulness of these examples. None of them discussed the relative merits of the approaches under consideration in this case; they were a skewed selection – not intended to be anything like a complete survey; they are not binding on this Tribunal; and further, some do not appear to be completely consistent with the compensation code -

- The Tribunal accepts that there may be circumstances in which, based on the material received by the tribunal, the expenditure on items at the permanent accommodation is the more helpful approach to measuring compensation; (See e.g. Cahill v Monklands District Council [1992] LT (E&W).)
- In Davies v Newham London Borough Council [1997] RVR 11 LT (E&W) there were exceptional circumstances. The tribunal accepted that, as the claimant was registered disabled, she needed a firm surface. It allowed the cost of a new floor covering;
- In Davies v Newham LBC [1997] there were other exceptional circumstances. Because of noise from a motorway the claimant used a sitting room, with French windows, as a bedroom. This probably is an example of where the adoption of replacement cost was appropriate and where the presumption of value for money was displaced by the absence of any benefit over and above what the claimant enjoyed at the original accommodation;
- The Tribunal accepts that where an acquiring authority provides guidance, and where a claimant has followed such advice, it is difficult for an acquiring authority to say that the associated expenditure is not a natural and reasonable consequence of the dispossession. In Gloretta Johnston v Paddington Churches Housing Association [2005] LT (E&W) the tribunal referred to the stated policy of the Association that “team managers have the discretion to provide carpets and curtains to tenants who have to move” and held that to be the key point in allowing the cost of new floor coverings. In effect the tribunal exercised that discretion in favour of the claimant, accepting she would be in a

marginally better position. In this case it was not suggested that the NIHE provided guidance that would support Ms Truesdale's approach;

- Bearing in mind that the Tribunal has concluded that the compulsory purchase code on compensation for disturbance applies to claims under Article 38 of the 1973 Order, it has reservations about the conclusion in Johnston v Paddington [2005] immediately above in which the cost of curtains, not covered by the policy document discussed above, was awarded; and
- In Allen v Doncaster Metropolitan Borough Council (1997) 73 P&CR 98 the Tribunal, having rejected the argument that a loss did not qualify as an expense, accepted the only evidence of the measure of loss that was before it i.e. that the curtains at the old house could have continued in use indefinitely but could not be adapted to the new house and that the amount claimed for curtains at the new house was not unreasonable. It awarded the cost of new curtains with no deduction for betterment.

Conclusions

35) For the reasons set out above, the Tribunal prefers Mr Ferguson's approach because it better reflects the measure of loss.

36) The Tribunal was informed that Mr Ferguson's approach has been the conventional approach in this jurisdiction for a long time. The Tribunal is not persuaded that, in general, it should be replaced.

37) In Julie Nobel v NIHE [2004] the Tribunal said that it preferred to adopt a broad rather than an over technical approach. In this case, the Tribunal received extensive opinions on alternative valuations but in light of the conclusions it has reached sees little point in a detailed criticism of them. Based on his own approach Mr Ferguson arrived at a figure of £525. On the same approach Mr Allen arrived at a figure of £650. In negotiations, Mr Ferguson had made an open offer of £600 to settle and Mr Allen had agreed to recommend that to his client. The Tribunal awards £600.

ORDERS ACCORDINGLY

24th May 2010 **Michael R Curry FRICS IRRV MCI.Arb Hon.Dip.Rating Hon.FIAVI**

LANDS TRIBUNAL FOR NORTHERN IRELAND

Appearances:

Claimant: Rory McNamee BL instructed by O'Reilly Stewart, Solicitors.

Respondent: Neil Phillips BL instructed by Harrisons, Solicitors.