

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
IN THE MATTER OF THE BUSINESS TENANCIES ACT (NORTHERN IRELAND) 1964
AND IN THE MATTER OF PREMISES SITUATE AT AND KNOWN AS
PORTION OF FORTWILLIAM GOLF CLUB, DOWNVIEW AVENUE, BELFAST 15
BT/11/1966
BETWEEN
GEORGE E CAMERON
FREDERICK W ATKINSON - APPLICANTS
FREDERICK C ROGAN

AND

DANIEL GORDON
JOHN FITZPATRICK
PATRICK OWENS - RESPONDENTS
WILLIAM McCORMICK

This was an application under section 8(1)(b) of the Business Tenancies Act (NI) 1964 for a new tenancy of 58 acres 3 roods and 38 perches of land situate at Greencastle in the Parish of Shankill in the County of the City of Belfast, used as part of a golf course by the Fortwilliam Golf Club.

The application was made by George E Cameron, Frederick W Atkinson and Frederick Charles Rogan (hereinafter called "the applicants"), as the executors of James Brown the last surviving joint tenant under a tenancy from year to year which arose by presumption of law upon the expiration of a lease of the subject land dated 28th September 1936 from Lord Shaftesbury, William McCormick and Thomas Maguire for a term of 17 years from the 1st November 1927 at a yearly rent of £300 payable by two equal half-yearly instalments on the 1st days of May and November. The respondents, Daniel Gordon, John Fitzpatrick and Patrick Owens are the assigns of the landlords interest in the 1936 lease and are hereinafter called the landlords.

The history of the subject land and the tenancies therein

On the 3rd March 1904 certain persons acting as trustees for the Fortwilliam Golf Club, and who had been appointed on 22nd January 1903 "to sign the lease", took a lease of the subject land for 15 years from 1st January 1903 at a rent of £130 per annum payable half-yearly on 1st May and 1st November. The Club had been formed on 10th January 1903, and "the links were ready for play" on 18th May 1903 (after expenditure of £336 by the Club) with a club house (of wooden construction) which had been then erected. The execution of the lease was held up between April 1903 and March 1904 because of difficulties which the then landlord experienced in obtaining possession from a Miss MacDermott of some 7 acres of the land to be comprised in the demise. By the time that the lease was executed the Club had decided to obtain a design "for a new course" from a Mr Butchard, and work on this "new course" which included Miss MacDermott's 7 acres, involved additional expenditure of over £100 for drainage with further similar work in prospect. In 1905 the Annual Report of the Club referred to visitors being "loud in their praises of a course second to none in Ireland" though it was then only a 9 hole course. In 1906 improvements were still being made, but between then and 1927 the Club facilities remained much as they were in 1904 though two new tees were added in 1921, and later 25 sand bunkers replacing grass hazards. About 1927 the Club obtained a lease of the 34½ acres on the north side of Gray's Lane and then added 9 holes making the course 18 holes. At this time 6 of the holes on the holding were left as they were, 3 were re-aligned and 2 holes were added, giving a total of 11 holes on the holding. Later extensive alterations to the club house gave it a superficial area of 5,000 square feet instead of the original 1,800 square feet. A putting green was made in 1945. From about 1921 onwards a system of annual mole draining to cover the course in rotation over a period of four years was instituted.

The original lease of 3rd March 1904 did not contain any covenant on the part of the trustees to construct any particular type of golf course or indeed to use the lands exclusively as a golf links.

On the expiry of the 1904 lease a further lease in favour of trustees for the Club was apparently executed in or about 1920 for a term of seven years expiring on the 31st October 1927. This lease did not impose any obligation upon the lessees to make any improvements or to use the land exclusively as a golf course, but did contain a covenant to

maintain any improvements made in good order. On the expiry of this term the above-mentioned lease of 28th September 1936 took effect from the 1st November 1927.

The 1936 lease includes the following covenants on the part of the lessees, which renewed in identical words earlier covenants in the 1904 and 1920 leases:-

"And also shall and will during the said term preserve uphold support maintain and keep the said demised premises and the fences thereon and every part thereof and all improvements made and to be made therein in good sufficient order repair and condition and at the expiration or other sooner determination of the said term so leave and yield up the same unto the Lessors their heirs or assigns PROVIDED ALWAYS and it is hereby agreed and declared that the Lessees their executors administrators and assigns may cut down such trees and remove such fences as may be necessary for the purpose of using the said demised premises as Golf links or a Golfing course the timber cut down to be the property of the Lessors their heirs and assigns and to erect such bunkers fences ditches and obstacles as may be necessary to enable the said premises to be used as such Golf links or Golfing course and on the expiration or sooner determination of the said term or at any time during the same to remove any Golf house or other building which the Lessees their executors administrators or assigns have or may have erected on the said demised premises And also that the Lessees their executors administrators and assigns will not use the said demised premises nor allow the same to be used except as Golf links or a Golfing course or for Grazing purposes and shall not use or allow the same to be used for any Agricultural purposes nor without the express License in writing of the Lessors their heirs or assigns plough or otherwise break up the said demised premises except solely for the purpose of levelling the surface thereof or laying down the same in grass in a skilful and property manner or in the ordinary course of using the same as Golf links or a Golfing course"

and contains a proviso as follows:-

"PROVIDED ALWAYS and it is hereby agreed that it shall be lawful for the Lessors their heirs or assigns at any time or times on the expiration of One years previous Notice in writing to be given at any time to the Lessees their executors administrators or assigns or sent by post addressed to the Secretary of the Fortwilliam Golf Club to resume possession of the whole or any part or parts of that portion of the premises hereby demised that is shown on the map hereon endorsed and thereon surrounded by a blue

line and the rent hereby reserved shall as and from the expiration of such Notice or Notices respectively be reduced acreably in respect of any portion or portions of the said premises".

The 18 hole course has been complete in its present form since 1928 and no significant capital outlay has been incurred since then. The annual maintenance work on mole drainage, fertilising and cutting of fairways, upkeep on greens and the running costs with repair and maintenance of the tractor, mowers and other machinery have in recent years taken substantial outlay. In 1965 and 1966 the gross expenditure on such account was £4,000 (out of total expenditures of £10,000 and £12,800) rising to over £6,000 for 1968 (out of £16,200).

The nature of the land and sequence of relevant events

The holding is pleasantly situated and well laid out with 11 of the 18 holes, the remaining 7 being on the north side of Gray's Lane on the 34½ acres taken first in 1927. The tees, fairways and greens are well sited on the rather undulating ground which falls away towards Belfast Lough, and the design has made good use of natural hazards. Many golf societies use the course and championship meetings have been held there.

The land is of average quality with a relatively poor top soil and a retentive sub-soil. As a result of the original drainage and the annual mole drainage operations, the course has been rendered reasonably dry and fit for all the year round service. Its value as grazing for cattle is low, but it could carry a reasonable stock of sheep.

In 1952 Belfast Corporation having compulsorily acquired the 34½ acres on the north side of Gray's Lane for £20,000, let the same to the Golf Club at £955 per annum. It was agreed between the Corporation and the Club, as part of the consideration for the letting, that the entire course would be open to public use under property Club rules. The rules provided that visitors may play on payment of a green fee and temporary members may use the course on introduction by a member. A considerable degree of use by the public has resulted and is shown by the income from green fees which in 1965 amounted to £1,149 (out of total Club revenue of £13,800), £1,319 in 1966 (out of £13,800), rising in 1968 to £2,144 (out of £18,500). There was a waiting list for membership of 160 (including juveniles) in 1969 and on many days in good golfing weather there are queues waiting to drive off at the tees.

On the 30th October 1961 the landlords served a Notice to Quit upon the then Captain and certain other Officers of the Fortwilliam Golf Club purporting to determine a tenancy in the holding described as follows:-

"held by you as tenants from year to year following the expiration of a lease for the term of seven years from the 1st November 1920 and used by you as a Golf course and club"

In 1964 the then trustees of the Fortwilliam Golf Club sought to obtain a new tenancy of the holding under the Business Tenancies (Temporary Provisions) Act (Northern Ireland) 1952, but failed on appeal to secure such relief for reasons which are set out fully in Bryans & Others v McCormick & Others [1964] NI 59, and which are not now relevant in view of the provisions of the 1964 Act under which the present application is brought.

The applicants' present Request for a new tenancy was made on 25th January 1966 and the property proposed to be comprised in the new tenancy was stated to be

"the whole of the property comprised in the current tenancy, and in the lease thereof dated 28th September 1936 from the Right Honourable Anthony Earl of Shaftesbury and others to Alfred Clifton and others"

and the proposal as to rent and the other terms of the new tenancy were stated as follows:-

"that the rent to be payable under the new tenancy shall be £1,000 per annum, that the tenancy shall commence on the first day of November 1966 and shall continue for a term of 25 years and that the other terms of the tenancy shall be the same, mutatis mutandis, as those contained in said lease, save and except the proviso for re-entry of the whole or any part or parts of the premises shown surrounded by a blue line on the map endorsed on the said lease."

The landlords gave notice of opposition on 21st March 1966 on the grounds that:-

"(a) Part I (of the 1964 Act) does not apply since you are not the tenants of the said property.

(b) We as such owners intend to carry out substantial works of construction on the holding, and we could not reasonably do so without obtaining possession of the holding." (This ground of objection was abandoned at the hearing.)

A copy of this notice of objection had not been lodged with the Registrar of the Tribunal pursuant to Rule 3(1)(b)(ii) of the Lands Tribunal (Business Tenancies) Rules, but there being no objection at the hearing, the Tribunal allowed this notice to be used in the proceedings.

The applicants then on 27th April 1966 by application to the Tribunal under section 8(1)(b) sought a new tenancy as trustees for the Golf Club and gave the particulars, which by leave of the Tribunal in the absence of any objection by the respondents were amended to read as follows:-

"Particulars of current tenancy

Date of contract or agreement - 28th September 1936 or alternatively 1st November 1944 upon the expiration of the above-mentioned lease.

(a. 17 years from 1st November 1927 or alternatively

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Term granted - (b. the said term and thereafter from year to year or in the

(further alternative

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(c. tenancy from year to year.

Rent reserved - £300 per annum.

Date and mode of termination of tenancy - 1st November 1966 by application by or on behalf of the above-named applicants for a new tenancy pursuant to section 5 of the Business Tenancies Act (Northern Ireland) 1964.

Nature of business carried on by tenants - Golf Club.

Net annual value of premises - £732 for a hereditament which includes these together with other premises.

Whether any, and if so what, part of the property comprised in the tenancy is occupied neither by the tenant, nor by a person employed by the tenant for the purposes of the business carried on by the tenant in the premises - The whole of the property is occupied by the members of the Fortwilliam Golf Club as beneficiaries under a trust.

Proposals for new tenancy

Property to be comprised in new tenancy - The whole of the property comprised in the current tenancy.

The rent to be payable - £1,000 per annum.

The duration of the new tenancy - 14 years or such longer period as may be agreed between the parties before the hearing.

Any other terms requested - Similar covenants provisoes and conditions to those contained in said lease mutatis mutandis.

Documents accompanying
this application

1. Notice to Quit dated 30th October 1961.
2. Request for a new tenancy dated 25th January 1966.
3. The said lease dated 28th September 1936
4. Refusal of request for new tenancy dated 21st March 1966."

In January 1968, Daniel Gordon, one of the respondents, having sought planning permission to develop the holding as a residential area with district shopping centre, primary school and other facilities, appealed against the deemed refusal of Belfast Corporation to permit such development, and the Ministry of Development, on 23rd July 1968, dismissed the appeal on the ground that it was satisfied that -

"on balance the public interest is in present circumstances best served by the retention of the Fortwilliam Golf Course, including the appeal site, as an open space."

The decision of the Ministry recited inter alia that the trustees of the Golf Club "were bound to permit the public to have access to the entire course to play golf".

The valuation evidence

Expert evidence on the issue of valuation was given by Mr H A Frazer for the applicants and by Mr Perkins for the landlords.

Mr Frazer relied upon schedules of comparable lettings in respect of other golf courses in or near Belfast, and Mr Perkins arrived at a rental value per acre based on the agricultural value plus the enhancement due to the cost of the capital works necessary to fit the holding for use as a golf course, and he sought to justify the rental value thus arrived at by comparison with the rent actually agreed to be paid to the Belfast Corporation for the 34½ acres held on monthly letting since 1952 and two other transactions.

Mr Frazer's valuation was -

Agricultural value = £12 to £14 per acre

Add for letting as a golf course 50%, making say £21 per acre x 58 acres = £1,225 per annum.

He relied strongly on two lettings in 1956 involving some 12 acres for Knock Golf Club at rents of about £15 per acre for 99 years.

In cross-examination he said that he was excluding all the improvements made by the Club over the years and the figure represented a market rent for the land notionally unimproved, but with its potential for use as a golf course, or for a mixed used involving playing fields, a golf range or other pleasure ground types of use.

He had not seen the income and expenditure accounts of the Club and did not consider them relevant unless similar accounts for the Clubs renting the comparables could also be considered. If he had to find a market rent at 1966 for the holding in its then condition as a golf course, he would estimate £1,600-£1,700 per annum. Subsequently he said that in this answer he had been thinking of 1969 values rather than 1966, and that a 1966 market rent would have been about 10% less, that is £1,450-£1,550, or an average of £1,500 per annum.

The Club now wished to spend £5,000-£10,000 on alterations and improvements to the club house and renewal for the maximum 14 years would be fair to allow the tenants to enjoy the benefit of such capital outlay.

Mr John Dyson Burne, Honorary Secretary of the Club gave evidence of the Club constitution, finances and general circumstances.

Mr Edward Yerward Bryans, one of the trustees of the general property of the Club, but not of the 1936 lease, gave evidence by reference to the Club minute books, that the "links" had been laid out in early 1903, long before the first lease of 3rd March 1904 was executed, that the present 18 hole course was completed by 1928 and that the capital works carried out and the annual maintenance over the years had produced a mature course of high standard. All the capital cost and annual maintenance was financed out of Club funds. It was not possible to separate the maintenance from the capital works of improvement, but the measure of improvements which the tenants were not obliged to make was the major part of the past outlay. In recent years however the labour costs were rising sharply and required heavy annual expense out of Club funds. He gave as an example the annual spring mole draining carried out by ground staff with the Club's own tractor and mole plough, which gradually had improved the character of the turf, by opening up drainage channels in the rather wet clay sub-soil lying under the top-soil.

The Club wished to spend £5,000-£10,000 on club house improvements, but at least 14 years would be needed to cover the amortisation of such outlay.

Mr Patrick McPolin, a caddy from 1921-1930 and a member since 1947, and Mr Hector Kerr, a member for over 20 years, gave useful evidence relevant to work carried out over the years on the course and the club house.

Mr Perkin's valuation was -

58 acres at £250		£14,500
11 holes on virgin land at £1,000 per hole		<u>11,000</u>
		£25,500
£25,500 at 8%	say	£2,000 pa

Equivalent to £34 9s 6d per acre per annum. This he contended should be the section 15 rent for a new tenancy, and would be substantially below the present value of the 1952 rent

of £27 13s 0d per acre (£955 per annum) paid to the Corporation for the 34½ acres on the north side of Gray's Lane.

The submissions for the applicants were that:-

First Contention

The "current tenancy" was, by virtue of sections 3 and 5(1)(a) and paragraph 3 of the Second Schedule of the 1964 Act, the tenancy created by the lease of 28th September 1936, which expired by effluxion of time on the 1st November 1944.

The following were the main reasons in support of this contention:-

- (1) Paragraph 3 contemplated a tenancy which had determined before the commencement of the Act.
- (2) Paragraph 3 applied no matter how long a time had elapsed between the termination of the tenancy and commencement of the Act, provided that the tenant was at the commencement of the Act in occupation of the premises or any part thereof.
- (3) Paragraph 3 applied whether such occupation was lawful or unlawful; see the reference to a decree for possession.
- (4) If such possession was lawful it must be by virtue of a licence, a tenancy at will or at sufferance or by agreement expressed or implied, or by implication of law, not being a tenancy within any of the categories mentioned in section 5. If the paragraph applied in any such case it must apply in all such cases.

It was unnecessary to rely on this contention if the second contention was sound.

Second Contention

The current tenancy was, by virtue of section 5(1)(b) the tenancy created by the lease of 1936.

The principal reasons for this contention were as follows:-

- (1) That tenancy was for a term certain and thereafter from year to year.

- (2) The tenancy was outside section 5(1)(b) if, and only if, that category was intended to include only tenancies created by a lease the habendum of which contained the words "and thereafter from year to year", or other words to the same effect.
- (3) It would be unreasonable to attribute to Parliament an intention to discriminate between a case in which the subsequent occupation from year to year was lawful by virtue of express words in a lease and the case in which it was lawful by implication of law.

As to the Section 15 Rent:

- (a) Where a tenant or a predecessor in title of his had remained in occupation of a holding during two or more tenancies, the effect on rent of any improvement carried out by him or that predecessor in title during a tenancy other than the current tenancy was to be disregarded unless in pursuance of an obligation to the immediate landlord.
- (b) Any improvement made by the Club in the carrying on of the section 1 business was to be regarded as a permitted use of the land.
- (c) The improvements were not obligatory and all fell within section 15(2)(c)(ii).

The submissions for the landlords were:-

1. As to section 15(2)(c)(ii):-

- (i) The basic rule was that a rent for the holding should be fixed in its actual state on the open market principle and that the onus of establishing the effect on rent of any improvements within this sub-section was on the tenant.
- (ii) The only improvements which were to be disregarded were those which were carried out by a tenant or his predecessor in title otherwise than in pursuance of an obligation to the immediate landlord.

Here any improvements were carried out by the Club, out of Club funds and not by any tenant of the holding.

- (iii) The lease obligations were to preserve uphold maintain and keep the demised premises and all improvements made and to be made in good and sufficient order repair and condition and so leave and yield up the same to the lessor.

The holding was a golf course since 1903 and though the tenants could remove the golf club house, all other improvements made were as a matter of obligation to be maintained and kept as a golf course. This obligation to maintain as a golf course was undertaken by the 1936 lease and all the earlier leases.

The improvements which converted the land from its original state into a golf course were carried out before the lease, that is before any tenancy and the effect on the rent of such improvements was long since spent. At any rate the effect on rent was fully reflected in the rent reserved by the 1936 lease. This rent brought up to 1966 levels justified a section 15 rent of £2,000 per annum.

2. As to the entitlement to make a request under section 5 and an application for a new tenancy under section 8.

The tenants could not qualify as the tenancy under which they held was neither -

- (a) a tenancy within section 5, nor
- (b) a tenancy deemed to be a tenancy within section 5 by the transitional provisions in para 4 of Schedule 2 of the 1964 Act, nor
- (c) a tenancy deemed to continue under para 3 of the said transitional provisions.

DECISION

In the course of argument it was conceded on behalf of the landlords that the Notice to Quit of 30th October 1961 was invalid and that in consequence the applicants had been in occupation of the holding under a tenancy from year to year which arose by implication of law on the expiry of the term demised by the 1936 lease, and which continued up to the date of the request for a new tenancy on the 25th January 1966. It was further conceded that such a tenancy was by virtue of the transitional provisions in paragraph 4 of Schedule 2 of the 1964 Act deemed to be "such a tenancy as is mentioned in sub-section (1) of section 5 of the 1964 Act".

In effect, these concessions meant that the applicants were entitled to make both the request of 25th January 1966 for a new tenancy of the holdings and the application of 27th April 1966 to the Tribunal under section 8(1) of the 1964 Act, and are now entitled to a new tenancy of the holding.

These concessions were in the opinion of the Tribunal properly made, and left the only matters to be decided the duration, rent and terms appropriate to the new tenancy.

The statutory basis for the determination of the rent in default of agreement is found in section 15 of the Act. This requires the Tribunal to find the rent at which, having regard to the other terms of the tenancy, the holding might reasonably be expected to be let in the open market, but there being disregarded certain matters set out in section 15(2), of which (a) and (c) are relevant to this case.

The first of these matters in section 15(2)(a) disposes of the effect on rent of any special value attributable to the fact that the tenant or his predecessors in title have been in occupation, and of any concession in rent for a sitting tenant. The holding is to be regarded as empty in the market.

The second concerns "improvements" made by the tenant or his predecessors in title in occupation over two or more tenancies and which were not carried out as a matter of obligation. Thus, the tenant is not to be required to pay a rent which takes into account improvements voluntarily made by him and his predecessors in title, but the burden of establishing that the facts are within this beneficial provision rests with him.

It was agreed that although the term "improvements" is nowhere defined in the Act and has been the subject of much judicial authority in different contexts, the meaning for the purposes of this case should include "any work which has enhanced the rental value and was reasonable and suitable to the character of the holding". This interpretation accorded with that attributed by Woodfall - Landlord and Tenant 27th Edition Vol 2 page 1400 to the same term in the sections of the Landlord and Tenant Act 1954 [S.34(c), S.47 etc] from which the provisions of the 1964 Northern Ireland Statute were in part derived.

The question what "improvements" in this sense could qualify under section 15(2)(c)(ii) was greatly disputed. On the one hand the tenants sought to have all the works in 1903, which transformed the original grass lands into the 9 hole course, the later works in 1927/28

insofar as they affected the holding and the major part of the annual outlay, treated as tenants' improvements made voluntarily, while the landlords contended that -

- (i) The works in 1903 were carried out before the lease was executed, and thus were not "improvements" carried out during previous tenancies.
- (ii) The works in 1903 and 1927/28 were carried out, not by the tenants' predecessors in title, but by the Club out of Club funds.
- (iii) The effect of these works on the rent had long since been spent and the actual state of the course in 1966 was attributable only to the obligation to maintain in good order. This was an obligation of each tenant which operated to enhance the letting value, and must be reflected in the rent now to be fixed.

On these points the Tribunal's view is that though the original works in 1903 anticipated the execution of the demise of 3rd March 1904, that demise commenced on 1st January 1903, probably because there was an earlier parol agreement to make a lease for a golf course. The original 1903 works were clearly "improvements" contemplated by the parties as being made during the tenancy, and liable to be kept in good order under the relevant covenant in the demise.

The fact that the works in 1903 and those later in 1927/28, which made the course one of 18 holes, were carried out by the Club out of Club funds falls, in the opinion of the Tribunal, within the ambit of section 24(1) of the 1964 Act which in effect makes business occupation by the beneficiaries under a tenancy held on trust equivalent to occupation by the tenant. Further, section 24(1)(a) requires that use or occupation by the tenant is to be construed as including use or occupation by the beneficiary, and the conversion of the original pasture to a golf course, and the works on the holding involved in the extension to 18 holes were permitted uses under the demise.

Thus it would seem to the Tribunal that section 15(2)(c)(ii) should be construed to read:-

".... where the beneficiary or a predecessor in title of his has remained in occupation of the holding during two or more tenancies, carried out by him or that predecessor in title during a tenancy other than the current tenancy"

On the third point, the Tribunal cannot accept that the effect on rent of the 1903 "improvements" and the 1927/28 realignment was not reflected in the 1936 lease rent which was effective for the term commencing on the 1st November 1927. That 1936 rent clearly took into account that the course has become one of 18 holes, with 11 holes on the holding.

The view of the Tribunal is that on the fixing of the rent for the new tenancy the effect of these 1903 and 1927/28 "improvements" would have to be disregarded because they were not carried out as a matter of obligation. But the matter does not rest there, each of the three earlier tenancies from 1903, 1920 and 1927 contained another obligation, namely to keep the demised premises "and all improvements made and to be made therein in good sufficient order repair and condition and at the expiration so leave and yield up the same to the lessor", and this covenant means that the holding must be treated as being in the market as a golf course in its well matured and well maintained state.

The obligation to keep the holding with all improvements in good condition involved a heavy financial obligation, requiring in 1965 and 1966 annual outlay of over four times the rent reserved and incidentally amounting to over three times the total green fees received. The notional market would have some regard to this obligation which, although any tenant will have the benefit of a well kept course for his outlay, also imports consideration for the landlord whose reversion benefits by improved drainage and the residual effects of manuring and sward management, and the applicants now seek the inclusion of this obligation in the new tenancy.

Thus the Tribunal has formed the view that the rent to be fixed should be related to a renewal of all the covenants contained in the 1936 lease (except the proviso for re-entry by the lessors of the whole or parts of the area surrounded by a blue line on the map attached to that 1936 lease and amounting as shown on the said map to 22a 3r 22p) and that the term of such new tenancy should be for a sufficient period to justify the proposed expenditure of £5,000 to £10,000 on new club house facilities. Nearly four years have elapsed since the request for a new tenancy and a term of 10 years from 1st November 1968 would seem to be appropriate to all the circumstances.

The rent to be paid can now be related to these terms and a 10 year duration from 1st November 1968.

Three matters require special reference as regards the fixing of a rent.

- (1) Mr Frazer's comparables suggest that rents per acre for golf course land run at figures very far below what would be expected for building or commercial purposes, and in some cases this may be due to the fact that landlords derived some collateral advantage or wished to benefit a Club or locality by granting a concessionary rent. One course (Ormeau) where the public have a right of use is let at only £6 11s 6d per acre, but this is an old rent and an exception, but only two of these comparables for lettings between 1952 and 1966 disclosed a rent over £16 per acre. Of these two, one (Masserene) was land for a new golf course which appears to have had a capital value in 1962 of £250 per acre (or about £20 per acre per annum at 8%) for 55 acres of land, and the other was the Corporation lease to Fortwilliam Golf Club in 1952 of 34½ acres at £27 10s 8d per acre. This 1952 transaction however followed the compulsorily vesting of the 34½ acres at a price of £20,000 which clearly allowed for the building potential, and the rent was assessed on the basis that it had to cover the loan charges on the capital. Thus the 1952 rent reflected the fact that the 34½ acres had then a building potential. In 1958 the terms of the refusal of planning permission for the development with housing of the adjoining subject land reduced the effect of this factor to negligible proportions. The 1952 rent was not then, or subsequently, adjusted and a possible inference seems to be that changing money values and market conditions kept the rent broadly in line with market values. At all events, no evidence sufficient to persuade the Tribunal to adopt the 1952 rent or to adjust it so as to form a basis for the rent now to be paid from 1st November 1968 was forthcoming.
- (2) The notional market must to some extent be influenced by the fact that the entire course must be open to use by the public in consequence of the obligation to the Corporation undertaken in consideration of the 1952 lease of the 34½ acres. This must restrict the market for the holding to Clubs which would be willing to accept this restriction in the extent to which they could use the holding for their own Club purposes. The income from green fees paid by the public is an advantage also to be taken into account in this connection, as is the fact that the extent of increasing public use has produced a substantial waiting list for ordinary membership.
- (3) The rent reserved by the 1936 lease has been unrevised since completion of the term demised and was accepted by implication throughout the year to year tenancy which commenced on the expiry of the lease. Mr Frazer said in cross-examination that regarding the holding in the market as a golf course, a figure of £1,450-£1,550 would

be a fair 1966 rent or £1,600-£1,700 on a 1969 basis. Mr Perkins when asked the same question, adhered to his figure of £2,000 per annum for the new tenancy. But neither witness laid any particular emphasis on the fact that the holding has only 11 holes of the 18 hole course and the remainder is held apparently on a tenancy not more secure than a yearly tenancy. The exact terms of this take from the Corporation were not proved, but it would seem at least doubtful whether a request for a new tenancy under section 5 of the Act would necessarily succeed.

Any hypothetical tenant for the holding would abate his rental bid according to his assessment of the risk of having the course reduced in size, and with a 10 year term and renewal of the old covenant to maintain improvements, it is difficult to see a bid in November 1963 of more than £1,500.

In all the rather special circumstances of this case, the Tribunal is of opinion that a rent of £1,500 per annum would be a fair estimate of the November 1968 market price for a 10 year renewal to take effect from 1st November 1968 with the covenants of the 1936 lease applied mutatis mutandis (except the proviso for re-entry of the portion outlined in blue on the map annexed to the 1936 lease). The right under the proviso to remove "any golf house or other building" will be worded so as to include any extensions made to the golf house or other building included in the tenancy now granted.

The landlords to pay to the applicants the measured sum of £50 towards their costs.

ORDERS ACCORDINGLY

F A L HARRISON

2nd March 1970

LANDS TRIBUNAL FOR NORTHERN IRELAND

Appearances:-

For Applicants - Mr F A Reid QC and Mr R D Carswell instructed by S & R Crymble, Solicitors, Belfast.

For Respondents - Mr D B Murray QC and Mr W P McConnell instructed by James F Fitzpatrick & Co, Solicitors, Belfast.