

LANDS TRIBUNAL FOR NORTHERN IRELAND
THE LAND COMPENSATION (NORTHERN IRELAND) ORDER 1982
PLANNING (NORTHERN IRELAND) ORDER 1991
LOCAL GOVERNMENT ACT (NORTHERN IRELAND) 1972

IN THE MATTER OF A REFERENCE

R/34/2009

BETWEEN

LIMBO LTD – CLAIMANT

AND

DEPARTMENT FOR SOCIAL DEVELOPMENT – RESPONDENT

Re: 15 & 15A Greenland Street, Belfast

COSTS

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

Background

1. The claimant (“Limbo”) owned property in Greenland Street which was vested by the Department for Social Development (“the Department”) by an Order made 5th June 2006.
2. The parties were unable to agree the amount of compensation and the question was referred to the Lands Tribunal in July 2009.
3. In or about May 2010 the parties agreed the compensation payable at £460,000 together with the Limbo’s reasonable costs of an aborted sale of the property prior to vesting and the costs of the reference to the Tribunal.
4. The parties were unable to agree the amount that the Department should contribute to Limbo’s legal costs and it referred the issue to the Tribunal.

Procedure

5. The Tribunal received written submissions from:
 - Mr Paul Kerr of Patricia A Kerr, Legal Costs Consultant;
 - Mr Robert P Crawford of R P Crawford & Co, Solicitors;
 - Ms Joanne Brundle of the Departmental Solicitors Office;

and oral representations from:

- Mr Barry Valentine BL; and
- Ms Brundle.

Positions of the Parties

7. Limbo claimed solicitor's costs of £9,798.60 and counsel's fee of £9,160.00 together with VAT.

The Department suggested:

- the referral had been premature; and
- the combined amount was unreasonably high.

8. Both parties agreed and the Tribunal accepts that

- it was not an appropriate case in which to award costs on the County Court scale and it should award an appropriate lump sum; and
- the 'Comerton Scale' for Queen's Bench Personal Injuries Actions was not "a scale of costs for the time being prescribed by rules of court or by county court rules" (see Rule 33 of the Lands Tribunal Rules).

Discussion

9. The Tribunal was referred to:

Section 21(4) of the Interpretation Act (Northern Ireland) 1954;

Section 8 of the Lands Tribunal & Compensation Act (Northern Ireland) 1962;

Schedule 6 of the Local Government Act (Northern Ireland) 1972;

Rule 33 of the Lands Tribunal Rules (Northern Ireland) 1976;

The Rules of the Supreme Court (Northern Ireland) 1980;

Order 55 of the County Court Rules (Northern Ireland) 1981;

The Land Compensation (Northern Ireland) Order 1982;

The 'Comerton Scale';

Donaldson v Eastern Health & Social Services Board [1977] NI 232

Thompson v Department of the Environment for Northern Ireland [1986] NI 74;

Cheffick v JDM Associates (No.4) [1989] 22 Con. L.R. 51;

Johnson v Reed Corrugated Cases Ltd [1992] 1 All ER 169;

Re C & H Jefferson (a firm) [1996] NI 404; and

Gillespie v Thompson [1998] NICh 6.

10. The Tribunal also considered:

Purfleet Farms Ltd v Secretary of State for Transport, Local Government and the Regions
[2002] EWCA Civ 1430

Curley v Northern Ireland Housing Executive [2003] R/12003;

Brooks v Northern Ireland Housing Executive [2009] R/27/2007; and
Throne v Department for Regional Development Part 2 [2011] R/70/2006.

11. In Purfleet Farms Ltd (2002), Potter LJ stated the presumption that, under the compulsory purchase code, a claimant should be entitled to its costs in the absence of some special reason to the contrary. A Tribunal not allowing such costs must be able to identify circumstances:

“in which the tribunal considers that an item of costs incurred, or an issue raised, was such that it could not, on any sensible basis, be regarded as part of the reasonable and necessary expenses of determining the amount of the disputed compensation.

... in which the claimant’s conduct of, or in relation to, the proceedings has led to an obvious and substantial escalation in costs over and above those costs which it was reasonable to incur in vindication of his right to compensation.”

12. The claim for solicitor's costs was based on a first draft bill of costs drawn up by Ms Kerr.
13. Counsel's fee was said to reflect the Comerton Scale and the Tribunal accepts that, where appropriate, it may have regard to material such as that scale in the interests of avoiding controversy over fees and lengthy unnecessary delays.
14. Mr Valentine BL suggested that the Tribunal's approach should be carried out on broad principles and should not be an exercise similar to taxation. (See Cheffick v JDM Associates (No.4) (1989).) He accepted that, unlike other jurisdictions perhaps, much of the negotiating role was performed by valuers but said his claim in effect recognised that by being lower than the amount for a case of equivalent value under the Comerton Scale.
15. The substantive dispute was referred to the Tribunal in July 2009. The key issue related to alternative development of the site. Later, in early 2010 Limbo sought and received a Certificate of Alternative Development (“the Certificate”) under Article 15(1) of the Land Compensation (Northern Ireland) Order 1982, and dated 8th April 2010. On receipt of the Certificate, the valuer acting on behalf of Limbo was able promptly to reach agreement on value with the valuer acting on behalf of the Department.
16. The Department suggested that the application for the Certificate should have been made earlier and the referral to the Tribunal was premature. The Tribunal agrees.

17. In some previous cases the Tribunal has simply rejected costs incurred before the appropriate time for referral. (See e.g. Curley v Northern Ireland Housing Executive (2003) and Brooks v Northern Ireland Housing Executive (2009).) However in this case the costs incurred directly as a result of the referral were modest and it is sufficient to consider whether some costs more indirectly associated with that were unreasonably incurred.
18. The Department accepted that it should pay some costs to the claimant but Ms Brundle suggested that the combined legal bills of the claimant's solicitor and counsel were unreasonably high.
19. The Department accepted that it was reasonable to brief counsel but suggested that the brief fee of £5,000 was unreasonably high for a matter involving essentially only one substantial legal issue. Ms Brundle put forward other detailed criticisms of the level of counsel's other fees e.g. for attending mentions (£300 each), for drafting the notice of reference (£500) and the application for the certificate (£500), for checking the amount of statutory interest (£500) etc., and suggested that the majority of matters for which a fee was claimed did not necessitate both solicitor and counsel fees. The Tribunal accepts that the claimant's figure for expenditure on counsel's fees appears excessive and assesses the appropriate total amount at £3,000 plus VAT.
20. No real issue was taken with solicitor's fees incurred in connection with an aborted sale. Ms Brundle pointed out that the written material relating to solicitor's fees received from the legal costs consultant was in fact a letter to Mr Crawford in the form of advice in which she sought further information in order to prepare finalised costs. Firstly, as the Tribunal pointed out in Throne v Department for Regional Development (2011) a professional person acting in a claim for compensation for compulsory purchase, would have known that his fees might reasonably be expected to be paid from the public purse and consequently liable to be subject to closer scrutiny. In such circumstances a higher standard of recording might perhaps be expected. If that were done, in a case such as this there should be no need for the expense of employing a legal costs consultant to collate documents to draft a bill of costs (£1,000). Secondly, the advice from the consultant also included warnings that the times relating to work on documents were estimated and further noted that the claimed uplift on that aspect (100% on about £97 per hour giving a total uplift of some £2,400) to reflect the value element may be the highest uplift that can be claimed. The Tribunal prefers about 33%. On balance, bearing in mind the particular criticisms made on behalf of the Department and lack of support for the times claimed but also the conclusions the Tribunal has reached in regard to duplication and the reduced amount it has, in consequence, allowed for counsel's fees, it accepts that the

claimant's figure for expenditure on solicitor's fees appears excessive and assesses the appropriate total amount at £6,000 plus VAT.

21. The Tribunal concludes that the Department should contribute £9,000 plus VAT towards Limbo's legal costs.

ORDERS ACCORDINGLY

18th May 2011

**Mr M R Curry FRICS MCI.Arb Hon.Dip.Rating
LANDS TRIBUNAL FOR NORTHERN IRELAND**