

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964

IN THE MATTER OF A REFERENCE

R/10/1992

BETWEEN

KEVIN MAGUIRE - CLAIMANT

AND

**THE DEPARTMENT OF THE ENVIRONMENT FOR NORTHERN IRELAND -
RESPONDENT**

Lands Tribunal for Northern Ireland - Mr A L Jacobson FRICS

Enniskillen - 6th November 1992

This was a claim for compensation for the compulsory purchase of a strip of garden in front of Nos 14 to 16 Rossole Road, Enniskillen, Co Fermanagh and a strip of side garden belonging to that house.

Mr Michael Potter of Counsel (for the Claimant) called Mr Kevin Anthony Maguire (Claimant), Mrs Frances Catherine Maguire (Wife of Claimant) and Mr Seamus Ignatius Cox BSc ARICS (Estate Agent) to give evidence.

Mr Maguire testified to his purchase of his house, the purchase of the plot of land at the side of the house; to the trees and the rockery which were situated in the land acquired and to the nature of the disturbance caused by the widening and improvement of Rossole Road which was carried out by the contractors employed by the Department of the Environment for Northern Ireland ("the Department").

Mrs Maguire testified to the extra work and the cost incurred in the cleaning of windows, carpets, clothes etc and to some of the extra cost of children's clothes.

Mr Cox, who formerly had been employed by Messrs McQuitty Ross but had since purchased the business and carried on his profession as estate agent spoke to a total valuation of £738.95 but had submitted a proof of evidence claiming £1,622.55. That proof was given in evidence but with the figures of estimates amended.

His computation of £738.95 was as follows:-

<u>Area of land acquired:</u> 44 square metres @ £7 =	£308.00
<u>Loss of plant and shrubs</u>	
Estimated cost of replacing rockery & plants:	£58.75
Trees: 2 Leylandii plus 2 Castlewellan Gold: 4 @ £26 plus VAT	<u>£122.20</u>
	£180.95
<u>Temporary Disturbance:</u> 25 weeks @ £10 per week	<u>£250.00</u>
TOTAL	<u>£738.95</u>

Notes:-

1. The proof of evidence contained the following computation:-

Area of land acquired:-

Amenity lands 28.95 square metres @ £7 =	£202.65
Development lands 15 square metres @ £39.95 =	<u>£598.95</u>
	£801.60

Compensation for Trees and Shrubs

Trees:- 2 Leylandii plus 2 Castlewellan	
Gold:- 4 @ £26 plus VAT	£122.20
Estimated cost of replacing rockery & plants	<u>£58.75</u>
	£180.95

Temporary Disturbance

Loss of two months rental:-	£320 x 2 =	<u>£640.00</u>
	TOTAL	<u>£1622.55</u>

2. In his revised computation Mr Cox took the unit figure of £5 per square metre which the Applicant paid in 1977 for the plot at the side of his house (300 square metres purchased for £1500). His written evidence considered that plot to be amenity land. Updating that figure to 1988 he estimated £7 per square metre for amenity land or land used as garden.
3. The estimate for trees was given by an Enniskillen florists' shop. No estimate was obtained from local garden centres. The amount of £122.20 did not include labour for planting etc. The Tribunal was told that this figure did not represent the reinstatement of the trees but merely their value in situ.

4. Mr Cox could not explain how his estimate of replacing the rockery and the plants was made up. He had made his estimate on what he saw in a photograph submitted in evidence by the Department and what he had been told by the Applicant and the wife of the Applicant regarding the plants in the rockery.
5. In his amended computation Mr Cox had abandoned his original rental method of calculating temporary disturbance and had based his new estimate on figures of cost of cleaning carpets, cleaning windows, extra washing powder and new shoes for four boys given to him by Mrs Maguire.
6. He accepted in cross-examination that he had negotiated (while employed by McQuitty Ross) the compensation paid to Mrs S Wardman of No 8 Rossole Road. The amount of £260 he accepted was calculated as follows:-

<u>Land Taken</u> 37 square metres @ £3.50 =	£130
<u>Shrubs or trees taken</u>	£25
<u>Temporary disturbance</u> £4 per week for 25 weeks	£100
TOTAL	£255
BUT AGREED	£260

Miss Heather Gibson of Counsel (for the Respondent) called Mr Denis Owen McLaughlin BSc ARICS of the Valuation and Lands Office to give evidence.

Mr McLaughlin spoke to an estimate of £350 which was calculated as follows:-

<u>Land Taken</u> :- 44 square metres @ £3.50 =	£154
<u>Loss of Plants, Shrubs etc</u>	
2 large Leylandii trees	£50
2 small Castlewellan Gold trees	£20
Rock garden with ferns and heathers	£30
	£100

Temporary Disturbance

"For extra expense incurred in, for example, more frequent car washing, driveway cleaning, dusting and carpet cleaning. No accounts or

supporting documentation were submitted on Claimants behalf".

£4 per week for 25 weeks	£ <u>100</u>
TOTAL COMPENSATION	£ <u>350</u>

NOTES: Mr McLaughlin relied on a sale of strips of garden from land owned by the Department or the Northern Ireland Housing Executive to Owner/Occupiers to enlarge rear gardens. But he gave only one example viz:- No 87 Beechill, Enniksillen:- 30 square metres strip of land adjacent to the side garden of an end terrace house. Northern Ireland Housing Executive to the Owner - consideration £50.

2. He further supported his estimate for land taken at £3.50 per square metre by a list of thirteen settlements in the same scheme of widening of Rossole Road. He testified that each was based on a garden land value of £3.50 per square metre. But he gave only two examples in detail viz:-

No 12 Rossole Road

<u>Land Taken</u> 29 square metres @ £3.50 =	£101
<u>Temporary Disturbance</u> £4 per week for 25 weeks =	£100
No loss claim for plants and shrubs	—
TOTAL	£201
say	£ <u>200</u>

No 18 Rossole Road

<u>Land Taken</u> 37 square metres @ £3.50	£130
<u>Loss of plants, shrubs etc</u> Small selection	£25
<u>Temporary Disturbance</u> £4 per week for 25 weeks =	£ <u>100</u>
Agreed with Mr Cox for McQuitty Ross @	£255
say	£260

3. He relied on his estimate for loss of plants, shrubs etc from enquiries he had made for cost of trees.
4. The Tribunal notes that for temporary disturbance Mr McLaughlin used the phrase "temporary injurious affection".

The Tribunal finds the following facts proved or admitted:-

1. Mr Maguire purchased the leasehold interest in No 14 Rossole Road in 1972. The detached chalet bungalow was erected sometime in 1965 of concrete blocks with brick facing and a tiled roof. An integral garage adjoins on one side. The lease is for a term of 999 years subject to a ground rent of £5 per annum.
2. An adjacent vacant plot situated between No 14 and No 18 Rossole Road was purchased by Mr Maguire for £1500 in April 1977. The leasehold interest was for a term of 999 years subject to £4 per annum ground rent. The plot was incorporated as a side garden to No 14 Rossole Road by Mr Maguire.
3. Outline planning permission for a bungalow was granted on 25th February 1982 on the plot of land purchased by Mr Maguire (in 2 above).

That planning permission lapsed 5 years later in 1987.

4. A Vesting Order for "Improvement Scheme for Rossole Road, Enniskillen" was made on 12th December 1988.

That Vesting Order became operative on 18th January 1989. Inter alia, 44 square metres of garden were acquired from the Claimant - a strip of 1.5 metres deep.

At 18th January 1989 Rossole Road consisted of a roughly tarmaced road without footpaths or adequate verges. It led directly to Tarman Brae, an ongoing housing development. Heavy construction traffic over a period had caused surface deterioration, with the road patched and uneven in many places. There was an inadequate storm drainage system which resulted in excessive surface water, particularly during periods of heavy rain.

Today there is a resurfaced carriageway with footpaths on either side.

5. Prior to the Vesting Order No 14/16 Rossole Road was bounded in front by a timber post and rail fence. That was replaced by the Department at the new front boundary with a brick pillars and timber rail fencing. The new entrance was realigned to accommodate access to the garage and a garden tap was relocated with a gully connected to the storm drainage system. This latter still requires a proper post to hold the tap.

2 Leylandii trees were removed by the Department as were 2 Castlewellan Gold trees. All of these trees were approximately 6 years old.

A rock garden with some plants was removed by the Department.

6. None of the trees nor the rock garden was reinstated by either the Department or the Applicant.

Today there exists approximately 20 newly planted Castlewellan Gold trees purchased as one year old trees for £2 each by the Applicant and planted by him.

7. No request was made to relocate the four trees lost nor to relocate the rockery. The Applicant considered that that was a matter for the Department.
8. No receipts were submitted for the disturbance losses sustained by the Applicant. Mrs Maguire's evidence was that extra window cleaning was required - cleaning cost about £4 per month; that on occasion the mains water was turned off without notice and if the washing machine was at that time in use, when the water supply returned it was full of grit. On occasion her artificial fibre underclothes were ruined. Extra expense was caused for buying additional washing powder. As well as that she had to vacuum carpets more frequently and at the end of the works she got "a man from Irvinestown" to clean the carpets in the hall and lounge at a cost "in the area of £35". Her twin boys were bought new track shoes but they lasted only a month.

However Mrs Maguire could not produce receipts for any of the above items nor could she recall exact amounts.

DECISION OF THE LANDS TRIBUNAL

The basic statute law for compensation to be paid for compulsory purchase is to be found in Article 6 of the Land Compensation (Northern Ireland) Order 1982 ("the 1982 Order");-

"(1) Compensation in respect of any compulsory acquisition of land shall, subject to the provisions of the Order and any other enactment, be assessed in accordance with the following rules -

- (1) No allowance shall be made on account of the acquisition being compulsory;
- (2) The value of land shall, subject to rules 3 to 6, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise;
- (3) The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any authority possessing compulsory acquisition powers;
- (4) Where the value of the land is increased by reason of the use of it or of any premises on it in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the occupants of the premises or to the public health, the amount of that increase shall not be taken into account;
- (5) Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, where reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement;
- (6) The provisions of rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land."

Neither expert dealt with any compensation for severance or injurious affection where part of the claimant's lands is acquired. That is dealt with in Article 8 of the 1982 Order.

Mr McLaughlin for the Department considered one of the heads of compensation to be "Temporary Injurious Affection" but that was a misnomer for that was the disturbance causing loss to the Applicant which was not based on the value of land and that loss came under Rule (6) of Article 6 of the 1982 Order.

Mr Cox in his written proof of evidence considered the basis of valuation for compensation for disturbance is the total loss of rental value of the premises for two months ie he based it directly on the rental value of land. In his verbal evidence he abandoned that approach for that basis could not be said to fall under the above-mentioned Rule (6).

The English Court of Appeal considered in Horn v Sunderland Corporation [1941] 2KB 26 the effect of Rules (2) and (6) in the Acquisition of Land (Assessment of Compensation) Act 1919, Section 2. That Act applied in Northern Ireland until repealed by the 1982 Order. The Rules in the 1982 Order do not differ in any material effect. It was held by the Court of Appeal (Sir Wilfred Greene MR, and Scott LJ Goddard LJ dissenting), "that when land being used for agricultural is ripe for building and compensation for its compulsory acquisition is fixed on the basis of its value as building land, compensation for disturbance shall only be awarded to the extent (if any) that the value of the land for agricultural purposes together with the compensation for disturbance exceeds the compensation payable on the basis of the land being building land".

Mr Cox in his written proof took building land value for some of the land taken but resiled from that method after the Lands Tribunal before the lunchtime break brought the Horn v Sunderland Corporation decision to Counsel's attention.

Both expert valuers in front of the Tribunal used the basis of Rules (2) and (6). Thus the values to be found are the open market value of part of the garden of the house as garden with no building potential. In addition the actual loss the owner suffered in the disturbance caused while the works were carried out - for there was no time when the Claimant and his family had to leave the house and live elsewhere for a temporary period.

Neither valuer considered the cost of removing the trees and relocating them elsewhere nor the cost of removing the rockery and replacing it elsewhere. In fact neither relocation was carried out - all the Applicant actually did was to buy about 20 young Castlewella Gold trees and plant them immediately behind the new fence installed by the Department.

Consequently the matter of the loss of the trees and the rockery comes under the market value of the land in Rule (2) and not as disturbance under Rule 6.

Dealing firstly with the open market value required by Rule (2) of Article 6(1) of the 1982 Order:-

Mr Cox arrived at £7 per square metre at the operative date of the Vesting Order for amenity garden land from the base of £5 per square metre paid in April 1977 by the Applicant for the adjacent plot. At that time Rossole Road was built up apart from this plot which was potential building land. Indeed the Applicant obtained Outline Planning Permission on 25th February 1982. The Tribunal rejects Mr Cox's opinion of value for it is based on the potential value of the land.

Mr McLaughlin, on the other hand, starts from one example of a sale of amenity land to extend a garden. That indicated a price of £1.67 per square metre for a sale in 1991. If that is the only example it would have been an uncertain base, but his proof of evidence appears to say that there were other sales. If that is so it was remiss of him not to give that evidence to assist the Tribunal. He then relied on other settlements of compensation in the same road improvement scheme all of which he said were on the same basis of £3.50 per square metre, but he gives only two detailed examples.

The Tribunal repeats what has been said before viz:- settlements are at the best secondary evidence and are not admitted where there is the primary evidence of sales.

That leaves the Tribunal in an unsatisfactory position for it cannot test properly whether Mr McLaughlin's estimate is correct. Nevertheless it is the best available and the Tribunal accepts £3.50 per metre for bare garden land.

That is not the end of the matter for both experts valued the loss of trees and loss of the rock garden as part of the land taken for neither added the cost of works of relocation and in fact the Applicant has not relocated himself. For the trees the best estimate the Tribunal can make on the facts and on the evidence of both experts is 4 trees @ £25 per tree = £100.

The rockery is much more difficult. Mr Cox estimated £58-75 but could not explain how that figure was calculated even when pressed in cross examination. Mr McLaughlin made an estimate of £30 after seeing the photographs of the premises before the works.

Even viewing those photographs with a magnifying glass the Tribunal is none the wiser. Doing the best it can the Tribunal takes £45.

Summarising:

Rule (2) Compensation for land taken:- 44 square metres @ £3.50 = £154	
4 trees @ £25 per tree in situ	= £100
Rockery and shrubs in situ	= <u>£45</u>
TOTAL	<u>£299</u>

Turning now to disturbance. The basis is the loss the Applicant actually incurred and should have been capable of proof by paid receipts. But there was little help from either Mr Maguire or Mrs Maguire - merely vague figures were quoted. What the Tribunal is looking for is the actual loss sustained by the owner over and above the normal expenditure ie that loss directly caused by the works.

Mr Cox's figures were figures told to him by his client and rounded up to £10 per week multiplied by 25 weeks.

Mr McLaughlin based his estimate on £4 per week on what other settlements have included. That too is unsatisfactory for the disturbance for a family of 2 adults and four children may be different from the disturbance for 2 adults. However, even in the light that the Applicant and his wife, while giving graphic examples of various incidents, gave no actual figures of expense and when an attempt was made the figures given were hazy the Tribunal still has to accept that the estimate made by Mr McLaughlin for the Department is the best in all the circumstances. It is accepted by the Tribunal.

Rule (6) Compensation for disturbance 25 weeks @ £4 = £100

In Horn v Sunderland Corporation Sir Wilfred Green MR said "It is a mistake to construe rr.2 and 6 as though they conferred two separate and independent rights, one to receive the market value of the land and the other to receive compensation for disturbance, each of which must be ascertained in isolation".

Compensation is, therefore, £299 plus £100 = £399

Having heard the parties and having reserved the question of costs the Tribunal directs that the Respondent do pay the Claimant's costs of this reference, such costs in default of agreement to be taxed by the Registrar on the County Court scale.

ORDERS ACCORDINGLY

4th December 1992

**Mr A L Jacobson FRICS
LANDS TRIBUNAL FOR NORTHERN IRELAND**

Appearances:-

Mr Michael Potter of Counsel (instructed by Messrs T S McAllister & Son, Solicitors) for the Applicant.

Miss Heather Gibson of Counsel (instructed by R F Cole, Solicitor of Department of Finance & Personnel for Northern Ireland, Solicitor's Branch (Environmental Division)) for the Respondent.