

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964
LAND COMPENSATION (NORTHERN IRELAND) ORDER 1982

IN THE MATTER A OF REFERENCE

PART II

And in the Matter of the Allocation of Costs

R/16/2002

BETWEEN

JULIE WARD & DEBORAH WATTS – APPLICANTS

AND

NORTHERN IRELAND HOUSING EXECUTIVE – RESPONDENT

Re: Land at 125 Old Dundonald Road, Dundonald

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

Belfast – 18th March 2004

1. By a decision dated 9th February 2004, the Tribunal awarded the Northern Ireland Housing Executive, the beneficiary of certain restrictive covenants, compensation for their extinguishment. The parties, having been unable to agree the allocation of costs, referred that issue to the Tribunal.
2. W B S Stephens QC instructed by Johnsons, appeared for the Applicants. Nicholas Hanna QC instructed by the Northern Ireland Housing Executive Legal Department, appeared for the Respondent.
3. The Housing Executive had claimed substantial compensation and there were two elements to the amount. The first was an unadjusted amount to represent any affect that the impediments had at the time they were imposed. The second element was indexation to uplift that amount to compensate for the passage of time. The parties had agreed that the second element of this case should be heard together with another case in which the Housing Executive were making a similar claim from Castlereagh Borough Council ('NIHE v CBC' [2003] R/30 & 32/2002). As a result of

NIHE v CBC proceeded separately to a hearing and the issue of indexation in this case was left in abeyance pending the outcome of that case. That second element was of particular importance because it would greatly magnify any small difference in the first element.

4. This is an appropriate case in which to distinguish between the two elements in the matter of costs: the two elements were suitable for splitting and it was accepted they could be dealt with at separate hearings.
5. Ben Stephens QC stressed that these claimants were private citizens and were opposed by a public body. The tribunal is not persuaded that is a material consideration. But even if it is wrong in that view, the principles governing the decision on the more valuable second element of the case – indexation – were already to be fought out between two public bodies and the private citizen could have stood (and in the latter stages, through circumstances, did stand) on the side lines until NIHE v CBC was decided.
6. So far as the first element was concerned, the Housing Executive claimed £5,500 and the applicants proposed £500. The Tribunal awarded £2,500. There were a number of difficult issues of valuation and although the determination was closer to the claimants figure, there was a lack of sufficient evidence to arrive at any sort of exact conclusion. The Tribunal is not satisfied that the determination is sufficiently far away from the mid point to say that the claimant had won the event. Accordingly, so far as costs of the first element are concerned the Tribunal makes no order as to costs.
7. The Housing Executive (who were, in effect, the claimants so far as the two elements were concerned) conceded or withdrew its claim for the second element as soon as it had had an opportunity to consider an appeal against the Tribunal's decision in NIHE v CBC. However, prior to that time, the claimants had already prepared for the hearing, which they had to ask to be adjourned. That included consultations and preparation of a skeleton argument. In the view of the Tribunal there was a direct and sufficient involvement of the claimants for them to be entitled to have their costs in regard to the second element. Without implying any criticism of the conduct of the Housing Executive, the Tribunal awards the claimants their costs relating to the second element only, up to the point of submission of their skeleton arguments.

8. If necessary, the Tribunal will hear the parties further on the assessment of costs.

ORDERS ACCORDINGLY

10th May 2004

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

Appearances:

W B S Stephens QC instructed by Johnsons, appeared for the Applicants.

Nicholas Hanna QC instructed by the Northern Ireland Housing Executive Legal Department appeared for the Respondent.