

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**IN THE MATTER OF A REFERENCE**  
**R/18/1993**  
**BETWEEN**  
**GEORGE HASLETT - CLAIMANT**  
**AND**  
**DEPARTMENT OF ENVIRONMENT FOR NORTHERN IRELAND - RESPONDENT**

**Lands Tribunal - Mr Michael R Curry FRICS FSVA IRRV ACI.Arb**

**Belfast - 17<sup>th</sup> January 1995**

This reference concerns a disputed claim for compensation under the Land Acquisition and Compensation (NI) Order 1973 for depreciation in value of a dwelling-house by reason of the use of public works. The relevant physical factors are noise, vibration and dust caused by a road improvement scheme.

Mr John Coyle instructed by Messrs Holmes & Moffitt, Solicitors for the Claimant, called Mr David Neil Mills, a Fellow of the National Association of Estate Agents who has practised as an Estate Agent in the locality since 1982.

Miss Jacqueline Simpson instructed by the Solicitor for the Department of the Environment, called Mr William Ronald Faloon, an experienced Chartered Civil Engineer employed in the Design Section of the Roads Service and Mr Robert Edward McDermott, an experienced Chartered Valuation Surveyor employed in the Valuation & Lands Agency (VLA).

The claimant is the owner/occupier of a terrace house at 47 Carncaver Road, Belfast, on the outskirts of an estate built as public housing about 1951. Many of the houses are now privately owned having been bought by former tenants under a "right-to-buy" scheme. The claimant had occupied the house as a tenant from 1951 and had purchased the property from the Northern Ireland Housing Executive under the scheme in 1984. Although basically similar when built, many of the houses on the estate have now been altered, improved or extended since becoming privately owned.

Carncaver Road is a cul-de-sac bounding part of the estate. The road is developed on one side only and the houses face outwards over the road towards the Upper Knockbreda Road which is a busy dual carriageway forming part of the Belfast Outer Ring Road. The dual

carriageway is at a higher level, about level with the first floor of the subject, runs parallel with Carncaver Road and is separated from it by a grassy bank with some low shrubs.

The intersection with the Castlereagh Road is nearby and, in 1985, the Respondent altered the dual carriageway to create an additional slip lane, between the existing dual carriageway and the top of the bank, for city bound traffic to filter left onto Castlereagh Road. As a result there is now an additional traffic lane and the traffic is closer to the claimant's house.

The new slip lane opened to public traffic on 23<sup>rd</sup> January 1985 and the valuation date is agreed to be 24<sup>th</sup> January 1986.

After the scheme was completed and after the valuation date, the claimant installed double glazing. Although, as originally submitted, the claim reflected the cost of that, the parties agree that is not a compensatable head. The claim now is for a depreciation in value of £2,000.

All the experts had prepared precis of evidence and these were exchanged prior to the Hearing. The valuers had met and helpfully had reached agreement on a number of non-contentious matters. They agreed that, at the valuation date, with the new road works in use and subject to the present or anticipated affect of the physical factors, the dwelling had a value of £18,000.

Mr Mills' opinion of the value of the property immediately before the slip lane was constructed is £20,000 and that the depreciation as a result of the relevant physical factors is £2,000. Mr McDermott's view was that any depreciating effect was slight and that there was no diminution in value.

Mr Faloon gave evidence that it was not Roads Service policy to measure noise levels before and after such schemes and the only method available to him of assessing any change in noise had been one of calculation. Using the method outlined in the Department of Transport Welsh Office Memorandum for the Calculation of Road Traffic Noise he calculated the increase in noise at a reception point on the frontage of the property. The works have created a live traffic lane approximately 3.5 metres closer to the frontage of the property which is now 23.2 metres from the road edge. In L10(18hr) terms his calculation showed an increase of between 2 dB(A) and 3 dB(A) to 73 dB(A) after the lane was opened to public traffic and taking into account the intensification that might reasonably be expected of the use of the works over the following 15 years.

He had not found it possible to quantify the increase in either vibration or dust level.

In his opinion before the scheme, the location would be considered to be noisy. The calculated increase is such that one would just about be able to perceive the difference if subjected to sharply distinguished samples but his calculation takes into account future growth over 15 years from opening. As a gradual increase it would be imperceptible.

On the question of double glazing Mr Faloon gave evidence that whilst ordinary double glazing for heat insulation, such as the claimant had installed, would attenuate noise to an extent, a system designed specifically for noise would be designed rather differently, with a much wider gap between the panes.

The valuation task is difficult. Despite the efforts of the expert valuers, neither was able to produce reliable, directly comparable open market transactions from around the relevant date and location.

Mr Mills relied primarily on the open market sale of No 44 which was similarly affected by the scheme. In November 1987, Mr Mills had put No 44 on the market. He was not aware of any sales on Carncaver Road but, as a result of his long experience of selling houses in the general locality, he fixed an asking price of £23,500. It failed to reach the asking price and was sold for £21,000. Prospective purchasers had told him that they were put off by the noise from the slip lane. Mr Mills attributed the shortfall to the effect of the road scheme but he accepted that there were special circumstances, such as the intervention of the Christmas period and the vendor's need to realise funds to pay for another house, which adversely affected the price obtained and that, given longer on the market, he might have achieved more.

He supported this primary comparison with particulars of a number of later sales of other houses facing the slip lane. In his view shortfalls between asking and achieved prices reflected the effect of the slip lane.

Mr McDermott relied on two types of evidence. One was the pattern of market values in Carncaver Road estimated by the Valuation & Lands Agency between 1980 and 1989 in connection with the "Right-to-Buy" scheme. His analysis of these estimated values showed no apparent reduction in or around 1985-86 in the price of houses when the effect of the scheme would have been apparent to both the VLA valuers and the tenants who were purchasing at prices, albeit discounted but based on these estimated values. The evidence showed no sudden change or differential, in the pattern of values, which might have been attributable to the scheme.

Secondly, Mr McDermott relied on the general pattern of open market sales in Carncaver Road, after the scheme was completed. In his view there was no evidence that any effects of the scheme had been sufficient to reduce market values in the affected part of Carncaver Road below those pertaining in the unaffected portion.

Mr Coyle submitted:

1. The effect of the increase in noise can only be negative.
2. Mr Mills evidence is that the effect on value is significant and not deminimus.

Miss Simpson submitted:

1. The increase in noise is not great against an already noisy background.
2. The burden is on the claimant.
3. The Tribunal should prefer Mr McDermott's opinion that the effect, if any, on value is insignificant.

The Tribunal has visited the location at different times of day, viewed the subject property and carefully considered the factual evidence, the expert evidence and the submissions of Counsel.

The issues of dust and vibration were not seriously pursued at the Hearing.

The Tribunal accepts the burden is on the claimant. The net issue for the Tribunal is whether the claimant has shown that, on the balance of probability there has been a significant depreciation in value. A deminimus effect on value does not give rise to a successful claim.

The Tribunal accepts that the effect, if any, on value of the increase in noise arising from the slip lane can only be a reduction and not an increase.

The Tribunal accepts the unchallenged evidence of Mr Faloon that the increase in noise is not great against an already noisy background and finds that the increase, taking into account future intensification of use, would be barely perceptible.

The matter turns on the conflicting opinions of the expert valuers. The factual evidence on which to base opinion is sparse. The Tribunal accepts that Mr Mills was expressing views which were genuinely held by him but prefers Mr McDermott's opinions.

Mr Mills relied primarily on the sale of No 44 nearly 3 years after the opening of the slip lane. There was a shortfall between his asking price and the actual sale price. He insisted that the asking price was a fair estimate of what he expected to achieve but, just as the market evidence before the Tribunal now is sparse, the evidence available to him then was sparse, even more so, and he had to import values from other locations to arrive at his asking price. That must raise a question as to its reliability. That is not intended as any reflection on Mr Mills' ability as a residential estate agent but rather a reflection of the difficulty in valuing in a sparse market without direct comparables.

He said that some of those viewing No 44 were put off by the noise from the slip lane. The Tribunal finds it difficult to accept that these viewers could envisage the general level of noise prevalent 3 years earlier, before the works and distinguish the increase. The Tribunal considers it would be unsafe to assume they were put off by the marginal increase rather than the overall level of noise.

It would appear from Mr Mills evidence that the vendor of No 44 was under some pressure to complete a sale and might have achieved a higher price given a longer exposure to the market. The Tribunal considers that it is dangerous to rely on one transaction in isolation. There is always a risk that factors which may affect an individual sale, such as the relative bargaining strength of the parties at the time, make it untypical of the market as a whole and so the Tribunal prefers conclusions drawn from a wider spectrum, which even out distortions caused by special factors affecting individual vendors and purchasers and sometimes referred to as the higgling of the market.

For these reasons the Tribunal finds it would be unsafe to rely on Mr Mills primary transaction.

Turning to Mr Mills other examples of shortfalls between asking and achieved prices, the Tribunal has considerable doubts about the assistance it may derive from them. The asking prices were fixed some or many years after the slip lane came into use and the Tribunal finds it difficult to accept that the asking prices should be taken to represent a value in a "no slip lane" world. In any event the most significant shortfall reflected a re-possession sale, a number of the others were not large amounts and shortfalls were not significantly different from shortfalls experienced on Carncover Road away from the scheme. The Tribunal concludes that these differences between asking and achieved prices do not assist it with its determination.

Both valuers referred to open market transactions concerning houses which were basically similar but not identical. Given the combination of the effect of these differences, the absence of detailed knowledge of the differences, the effects of time, the higgling of the market and a sparse market at that, it is difficult to isolate small, real differences in value attributable to the relevant factors. However the valuers' analyses of recent transactions did not show any apparent difference in sale prices between those on parts of the road affected and not affected by the scheme.

The Tribunal accepts Mr McDermott's opinion that it is apparent from the purchases by tenants based upon the valuations carried out by VLA for the purposes of the right-to-buy scheme, and not in any contemplation of this litigation, that neither VLA nor the tenants purchasing have thought it proper to make any adjustment for any effect of the slip lane.

Having come to the view that it prefers Mr McDermott's evidence for the reasons above, the Tribunal concludes that the claimant has not succeeded in discharging the burden of showing that, on the balance of probabilities there has been something more than a deminimus effect on value as a result of the relevant physical factors resulting from the use of the works.

The claim therefore fails.

The Tribunal makes no order as to costs save that the costs of the Claimant who is a legally assisted person should be taxed in accordance with Schedule 2 to the Legal Aid and Advice and Assistance (Northern Ireland) Order 1981.

Although this reference had to be argued along different lines, it seems that the question of installation of double glazing is at its heart. The Tribunal notes that although the 1973 Order makes specific provision for the Department to make regulations providing for the insulation of buildings against noise or payment of grants and regulations made under the corresponding legislation in England and Wales have been in force for some considerable time no such scheme has been introduced here. The difficulties facing the parties and the Tribunal in dealing with a claim of this nature are obvious and the respondent may wish to consider whether, in the interest of essential fairness, such regulations should now be introduced.

**ORDERS ACCORDINGLY**

**10<sup>th</sup> March 1995**

**MR M R CURRY FRICS FSVA IRRV ACI.Arb  
LANDS TRIBUNAL FOR NORTHERN IRELAND**

**Appearances:**

**Mr John Coyle instructed by Messrs Holmes & Moffitt, Solicitors, for the Claimant.**

**Miss Jacqueline Simpson, instructed by the Solicitor for the Department of the Environment, for the Respondent.**