

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**IN THE MATTER OF AN APPLICATION**

**R/19/1997**

**BY**

**MARTHA HAWE - APPLICANT**

**AND**

**NORTHERN IRELAND HOUSING EXECUTIVE - RESPONDENT**

**RE: PREMISES AT 8 ALBERTVILLE DRIVE, BELFAST**

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

**Belfast - 17<sup>th</sup> September 1997**

The dispute was about the value, in accordance with Art. 6 of the Land Compensation (Northern Ireland) Order 1982, of a terrace house in Belfast, compulsorily acquired by Vesting Order dated 18<sup>th</sup> September 1995.

Joe Allen, an experienced Chartered Surveyor appeared, by leave of the Tribunal, on behalf of the Applicant and also gave expert evidence. He valued the house at £14,000. Gregory Quigg, Solicitor of the NORTHERN IRELAND HOUSING EXECUTIVE ('the HOUSING EXECUTIVE') Legal Department, appeared on behalf of the Respondent and called Aiden Joseph McHugh, an experienced Chartered Surveyor of the Valuation and Lands Agency (VLA), to give expert evidence. He valued the house at £11,000.

So, both valuers were just over 10% away from a mid point and the dispute did not turn on questions of law or valuation method. But there were real issues about the choice of comparables, the reliability of factual evidence, the degree of helpfulness of comparables to the task of relating the value of the house to the open market and differences of expert opinion. A number of general issues arose and the Tribunal first deals with those before dealing with more specific points.

Mr Allen complained that the VLA had been uncooperative but the Tribunal rejects that criticism because the matters about which he complained were clearly within the ambit of the Housing Executive and Mr Allen had chosen not to take up their offer of assistance.

The parties had produced a statement of agreed facts but there was some reliance on hearsay in regard to other disputed matters. As a strict application of the hearsay rule would have made the proceedings disproportionately unwieldy, the Tribunal permitted

hearsay evidence to be given on the basis that it would carefully consider what weight ought to be attached to it. However the Tribunal does stress that the reliability of evidence is an important factor, clearly there are dangers in adducing hearsay evidence, particularly on a core issue and there is a limit to what ought to be admitted.

The Tribunal also underlines the importance of experts setting out their reasoning behind their analysis in their reports. Sometimes, non-disclosure may be in the hope of taking the opposing expert by surprise and so improving the prospects of winning. If so, the Tribunal emphasises that, the moment the expert begins to prepare the evidence, any previous role as negotiator, doing the best one can for one's client, ceases. It is difficult to give up that role, but it must be done. All the cards must be displayed face up, on the table, in the reports. Unless fresh matters, and generally there should not be any, are raised in the opposing expert's report, the report should aim to be sufficiently complete to be taken as evidence in chief, with only minimal oral clarification. If the reasons are not disclosed at the proper stage, and so not available for mature appraisal and informed challenge by the opposing party, the Tribunal may consider whether to take the lesser degree of scrutiny into account and may attribute less weight to the opinion. In this Reference, by the time of the Hearing, both experts had prepared and presented detailed and helpful calculations showing exactly what adjustments were required to be made to their comparables, for each factor, to arrive at their valuation of the subject.

Mr Allen suggested that the first settlements in this redevelopment area may have been at figures advantageous to the Housing Executive and so may be unreliable. However, Mr McHugh had reached agreements on more than one house claim with each of six different Chartered Surveyors. He also produced a schedule of settlements on dwellings which he considered to be of a similar type to the subject but he did not seek to rely on those as comparables. Although it is alert to the danger that those who settle first may not be the strongest, such an assertion must be proved and the Tribunal does not accept Mr Allen's unsupported allegation. Further, without doubting the genuineness of Mr Allen's concern, the Tribunal must be wary of the ease with which such an allegation can be made and the possibility of its improper use to put the acquiring authority to unjustified trouble and expense or to attempt to justify a fishing trip through its records. In the event, neither side relied on such settlements.

The house was a 2½ storey house in Albertville Drive which is off the Crumlin Road, below its junction with Tennent Street. It was built before 1919 and renovation work had been carried out in 1984 and 1990. There was an enclosed yard, store and small garden area to the rear. Of importance to the issues in this reference, the total area was about 105 sq m, there were 4 bedrooms, no central heating but a glass fronted fire with a back boiler and a very adequate, but not recent, kitchen and bathroom.

In his report, Mr Allen contended that Mr McHugh had been selective and unfair in some of the evidence he put forward and had relied on a particularly low value sale, 6 Eccles Street at £16,000, as a comparable when there were other sales of similar properties which should have been included as being more typical and thereby relevant. These were 9 Eccles Street at £17,500, 35 Eccles Street at £20,000, 42 Woodvale Avenue at £18,950 and 33 Ainsworth Avenue at £19,000. In response, Mr McHugh pointed out that Mr Allen had made no effort to include these sales in the Statement of Agreed Facts and produced no analysis. He would not accept that he had deliberately chosen low value sales as comparisons. There was not a lot of open market activity but he concentrated on those he regarded as the most comparable and as close to the date of vesting as possible. He had discounted those which, on investigation, involved connected parties, were in a different locality, or had materially different accommodation. At the Hearing Mr Allen accepted that the sale of No 33 Ainsworth Avenue did not proceed. Mr McHugh rejected No 9 Eccles Street because of a peculiar sales history (£16,000 one day and £22,500 two days later), No 35 because it was clearly superior in terms of its condition and facilities and VLA had no record of any sale, and 42 Woodvale Avenue because it was too dissimilar as it was a much smaller, 2 bedroom house which appeared to have already been fully rehabilitated, including the replacement of a 2 storey return. The Tribunal is not persuaded that Mr McHugh's selection of comparisons was unfair.

Not surprisingly to anyone in property, Mr McHugh considered location to affect relevance and value. He was satisfied his comparisons were appropriate and the best he could find but due to difficulties in finding ones that were close in location he had to go to what he considered to be a better location. But he had not included his research, on the effect of location on value, for the Tribunal because he felt it was already "drowning under the weight of paper". He said there was a clear difference in value above and below Tennent Street and considered that, if anything, his adjustment for location was conservative. The Tribunal presumes that location is a significant influence on value and accepts Mr McHugh's proposition that, all other things being equal, comparisons further away, such as those in Woodvale Street, are less relevant than those located closer and there is likely to be a difference in value. But to quantify a difference (if any) when that is disputed, it must have evidence on which to reach a conclusion. In this reference there was none. Rather than drowning under paper the Tribunal was suffocating in a vacuum. So the Tribunal does not accept Mr McHugh's contention of 5% but makes clear that it accepts, of course, that location affects value and that percentage, or some other larger or smaller figure, may be correct depending on the particular evidence, or lack of it, in the circumstances.

Mr Allen said that four of the comparables relied on by the District Valuer were less relevant because they were purchased by landlords for letting under furnished tenancies - 108

Tennent Street, 8 Bootle Street, 70 and 127 Bray Street. He considered that some purchasers for this purpose were "carpet baggers", waiting for a house to stick on the market and then buying at a bad price. He referred to 70 Bray Street which had been on the market at £15,500 in September 1995, the asking price was subsequently reduced to £13,950 due to lack of interest and it was eventually sold to an investor for £11,000 in April 1996. He considered such sales for investment purpose should be treated with caution.

The purpose of the reference is to determine the open market value and the market included purchasers for investment as well as owner occupation. Different houses and states of the market may have different attractions to different classes of purchasers but the Tribunal must consider the market as a whole. If investors outbid owner-occupiers or vice-versa then that is still the real market, the deal is an indicator of the market and cannot be ignored because the offer came from a particular sector. The Tribunal does accept that bargains can be bought but does not accept all purchases by investors, in a market in which both classes of purchaser appear, as here, to be active, to be a safe indication of purchases at an undervalue. The best way of avoiding reliance on an isolated sale at a bad price (or indeed, a high bid from a particular purchaser) would seem to be to look at the market as a whole. At the extreme, even if all sales appear to be at 'bad prices' then that still is the market. In arriving at its conclusion the Tribunal has taken all the evidence before it into account, but of course has attached more weight to some than others.

Mr Allen was unhappy about the relevance of sales of properties in Bray Street which had been put on the market during 1995. In his view the local market in Bray Street was depressed at that time and a possible explanation for that was a sectarian murder nearby in late 1994. As Mr Allen was concerned that Bray Street and Tudor Place were not helpful comparables on grounds of lack of relevance and reliability and Mr McHugh considered they were of marginal assistance, the Tribunal finds them of very limited assistance and prefers to rely on other comparables.

The parties accepted that the comparables were all of a similar age to the subject and no allowance was necessary on that account. Some other adjustments to the values of comparables to reflect some particular differences were not in dispute. The Tribunal was told these figures represented average, standard figures adopted in other settlements, the Tribunal sees no reason to consider them further and adopts them. Some other figures were disputed.

It was apparent from inspection, and the photographs that part of the front wall of 8 Albertville Drive had sagged above the bay window. Mr McHugh considered that was an indication of potential structural problems which would warrant a reduction. From inspection he was aware of a number of other properties where the bay windows had been

repaired and so he felt it was a factor that could not be ignored but, in the absence of hard evidence, a notional amount was appropriate. He thought his allowance of £250 was modest. Given the obvious distortion of the facade above the bay, the Tribunal cannot accept that would not detract from the value of the house in comparison with those without distortion and, not without some reservations, accepts Mr McHugh's spot figure of £250.

Generally both the experts adjusted the value of 3 bedroom houses by adding £1000 to arrive at the value of the subject, which had 4 bedrooms. Because of their different character, Mr McHugh was unhappy about using 2 bedroom houses as a guide at all, Mr Allen adjusted their value by a further £1000, Mr McHugh by a further £500. The Tribunal accepts, to a large extent, Mr McHugh's reservations about the relevance of 2 bedroom houses ie 51 Enfield Street and 55 and 58 Woodvale Street. These 2 bedroom houses at a different location must be regarded as being of very limited help when more similar and closer comparisons were available.

Mr Allen contended for a further adjustment for differences in size from the subject. Where this ranged between about 15% to 20%, he allowed £500. Where the difference was greater, ie about 25% or 30%, he made that £1000. Mr McHugh considered the allowance for additional bedroom accommodation already reflected proportionate additional space and made no allowance except at 6 Eccles Street, where there was a 13% difference in size but no difference in bedroom accommodation he did allow £500. The Tribunal is not persuaded by the evidence that a further allowance for the additional size generally was justified.

Mr Allen considered an open market sale of 108 Tennent Street at £10,000, on which Mr McHugh relied, to be at the lower end of a range of prices and drew attention to 9 Olive Street, a similar type of house but further away and sold at £18,500. He considered these two houses were at the lower and upper ends of a range of values and a more relevant starting point would be the median. There was a question about the state of 108 Tennent Street. The agent for the purchaser had informed Mr Allen that, at the time of sale the property required complete internal refurbishment including new bathroom, new kitchen, rewiring, replastering and dpc. Mr Allen had inspected the property at the date of sale and confirmed that was the situation at the time. Mr McHugh accepted it was not immaculate but disagreed about the degree of disrepair and drew the Tribunal's attention to the agent's brochure, at the time of sale, and the Statement of Agreed Facts: "renovations had been carried out including re-roofing, replacement chimney, replacement windows and new solid ground floor". Mr Allen said the purchaser had told him that Housing Executive grant approval had been obtained to replace the too small return which suffered from rising and penetrating damp. Mr McHugh said records showed a 2 storey replacement return of 35.5 sq m already had been built in 1981, he had seen it and there was no record of any such

recent grant approval. Mr Allen said the purchaser also had told him that he had paid over the odds.

Mr Allen had not relied upon Olive Street as a comparable but included it in an attempt to reduce the reliance to be placed on 108 Tennent Street. There was a clear conflict between the opinion which Mr Allen included in his report and evidence within the Housing Executive and VLA records about the condition of 9 Olive Street. The Tribunal accepts that there is some tension between the results of the two sales but is not persuaded that this evidence about Olive Street is sufficiently reliable to significantly, of itself, reduce its reliance on 108 Tennent Street. But the Tribunal has reservations about the actual condition of the latter house and concludes that it should be treated as supporting about £11,000 to £12,000 and regarded as a less reliable comparable than others.

Both experts referred to a 3 bedroom house of similar character to the subject, at 96 Tennent Street, but the experts disagreed both about some of the information on which they based their opinions and the conclusions to be drawn. Mr McHugh said that, at the time of sale, No 96 had a modern fitted kitchen in a modern single storey replacement return, a better bathroom than the subject and also full oil fired central heating. Mr McHugh considered the subject had an inferior bathroom. Mr Allen said that the new owner of Tennent Street had spent a substantial sum on kitchen improvements but Mr McHugh had inspected it before the changes and the kitchen appeared good enough to him. So the experts differed on the state of the property and, as a result, the appropriate adjustments. Mr Allen considered this comparable supported a value for the subject of £14,000, Mr McHugh thought £11,000. On balance, the Tribunal finds this comparable supports a value for the subject of about £12,000 to £12,500. Although there were differences on factual detail and expert opinion, it finds this comparable to be among the more helpful.

Earlier, the Tribunal considered the question of whether Mr McHugh had unfairly chosen an open market sale of 6 Eccles Street as a comparable and rejected that criticism. He had inspected it internally and found the kitchen and bathroom were superior to the subject. Although both were 4 bedroom houses, he made substantial adjustment for the other differences to relate it to the subject. Mr Allen said that, as No 6 had a modern replacement two storey return and had been extensively refurbished throughout, it had too many unlike features to enable a fair comparison with the subject property. Both it and the subject had 4 bedrooms but Mr McHugh had allowed £500 for a size difference (105 sq m v 88 sq m). He considered this comparable supported a value for the subject of £11,500. The Tribunal does not wholly accept his analysis but broadly agrees with this figure. However, although the Tribunal does not reject 6 Eccles Street as a comparable, it considers that its modern 2 storey return and refurbishment makes it less relevant than others and as such, less helpful.

At the Hearing, Mr Allen accepted that a 3 bedroom house at 8 Bootle Street was sold for £15,500 and not £16,500. From his inspection at the time, he considered some refurbishment and remedial works were required. Subsequently the tenant informed him that considerable work had been done, a new kitchen had been installed with a new floor, bathroom walls had been replastered and tiled, bedroom walls replastered and dpc installed, and this must at least suggest that some work was required at the date of sale. Mr McHugh had been unable to inspect internally but on the basis of the information on the sales brochure considered that the bathroom was superior to the subject, eg it included a step-in shower cubicle. The experts disagreed about the extent of the need for the work, how much had actually been done and differed on the appropriate amount to be allowed for it. Although there were differences on factual detail and expert opinion, on balance, the Tribunal finds this comparable to be helpful and to support a value for the subject of about £12,000 to £12,500.

Mr Allen relied primarily on settlements of compensation claims in schemes in other areas, ie Lawnbrook and Woodvale, which, after some adjustment to reflect the Tribunal's conclusions on treatment of some matters (most adjustments were not disputed), supported a range of values for the subject from £13,000 to £13,750.

So, after adjustment for disputed matters and forming a view as to the helpfulness of some comparables for other reasons, the Tribunal finds the gap has narrowed leaving a modest but clear difference between the figures derived from the open market and the figures derived from settlements in other RDA's. The Tribunal must make a choice and, as stated earlier, the selection must be based on what is before the Tribunal in this reference. In this kind of case, the decision of the Tribunal often will be flavoured by both sales and settlements. It is not always a stark choice between options, there will be overlaps. The Tribunal accepts that reliance on settlements is not unusual and many Tribunal cases have relied on them but the fundamental issue for the Tribunal is 'at what value would the market really have settled in a no scheme world?' and the preferred starting point will usually be the real market in the real world. However, the question is not simply one of determining what is the market, it is a matter of relating the particular property in its actual state to the market and, in some circumstances, settlements may provide helpful or better evidence. In particular, as illustrated by some matters in this reference, often the only relevant and most reliable evidence of adjustments to open market sales may be the adjustments that experienced valuers have agreed in settlements in similar circumstances.

Mr Allen preferred settlements. Normally he would prefer open market sales within the vicinity but in his view the settlements, on which he relied in this reference, already reflected adjustments to relate them to those sales and, as a result, they were closer comparables, in

terms of like features to the subject, and so required less adjustment. The Tribunal does not find that view was supported by the evidence.

Although in a previous reference, Eileen Donnelly v Northern Ireland Housing Executive R/12/1995, Mr Allen had opposed reliance on settlements, he distinguished that on grounds that in this case he was referring to settlements in different redevelopment areas but the Tribunal is not persuaded that distinction helps his contention. Rather the reverse in that the importing of values from other areas must be viewed with caution.

In Mr McHugh's view the available sales evidence was much more relevant and helpful than settlements. The Tribunal accepts that his evidence was a true reflection of the market and based on comparisons as relevant to the subject as he could find.

Mr Allen emphasised to the Tribunal that both he and the VLA had first hand knowledge of the settlements and had inspected almost all of the open market sales on which they, in turn, had been based. The Tribunal accepts that a first hand and complete knowledge of a transaction must add to its reliability and may add to its weight as evidence but does not accept that the degree of certainty outweighs all other factors. Reliability and relevance are both qualities affecting the usefulness of the information but reliable evidence may relate to something so different as to be irrelevant and relevant information may be so unreliable that it is of little or no use as evidence. The Tribunal does not accept that detailed knowledge necessarily makes the settlements of greater assistance than sales. It may do so but in determining their significance and weight, it is a question of forming a judgement on both relevance and reliability.

In regard to the reliability of the expert criteria put forward by the opposing experts, Mr Allen emphasised his wide experience and referred to the tension between the "forty years man and boy" and the "analytical" schools of surveyors. Mr McHugh had been in the VLA since 1978, qualified as a Chartered Surveyor in 1990 and he had been involved in compensation cases since 1983. He had been involved in many schemes but this was the first scheme for which he had overall responsibility. Mr Allen referred the Tribunal to his long experience of compensation work and to Samuel Lunney v NIHE R/19/1995 in which the Tribunal stated "In many circumstances, long experience serves well, particularly where the expertise requires interpretation of the real market."

Although the "forty years man and boy" school sometimes may be preferred to "analytical" school, that is more often the case when what is at issue is a broad understanding of the message of the market and when the experience is that of an estate agent in the market, with first hand knowledge of it. That is the import of the quotation. Settlements in large schemes may be expected to reveal a tighter pattern than the market and so may lend

themselves more readily to an analytical approach so although Mr Allen may have had wider experience of such schemes, the Tribunal does not find Mr McHugh at any significant disadvantage in terms of the experience appropriate to the issues in this reference. It is a factor to be taken into account, but the Tribunal does not accept that Mr Allen's undoubted long experience is a compelling reason why the Tribunal should prefer his analysis of settlements to Mr McHugh's or that, by virtue of wide experience of this type of work, his analysis of such settlements ought to be preferred to analysis of the open market.

While not disregarding settlements completely, the Tribunal prefers the evidence derived more directly from the open market and attaches much more significance to it. Having considered all the evidence, and set out its conclusions on the issues raised and the relative helpfulness of the evidence, the Tribunal finds the value of the land taken to be £12,250 (twelve thousand, two hundred and fifty pounds).

Mr Allen questioned whether valuations for compensation in this redevelopment area were given the same careful consideration as in others such as the Clonard RDA scheme. Mr McHugh assured the Tribunal that the investigation and analysis was no more nor less thorough than for that RDA, he emphasised that Clonard RDA involved about 600 dwellings, nearly 10 times the subject scheme, and considered that the VLA had tailored their response appropriately to the size and complexity of the task. Having heard the parties and carefully considered all the matters brought to its attention, the Tribunal does not find there are any grounds on which to conclude that the consideration given was at all inadequate.

The parties having agreed the question of costs the Tribunal doth make no order as to costs.

#### **ORDERS ACCORDINGLY**

**17<sup>th</sup> December 1997**

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

#### **Appearances:-**

**Joe Allen ARICS or the Applicant.**

**Gregory Quigg, Solicitor, NIHE Legal Department for the Respondent.**