

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**PROPERTY (NORTHERN IRELAND) ORDER 1978**  
**IN THE MATTER OF THE ALLOCATION OF COSTS**  
**R/35/2002**  
**BETWEEN**  
**DOROTHY M A McKILLEN, ANTHONY PEARSON &**  
**DOROTHY McKILLEN – APPLICANTS**  
**AND**  
**JAMES FERGUSON & EITHNE FERGUSON – RESPONDENTS**

**PART II**

**Re: 16 Ashley Park, Dunmurry, Belfast**

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

**Belfast – 15<sup>th</sup> June 2005**

1. Mr D R K Sharpe BL instructed by Diamond Heron, solicitors appeared for the Applicants. Mr C Maunsell, solicitor appeared for the Respondents.
2. Following a hearing on 11<sup>th</sup> December 2003, the Decision of the Tribunal ('the Part I Decision' for convenience) was given on 23<sup>rd</sup> December 2003. The issue now relates to costs.
3. In accordance with usual practice the Part 1 Decision did not include any determination on the allocation of costs. The award of costs in the Lands Tribunal is discretionary (see Section 8(7) of the Lands Tribunal & Compensation Act (NI) 1964 and Rule 33 of the Lands Tribunal Rules (NI) 1976). They are not automatic, must be asked for and no costs are payable in the absence of an Order. Mr Sharpe described the practice as analogous to that in the High Court.

4. The reality is that at the time the Tribunal gives its decision on a substantive dispute it is not aware of whether costs should follow the event or not - there may be some reason why a special award should be made (for example, the unreasonable rejection of an offer to settle without prejudice save as to costs).
5. There is no rule expressly fixing a time limit for applications for costs but they should be made promptly. In this case, by 13<sup>th</sup> May 2004, more than 4 months after the Part 1 Decision, no application for costs or otherwise had been made and an Order was perfected ('the Registrar's Order') which included the term:

"And the Tribunal makes no Order as to costs".

Copies were sent to the parties that day.
6. If the Respondents were aggrieved they might have appealed that decision in the Registrar's Order as being erroneous on a point of law but at that stage there was a time limit. They would have had to make an application within 7 days of the Order (Rule 29 of the Lands Tribunal Rules (Northern Ireland) 1976). There was no such application.
7. Mr Sharpe dealt with questions of an omission and/or error within the meaning of the Rules but Mr Maunsell made it clear that he did not suggest that the Tribunal had made any.
8. Nearly 2 months later, on 8<sup>th</sup> July 2004, Mr Maunsell wrote to the Registrar:

"... my Clients have instructed me to apply for costs ...  
I am preparing details of the expense involved and this will follow."

It now appears that Mr Maunsell did not copy this letter to the Applicants.
9. A further 6 months later and more than a year after the Tribunal had given its Part 1 Decision, on 21<sup>st</sup> January 2005, Mr Maunsell, who had not been well, wrote to the Registrar with details of costs and said:

"I would ask the Tribunal to make an Order for the above items of cost to be paid by the Applicants."

The Registrar copied that letter with its enclosures to the Applicants.

10. On 23<sup>rd</sup> February 2005 the Applicants replied opposing any Order for the Respondents' costs to be payable by the Applicant. They pointed out that no application was made by or on behalf of the Respondents at the time and the letter of 21<sup>st</sup> January 2005 was the first intimation of any application.
11. The Respondents had two complaints. They said firstly that they had succeeded in the event and should have been awarded their costs and secondly that they were not given the opportunity to claim their costs and the Tribunal had been fundamentally unfair in making its Decision on costs without hearing them.
12. At the Hearing on 15<sup>th</sup> June 2005 the Tribunal questioned its jurisdiction to deal with the current dispute and the effect, if any, of a decision it might make but both parties assured it that they wished to proceed.
13. The Tribunal accepts that the Respondents were successful in the event and at this Hearing there was no material put forward that would suggest that, on application, they could not reasonably expected to have recovered much if not all of their costs.
14. The Tribunal accepts that where an application for costs is made, it would be fundamentally unfair to make an Order for costs without giving the parties the opportunity to be heard.
15. Mr Maunsell suggested that his clients were not given an opportunity to present their case for costs. The Tribunal does not agree. There is a great deal of difference between not having an opportunity and not taking advantage of an opportunity. The Respondents were legally represented. The law and modern practice of the Tribunal is clear from the 1964 Act, the 1977 Rules, and the decided cases. These decisions are readily available. They also are digested in the Bulletin of NI Law *SLS* and indexed in the Table of Cases on the Lands Tribunal website. They include a number of cases on costs and costs under the 1978 Order in particular. There was no evidence of the Tribunal in recent times having awarding costs otherwise than as a result of the making of an application and, if made, after having heard the parties. In the view of the Tribunal the Respondents had ample opportunity to apply for their costs at the time of the Part 1 Decision but did not do so. They may have had a

16. The Tribunal is not persuaded that once the Registrar's Order is perfected and the time for an appeal expired it has any power to re-open the issue of costs. But even if it were wrong in that it would not be inclined to do so. Mr Maunsell had the opportunity but did not take the proper steps at the proper time. Parties are entitled to finality and it would not be proportionate and would not be consistent with the right to a fair trial within a reasonable period to re-open the issue of costs such a long time after the determination of a case. Mr Sharpe added that his clients would be severely prejudiced if the issue were re-opened as one of the considerations in the Applicants decision not to appeal the Part 1 Decision was that there was no award of costs against them.
17. The Application is refused.

**ORDERS ACCORDINGLY**

**30<sup>th</sup> June 2005**

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

**Appearances:**

**Mr D R K Sharpe BL instructed by Diamond Heron, solicitors appeared for the applicants.**

**Mr C Maunsell, Solicitor, appeared for the respondents.**