

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

**IN THE MATTER OF A REFERENCE**

**R/38/1988**

**BETWEEN**

**HUGH H ECCLES, HUGH W P ECCLES, CHRISTINE J M THOMPSON,  
DIANA R C ELLERY AND THOMAS N PILSWORTH, EXECUTOR OF  
MRS MARGARET E PILSWORTH (DEC'D) - CLAIMANTS**

**AND**

**THE NORTHERN IRELAND HOUSING EXECUTIVE**

**Lands Tribunal for Northern Ireland - The President, Judge R T Rowland QC  
and Mr A L Jacobson FRICS**

**Belfast - 9<sup>th</sup> June 1989 and 19<sup>th</sup> January 1990**

This reference comes before the Tribunal for the determination of a preliminary point of law arising from a claim for compensation for compulsory acquisition by the Northern Ireland Housing Executive of nine dwelling houses in Coleraine. The question is whether the measure of compensation should be based on the site value, cleared of houses, or whether it should be based on the value of the houses acquired each of which was allegedly subject to a protected tenancy. The Tribunal is asked to decide the correct method of proceeding, thereafter leaving the expert witnesses to agree, if possible, the amount of compensation prior to a plenary hearing. The determination of the Tribunal is to be based upon the following agreed facts:-

1. In 1984 the Northern Ireland Housing Executive ("NIHE") proposed to carry out certain redevelopment works in Coleraine in pursuance of their statutory powers. Part of the redevelopment area consisted of 9 houses in Park Street, Coleraine viz: Nos 5, 7, 9, 11, 13, 15, 17, 19 and 21 (herein called "nos 5 to 21"), which are situated just off Church Street near to the Diamond. They had been deteriorating gradually over a period of years and the time had come to redevelop the area.
2. In February and March 1983 Closing Orders had been made in respect of each of the houses, and the occupiers were rehoused as follows:-

No 5 on 20<sup>th</sup> February 1983: Occupier rehoused on 9<sup>th</sup> July 1984  
 No 7 on 25<sup>th</sup> July 1983: Occupier rehoused on 19<sup>th</sup> September 1983  
 No 9 on 2<sup>nd</sup> March 1983: Occupier rehoused on 26<sup>th</sup> September 1983  
 No 11 on 2<sup>nd</sup> March 1983: Occupier rehoused on 12<sup>th</sup> December 1983  
 No 13 on 2<sup>nd</sup> March 1983:  
 No 15 on 21<sup>st</sup> February 1983: Occupier rehoused on 31<sup>st</sup> October 1983  
 No 17 on 21<sup>st</sup> February 1983: Occupier rehoused on 19<sup>th</sup> September 1983  
 No 19 on 21<sup>st</sup> February 1983: Occupier rehoused on 2<sup>nd</sup> January 1984  
 No 21 on 21<sup>st</sup> February 1983: Occupier rehoused on 5<sup>th</sup> August 1984

3. On 27<sup>th</sup> June 1984 NIHE declared Nos 5 to 21 (along with other houses not material for present purposes) to be a Redevelopment Area under its statutory powers.
- 0 4. On 1<sup>st</sup> February 1985 NIHE gave notice of an application for a vesting order for the said lands and buildings.
5. On 11<sup>th</sup> February 1985 NIHE made a Declaration of Unfitness order in respect of each of the houses which order was subsequently confirmed by the Department of the Environment for Northern Ireland ("DOE") on 10<sup>th</sup> January 1986.
6. On 27<sup>th</sup> September 1985 NIHE approved and confirmed the Redevelopment Area.
7. The Vesting Order was made by the DOE on 16<sup>th</sup> September 1985 and it became operative on 1<sup>st</sup> November 1985. It is agreed that this is the date at which compensation is to be assessed.

The agreed facts relating to the occupancy of the houses are as follows:-

8. Houses Nos 5, 7, 9, 15, 17 and 19 Park Street, Coleraine had been occupied by virtue of Agreements made between the Landlord and each occupier: All agreements are in identical terms namely:
  - "1. The Employers being the lawful owners of the dwelling house known as No Park Street, Coleraine aforesaid have agreed to let the Caretaker into possession of the said dwelling house as Caretaker.

2. During her term of residence in the said premises the Caretaker will keep the same in such state of repair and condition as same now are.
  3. The Caretaker shall pay and discharge all rates payable in respect of the said premises for the period she is in occupation.
  4. The Caretaker will not in any circumstances part with the possession of or sublet the premises or any part thereof or take in any lodgers.
  5. It is mutually agreed that the agreement hereby created may be determined by either party giving to the other one month's notice in writing to that effect."
9. No person who entered into any of the aforesaid agreements had ever previously occupied the houses.
10. Each occupier completed claims to Northern Ireland Housing Executive for Disturbance Payments in 1984. On claim forms each occupier indicated capacity in which he considered he occupied the premises. The claims are tabulated below:-

<b>Premises</b>	<b>Occupier</b>	<b>Capacity</b>	<b>Date</b>
5 Park Street	A M Conley	Caretaker	09.07.1984
7 Park Street	N Moffat	Caretaker Tenant	09.10.1983
9 Park Street	J Thompson	Caretaker Tenant	26.09.1983
11 Park Street	J Gilmour	Tenant	14.12.1983
13 Park Street	M Steele	Tenant	01.04.1984
15 Park Street	M A L Hamill	Tenant	03.01.1984
17 Park Street	T Dysart	Tenant	19.09.1983
19 Park Street	S Doherty	Tenant	06.01.1984
21 Park Street	R Edgar	Tenant	20.08.1984

11. It is common case that there were two protected tenancies viz No 11 Park Street where no caretaker was let into occupation. Also the protected occupier of No 13 Park Street went to Scotland and no caretaker was let into occupation.

Thus Counsels' submissions in relation to the measure of compensation are confined to Nos 5, 7, 9, 15, 17 and 19 Park Street respectively.

The statutory provisions for determining questions of compensation are contained in the Land Compensation (NI) Order 1982 ("the 1982 Order") and the Housing (Northern Ireland) Order 1981 ("the 1981 Order").

Article 3:-

"Where by or under any statute (whether passed or made before or after the making of this Order) land is authorised to be acquired compulsorily, -

- (a) any question of disputed compensation; and
- (b) where any part of the land to be acquired is subject to a lease which comprises land not acquired, any question as to the apportionment of the rent payable under the lease;

shall be referred to and determined by the Lands Tribunal."

Article 6(2):- "In assessing compensation to be paid in respect of the compulsory acquisition of any land no account shall be taken -

- (d) in a case where, on the date on which the vesting order was made, the land is subject to a tenancy or would have been subject to a tenancy if the tenant had not given up occupation of a dwelling as mentioned in Article 30(3) of the Land Acquisition and Compensation (Northern Ireland) Order 1973, of any increase or diminution in the value of the land which is attributable to, or to the prospect of, the tenant giving up possession;"

Article 13

"(1) In a case where -

- (a) the interest to be compulsorily acquired for purposes which involved the carrying out of proposals of the acquiring authority for development of the land in which the interest subsists or part of it; and
- (b) on the date on which the vesting order becomes operative there is not in force planning permission for that development, it shall be assumed that planning permission would be granted in respect of that land or that part of it, as the

case may be, such as would permit development of it in accordance with the proposals of the acquiring authority."

Because the nine houses, the subject matter of this reference, are nine unfit dwellings on a site which forms part of an approved re-development scheme the following provisions of the 1981 Order are relevant:-

#### Article 91

"(1) Where land included in an approved redevelopment scheme or in a housing action area includes land which comprises a house which is unfit for human habitation and is not capable at reasonable expense of being rendered fit for human habitation, the compensation to be paid in respect of the compulsory acquisition of the land comprising such house shall, subject to the following provisions of this Article, be the value, at the date of the acquisition, of the land as a site cleared of buildings and available for development in accordance with the requirements of the building regulations for the time being in force."

"(2) the compensation to be paid in accordance with paragraph (1) in respect of the compulsory acquisition of any land, including the buildings thereon, shall, subject to paragraph (3), not exceed the compensation which would have been payable if paragraph (1) had not applied to the acquisition; and, for the purposes of this paragraph, the amount of the compensation to be paid in accordance with paragraph (1) shall be deemed to include the amounts, if any, of any payments made or which fall to be made in respect of any house on that land under this Chapter."

#### The Land Acquisition and Compensation (Northern Ireland) Order 1973

##### Article 30(3)

"For the purposes of this Article a person shall be deemed to have been displaced from a dwelling in consequence of the compulsory acquisition of an interest therein ..... if, after the notice of application for, or the notice of intention to make, a vesting order in respect of that interest has been published ..... but before such an order becomes operative, he gives up occupation of the dwelling by arrangement with the Housing Executive or with the authority proposing to acquire the dwelling compulsorily".

Paragraphs (3A) and (3B) were subsequently added by Statutory Instruments in 1976 and 1977 and became as follows:-

"(3A) For the purposes of this Article a person shall not be treated as displaced from a dwelling in consequence of the acceptance of an undertaking or the carrying out of any improvement to the dwelling unless he is permanently displaced from it in consequence of the carrying out of the works specified in the undertaking or, as the case may be, of the improvement in question.

(3B) For the purposes of this Article a person shall be deemed to have been displaced from a dwelling in consequence of the making of a housing order in relation thereto if -

- (a) the Housing Executive is satisfied that the dwelling is unfit for human habitation and is not capable at reasonable expense of being rendered so fit; and
- (b) the person vacating the dwelling gives up occupation by arrangement with the Housing Executive."

Mrs Dinsmore, of Counsel, (for the Claimants) submitted as follows:-

1. The fundamental basis of compensation in this case is "the amount which the land if sold in the open market by a willing seller might be expected to realise". Article 6: Rule 2: 1982 Order.
2. Where, as here, the houses are 'unfit' houses the appropriate measure of compensation is the cleared site value of the property for commercial and residential use. Article 91(1) of the 1981 Order which is itself circumscribed by the provisions of Article 91(2)
3. Article 91(2) provides that the amount of compensation payable under 91(1) shall be deemed to include the amounts, if any, of the payments which fall to be made in respect of any house on the land. This, in effect, means that the true measure is open market value provided it is less than cleared site value.
4. The cleared site value encompasses commercial and residential use because

- (a) All the houses were vacant at the Vesting Order date;
  - (b) There was outline planning permission for ground floor shops and dwellings above; this permission expired on 11<sup>th</sup> February 1982;
  - (c) But the DOE had already vouchsafed that permission in the event that the proposed re-development by NIHE did not proceed. See the DOE's letter dated 7<sup>th</sup> February 1982;
  - (d) The location of the Park Street site close to the Diamond, Coleraine indicated a demand for shops.
5. Article 6(2)(d) of the 1982 Order, if it applies, enjoins that any increase (or decrease) in the value of the land which is attributable to the tenant giving up possession (if the land were let) is to be disregarded if the tenant did not give up occupation of the dwelling as mentioned in Article 30(3) of the 1983 Order.
6. Article 6(2)(d) does not apply to the present case because:-
- (i) There were no tenants in occupation at the date of the Vesting Order.
  - (ii) The protected tenancies of each of the 9 houses were no longer in existence; these had been effectively terminated by the prior closing orders. See Article 45 of the 1981 Order.
  - (iii) After the closing orders had been made those houses which thereafter were held under "caretaker agreements" had ceased to be subject to them by the time the vesting order was made.
  - (iv) In any event, the legal effect of the caretaker agreements was to create a mere licence, not a tenancy, such licence being expressly revocable on one month's notice.  
Street v Mountford [1985] AC 809  
Sec 3 of Deasy's Act 1860
  - (v) For the purposes of Article 6(2)(d) of the 1982 Order none of the subject houses was held under a tenancy. Therefore the Article does not apply.

7. Article 6(2)(d) aforesaid mentions the tenant having "given up occupation of a dwelling as mentioned in Article 30(3)" of the 1973 Order. This latter Article envisages a person giving up occupation after the notice of application for a vesting order b
8. The result is that when claimants contend for cleared site value they are not seeking any increase in the value of the land in the circumstances envisaged by Article 6(2)(d).
9. Article 6(2)(a) of the 1982 Order provides that no account shall be taken of any depreciation in the value of the land which is "attributable to the carrying out, or the prospect of carrying out, of so much of any development on the land ... which has been or is being or is proposed to be acquired for the purposes of the scheme ..... as would not have been likely to have been ... carried out if the acquiring authority did not propose to acquire that land."

But in the present case there was outline permission for commercial purposes and that outline permission would have been renewed had a further application been made. The reason it was not made was the clear indication of the impending scheme by a housing authority with compulsory powers of acquisition. It therefore cannot be said that development of the land taken would "not have been likely". Article 6(2)(a) gives statutory recognition to the principle established by the decision of the House of Lords in Point Gourde Quarrying Ltd v Subintendant of Crown Lands [1947] AC 565.

10. None of the occupancy agreements was a sham. In each case the agreement was for a licence not a tenancy for the following reasons:-
  - (i) The intention of the parties was clear on the face of the written agreements.
  - (ii) No rent was payable for the occupation.
  - (iii) The term "Caretaker" was expressly used.
  - (iv) The repair obligation was minimal - they were unfit houses in a poor state of repair.
  - (v) No fixed period was stipulated in the agreements.
  - (vi) No assignable interest was conferred merely a personal right.

- (vii) Express provision was made for determining the licence - one month's notice.
- (viii) Neither the owner nor the occupier had, by their conduct, treated the occupancy as a tenancy. The occupiers did vacate when required. The houses were in fact vacant.

She referred to:-

Tubman v Department of Environment (R/30/1980) Tribunal Decision

Section 3 of Deasy's Act

Halsbury's Laws: 4<sup>th</sup> Edition: Volume 27: Paragraph 6

Shell Mex and BP Ltd v Manchester Garages Ltd [1971] 1 All ER 841

Street v Mountford [1985] 2 All ER 289

Mr Millinson, of Counsel, (for the Respondent) submitted:

- (i) It is agreed that the 1982 Order contains the relevant provisions for determining questions of compensation.
- (ii) The claimant is not entitled to enrich himself at the expense of NIHE in carrying out its statutory functions of making Closing Orders and its statutory right to rehouse the occupiers.
- (iii) Article 6(2)(d) of the 1982 Order is crucial. He relied on the words "would have been subject to a tenancy if the tenant had not given up occupation ....." Here, the tenant would not have given up occupation but for the Closing Orders as contemplated by Article 30(3) of the 1973 Order. Therefore there is to be no increase or diminution in the value of the land.
- (iv) Article 30(3B) of the 1981 Order deems that displacement from a dwelling house occurs if the dwelling is unfit and if the occupier gives up occupation by arrangement with NIHE.
- (v) The result of this is that what is being acquired are houses each of which was subject to a protected tenancy and it is on that basis that compensation falls to be assessed.

- (vi) Article 30(3B) of the 1981 Order has common ground with Article 6(2)(d) of the 1982 Order because the latter clearly contemplates a tenant giving up occupation of a dwelling and each of the three circumstances postulated in Articles 30(3), 30(3A) and 30(3B) also contemplate a tenant giving up occupation.
- (vii) The claimant has argued that no such phrase as "as amended" has been added to Article 30(3); but that is not necessary under the ordinary rules of statutory interpretation. Article 30(3) as originally enacted put compulsory purchase and housing orders made in relation thereto in the same context.
- (viii) A caretaker tenancy is a form of licence; but at the termination of a protected tenancy the person who was then the protected tenant immediately before the termination becomes a statutory tenant.

See Articles 4 and 5 of the Rent (Northern Ireland) Order 1978

- (ix) In determining whether an agreement is a tenancy or a licence 'labels' are not conclusive - they are only of assistance. It is the substance of the agreement that has to be determined according to law. The claimants rely on 'labels' rather than substance.
- (x) Under Deasy's Act a tenancy is created by contract. When the occupiers applied for disturbance compensation to the Northern Ireland Housing Executive they did so as tenants - which is what they regarded themselves.
- (xi) The agreements, dating between 1970 and 1981, were all before the making of the Closing Orders.
- (xii) Looking at the terms of the agreements the substance is that of landlord and tenant relationship. In Clause 2 the words "during her term of residence" is not conclusive against a tenancy. Addescombe Garden Estates Ltd v Crabbe [1957] 3 All ER 563.

In Clause 4 the "caretaker" is enjoined not to "sub-let". How can a permissive occupier sub-let? The expressions "sub-let" and "let the caretaker into possession" obviously indicated a lessor/lessee relationship.

Clause 5 provides for one month's notice to quit a classic monthly tenancy.

- (xiii) Regardless of motive what has been done is to create a tenancy with exclusive possession to the occupier. Each of the five agreements are consistent with a tenancy. The Shell Mex and BP case (where the agreement was held to be a licence) is distinguishable on the grounds that the landlords had the right to go into the premises as and when they required. There is no such right here. He referred to Megarry and Reid 4<sup>th</sup> Edition page 477.
- (xiv) Application for disturbance payments clearly point to tenancies.

Mrs Dinsmore in reply, submitted:-

- (1) The respondent's argument on the measure of compensation cannot apply to any of the properties where there are caretakers (Nos 5, 7, 9, 15 17 and 19 Park Street) because these were subject to mere licenses and not tenancies. Only nos 11 and 21 were protected tenancies. No 13 was a protected tenant but went to Scotland and was not re-housed.
- (2) The caretaker agreements were made in or around 1977 and the Closing Orders in 1983.
- (3) The repair covenants in the Addiscombe case were clearly different from the covenant in the caretaker agreements.
- (4) All the evidence here points to an intention to create a mere licence - not a tenancy. The Lands Tribunal decision in Tubman is similar in a number of aspects. There despite the existence of a rent book and regular payments of money, the agreement was held to be a licence. Here, the agreement confers a personal right of residence and the giving of one month's notice to terminate the occupancy and so allow the owner back into possession. The statutory tenants had long left and the new occupiers were caretakers and both parties knew that was the intention.
- (5) As to the measure of Compensation Article 6(12)(d) of the 1982 Order did not, and cannot, incorporate Article 30(3B) of the 1981 Order.

Articles 30(3A) and 30(3B) deal with entirely different topics.

## **DECISION**

Article 6(1) of the 1982 Order requires that compensation in respect of any compulsory acquisition of land shall, subject to the provisions of the Order be taken to be the open market value of the land - in this case of numbers 5 to 21 Park Street.

The assumptions as to the planning permissions which are to be taken into account are to be found in Articles 12 and 13 of the 1982 Order. In this case there are two such assumptions to be made viz;

- (a) under Article 13(1) of the 1982 Order as if a planning permission had been granted for the housing development for which the Northern Ireland Housing Executive had acquired the land, and
- (b) The likelihood that in the absence of housing, permission for commercial development was a probability. Although the Lands Tribunal cannot take into account the Outline Planning Permission for retailing on the ground floor with a minimum of eleven dwelling units which had expired on 11<sup>th</sup> February 1982 prior to the operative date (1<sup>st</sup> November 1985) of the vesting order, nevertheless the Department of the Environment for Northern Ireland, by letter of 7<sup>th</sup> February 1986 told the Claimants "In the absence of the proposed redevelopment of the site for housing it is likely that your client' proposal would again receive sympathetic consideration". The Tribunal must take into account that, in what is colloquially called the "non-scheme world" there is a probability that an application for the same (or similar) development would receive planning permission.

However that is not the end of the matter for there are nine unfit dwellings on the site which forms part of an approved Redevelopment Scheme. Article 91 of the 1981 Order amends the base for compensation to a cleared site on the assumption that the houses are demolished. Article 91(1) adds compliance with the requirements of the building regulations for the time being in force. No argument was addressed to the Lands Tribunal that the building regulations have such effect on development that market value is affected. The Claimants rightly conceded that the cost of demolition and clearing the site must be deducted from the calculated open market value of the site.

Article 91(2) provides a ceiling value for compensation. The open market value of the buildings and land as they existed (but with the same planning assumptions as above) is then contrasted with the open market value of the cleared site (as above).

The lower of the two values is payable as compensation. In this case there are no "well-maintained" payments to be taken into account and the open market value of the cleared site would exceed the open market value of the houses and land by the cost of demolition and clearing. Thus the Claimants' concession that the cost must be deducted is a proper concession.

However the estimate of open market value of the buildings and land under Article 91(2) of the 1981 Order is further complicated by Article 6(2) of the 1982 Order which requires no account shall be taken "of any increase or diminution in the value of the land which is attributable to, or to the prospect of, the tenant giving up possession" where "the land is subject to a tenancy or would have been subject to a tenancy if the tenant had not given up occupation of a dwelling as is mentioned in Article 30(3) of the Land Acquisition and Compensation (Northern Ireland) Order 1973" at the date at which the vesting order was made. The Respondent has strongly contended that Article 30(3) applies to these tenants who had given up occupation.

But the facts show that all the houses were vacant by the 5<sup>th</sup> August 1984 at the latest. The vesting order was made on 16<sup>th</sup> September 1985 and became operative on 1<sup>st</sup> November 1985. The notice of application for a vesting order was on 1<sup>st</sup> February 1985. None of the houses became vacant after 1<sup>st</sup> February 1985 and so Article 30(3) does not apply.

Article 30(3A) and 30(3B) were added to the Land Acquisition and Compensation (Northern Ireland) Order 1973 by Statutory instruments in 1976 and 1977 and the Respondent submits that both paragraphs together with Article 30(3) are to be construed as being incorporated in Article 6(2)(d) of the 1982 Order. The Respondent relies on Article 30(3B) ie that the persons are deemed to have been displaced from the dwellings because they vacated the dwelling by arrangement with the Northern Ireland Housing Executive. If the Respondent is correct then compensation is limited to the value of the Park Street houses (apart from No 13) in each case subject to the house being occupied by a protected tenant (subject also to a Closing Order).

The Tribunal does not accept that statutory interpretation for the following reasons:-

1. Article 30(3) (as amended by SI/1977 No 597 (NI8)) is incorporated in Article 6(2)(d) of the 1982 Order.
2. If Article 30(3B) is incorporated then so is Article 30(3A). But Article 30(3A) cannot be read in conjunction with Article 6(2)(d) of the 1982 Order so as to make any sense.
3. The common ground between Article 30(3) and Article 6(2)(d) of the 1982 Order is the compulsory purchase of an interest in a building. There is no such common ground between Article 30(3B) and Article 6(2)(d) of the 1982 Order. There is no mention of compulsory purchase in Article 30(3B).
4. Article 30(3), Article 30(3A) and Article 30(3B) are part of Part IV of the Land Acquisition and Compensation (Northern Ireland) Order 1973. Part IV deals with the provisions for the benefit of persons displaced from land and Article 30 deals with the right to "home loss payment" where a person is displaced from a dwelling. All three paragraphs clarify who is or is not to be granted such a home loss payment.
5. Article 30(3A) and Article 30(3B) were added to the Land Acquisition and Compensation (Northern Ireland) Order 1973 some five years prior to the 1982 Order being enacted, but those two paragraphs are not specifically mentioned in Article 6(2) of the 1982 Order, a significant omission if they are to be held as having been incorporated in Article 6(2)(d) of the 1982 Order.
6. If it had been intended that Article 30(3A) and Article 30(3B) were to be interpreted as part of Article 30(3B) it would have required a partial renumbering eg Article 30(3) would have become Article 30(3)(a) and the two added paragraphs (b) and (c) respectively.

The Tribunal therefore holds that correct basis for assessing compensation in this case is by assessing two open market values viz:-

- (a) the open market value of a cleared site in accordance with Rule 2 of Article 6 of the 1982 Order and Article 91(1) of the 1981 Order; and
- (b) the open market value of the vacant houses and their sites in accordance with Rule 2 of Article 6 of the 1982 Order and Article 91(2) of the 1981 Order.

The lesser of the two values is the compensation to be paid for the compulsory acquisition of Nos 5 to 21 Park Street (inclusive).

That is sufficient to dispose of the matter but a further question was raised as to whether the persons granted occupation of Nos 5, 7, 9, 15, 17 and 19 Park Street respectively were licencees or tenants.

A number of authorities were mentioned to the Lands Tribunal but the House of Lords case of Street v Mountford [1985] 2 All ER 289 may be taken as the starting point. In that case Lord Templeman criticised the reasoning of Slade LJ in the Court of Appeal as follows:-

"Slade LJ proceeded to analyse all the provisions of the agreement, not for the purpose of deciding whether his finding of exclusive possession was correct but for the purpose of assigning some of the provisions of the agreement to the category of terms which he thought are usually to be found in a tenancy agreement and of assigning other provisions to the category of terms which he thought are usually to be found in a licence".

Lord Templeman made it clear from his speech that he regarded it permissible to construe an agreement dealing with the occupation of property only for the purpose of determining whether it confers exclusive possession upon the occupier.

In analysing this caretaker agreement the intention is clear on the face of it namely to create a caretaker occupancy. Clause 1 did not let the premises to the person but let him into possession as a Caretaker. No rent was payable, although rates were to be paid by the Caretaker for the period of occupation whereas normally the owner is responsible for rates when a Caretaker is in occupation. There is no fixed period such as week to week or month to month and there is no assignable interest conferred. The Tribunal considers that it was merely a personal right - the Caretaker merely to occupy the house to ensure that there was no further deterioration or vandalism. The one month's notice to determine the occupation when viewed with the other clauses of the agreement does not indicate exclusive possession but it enables the owner to obtain possession whenever he so desired.

Lord Templeman observed that while the fact of exclusive possession is important, it is still not decisive:-

"An occupier who enjoys exclusive possession is not necessarily a tenant. He may be an owner in fee simple, a trespasser, a mortgagee in possession, an object of charity or a service occupier. To constitute a tenancy the occupier must be granted exclusive possession for a fixed periodic term certain in consideration of a premium or periodical payments. The grant may be express, or may be inferred where the owner accepts weekly or other periodical payments from the occupier".

The Tribunal finds that the agreement does not create a tenancy. The parties agree that the agreement is not a sham. The occupier was allowed to occupy the property as a Caretaker.

Those Caretakers were rehoused by the Northern Ireland Housing Executive from the houses numbered 5, 7, 9, 15, 17 and 19 Park Street. Article 30(3) of the Land Acquisition and Compensation (Northern Ireland) Order 1973 would still apply to Caretaker occupation in that it refers to "a person deemed to have been displaced from a dwelling" if "he gives up occupation of the dwelling by arrangement with the Housing Executive". But that must have taken place "after the notice of application for, or the notice of intention to make, a vesting order in respect of that interest has been published". (Article 30(3) of the 1973 Order.)

None of this alters the finding of the Tribunal as set out above as to the correct basis for compensation.

#### **ORDERS ACCORDINGLY**

**8<sup>th</sup> March 1990**

**The President, His Honour Judge R Rowland QC  
and Mr A L Jacobson FRICS  
Lands Tribunal for Northern Ireland**

#### **Appearances:**

**Mrs Margaret Ann Dinsmore of Counsel (instructed by Messrs Wray & Baxter, Solicitors) for the Claimants.**

**Mr Chris Millinson of Counsel (instructed by Messrs Anderson & Co, Solicitors) for the Respondent.**