LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964

PROPERTY (NORTHERN IRELAND) ORDER 1978

IN THE MATTER OF A REFERENCE

R/41/2006

BETWEEN

EASTONVILLE TRADERS LIMITED

AND

MARGARET L GILLESPIE & OTHERS

Re: Holborn Avenue, Bangor

Part 2

Lands Tribunal - Mr M R Curry FRICS IRRV MCI.Arb Hon.Dip.Rating Hon.FIAVI

Background

1) Much of the background is set out in the Decision R/41/2006 of 26th September 2007 ("the Part 1 Decision"). The Tribunal here generally uses the same terminology - the Hall land and the Gillespie land are described in the Part 1 Decision. In summary, some 25 years ago there was a dispute between neighbours - the Trustees of Holborn Hall ('the Trustees') and the Respondents ('the Gillespies') and their tenants which was settled. Now there is a new dispute on related matters. The Trustees' successors in title, the Applicant ('Eastonville') has obtained planning permission following an appeal to the Planning Appeals Commission for construction, on the Hall land, of a housing scheme in two three storey blocks of 14 new build apartments for the elderly ('the Eastonville scheme').

2) In Part 1 the issue before the Tribunal was the preliminary question as to whether or not the terms of settlement of the 18th of December 1994 ('the 1994 agreement') impede Eastonville's current development proposals. The Tribunal concluded that, to an extent, it did. In light of that Decision, Eastonville seeks modification of the 1994 Agreement, with regard to the shared passage at the entrance only.

3) Article 5 of the Property (Northern Ireland) Order 1978 ('The Property Order') gives a power to the Tribunal to modify or extinguish impediments. Article 5(5) of the 1978 Order sets out the matters to be taken into account in determining whether an impediment affecting any land ought to be modified or extinguished. The factors are set out below to emphasise that the approach of the Tribunal is based on all of these factors, to the extent that each is relevant.

The Tribunal accepts that no single factor is a trump card. Also they are not watertight compartments - particular matters may overlap or be appropriately considered under different headings and so the Tribunal does not find it necessary to expressly allocate them to any particular heading.

"… the Lands Tribunal shall take into account—

(a) the period at, the circumstances in, and the purposes for which the impediment was created or imposed;

(b) any change in the character of the land or neighbourhood;

(c) any public interest in the land, particularly as exemplified by the regional development strategy formulated under Article 3 of the Strategic Planning (Northern Ireland) Order 1999 or by] any development plan adopted under Part III of the Planning (Northern Ireland) Order [1991] for the area in which the land is situated, as that plan is for the time being in force;

(d) any trend shown by planning permissions (within the meaning of that Planning Order) granted for land in the vicinity of the land, or by refusals of applications for such planning permissions, which are brought to the notice of the Tribunal;

(e) whether the impediment secures any practical benefit to any person and, if it does so, the nature and extent of that benefit;

(f) where the impediment consists of an obligation to execute any works or to do any thing, or to pay or contribute towards the cost of executing any works or doing any thing, whether the obligation has become unduly onerous in comparison with the benefit to be derived from the works or the doing of that thing;

(g) whether the person entitled to the benefit of the impediment has agreed either expressly or by implication, by his acts or omissions, to the impediment being modified or extinguished;

(h) any other material circumstances."

4) The shared passage provides vehicular and pedestrian access to both the Hall and Gillespie lands. At paragraph 33 of the Part 1 decision, the Tribunal concluded that

"Having regard to the dispute that the 1994 Agreement was intended to resolve, the Tribunal concludes that the intention of the parties was to license shared, reciprocal access over the length and full breadth of the passage on which the lines were to be painted. The Tribunal has the impression that the arrangement would allow one service vehicle to pass another at the passage. But, after development on either option, there would be just sufficient for two cars or a car and service vehicle to pass. That is a significant difference in facility."

5) The shared passage ('the 1994 Scheme') is just over 6.0 metres wide and about 12.5 metres long. Eastonville put forward proposed access provisions in a drawing SK41 ("Scheme SK41"). This was a revision of the scheme put forward at the time of the Part 1 Decision. The effect would be that the shared passage would be changed so that it still would be narrower (about 5.0 metres) for the rear 8 metres but splay out, over the front 4.5 metres, to be slightly wider than the 1994 Agreement scheme at its junction with the back of the pavement at Holborn Avenue.

6) The Gillespies hold the lessor's interest in a Lease dated 19th March 1894 between Robert Edward Ward of the one part and Robert Eugeune Sparks, Robert McClay and William Henry McLaughlin of the other part ("the 1894 Lease"). The application also includes modification and/or extinguishment of impediments contained therein and affecting the Hall land:-

   "[the Lessee] …. will not save as hereinafter provided during the said term erect or suffer to be erected upon the said demised Premises, any Building whatsoever, except the said Mission Hall and such conveniences as may be required in connection therewith…"

   and

   "PROVIDED ALWAYS … the Lessees are to be at liberty if at any time during the continuance of this demise the Mission Hall should be ceased to be used as such to remove the same and erect two Dwelling Houses with suitable offices out houses and conveniences in lieu thereof on such sites and in accordance with such plans elevations sections conditions and specifications as shall be previously approved of in writing by and in all respects to the satisfaction of the Architect or Agent for the time being of the Reversioner or Reversioners and so that such Dwelling Houses when completed shall be of such value as to be valued under the Acts of Parliament for the time being in force for the valuation of the rateable property in Ireland each of an annual value of not less than £15.00"

7) Most of the Gillespie land is occupied by Dignity Funeral Services Limited ['Dignity']. The building thereon is a former warehouse that has been converted for use as a funeral parlour with ancillary uses. The lease to Dignity is for the term of 15 years from the 1st of June, 1996. Dignity also uses the car parking spaces located to the rear of the mission hall site. If, at the end of its term, Dignity elects not to renew its lease, the Gillespies may have to find a tenant for a different use or consider redevelopment. An indicative scheme for apartment development was produced.

8) The Gillespies also own adjacent properties, number 6 Holborn Avenue, a dwelling that is occupied by Richard Gillespie and adjoining the shared passage; 18 Holborn Avenue; and property at 87 High Street.

9) At the direction of the Tribunal (see 12 below), the architects met and produced a revised design for access. This was set out in a drawing SK43 ("Scheme SK43"). The effect would be that a revised right of way, 6.0 metres wide, would run all the way from the junction with Holborn Avenue to the entrance to the funeral parlour. They agreed that this would provide a more manageable access through the site for both parties. However, it would require the footprint of the Eastonville building design to be stretched and that in turn would require a 'land swop' between the Gillespies and Eastonville; a redesign of the housing scheme; and a new planning application. The latter could be determined promptly under newly introduced 'non-contentious guidelines'.

Procedure

10) Written and oral expert evidence was received from:
- Mr Charles Ballantyne and Mr Michael Whitley – architects; and
- Mr Kenneth Crothers and Mr Brian Patterson – chartered surveyors.

Oral evidence was received from:
- Mr McBratney, a Director of Dignity Funeral Services;
- Mr William Vincent Gillespie; and
- Mr Richard Gillespie.

11) Post hearing, written submissions were received from Mark T Horner QC and Colin Henry BL.

12) The Tribunal then asked:
   a) whether a "new entrance" as illustrated in the SK41 scheme would require statutory approval;
   b) in regard to future redevelopment on the Gillespie land, how the SK41 scheme would compare with the 1994 agreement scheme; and
   c) whether a variation of the SK41 scheme, perhaps coupled with ancillary amendment of the 1994 agreement in regard to use and layout of adjoining space, would be more likely to receive statutory approval.

The Tribunal directed that the architects (or, if appropriate, other experts) should meet, discuss these issues and report. The architects did meet and the parties agreed that the Tribunal receive, as evidence, the agreed minute of the meeting and also a variation of the SK41 Scheme illustrated in Drawing SK43.

13) If the Tribunal were to consider modification so as to permit development in accordance with Drawing SK43 (Scheme SK43 as an alternative to Scheme SK41) that modification may, in

effect, include new impediments. The Tribunal invited Eastonville to say whether it would agree to such modification. It also invited either party, if it so wished to make further submissions on this or any other fresh material.

Positions of the Parties

14) The Gillespies opposed modification of the restrictions in the 1894 lease.

15) Mr Henry BL suggested the 1994 Agreement is outside the ambit of the Property Order. In the alternative if it is within the ambit, its circumstances and recency are material circumstances of great importance. Mr Horner QC suggested that any practical benefit would not be sufficient weight to justify the continuance of the restrictions without modification.

16) Eastonville would agree to modification in accordance with Scheme SK43 (as an alternative to Scheme SK41), but the Gillespies advised that there was no agreement between the parties on the associated land swop, which would be necessary, and the Tribunal has no power to order such a swop.

Discussion

The 1994 agreement and the ambit of the Property Order

17) The 1994 agreement was made by way of a Tomlin Order and thus became an Order of the Court, see Foskett, the *Law and Practice of Compromise* paragraph 9-29.

18) Mr Henry BL suggested that in the context of the Property Order the word instrument does not include a court order; Mr Horner QC suggested that it should be given its ordinary meaning.

19) Article 3(1) of the Property Order provides:

> "Subject to paragraph (2), the provisions of this Part apply to any of the following impediments to the enjoyment of land (whether the impediment exists at the commencement of those respective provisions or comes into existence thereafter, and whether the land affected by the impediment is registered or unregistered):
>
> (a) a restriction, whether general or specific, arising –
>
> (i) Under a covenant, condition or agreement contained or implied in a deed, will **or other instrument** (but not in a mortgage), …"
>
> Emphasis supplied.

20) Paragraph 140 of *Halsbury's Laws of England*, Volume 13 (2007 re-issue) states:

> "The word instrument as applied to a writing may have a still wider scope, and may include documents which affect the pecuniary position of parties although they do not

create rights or liabilities recognised in law; but usually it applies to documents under which some right or liability, legal or equitable exists."

21) Halsbury's also suggests that "in general the word ['instrument'] is not appropriate to describe an order of the court" and refers to Jodrell v Jodrell [1869] LR 7, EQ 461 in which Lord Romilly, M.R. determined that an order of Court is not an instrument within the meaning of the Apportionment Act 1834. But in Re: Holts Settlement [1968] 1 ALL ER 470 an arrangement coupled with the court's order was held to constitute an instrument within the meaning of the Perpetuities and Accumulations Act 1964. In Sun Alliance Insurance Limited v Inland Revenue Commissioners [1971] 1 ALL ER 135, in the context of the Stamp Act 1891, Foster J referred to these cases and concluded that both turned on the provisions of the particular Acts in question and had "no doubt that the court order is a written document and therefore, by definition, an instrument". In R v Sheffield City Council, ex-parte Parker [1994] 1FCR 383 it was held that in the context of the particular regulations, the expression "other instruments" was enough to include a court order whether made with or without the parties consent.

22) The Tribunal concludes that the 1994 court order is a written document and therefore, by definition, an instrument. In the view of the Tribunal the fact that the 1994 agreement was recorded in a court order does not exclude it from being an instrument within the ambit of the 1978 Order. Also, although it is not in the nature of a lease or contract for the disposal of or creation of interests in land, it is an agreement for access and use of land which affects the legal and equitable rights of not just the parties to the Agreement but also their successors in title and so, years later, the arrangements created by such agreements may become obsolete or unreasonable. Further, from time to time the Tribunal modifies court orders made by itself, usually to reflect changed development schemes and new planning permissions so, as a matter of practice, there is no absolute bar.

23) If the Tribunal were not cautious, interference with a court order could have an adverse impact on the settlement of litigation in land disputes as the prospect of any such intervention might impede resolution of such disputes in the future.

24) But the Tribunal should also take into account the policy objectives of the 1978 Order. Rather than petrify the 1994 agreement, the Tribunal prefers to accept that the 1994 Agreement should be treated as an 'instrument' for purposes of the 1978 Order. The circumstances and purposes of the agreement are matters to be taken into account under Article 5(5), but its status should also be reflected in a particularly careful scrutiny of all relevant matters. That should provide a sufficient safeguard without impeding the policy objectives of the 1978 Order.

Modification

25) Planning consent has been obtained so there is a presumption that the proposed development is reasonable.

26) The Tribunal accepts that some development on the Hall land might reasonably be expected to proceed, whether or not the Tribunal grants the modifications sought.

27) In regard to Scheme SK43, the Tribunal has no jurisdiction to compel a transfer of ownership. With regret, in the absence of agreement between the parties on the necessary land swop, the Tribunal concludes that it cannot order modification in accordance with that scheme.

28) Before considering the application for modification of the 1894 lease, the Tribunal considers modification of the 1994 Agreement.

Modification of the 1994 Agreement

29) The 1994 agreement is a compromise of a previous dispute. It includes, by provision for the painting of double yellow lines, a long term purpose of preventing obstruction of the shared passage by parked vehicles.

30) Under Article 5(2) of the 1978 Order, in relation to a lease, there is a requirement for leave to bring an application within 21 years of its commencement. Although the 1994 Agreement is not a lease, this case was brought within about 14 years of the 1994 agreement. Mr Horner QC accepted that recency could be taken into account but stressed that there was no legislative intention that permission was required in the case of any instrument other than a lease.

31) This is an opposed application for modification of an agreement that was made an order of the court.

32) In 1994 the shared passage was used in connection with a mission hall on the Hall land and a car showroom on the Gillespie land. Those uses would not imply that wider vehicles were actually using the passage on any regular basis. Circumstances that are relevant to the pattern of its use have changed - the mission hall has been demolished and the car showroom has become a funeral parlour. There have been other changes in the immediate area but not such as would be material to the proposed modification.

33) The whole Eastonville scheme was referred to and approved by the Planning Appeals Commission and therefore considered to be consistent with the public interest in the context of the North Down and Ards Area Plan 1984-1995 (the development plan in force at the time).

34) The Planning Appeals Commission also considered the draft Belfast Metropolitan Area Plan 2015 ('BMAP') and concluded that the Eastonville scheme would reflect its town centre location and the more general pattern of development.

35) It was suggested that the site access for the Eastonville scheme over the shared passage, as presented to and approved by the Planning Appeals Commission, could have been open to challenge. However there was no evidence of any challenge.

36) The Architects agreed that the SK41 Scheme would not require a new Planning application as it would be a minor alteration within the site. However it would be appropriate to send a copy of the relevant drawing, as an amendment, to the Planning Service for its files.

37) As a result of changes in society and demographic changes, there is an increased need for accommodation for the elderly in schemes such as the Eastonville scheme.

38) Mr Crothers and Mr Patterson agreed that the Gillespie land is severely circumscribed by location.

39) Although physical dimensions may affect practical benefits, it is the latter that must be considered.

40) In fact, on a regular weekly basis the shared passage is presently obstructed, without objection, by wheelie bins before and after bin collection.

41) The property is held as an investment by the Gillespies and the question of practical benefit must be considered:
   a) during the contractual term of the lease to Dignity;
   b) at the end of that lease; and
   c) after that period, if Dignity did not renew.

a) During the current Lease to Dignity

42) There was considerable debate about how different combinations of vehicles could manoeuvre in the passage and at the entrance. In comparison with the scheme outlined at the time of the Part 1 Decision, the shape and dimensions of the SK41 Scheme would be an

improvement as it should alleviate some potential congestion around the entrance. In comparison with the 1994 Agreement scheme, much of the shared passage would be narrower and two wider vehicles could not pass, except at the entrance. But Mr McBratney made no complaint about the proposed modified shared passage of the SK41 Scheme.

43) Mr McBratney did express concern that building work carried out in implementation of the Eastonville scheme would cause upset and annoyance to Dignity and its customers. But building work could be expected whether or not the 1994 Agreement were modified.

44) Dignity had been granted a right of way only over the passage that reflected the positions of the parties in 1993, i.e. only 3.7 metres wide as it was prior to the 1994 Agreement, so although Dignity actually has use in accordance with the 1994 Agreement, the SK41 scheme would not be an interference with that grant.

45) The Tribunal concludes that, in terms of practical benefit, the SK41 scheme alone, when compared with the 1994 Agreement, could have some slight adverse impact on Dignity's operations but there would be no adverse effect on the Gillespies during the current contractual term of the lease to Dignity.

b) At the end of the lease to Dignity

46) The contractual term of the Dignity lease ends in 2011. Dignity is a national company and its covenant as tenant of this property is of particular importance to the Gillespies - it adds substantial value as an investment.

47) Dignity will be free to consider whether or not to renew their lease. The Tribunal accepts that this would be a very difficult property to let on the open market and it would be important to try to retain the existing tenant. Any consequences of modification for this actual tenancy could be of considerable importance.

48) The prospect of disruption to its business from a scheme involving construction work on the Hall land is something that Dignity may be expected to take into account. Mr McBratney confirmed that. But the effect of the impediment does not include an absolute bar on construction work on the Hall land. That would not be prevented by the absence of modification in accordance with the SK41 scheme.

49) On lease renewal, Dignity's right of way could be extended so as to include the entire SK41 scheme. But that would be a paper benefit as Dignity actually has use in accordance with the 1994 Agreement.

50) Mr Patterson thought that the narrowing of the entrance would have a marginal effect but could be the “nail in the coffin”. The Tribunal accepts his observation that an existing tenant may have greater concern about change than someone fresh to the scene.

51) The Tribunal accepts that the most beneficial strategy for the Gillespies is to retain their property as an investment with Dignity as their tenant. It also accepts that the modification could be a factor in a decision about lease renewal by Dignity. But the likely extent of the impact on Dignity’s business firstly, must be considered in the context of the particular concerns expressed by Mr McBratney, and secondly, must be distinguished from the likely impact of some development, of the Hall land. Significantly, Mr McBratney made no complaint about the proposed modified shared passage of the SK41 Scheme. The Tribunal also accepts that, whether or not the Tribunal grants the modification sought, development on the Hall land might be expected. In Dignity’s decision whether or not to renew its lease, the provisions for access alone are likely to be much less important than the prospect of development on the Hall land.

52) The Tribunal concludes that the impact of the SK41 scheme alone at renewal time could have some adverse effect on the prospects of Dignity renewing its lease but, if so, it would be slight.

c) If Dignity vacated

53) If Dignity vacated, one option would be for a letting to another tenant but any such letting would likely be for a different use. The other option would be redevelopment.

54) The Tribunal was referred to *Development Control Advice Note 15 (2nd Edition) Vehicular Access Standards [DCAN 15]* which deals with intensification of use of existing accesses and new accesses. A significant intensification of use by traffic or substantial alteration of the existing access would have the potential of raising impossible requirements of greater width, radii, sight lines and adjusted gradient.

55) The Tribunal was also referred to *BMAP* and *Creating Places – achieving quality in residential development*. The guidance in *Creating Places* relating to shared surfaces refers in turn to *Traffic Advisory Leaflet 2/94* published by the Department of Transport in August 1994.

56) The architects agreed that the SK41 Scheme would not require a new Planning application as it would be a minor alteration within the site. If the Tribunal ordered modification of the 1994

agreement in accordance with the SK41 Scheme, it would direct that, as suggested by them, a copy of the relevant drawing, as an amendment, be sent to the Planning Service.

57) There were differences of opinion between the architects but they agreed that both a change of use and redevelopment would require planning consent. The threshold level at which development would be considered to result in an intensification of use by traffic of the existing access would be a matter for the statutory authorities but there is some degree of flexibility; DCAN 15 does allow for exceptions in order to secure important planning objectives. There was nothing before the Tribunal to suggest that the threshold of intensification would differ depending on whether an application was based on a change of use or on redevelopment.

58) There may be prospects for redevelopment of the Gillespie land based on a larger scheme in conjunction with land in others' ownership and with different or additional access points. But the Tribunal concludes, on the evidence received, that the degree of redevelopment relying only on access to Holborn Avenue would depend on the limitation imposed by the quality of that access and it would be essential to avoid any significant degree of intensification of use by traffic.

59) Mr Ballantyne produced an indicative scheme for housing with about 20 units on the Gillespie land. The Gillespie land is part of an area shown in *Map No. 31 Bangor Town Centre* as a development opportunity site in BMAP. The Hall land permission is a further positive indicator that approval for housing development might reasonably be expected.

60) From all the evidence the Tribunal concludes that, without intensification of use by traffic of the existing access, the maximum total number of housing units that would be permitted to be accessed is likely to be not more than around 25 units. If that capacity were to be shared, BMAP and the guidance would appear to indicate that a scheme for residential development, on both the Gillespie land and the Hall land with a dozen or so units on each, might reasonably be expected to be approved. That would broadly equate with and be compatible with the planning permission, on the Hall land, for the scheme of 14 apartments for the elderly.

61) The SK41 Scheme would be an improvement on what was contemplated at the time of the Part 1 Decision. However, the Tribunal is not persuaded that the difference between the SK41 Scheme and the 1994 Agreement scheme would have any significant effect on demand for the Gillespie land for an alternative use or for redevelopment.

62) The Tribunal is not persuaded that, in regard to either a change of use or redevelopment of the Gillespie land, adopting the SK41 Scheme rather than the 1994 Agreement scheme would make any significant difference to what would be permitted by the statutory authorities. Also, it is not persuaded that the difference between the SK41 Scheme and the 1994 Agreement scheme would have any significant effect on the market demand for the Gillespie land for an alternative use or for redevelopment in accordance with such statutory approvals.

63) The evidence was that this would be a very difficult property to let on the open market and, with the present state of the residential market, redevelopment is unlikely in the short term. This underscores the importance of retaining Dignity as a tenant.

Conclusions on modification of the 1994 Agreement.

64) Leaving aside the background to the 1994 agreement, the Tribunal concludes that it would be unreasonable if not modified. Social circumstances have changed since 1994 and there is an increased need for provision for the elderly. The SK41 Scheme is part of a scheme that is in the public interest, and consistent with the trend of planning permissions. In regard to practical benefit, disregarding as it must other consequences of development of the Hall land, the Tribunal concludes that the SK41 Scheme alone would make no difference to the Gillespies during the term of the current lease to Dignity, slight if any at renewal, and no significant difference if Dignity vacated. A degree of obstruction of the shared passage is tolerated at present.

65) However the 1994 agreement is a compromise of a previous dispute and this is an opposed application for modification of an agreement that was made an order of the court only about 14 years ago. Parties settling a dispute must be confident that a decision to intervene will not be taken lightly by another court. The material received by the Tribunal was treated to extensive and close analysis. On balance, after careful consideration of the matters to be taken into account under Article 5(5) of the 1978 Order, the Tribunal concludes that, in the circumstances of this case, the nature and comparative recency of the 1994 agreement are factors that are insufficient to outweigh the arguments for modification. The Tribunal concludes that the 1994 agreement ought to be modified in accordance with the SK41 Scheme.

The 1894 lease

66) Mr Crothers and Mr Patterson agreed that the purpose of the impediments in the 1894 lease was likely to be to secure the use of the property as a mission hall and to permit an appropriate form of alternative residential development in the event that its use as a mission

hall ceased. By prescribing a minimum rateable value, the covenant probably was intended to ensure that any such houses were substantial.

67) There has been a change in the character of Holborn Avenue between High Street and Stanley Road adjacent to the subject site probably from terrace housing to mixed use, commercial and residential, with a residential bias. The intended mission hall has now been demolished and there is a funeral parlour on the Gillespie land. There have been fundamental changes in society since 1894 and there is an increased demand for accommodation for the elderly.

68) The development was referred to and approved by the Planning Appeals Commission and therefore considered to be consistent with the public interest in the context of the North Down and Ards Area Plan 1984-1995 (the development plan in force at the time). The Planning Appeals Commission also considered the draft Metropolitan Area Plan 2015 and concluded that the proposal would reflect its town centre location and the more general pattern of development.

69) In general, the discussion above, in regard to practical benefits and the 1994 Agreement, is relevant but the Gillespies were concerned about the proposed Eastonville scheme in regard to the effect on No 6 Holborn Avenue (adjoining the passageway) as well as Dignity's tenancy. In regard to the former there would be some overlooking, some loss of light and some loss of amenity because of the proximity and height of the buildings of the scheme. But the covenant in the 1894 lease places no restriction on the height or location of any buildings on the site and therefore does not give the Gillespies the benefit of control over that.

70) On balance, the Tribunal concludes that the 1894 lease ought to be modified so as to permit development in accordance with the Decision of the Planning Appeals Commission.

Decision

71) The Tribunal accepts that the 1994 Agreement should be treated as an 'instrument' for purposes of the 1978 Order.

72) The Tribunal orders that the 1994 Agreement be modified to permit development in accordance with the SK41 Scheme. The Tribunal directs that a copy of the relevant drawing be sent, as an amendment, to the Planning Service for its files. For the avoidance of doubt the Tribunal considers it to be an essential feature of Scheme SK41 that the provision for marking both sides of the shared passage with double yellow lines should remain.

73) The Tribunal orders that the 1894 Lease be modified to permit development in accordance with the Decision of the Planning Appeals Commission, reference 2005/A078 dated 23rd January 2006, or any subsequent modification thereof (including the SK41 Scheme).

ORDERS ACCORDINGLY

3rd August 2010 **Mr M R Curry FRICS IRRV MCI.Arb Hon.Dip.Rating Hon.FIAVI**

LANDS TRIBUNAL FOR NORTHERN IRELAND

Appearances

Mr Mark T Horner QC instructed by Elliott Duffy Garrett, solicitors appeared for the Applicant.

Mr Colin J W Henry BL instructed by Wilson Nesbitt, solicitors appeared for the Respondents.