

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

IN THE MATTER OF A REFERENCE

R/48/1990

BETWEEN

JOHN GRAHAM - CLAIMANT

AND

THE NORTHERN IRELAND HOUSING EXECUTIVE - RESPONDENT

Lands Tribunal for Northern Ireland - Mr A L Jacobson FRICS

Belfast - 15th February 1991

This concerned the compensation to be paid for the compulsory acquisition by Vesting Order of a dwelling-house at No 30 Colchester Street, Belfast.

The following facts were proved or admitted:-

1. The Claimant purchased a lease of the house in 1981. That lease was dated 25th November 1981 from John L Master to John Graham. It was a long lease subject to a Ground Rent of £8.00 per annum. Consideration paid:- £1,900.
2. At the time of purchase there was a written agreement between John Graham and his parents that they could live in the house paying no rent. Mr Graham's parents lived there for about three years until they became a little frail and they then went to live with Mr Graham's sister where the proper care could be given.
3. At that time vandalism and squatting were not unusual in the general area. So that when Mr Graham's son-in-law's brother, a Mr James Ewart, asked what was happening to the house he was allowed to live in the house paying the rates but no rent was charged.

Mr James Ewart (and his common law wife) purchased some furniture from Mr Graham's parents and brought some of their own furniture to the house and lived there for some eighteen months.

4. Almost co-terminous with Mr Graham's purchase on 3rd December 1981 he entered into a Declaration of Trust:- John Graham to Rachel Ewart. This was to provide No 30 Colchester Street for his grand-daughter Rachel Ewart who was at that time about 11 years old.

Rachel Ewart was the daughter of Mr Graham's daughter and her husband (Mr James Ewart's brother).

5. Following an inspection by the Environmental Health Department, the Northern Ireland Housing Executive on 1st February 1984 made an Order declaring, inter alia, that No 30 Colchester Street was an unfit house to which Article 91 of the Housing (Northern Ireland) Order 1981 ("the 1981 Order") (ie compensation for unfit houses) applied. The notice of that declaration of unfitness order was served on the occupier, Mr James Ewart on 7th March 1984.

Mr Graham does not remember that notice being passed to him but he accepted that he would have seen it.

No objection to the unfitness order for No 30 Colchester Street was made. The Department of the Environment subsequently confirmed that Declaration of Unfitness Order.

6. On the 11th September 1984, following an application from the Northern Ireland Housing Executive, the Department of the Environment made a Vesting Order for the Abingdon Street Redevelopment Area No 62, inter alia, which included No 30 Colchester Street.

That Vesting Order became operative on 5th November 1984. It is at that date that compensation is to be assessed.

7. The notice of intention to vest was served on Mr James Ewart at No 30 Colchester Street. The notice that the Vesting Order was becoming operative was served by Recorded Delivery by the Post Office. Such Recorded Delivery to Mr James Ewart at No 30 Colchester Street was dated 2nd November 1984.

8. Sometime in November 1984 Mr Graham claimed compensation under Article 95 of the 1981 Order. The Valuation and Lands Office dealt with the matter of compensation and came to an agreement at a sum of £4,100 with a disturbance allowance of £130. That was on the basis that the open market value with vacant possession was payable (by means of site value for an unfit house under Article 91(1) of the 1981 Order plus an owner-occupier's supplement to make the total compensation up to open market value under Article 95 of the 1981 Order).

When that agreement was reported to the Northern Ireland Housing Executive and title to the house was checked, it became obvious that that agreement was on the wrong basis and further negotiations took place with no agreement.

DECISION

The Tribunal is asked to determine the correct compensation to be paid. Additionally, the Reference also asked the Tribunal "to determine whether or not the Compensation of £100 offered to the Claimant is fair and reasonable". The Respondent says that amount is erroneous - £15.00 was the offer.

The relevant parts of the 1981 Order are as follows:-

Article 91 - "(1) Where land included in an approved re-development 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."

Thus compensation for No 30 Colchester Street which is an unfit house not capable of being made fit at reasonable expense is site value.

That site value is small and cannot exceed the market value of the house and, therefore, Article 91(2) is not applicable. Article 91(3) and (4) are not relevant in this case.

Article 95 - "(1) Where a house has been acquired at site value in pursuance of a vesting order ..., then, if -

- (a) the relevant date is later than 23rd April 1968; and
- (b) on the relevant date and throughout the qualifying period, the house was wholly or partly occupied as a private dwelling and the person so occupying it (or, if during the period it was so occupied by two or more persons in succession, each of those persons) was a person entitled to an estate in that house or a member of the family of a person so entitled;

the Executive shall make in respect of that estate a payment of an amount determined in accordance with paragraphs (4) to (7)."

The relevant date is the date the Vesting Order was made (see Section 96(1)(b)) viz 11th September 1984. The qualifying period therefore is the two years ending 11th September 1984.

Mr Graham held the house in trust for his grand-daughter Rachel Ewart. In any event he could not qualify as a person occupying, neither could a member of his family, for he himself qualified for a house he occupied at No 25 Colchester Street. Rachel Ewart, for whom the house was held in trust did not occupy herself. The occupiers during the relevant period were her grandfather and grandmother and her uncle. But none of those qualify as members of her family under Article 2(4) and (5) of the 1981 Order viz:-

"(4) For the purposes of this Order a person is a member of another's family if that person is -

- (a) the other's wife or husband; or
- (b) a son or daughter or a son-in-law or daughter-in-law, or the other's wife or husband; or
- (c) the father or mother of the other, or of the other's wife or husband."

"(5) In paragraph 4(b) any reference to a person's son or daughter includes a reference to any step-son or step-daughter, any illegitimate son or daughter and any adopted son or daughter of that person, and "son-in-law" and "daughter-in-law" shall be construed accordingly."

Therefore, with some sympathy for the Claimant, the Lands Tribunal comes to the conclusion that compensation is limited to the site value of No 30 Colchester Street cleared of buildings.

Mr Maurice Butler, Solicitor, called Mr Robert Gordon Bleakley ARICS, Senior Valuer in the Valuation and Lands Office to give evidence of site value at the operative date of the Vesting Order viz 5th November 1984.

He put forward the following valuation:-

<u>Site area</u>	43.05 square metres @ £1.00 per square metre	£43.00
Deduct:- Ground Rent £8.00 per annum		
Years Purchase	<u>3.5</u>	£ <u>28.00</u>
Compensation for the leasehold estate		£ <u>15.00</u>

As the Claimant accepted the area is correct at 43.05 square metres but asked no questions of Mr Bleakley, the Tribunal by asking questions of Mr Bleakley was satisfied that the amount arrived at was similar, and in line with other settlements - there being no open market sales of similar sites.

The Tribunal awards £15.00 compensation. Mr Butler, on behalf of the Respondent fairly and quite properly, did not ask for costs. Therefore the Tribunal makes no award as to costs.

ORDERS ACCORDINGLY

4th March 1991

**Mr A L Jacobson FRICS
Lands Tribunal for Northern Ireland**

Appearances:-

Mr John Graham, the Claimant, by himself.

Mr Maurice Butler, Solicitor (of Messrs Johns Elliot, Solicitors) for the Respondent.