

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

R/6/1993

BY

WILLIAM JOHN ERWIN AND ISABELLA ERWIN

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

Ballymena - 21st September 1994

This is an application under Section 24 of the Leasehold (Enlargement & Extension) Act (NI) 1971 ("the 1971 Act") to acquire the freehold of premises at 3 Kinhilt Street, Ballymena.

The determinations which are sought by the Applicants are

- (a) That the Applicants may be entitled to acquire the freehold reversion in the premises.
- (b) That a person be appointed to act in lieu of all necessary parties for the purposes of the said acquisition.
- (c) That the appropriate purchase price be determined.
- (d) The division of the said purchase price among the superior interests.
- (e) Any other matter that may be relevant.

Mr David McBrien appeared on behalf of the Applicants, instructed by Messrs Boal Anderson & Co and called Mr James Alex Evans McKinney, a Chartered Surveyor, the Applicants who were brother and sister, and exhibited affidavit evidence of Kathleen Ann Hanna, Solicitor.

For convenience the Tribunal deals with each question for determination in turn.

- (a) **That the Applicants may be entitled to acquire the freehold reversion in the premises.**

Miss Kathleen Ann Hanna, Solicitor, gave evidence on affidavit that the Applicants are the owners of a leasehold estate in the premises at 3 Kinhilt Street, Ballymena held

on Indenture of lease dated 18th June 1909 for the term of 91 years from the 1st November 1908 subject to yearly rent of £4.

The lease contains a covenant by the Lessee to erect two dwellings houses on the demised premises which became and are now known as Nos 3 and 5 Kinhilt Street, Ballymena.

The original Lessee subsequently assigned that part of the demised premises held under the lease and now known as No 5 Kinhilt Street to another party by Indenture of Assignment dated 15th December 1933 for the residue then unexpired of the term of 91 years demised by the said lease, subject to the apportioned yearly rent of £2 10 shillings.

Miss Isabella Erwin gave evidence that she was born on the 8th September 1929 and has lived at 3 Kinhilt Street all her life. There had been a shop on the premises but it has been closed for more than 25 years.

Mr William John Erwin gave evidence that, because his sister had been in poor health he had stayed at the house and taken his evening meal and breakfast there every night for more than 5 years.

The Tribunal is satisfied from the evidence that the Applicants are entitled to acquire the freehold reversion in the premises.

- (b) **That a person be appointed to act in lieu of all necessary parties for the purposes of the said acquisition.**

Miss Kathleen Ann Hanna, Solicitor, also gave evidence on affidavit of enquiries made regarding the identity of the owners of the freehold reversion. In spite of diligent efforts including a Land Registry search, a hand search in the Registry of Deeds, a negative hand search obtained in the Dublin Deeds Registry Office, a Statutory Charges search and enquiries of the Valuation and Lands Agency, the owners of the freehold reversion could not be identified. Advertisements were also placed in two newspapers circulating in the locality and no response was received to either advertisement.

Miss Hanna had also made enquiries of 3 other parties who from her own knowledge had acquired freehold estates which might have included the reversionary interest. By letter dated 15th February 1993, having previously stated that their clients did not fall within any of the categories set out in Section 2 of the Act, having no interest in

the premises, Messrs Peden & Reid confirmed, on behalf of one of the possible reversioners, that their clients, Messrs Barnett, Peile & Gemgary, had no objection to the Applicants acquiring the freehold to the premises. One of two other parties, either the Adair Estate or Messrs Cotton, Turnbull & Watt, is probably entitled to the reversionary interest. On 17th February 1993 Notice of Intention to acquire the fee simple was served on Messrs Cotton, Turnbull & Watt, care of their solicitors and on the Adair Estate, care of the same solicitors. By letter dated 8th April 1993 they replied to the effect that it would be neither parties intention to make representations provided confirmation were received that the Applicants complied with the requirements of the Act. On 15th April Miss Hanna replied confirming that the Applicants complied with all relevant requirements of the Act. By letter dated 10th May 1993 Messrs Crawford & Lockhart, Solicitors, informed the Tribunal that "We act both for the Adair Estate and for Messrs Cotton Turnbull & Watt in this matter neither the Adair Estate nor Messrs Cotton Turnbull & Watt will be represented at the Lands Tribunal Hearing as they are unaware as to whether they have any interest in the property or not."

As the person who is required by the 1971 Act to convey the fee simple is unknown or unascertained, by virtue of Section 5 of the Act the Tribunal appoints the Registrar to execute the conveyance of the fee simple.

(c) **That the appropriate purchase price be determined.**

Mr McKinney has long experience of valuing property in the locality and of valuations for purposes of the 1971 Act and submitted a proof of evidence. From an analysis of comparables he arrived at a standing-house value of £15,000 and adopting the approach previously used in Connor v Greer, Hamilton and Gailey R/25/1988 and J B Reid v Turnbull, Watt & Cotton R/34/1988 arrived at a purchase price for the fee simple in accordance with the provisions of Section 14 of the 1971 Act of £875. The Tribunal accepts his valuation.

The Tribunal determines the purchase price to be £875.

(d) **The division of the said purchase price among the superior interests.**

In light of the conclusion the Tribunal has reached in regard to (b) above, that the superior interests are unknown or unascertained, the Tribunal therefore orders that the purchase money payable in consideration of the conveyance of the fee simple estate be paid into the Supreme Court before the execution of the conveyance.

(e) **Any other matter that may be relevant.**

No other matter was raised at the Hearing.

ORDERS ACCORDINGLY

29th November 1994

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

Appearances:

David McBrien of Counsel instructed by Messrs Boal Anderson & Co, Solicitors for the Applicants.