

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

IN THE MATTER OF A REFERENCE

R/7/1989

BETWEEN

THOMAS J DOYLE - CLAIMANT

AND

**THE DEPARTMENT OF THE ENVIRONMENT FOR NORTHERN IRELAND -
RESPONDENT**

Lands Tribunal for Northern Ireland - Mr A L Jacobson FRICS

Cookstown - 12th June 1989

This reference concerns the amount of compensation (if any) to be paid in consequence of the execution of works (viz the laying of a new sewer with a manhole as part of the Castledawson Sewerage Scheme) at No 138, Hillhead Road, Castledawson, Co Londonderry. Those works were done by the Department of the Environment for Northern Ireland ("the Department") under Article 13(2) of the Water and Sewerage Services (Northern Ireland) Order 1973.

Mr Colm Henry of Counsel (for the Claimant) called Mrs Margaret Elizabeth Doyle (joint owner of No 138 Hillhead Road) and Mr Neville Dennis Norman Macaulay BSc CEng MICE to give evidence.

Mrs Doyle testified that her house was originally a Labourer's Cottage which was refurbished completely and enlarged. The accommodation now consists of Living Room, Working Kitchen with Dining Area, Bathroom and four bedrooms. All the walls and ceilings (existing and new) were freshly plastered when the alterations were made in or about 1985/86 and occupation was commenced in August/September 1986. As there was to be a Mass in the house and a large number of neighbours coming in Mrs Doyle explained that from Thursday 19th February 1987 through to Monday morning she had been painting the walls in the house to prepare it for the persons who would assemble for the Mass. On Thursday 19th February 1987 the Department's Contractors came through the hedge from the adjacent field and started to dig the trench to put in the manhole (on the Department's Wayleave Map No 10.5.4). The hole was wide and deep and was about 2 to 3 metres from

the gable end of her house and was about 3 to 4 metres deep. On Friday 20th February 1987 the pipe trench was dug across the gateway.

As they were digging the sand was sliding in again and the water gathered in the trench until it was about half full. A pump was then brought onto the site to pump out the water. On Monday 23rd February 1987 the Contractor returned and continued work until the evening. A number of cracks were noticed on Monday evening which were not there when the painting of the walls was being done. On Tuesday 24th February 1987 Mr Doyle spoke to David McKeown the Resident Engineer for the sewerage scheme. Mr McKeown inspected the cracks and he came and told Mrs Doyle that he was discontinuing the work for he did not wish to cause more damage. Mrs Doyle further testified that her solicitor advised her to contact her architect. He in turn advised employing a Civil Engineer, a Mr Macaulay. Further cracks occurred during the next two or three weeks then nothing further. Permission to continue the Department's working was refused and the trench was filled in.

Mrs Doyle further testified that she redecorated once more before Christmas 1988.

Mr Macaulay testified that he inspected the house internally and externally on 26th February 1987. The walls and ceilings of the house were finished plaster. The workings at that time consisted of a trench parallel to the gable end of the house (Bedroom 3). The level of water in the depressed area was about ½ metre from the level of the sand. It had been showery that day but that inspection showed that that water level was the water-table. The sub-soil was permeable sandy silt.

Inspection of the whole of the interior showed some cracking of the plaster mainly in the older house portion. Some of those cracks were newly formed because of the clean interfaces and the shape. Some cracks were caused by normal shrinkage due to new plaster drying out. Some cracks obviously were old cracks because there was paint bridging and those were ignored and rejected. He testified to the following cracks:-

Interior

In Bedroom 1 a crack about 4 feet long with a corresponding crack on the other side of the wall in Bedroom 2.

On the south wall of Bedroom 2 there was a three feet long crack.

There was a high level crack in the wall and ceiling at the Dining Area and various cracks in the walls in the Hall and Passage.

At the house exterior:-

At the south wall under the window cill of Bedroom 1 there was a crack about three feet long.

At the outside wall of Bedroom 2 there was a crack 15 inches long.

On the north wall between Bedroom 4 and passageway at the concave corner there was a crack about 3 feet long.

On the north wall of Bedroom 4 to the right of the window was a crack 18 inches long.

There was a crack under the window sill of the Bathroom and another to the right of that window.

Mr Macaulay testified that he returned for a further inspection on 2nd April 1987. The cracks he had noted had become marginally wider. Some other small cracks of no great consequence had also appeared. He accepted that all the cracks were minor and had been caused either by the water-table being lowered by pumping or by machinery vibration. In cross-examination he did not accept that Bedroom 3 and its gable wall should have suffered most if the water-table had been lowered for he considered that the subterranean flow of water may not have got into the trench from under the wall of Bedroom 3.

The remedial work Mr Macaulay recommended consisted of hacking off plaster for 6 inches either side of each crack, waterproofing, installing some expanded metalwork to strengthen that part of the wall, replastering and finally redecorating the wall. He had not considered that cost in detail but £1,500 to £2,000 should meet the cost.

Miss Heather Gibson of Counsel (for the Respondent) called Mr Samuel David McMullin BSc CEng MICE (an Associate of Messrs McCutcheon & Wilkinson) who was the Administrative Engineer in charge, and Mr David Taggart Robinson BSc CEng MICE (partner in David Robinson & Associates, Loss Adjusters, Surveyors and Civil Engineers) to give evidence.

Mr McMullin testified that he visited the scheme about once a week to check progress. Mr David McKeown the site engineer and he jointly inspected Mr & Mrs Doyle's house about 25th February 1987. He did not re-inspect until 25th May 1989.

Mr McMullin testified that when the excavation in the vicinity of the Doyle's house was taking place the Contractor used an hydraulic steel box shutter 2.5 metres high to support the sides of the trench. That box shutter was introduced into the trench after 750mm to 900mm depth of excavation had been made and as further excavation was made would be gradually lowered. On completion of the pipe installation back-filling was done with mass concrete to ensure no movement of trench sides after back-filling was complete. He further testified that the water pump was used to keep the bottom of the trench free of water - the pump's 4 inch capacity was nowhere near large enough to lower the water-table. The concrete path round the bungalow showed no signs of settlement and the bond between the path and the gable end remained intact.

He spoke to a list of cracks reported to the Department by a Mr Connelly (employed by the Claimant) and shown on a joint inspection with Mr David McKeown, the site engineer. Neither Mr Connelly nor Mr McKeown were present in the Court but Mr McMullin said that the contents of Mr Connelly's letter were disputed and the cracks were considered to be superficial cracks of a minute type and probably caused by new plasterwork drying out and certainly not by the Department's works. He further testified that glass slide tell-tales were placed across some cracks on 27th February 1987 and regularly inspected by Mr McKeown. Only one of those tell-tales were broken because it was located near to a radiator. He produced photographs of some cracks, a plan and elevation of the house showing the situation of cracks and rebutted the claim for compensation altogether as being not caused by the Department's works. He gave a number of reasons why in general plaster cracks may occur. He told the Tribunal that the remaining sewer pipe and Manhole No 10.5.5 as shown on the Wayleave Map (accompanying the Department's notice of intention to construct a sewer in Mr Doyle's land) were not installed and have never been installed for it was not wished to work after Mr Doyle had asked the Contractor to leave the land.

Mr Robinson testified that he visited the house once on 2nd May 1989 and at that time most of the rooms had been repainted by Mrs Doyle and there was some difficulty in identifying some of the cracks. He was of the opinion that the cracks were not caused by the excavation and therefore the Department was not responsible for the damage.

However he disagreed that it was necessary to carry out the remedial work put forward by Mr Macaulay. He considered the cracks could be veed-out and filled with some commercial product such as Polyfilla. The cost of that and the consequent redecoration was put at £300 by Mr Robinson.

DECISION

The Lands Tribunal found the Department's evidence unsatisfactory in some respects. The site engineer Mr David McKeown was not called (the Tribunal was told he had left the employ of Messrs McCutcheon and Wilkinson).

Mr McMullin had inspected on 25th February 1987 and 25th May 1989. Most of his factual evidence came from matters he had been informed of as Administrative Engineer. Mr Robinson had only inspected on 2nd May 1989 for this hearing and the Tribunal must reject his opinion that the Department were not responsible.

The evidence as to the cracks given by Mrs Doyle that she had painted walls immediately prior to the Department's works and that a group of further cracks was seen on the Monday evening was not controverted by any evidence. Mrs Doyle was the only witness who was present in the house before the works, during the works or after the works. Mr Macaulay, the expert witness for the Claimant, had inspected the house internally and externally on 26th February 1987 and again on 2nd April 1987. His evidence as to the cracks seen by him on both occasions must be accepted by the Tribunal. He excluded all cracks which were paint-bridged - obviously they had occurred before Mrs Doyle had painted the walls when preparing for the Mass to take place in the house.

The problem remains as to what was the cause of those cracks. The Department's expert witness, Mr McMullin, was clearly of the opinion that the cracks were normal with the drying out of newly plastered walls and had not been caused by vibration and in his opinion the water-table had not been lowered. He could not give a satisfactory reason why Mrs Doyle testified that there were no cracks visible after she had painted the walls and yet these cracks with clean interfaces had occurred together sometime on the Monday 23rd February 1987 except to say that Mrs Doyle must have missed them. But in those circumstances those cracks must have shown paint-bridging which they patently did not.

On the other hand Mr Macaulay who inspected only a few days after the cracks became apparent considered they had been caused by either vibration or the lowering of the water-table.

The Tribunal on the balance of probabilities accepts the evidence that all of these minor cracks appeared on Monday 23rd February 1987 and those extra cracks which were seen on Mr Macaulay's re-inspection on 2nd April 1987 were of little consequence.

The only external works which were carried out were the sewerage scheme (in part) on the lands of Mr Doyle carried out by the Department. On the balance of probabilities the Tribunal finds those cracks to have occurred by reason of the Department's works. The Tribunal on the evidence cannot pinpoint the cause although on the balance of evidence it seems doubtful if the cause was the lowering of the water-table and in this respect Mr McMullin's opinion is more acceptable to the Tribunal.

It is evident from Mr Robinson's evidence that since Mrs Doyle's redecoration before Christmas 1988 most of these minor cracks cannot be seen. The remedial works suggested by Mr Macaulay at a cost of £1,500 to £2,000 cannot therefore be adopted by the Tribunal for it is common case of all the expert witnesses that there is no long-term damage to the house whatsoever.

The only other estimate of remedial works is that of Mr Robinson @ £300. The Tribunal awards this sum of £300.

The Respondent Department will pay the Claimant's costs of this hearing, if not agreed to be taxed by the Registrar of the Lands Tribunal on the County Court scale.

ORDERS ACCORDINGLY

24th July 1989

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

Appearances:-

Mr Colm Henry of Counsel (instructed by Messrs John J McNally & Co, Solicitors) for the Claimant.

Miss Heather Gibson of Counsel (instructed by the Solicitor for the Department of Finance & Personnel for Northern Ireland) for the Respondent.