

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

IN THE MATTER OF AN APPLICATION

R/9/1992

BETWEEN

WILLIAM LAURENCE PEDLOW - APPLICANT

NO RESPONDENT

Lands Tribunal for Northern Ireland - Mr A L Jacobson FRICS

Craigavon - 7th October 1992

This was an application under Article 5 of the Property (Northern Ireland) Order 1978 ("the 1978 Order") for the modification and/or extinguishment of an impediment contained in a lease dated 25th December 1861 between Alexander Crothers of the one part and The Reverend Lowry Edmonds Berkeley, The Reverend James Moorehead, The Reverend Michael McMurray and the Reverend James Orr of the other part. The subject matter of that lease was land at Dunkirk Road, Waringstown, County Down in which the Corcreeny School House was erected in or about 1862. The lease was for a term of 990 years from 1st November 1861 subject to a payment of one shilling per annum (now 5p).

The impediment reads as follows:-

"Upon Trust to erect and build thereon or on part thereof such Houses or Buildings as may be requisite for the education therein of young persons resident in or near to the said locality in which the lands and premises are situate and to permit and suffer the said Buildings when erected and the other portions of the premises hereby demised or intended so to be used and occupied for the purposes of such education and no other purpose whatever not incidental thereto or connected therewith such education so to be given from time to time on such subjects on such plan or method with such regulation as to discipline terms of tuition and payment of fees and with such power as to the appointment and discharge of Teachers from time to time to be employed therein and as to all other matters connected with such education as they the said Lowry Edmonds Berkeley James

Moorehead Michael McMurray and James Orr their Assigns or successors in office to be appointed as hereafter mentioned and the said Alexander Crothers during his lifetime and from and after his decease the persons from time to time thereafter legally entitled to the immediate estate in reversion in the Lands and Premises hereby granted and demised being a Member of the Presbyterian Church in Ireland or a majority of such persons hereinbefore particularly mentioned and described and hereafter collectively designated as the Committee of Management of the said School shall in such behalf respectively appoint provided also that no Doctrine of religious belief shall at any time be taught in any School held upon the said demised premises or on any part thereof which shall be opposed to or in any way at variance with any Doctrine of religious belief set forth in the said Westminster Confession of Faith, And that in case of any difference of opinion between the Trustees of these presents or amongst the members for the time being of such committee of Management hereinbefore particularly mentioned as to any of the other matters aforesaid or otherwise respecting the execution of the trusts of these presents or the true intent and meaning thereof it shall be lawful for the Trustee or Trustees differing in opinion from a majority of the other Trustees for the time being of these presents to submit the matter in dispute and the grounds of such difference in writing under his or their Lands to the Presbytery of Dromore whose decision in relation thereto shall be final and conclusive and binding on the Trustees of these presents for the time being to all intents and purposes whatsoever as if herein expressed and declared except so far as the same may relate to any Doctrine of religious belief taught or alleged to have been taught in such school as to which only the decision of the Presbytery may be appealed from to the General Assembly of the said Church in the same manner as in the Code of Discipline of the Assembly is provided in respect to appeals from any Presbytery of the said Church such appeal to be final and conclusive in such last mentioned behalf ..."

Miss A J Matthews of Counsel called the Applicant Mr William Laurence Pedlow, a retired School Headmaster Mr Samuel John Wilfred Cooper and an Estate Agent Mr John Joseph Mahon (a partner in Messrs Robert Graham & Co) to give evidence. Affidavit evidence from Canon John Moore (Rector of Holy Trinity Parish Church in Waringstown was also submitted).

The following facts were proved:-

1. In accordance with the lease, a school building was erected on the land sometime in 1862. This replaced enhanced and formalised the former "hedge schools" carried on by the Presbyterian Ministers in the general area. At that time the school catered for some 30 to 40 pupils.
2. Following the Educational Endowments (Ireland) Act 1885 an Order in Council of 6th November 1893 framed a Scheme which vested the school in the "Education Board of the Dromore Presbytery".
3. A resolution dated 3rd November 1942 was passed by the Dromore Presbytery as follows:-

"Resolved that the Presbytery consent to the Sale at £200 to the Representative Church Body of the Corcreeny School premises held under Lease dated 25th December 1861 from Alex Crothers to Reverend L E Berkeley and Others."

That followed the Northern Ireland Education Acts of 1928 which set up various Public Elementary Schools (and took over the existing National Schools). That Act included the Boys' School, Girls' School and Corcreeny School, but in 1932 a new school was built and opened in the Waringstown area; the three old schools being closed. The Corcreeny School remained in the ownership of the Dromore Presbytery but for some years prior to the above resolution had been let to the Select Vestery of Donacloney Parish Church for use as a Sunday School.

On 4th May 1943 the Education Board of the Dromore Presbytery assigned the school to the Representative Church Body of the Church of Ireland.

4. In recent years the numbers of children attending the Sunday School dwindled and the school was closed in September 1983 and has not been used for educational purposes since.

A new church hall for Holy Trinity Parish Church was opened in September 1987 at Mill Hill, Waringstown. The Parish has no further use for the Corcreeny School.

5. The Representative Church Body of the Church of Ireland sold the premises by way of assignment to Mr William Laurence Pedlow on 28th September 1987.
6. The rent of 1/-(5p) reserved in the lease of 1861 has not been paid for over 60 to 70 years, nor has it ever been demanded.
7. The school is situated in a rural area inside the green belt where little development has taken place. Such development has been mainly replacement farmhouses.
8. Enquiries as to the persons entitled to the immediate estate in reversion in the lands have proved to be in vain.

Advertisements were placed in the Lurgan Mail (a paper circulating in the general area) on 10th September 1992 and in the Belfast Telegraph (a paper in general circulation in Northern Ireland) on 10th September 1992. Such advertisements were addressed to "the Successors in Title of Alexander Crothers Esqr. of Banbridge County Down and to those others whom it may concern" informing them of today's hearing and this Application and requesting any persons wishing to object to write to the Applicant's solicitors and to the Registrar of the Lands Tribunal within 21 days.

Only one letter dated 17th September 1992 was received from Mr Archie L Gibson BA, Solicitor. That letter only sent to the Applicant's solicitors read as follows:-

"Your advertisement in the local paper has been brought to my attention in respect of Lands at Dunkirk road, Waringstown and I would point out that my house which was the old school house is situated at the rear of the premises; I would have no objection to the Application being made to the Lands Tribunal to change user providing user was to be for a private dwelling house only and perhaps you would note my comment."

DECISION OF THE LANDS TRIBUNAL

The Tribunal is satisfied that the impediment unreasonably impedes the enjoyment of the land. There is no demand for its use for educational purposes in either the secular or the religious spheres. The various matters the Tribunal must take into account in determining

whether the impediment ought to be modified or extinguished are to be found in Article 5(5) of the 1978 Order, viz:-

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

In 1861 education of the young was being carried out by individual Ministers of Religion in what was termed "hedge schools". The 1861 Lease was an endeavour to give a more formal education (including religious education) to the young.

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

As far as the neighbourhood is concerned little change in its rural aspect has occurred over the years. There have been introduced modern methods of farming and modern dwellings have replaced the old farmhouses in a number of places. Otherwise the character of the neighbourhood has not changed.

The school building which was erected in 1862 has been little changed. Its repair was good for its age although there was a little dry rot existing. However, for many years the building has been disused, for education has moved on into new buildings and there is no demand for Sunday School use. In this sense the character of the land has completely changed.

"(c) any public interest in the land, particularly as exemplified 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;"

The school is situated in the green belt area in the development plan for the area. There is no public interest for educational purposes or for any other requirements of national or local authorities.

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

No permissions for any development other than for replacement farmhouses or for the occasional house for a farmer's son or manager have been granted in the vicinity of the land which is the subject of this Application.

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

There was no evidence before the Tribunal that any person is benefited in a practical way by the impediment.

"(f) where the impediment consists of an obligation to execute any works or to do 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;"

This impediment consists of two obligations:-

- (i) "to erect or build ... such houses or buildings as may be requisite for the education therein ...". The requisite buildings were erected about one year after the lease was granted;
- (ii) and for "young persons resident in or near to the said locality"... "such education as to be given from time to time ..."

While that obligation was carried out for many years there is no requirement for such education in this building for new schools have been provided under the various Education Acts and local Churches have built Church Halls which cater, inter alia, for Sunday Schools where religious education is given to young persons. In this respect that part of the obligation is obsolete.

"(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;"

The person entitled to the benefit could not be found after many enquiries which included press advertisements. Thus that person could not have expressly agreed but as there were no replies to the press advertisements it can be said he has implicitly agreed because he omitted to so reply.

"(h) any other material circumstances".

No other material circumstances were brought to the notice of the Tribunal.

Taking into account all of these matters they confirm that the impediment unreasonably impedes the enjoyment of the land. The Tribunal is asked to either extinguish the

impediment or modify the same. If extinguishment were granted, it would leave it open to any person, sometime in the future, to build whatever he wished, subject only to the planning requirements existing at that time. However no words of modification possibly could be phrased so as to make such modification read sensibly. The Tribunal prefers to restrict the user of the land to conform with the rural aspect of the vicinity and the requirements of the current development plan. Article 5(6)(a) of the 1978 Order enables the Tribunal to "add or substitute in view of the modification or extinguishment of the existing impediment".

Consequently, the Tribunal extinguishes the impediment as requested but substitutes the following impediment in lieu of that extinguished:-

"Not to carry on or permit to be carried on upon the premises or any part thereof any trade, business or manufacture whatsoever and not to use or permit to be used the same for any other purpose than as a private residence."

ORDERS ACCORDINGLY

30th October 1992

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

Appearances:-

Miss A J Matthews of Counsel (instructed by Messrs T G Menary & Co, Solicitors) for the Applicant.