

EXPERT REPORT

A report by an expert witness, which deals with each of the matters set out in Article 5(5) of the 1978 Order is required. As the Tribunal expects outline planning issues to be resolved before hearing the case, it is not concerned with planning issues as such and so the report should normally be prepared by a suitably qualified estate agent.

Suggested contents

1. **Qualifications**

The witness should set out his qualifications and briefly outline either his experience and local knowledge of the area or enquiries made.

2. **Location**

Provided the location is clearly identified, a map based on an abstract from the ordnance survey map will suffice.

3. **Description**

A very brief description is normally sufficient. It should be accompanied by a map showing the extent of the property and a photograph, if possible.

4. **Matters to be Considered**

The fundamental test for the Tribunal is whether the covenant or impediment is an unreasonable impediment to the enjoyment of land; enjoyment includes use and development. The 1978 Order includes a number of matters which the Tribunal is required to consider and the report should therefore include a comment on each of the following matters:

- (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 any development plan adopted under Part 3 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 trade 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. It will not usually be necessary to include copies of decisions (other than permission for the relevant development).
- (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 anything, or to pay or contribute towards the cost of execution any works or doing anything, whether the obligation has become unduly onerous in comparison with the benefit to be derived from the works of the doing of that thing,
- (g) Whether the person entitled to the benefit of that impediment has agreed expressly or by implication, by his acts or admissions, to the impediment being modified or extinguished.
- (h) Any other material circumstances.

Some of these matters may not be relevant in a particular case, if so the expert need only say so.

5. Planning or Other Consents

The Tribunal will normally restrict any modification to that for which appropriate consents have been obtained. A copy of all relevant planning and other permissions required to implement the proposal should be included.

6. Compensation

The award of compensation is discretionary. If any person is found to be entitled to the benefit of the covenant and claims compensation, the Tribunal will make directions to allow appropriate expert valuation evidence to be prepared.

NB The Expert Witness and the duty of the Tribunal

The expert witness should provide independent assistance to the Tribunal by way of objective unbiased opinion in relation to matters within his expertise. Manifest independence is of particular importance in unopposed applications.

The expert evidence will usually be taken as read but in exceptional circumstances the expert may be required to give oral evidence. The expert should therefore attend the Hearing.