

NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED) AND THE
VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007

CASE REFERENCE NUMBER: 10/11

AINE SAVAGE - APPELLANT
AND
DEPARTMENT OF FINANCE & PERSONNEL (LAND & PROPERTY SERVICES) -
RESPONDENT

Northern Ireland Valuation Tribunal

Date of Hearing 25 August 2011
Belfast

Chair: Ms Alison Stewart

Members: Mr Bill Deddiss MRICS and Mr Garry McKenna

DECISION

The unanimous decision of the tribunal is that the appeal is dismissed.

REASONS

Introduction

This is a reference under Article 12B of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). There was no appearance before the tribunal by or on behalf of the applicant and the respondent, both parties having indicated that each was content to rely upon representations in writing. In accordance with Rule 11 of the Valuation Tribunal Rules (Northern Ireland) 2007, an appeal may be disposed of on the basis of written representations if all the parties have given their consent in writing to that course.

The appellant appealed against the outcome of a review of a decision of the Department that the applicant was not entitled to claim Disabled Persons' Allowance ("DPA").

The Relevant Legislation

The statutory provisions are to be found in the 1977 Order. Article 31A (12B) of the 1977 Order was inserted by Article 17(8) of the Rates (Amendment) (Northern Ireland) Order

2006 ("the 2006 Order"). That Article 31A (12B) enables a person to appeal to the tribunal against the result of a review by the Department (the respondent to this appeal) of a decision that a person is not entitled to a rate rebate for a property with a special facility for a person with a disability. This is referred to as Disabled Person's Allowance - "DPA".

These are the relevant statutory provisions:-

Article 16 of the 2006 Order amends the 1977 Order by inserting the following paragraph—

" (2A) For the purposes of this Order a person has a disability if he—

(a) is substantially and permanently disabled (whether by illness, injury, congenital deformity or otherwise); or

(b) suffers from mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986 (NI 4).".

Article 17 of the 2006 Order (amending the 1977 Order) provides for rate rebates for certain hereditaments with special facilities for persons with a disability. Article 17 provides that Article 31A of the 1977 Order shall have substituted the following paragraphs—

" (2) This Article applies to—

(a) a hereditament in which there is a facility which is required for meeting the needs of a person who resides in the hereditament and has a disability, including a facility of either of the following descriptions—

(i) a room, other than a kitchen, bathroom or lavatory, which is wholly or mainly used (whether for providing therapy or for other purposes) by such a person; or

(ii) an additional kitchen, bathroom or lavatory; and

(b) a hereditament in which there is sufficient floor space to permit the use of a wheelchair used by and required for meeting the needs of a person who resides in the hereditament and has a disability.

(3) In paragraph (2)—

(a) references to a person who resides in a hereditament include references to a person who is usually resident there; and

(b) subject to paragraph (3A), references to a facility or a wheelchair being required for meeting the needs of a person who has a disability are references to its being essential or of major importance to that person's well-being by reason of the nature and extent of the disability.

(3A) A wheelchair is not required for meeting a person's needs if he does not need to use it within the living accommodation comprising or included in the hereditament.

(4) -.

(5)

" (10) The amount of a rebate shall be so much of the rates chargeable in respect of the hereditament for, or properly apportionable to, the rebate period or the relevant part of it as is referable to 25 per cent. of its rateable capital value."

(6) -

(7) -

(8)

" (12) Any person who is aggrieved by a decision of the Department.... may, within twenty-eight days of the service on him of a notice under that paragraph, apply to the Department for a review by the Department of its decision.

(12A) The Department shall serve on that person a notice of the result of the review.

(12B) If that person is dissatisfied with the result of the review, he may appeal to the Valuation Tribunal.

..... "

The Evidence

There was no oral evidence as the appellant confirmed that she was content for the appeal to be disposed of by written representation. The tribunal had before it the appellant's form of appeal to the tribunal (Form 2) which was received by the tribunal on 1 July 2011 along with a covering letter and copies of various documents including the following:-

1. The applicant's application for DPA dated 16 May 2011.
2. An acknowledgement letter from LPS dated 16 May 2011
3. A letter dated 20 May 2011 from LPS indicating that the application was unsuccessful.
4. A letter dated 27 May 2011 from the appellant which was treated as a request to review the decision not to award DPA.
5. A letter dated 3 June 2011 stating decision unchanged after review.
6. Correspondence between the tribunal and the parties.
7. A case report prepared by LPS and submitted on 22 October 2010.

The Facts

On the basis of such information as was before it the tribunal determined, upon the balance of probabilities, the following facts:-

1. The hereditament consists of a dwelling house situated at number 25 Hillhead Crescent, Ballynahinch, County Down BT24 8HG ("the property"). The property is

2. Mr Aidan Savage applied to the respondent for DPA by application dated 16 May 2011. He applied on the basis that the appellant suffers from joint pains, mainly worse in the winter, which affect her mobility. He stated that she has a condition in her right arm that affects the use of her hand and its grip. The strength in both arms is affected due to lymphoedema following a double mastectomy due to cancer. Her condition is mainly the side effects of having chemotherapy twice for breast cancer. He attached a letter dated 7 April 2011 from the Social Security Agency which confirmed that the appellant is in receipt of Disability Living Allowance.
3. At section 3 of the DPA application the appellant ticked the box which states that she has a "room, which is wholly or mainly used by the person with a disability for therapy or other purpose" and further stated that this room is a bedroom used for "manual lymph drainage".
4. By letter dated 20 May 2011 the respondent wrote to the appellant rejecting the appellant's claim for DPA on the grounds that the property did not have any of the qualifying facilities as set out in Article 31A of the 1977 Order. The appellant was informed of his right to ask for a review of the decision.
5. By letter received by the respondent on 27 May 2011 the appellant wrote to the respondent saying that she found the decision in the respondent's letter of 20 May 2011 to be totally unfair as the respondent had asked for a room mainly used for herself for treatment other than a kitchen or bathroom which she felt she had done because the room concerned was a bedroom. The appellant also stated in this letter that aside from the disability in her application form (joint pains and lymphoedema) she also has to infuse a 50ml injection over 12 hours, three times a week for her high iron condition. She also stated that she has since developed arthritis
6. On 3 June 2011 the respondent wrote to the appellant about her letter of 27 May 2011 requesting a review of their decision not to apply DPA. They advised the appellant that the original decision would remain unchanged. The respondent stated in this letter that a bedroom does not meet the scheme's qualifying criteria as every property has a bedroom and living room and everybody needs a bedroom and living room whether disabled or not. The respondent referred the appellant to the relevant case law regarding applications for DPA with respect to a bedroom or living room. The respondent further informed the appellant of her right to appeal to this Tribunal.
7. The appeal was received on 1 July 2011 which stated that she has had a rail put in the room.
8. The tribunal had no evidence or information in regard to the property generally other than such as was contained in the foregoing documentation.

THE TRIBUNAL'S DECISION

Article 31A (12 B) of the 1977 Order enables a person to appeal to the tribunal against the result of a review by the Department of a decision that a person is not entitled to a rate rebate for a property with a special facility for a person with a disability. In order to succeed in such an appeal, the applicant has to satisfy the tribunal that the hereditament has a facility which is required for meeting the needs of a person who resides in the hereditament and has a disability, including a facility of either of the following descriptions (as set out in Article 31A (2) of the 1977 Order) —

- (a) (i) a room, other than a kitchen, bathroom or lavatory, which is wholly or mainly used (whether for providing therapy or for other purposes) by such a person; or
- (ii) an additional kitchen, bathroom or lavatory; and
- (b) a hereditament in which there is sufficient floor space to permit the use of a wheelchair used by and required for meeting the needs of a person who resides in the hereditament and has a disability.

There is no evidence that the property has sufficient floor space to permit the use of a wheelchair used by and required for meeting the needs of a person who resides in the hereditament and has a disability such as to comply with Article 31A (2)(b).

For the purposes of this appeal, the tribunal's view is that the appellant is to be treated as a person with a disability for the purposes of the legislation because of the conditions stated above.

The Tribunal has to examine the facts before them and apply the criteria set out in Article 31A (2)(a) of the 1977 Order. The tribunal must be satisfied that there is a facility which is required for meeting the needs of a person (in this case the applicant) which includes either a room (other than a kitchen, bathroom or lavatory), which is wholly or mainly used whether for providing therapy or for other purposes by the applicant, or if such a room does not exist then an additional kitchen, bathroom or lavatory, being essential or of major importance to the applicant's well-being by reason of the nature and extent of the disability.

The tribunal notes that the appellant states that a rail affixed in a bedroom in the property is a facility, which is required to meet her needs caused by her disability. The appellant believes that the said rail is an alteration to the property and in accordance with the legislation that the property ought properly to qualify for DPA.

The tribunal in determining the matter of interpretation of Article 31A (2) of the 1977 Order seeks guidance from a number of English authorities which concern statutory provisions expressed in largely similar terms to the statutory provisions which concern this tribunal. One leading case is the relatively recent case of ***South Gloucestershire Council v Titley and Clothier [2006] EWCA 3177***. Mr Titley, who was profoundly deaf, predominantly used a room equipped with a hearing loop and associated equipment. Mr Titley had certainly made substantial adaptations to the room in order to provide a facility to enable his quality of life to be much enhanced. The Council's appeal to the Court of Appeal succeeded (and Mr Titley failed) as, in summary, the Court's determination was that the room with the particular facility would have been used anyway and was in no way "additional".

The tribunal's view is that whilst the rail will be of assistance to the appellant with regard to her therapy the question to be asked is whether this would comply with the qualifying conditions as set out in Article 31A of the 1977 Order which states that the relevant and qualifying facility includes either a qualifying room (other than a kitchen, bathroom or lavatory), or if such a room does not exist then an additional kitchen, bathroom or lavatory, these being essential or of major importance to the qualifying person's well-being by reason of the nature and extent of the disability.

The appellant did not present any evidence in respect of the existence of an additional kitchen, bathroom or lavatory. The rail which has been fitted would not seem to meet the criteria of being considered "additional". The main case relating to this point is the *Howell-Williams v Wirral Borough Council*. Fox LJ stated,

"It cannot have been the intention of Parliament to grant a rebate merely because a room is predominantly used by a disabled person...it seems to me that the use of the room must relate to the disability."

The appellant seeks the DPA because of her use of the bedroom as stated above. The room is not additional in the sense that it is there because of the requirements of the appellant's therapy. Whilst the appellant states that she must use this room for privacy reasons she also states that her husband assists her with her therapy. There is no evidence produced with regard to any other parties sharing the property. The room could revert to its normal use as a bedroom the instant that the therapy has ceased.

The Tribunal is of the view that the appellant has not satisfied the statutory test and the property does not qualify for a rebate under Article 31A (10) of the 1977 Order. The tribunal's unanimous decision is that the appeal is dismissed.

**Ms. Alison Stewart, Chair
Northern Ireland Valuation Tribunal**

Date decision recorded in register and issued to parties: