

NORTHERN IRELAND VALUATION TRIBUNAL

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

Case Reference Number 34/09

Alan Cleland - Appellant

and

Department of Finance and Personnel - Respondent

Northern Ireland Valuation Tribunal

Chairperson: Mrs Mary O'Neill

Members: Mr Tim Hopkins FRICS and Mr David Rose

Belfast, 9 November 2009

DECISION

The unanimous decision of the Tribunal is that this appeal is dismissed.

REASONS

Introduction

This is a reference under Article 12B of the Rates (Northern Ireland) Order 1977 as amended ("the 1977 Order").

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

The Appellant Mr Alan Cleland and Mrs Cleland appeared in person and their representative for this hearing was their son Mr Conor Cleland.

Mr Darryn Coey appeared for the Department as Respondent.

The Appellant filed a claim form dated 1 September 2009 and received by the office of the Northern Ireland Valuation Tribunal on 3 September 2009, appealed against the outcome of a review of a decision of the Department that the Appellant was not entitled to claim Disabled Persons Allowance (“DPA”).

The Law

1. The statutory provisions are to be found in the 1977 Order. Article 31 A(12B) of the 1977 Order was inserted by Article 17(8) of the Rates (amendment) Northern Ireland Order 2006 (“the 2006 Order”). Article 31 A(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 Persons Allowance (“DPA”).
2. As it is agreed in this case that Louise Cleland (being a daughter of the Appellant Mr Alan Cleland and who resides in the property under discussion) meets the relevant criteria as being a person who has a disability, the Tribunal’s focus in this case is on the premises and the statutory criteria relating to the premises.
3. 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, insofar as material to this appeal, provides –

“(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;
- (3) in paragraph (2) –
- (a) –
 - (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 wellbeing by reason of the nature and extent of the disability.
4. Article 17 further provides that any person who is aggrieved by a decision of the Department may apply to the Department for a review by the Department of its decision and if that person is dissatisfied with the result of the review, he or she may appeal to the Valuation Tribunal.

THE EVIDENCE

5. The Tribunal heard from Mr Conor Cleland on behalf of the Appellant and from Mr Coey on behalf of the Tribunal. The Tribunal also had before it a copy of the Appellant’s application for “DPA” and the appeal form and a copy of the correspondence from the Appellant and the Department. These included letters dated 21 June 2009, 13 July 2009, 29 September 2009 and 3 November 2009 from the Appellant together with letters dated 21 April 2009, 28 May 2009, 26 June 2009, 9 July 2009, 21 July 2009 from the Respondent.

THE FACTS

6. On the basis of the information before it, the Tribunal determined upon the balance of probabilities, the following facts;

- (a) The hereditament consists of a dwelling house situated at Beachlawn, 55 Dublin Road, Newry, Co Down, BT35 8DA (“the premises”). The Appellant is the rate payer.
- (b) The Appellant applied for “DPA” in respect of the premises by application dated 8 April 2009 and indicated that the premises had “a room, other than a kitchen, bathroom or lavatory, which is wholly or mainly used by the person with a disability” that this room was a “living room” and that it was used “as her own sitting room”. The Appellant indicated that the premises had “an additional lavatory for use by the person with the disability”. The Appellant also indicated that the premises had a “downstairs toilet and living room to give her her own living space”. In a letter of 21 June 2009 the Appellant indicated that; “Louise is the subject of person centered planning under the guidance of the Southern Trust. This is to enable her to live as full, and as independent, a life as possible in accordance with Government policy of care in the community”. The Appellant further indicated that Louise was 27 years old and had always lived at home and as a result the Appellant had therefore “adapted one of the reception rooms in our home as a living room for Louise”. The Appellant went on to indicate that “Louise has required her own living room for a number of reasons, including to socialise and entertain her friends; to listen to music; to read; to carry out her art activities; to sing and to watch her own television programmes and films”. The Appellant further stated that “Louise is restricted as to how often, and when she can go out and is therefore required to spend more time indoors at home”. Finally, the Appellant indicated “as might be expected of an adult living with her parents, Louise is also particularly concerned with her privacy. She insists on having the door to this room closed and the practice in our home is to knock before entering this room”. By letter of 9 July 2009 the Respondent sought further information in relation to how many lavatories the premises had and whether the additional lavatory was required for meeting the needs of the person with the disability. By letter of 13 July 2009 the Appellant replied indicating that there were four lavatories in the property but that “no additional lavatory was required to meet Louise needs” and that the lavatories “are available for Louise’s use”.

- (c) By letter dated 21 July 2009 the Respondent confirmed that the application for Disabled Persons Allowance had been unsuccessful on the basis that; “in order to qualify for the rate relief there has to be a clear link between the disability and the need for the additional facility. You have confirmed in your letter of 13 July 2009 that the property has 4 lavatories but that an additional lavatory is not required to meet the disabled person’s needs” and further on the basis that; “you had adapted one of the reception rooms in your property as a living room for Louise” and that “it has been ruled in the case of *Howell-Williams v Wirral Borough Council* 1981, that it is not appropriate to award rate relief where a room is being used as living room”.
- (d) Any remaining findings of relevant fact are as may be mentioned below –

THE CONTENTIONS OF THE PARTIES

7. In his representations to the Tribunal Mr Conor Cleland, on behalf of the Appellant, confirmed at the outset that the Appellant did not wish to rely on the provision of an additional bathroom or lavatory within the premises. He frankly accepted that all lavatories are available for Louise’s use. The Appellant did not therefore wish to rely on Article 31(A) of the 1977 Order. He further accepted that the additional room was not wholly used by Louise but was in fact used as a family dining room on occasions such as birthday celebrations or at Christmas. He also accepted that the room could quickly be restored to a dining room by putting in different chairs and moving the television. It was accepted on behalf of the Appellant, that Louise, as a 27 year old adult with Down’s Syndrome required this additional room as a living room and to play music, to carry out art works, to entertain her friends and to watch TV. The Appellant indicated that Louise did not go out much although she did work as a classroom assistant and was able to go into town on a Saturday afternoon. That she required this room as she insisted upon her privacy within the home and that but for her disability she would not require the availability of this additional room and it could be restored as a family dining room. The Appellant had supplied the Tribunal with copies of; [a], *Howell-Williams –v- Wirral Borough Council* (1981) RA189: (b) *Luton Borough Council –v- Ball* (2001) All ER (D) 323(NAR) and (c) *Hanson -v- Middlesborough Borough Council* (2006) EWHC 1700 (Admin) and sought to rely on these cases. In particular the Appellant wished to distinguish the case of

Howell-Williams on the basis that in that case there was in fact only one living room within the two bedroomed apartment. The Appellant also sought to rely on paragraphs 19, 21 and 24 of the Hanson –v- Middlesborough Borough Council and in particular to the test of the interpretation of paragraph 31(a) (3)(a) being the interpretation of the phrase “major importance to his wellbeing by reason of the nature and extent of his disability”. In particular the Appellant wished to rely on their contention that the additional room was of major importance to a person such as Louise with the condition Down’s Syndrome.

8. The Department as Respondent, in rejecting the application for DPA wished to rely on the Court of Appeal Decision in the case of Howell-Williams –v- Wirral Borough Council 1981. It remained the Respondent’s contention that the room was being used as an additional living room and that to succeed the use of the room must relate to the persons wellbeing by reason of the nature and extent of the disability.

THE TRIBUNAL’S DECISION

9. In order to succeed in this appeal the Appellant, Mr Cleland would have to satisfy the Tribunal that the premises has a facility which is required for meeting the needs of Louise (being a person residing in the property who has a qualifying disability), including a facility which falls within the legal framework applicable to these matters. Therefore, the Tribunal must be satisfied that there is a facility which includes either (a) a room (other than a kitchen, bathroom or lavatory), which is wholly or mainly used whether for providing therapy or for other purposes by Louise, or, if such a room does not exist then (b) an additional kitchen, bathroom or lavatory, either of these (that is to say either (a) or (b)) being essential or of major importance to Louise’s wellbeing by reason of the nature and extent of the disability.
10. The Appellant accepts that there is no additional kitchen, bathroom or lavatory in the premises for the purposes of this appeal. Thus, if the appeal is to succeed the Tribunal must be satisfied that there is a room wholly or mainly used whether for providing therapy or for other purposes by Louise, being essential or of major importance to Louise’s wellbeing by reason of the nature and extent of her disability.

11. This Tribunal has followed the general guidance given in the cases mentioned by both the Appellant and the Department in their submissions and upon the additional case of Sandwell –v- Perks (2003) EWCA 1749 [Admin] which case was a case concerning the matter of a link stated as being required to be established between the existence of the qualifying disability and the requirement of the use of the room in the property and indeed the Tribunal has relied on the case of South Gloucestershire Council –v- Titley and Clothier (2006) EWCA 3117 (Admin); both of which cases have been rehearsed in earlier decisions of this Tribunal. It is clear that the purpose of the applicable law encompasses the notion of something additional to the norm. That is to be found in the proper interpretation of Article 17 of the 2006 Order and specifically Article 17(2)(a)(i) and (ii) and Article 17(3)(b) as these amend the 1977 Order. The Tribunal note the reference to the case of Howell-Williams –v- Wirral Borough Council. In that case 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 user of the room must relate to the disability”. The Tribunal also notes the finding in the case of South Gloucestershire Council –v- Titley and Clothier (2006) ECWA 3117 (Admin) on the facts of that case Mr and Mrs Clothier were the parents of 2 Down Syndrome children each of whom had a bedroom in the property where he or she spent a great majority of time each day, alone. There were no psychological adaptations made to the bedrooms. Mr and Mrs Clothier described each room as a “sanctuary”. On appeal the Court of Appeal in England, dealing with English Statutory Council Tax Provisions which are in the essential parts thereof expressed in broadly similar terms to the 1977 Order provisions, observe that even if neither of Mr and Mrs Clothier’s 2 children had had any disability whatsoever but were still living in the same household as Mr and Mrs Clothier, each would have had their own bedroom anyway – neither bedroom was in any sense “additional”. The Court of Appeal affirmed its earlier decision in Howell-Williams.
12. In this case there is no evidence that there is a room which qualifies as being additional, distinct or different. Indeed the Appellant, has quite properly, not tried to make out that case before this Tribunal. Under Article 17 of the 2006 Order the Appellant would have to establish that the room was essential or of major

importance to that persons wellbeing by reason of the nature and extent of the disability. In *Howell-Williams –v– Wirral Borough Council*, Fox LJ held that “where use of the room was unrelated to her disability because she needed the room for ordinary living and not for meeting the needs of her disability in that she had no equipment fixed in there for therapy. Accordingly she was not entitled to the rate relief she sought. The Appellant would have had to have shown that the room was predominantly used (whether for therapy or for other purposes) by a disabled person and secondly that it was required for meeting the needs of that person”. On the evidence before it this Tribunal cannot be satisfied that this room must be required for meeting the needs of this disabled person or that this room was of essential or major importance to Louise’s wellbeing by reason of the nature and extent of her disability.

13. Thus, the appeal cannot succeed and consequently the Tribunal’s unanimous decision is that the appeal is dismissed.

Mary O’Neill

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: