

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

CASE REFERENCE NUMBER: 02/07

ALAN RITCHIE - APPELLANT
AND
DEPARTMENT OF FINANCE & PERSONNEL - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Members: Mr Philip Murphy FRICS and Mr Bernard O’Kane.

Belfast, 10 March 2008

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").

The appellant, Mr Ritchie, appeared in person.

Mr Martin Wolfe, Barrister-at-Law, instructed by the Departmental Solicitor's Office, appeared for the respondent.

The appellant 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

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"). 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

The tribunal received oral evidence from the appellant. It is not the tribunal's general practice to take evidence under oath. The tribunal also had before it an agreed bundle of documents including the following:-

1. The appellant's application for DPA dated 26 April 2007.
2. Inspection report of the respondent dated 18 August 2007.
3. Correspondence between the appellant and the respondent
4. The appellant's Notice of Appeal (Form 2) to the tribunal.
5. A written submission consisting of a letter from the respondent to the tribunal dated 16 November 2007.
6. Correspondence between the tribunal and the parties
7. Copies of various authorities referred to in the course of the hearing.

The Facts

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

1. The hereditament consists of a dwellinghouse situated at 64 Willesden Park, Stranmillis, Belfast BT9 5GY ("the premises"). The tribunal had no information regarding title, nor regarding the physical construction and characteristics of the property, save as is mentioned in the papers before the tribunal or as was mentioned by the appellant in his oral evidence to the tribunal. The appellant is the ratepayer.
2. The appellant applied for DPA by application dated 26 April 2007, received by the respondent on 2 May 2007.
3. The premises were inspected by the respondent on 18 August 2007 by a Mr Morrow who recorded that no adaptations fitted the criteria. Mr Morrow recorded in answer to the question on the respondent's report form – "*Does the property have any of the following qualifying facilities?*" (with a list of these following thereafter), "*no*", by ticking the appropriate box on that form. Mr Morrow also recorded, "*The room is a bedroom only. No facilities for extra lavatories or adaptations*".
4. By letter dated 21 August 2007 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 dated 6 September 2007 the appellant wrote to the respondent taking issue with the respondent's determination. That letter was treated by the respondent as being a request for a review. The respondent, by letter dated 10 September 2007, confirmed that the review request had been considered and that the original decision should remain unchanged. There followed further correspondence and then the appellant made his appeal to this tribunal.
6. Certain other facts are not in contention and were accepted by the tribunal. Materially, it is the case that Mr George Hunter, the appellant's brother-in-law, has resided and currently resides in the property. It is not in contention, and the tribunal accepts as a matter of fact and law, that Mr Hunter is a person with a qualifying disability as defined in Article 2A of the 1977 Order.
7. The remaining findings of relevant fact are mentioned below.

THE CONTENTIONS OF THE PARTIES

The Appellant's Submission:

In his oral evidence and submissions, the appellant explained to the tribunal that Mr Hunter had occupied a room in the property since January of 1984. Although the property became his permanent residence from the start of March 2004, Mr Hunter had occupied the room in question virtually every weekend since January of 1984. Mr Hunter had prior to March 2004 been residing during the week in sheltered accommodation provided by Down Lisburn Trust ("the Trust") under the care of a qualified behavioural nurse therapist. There were, it seems,

certain difficulties experienced in 2003 and in 2004 with Mr Hunter's behaviour in that sheltered accommodation. The Trust thereafter indicated that it would be unable to continue to provide sheltered accommodation. As a result the appellant commenced the provision of full time residential accommodation to Mr Hunter in the property with effect from March 2004. The appellant informed the Tribunal that there was a great benefit to Mr Hunter deriving from the arrangement which subsisted from that time onwards. The appellant expressed to the tribunal his views concerning what he saw to be an institutionally abusive environment that he claimed had been earlier provided by the Trust. That had resulted, he contended, in Mr Hunter's behavioural issues.

Mr Hunter had his own room in the property where he spent part of the day. However, he was a sociable person and he interacted a lot with the appellant and his spouse throughout the day. Mr Hunter normally attended day facilities provided by the Trust during the weekdays, from Monday through to Friday.

Regarding the specific characteristics of the property, the appellant did not endeavour to argue that any room in the property was specially adapted for Mr Hunter. Mr Hunter had free access to every room in the property and he readily availed of that. However, the appellant had created for himself a work area in the roof space of the property for his own work and his computer facilities were located there in a space where the appellant could get peace and quiet to study.

The appellant noted that the respondent, in rejecting his application for DPA, had relied on the case authority of **Sandwell v Perks [2003] EWCA 1749 Admin**, which was a case concerning the matter of any necessary causative link established between the existence of a qualifying disability and the requirement of the use of a room in a property. The appellant stated that the application of this "causative link" test predated the implementation of the Disability Discrimination Act 1995 (referred to hereafter as "DDA"). In applying that particular **Sandwell v Perks** test, the respondent had failed to consider:-

1. that the rest of the household consisted of the appellant and his spouse and the permanent use of the room as a bedroom for Mr Hunter prevented its use by the rest of the household for any purpose; and
2. that Mr Hunter had occupied the room permanently since the appellant moved into the property in January 1984. Although this became his permanent residence in March 2004, he had in fact occupied the room virtually every weekend since January 1984; and
3. that this was now Mr Hunter's permanent residence due to the fact that for various reasons related to his behaviour the Trust decided in February 2004 that they could no longer provide residential accommodation for Mr Hunter, despite having done so since late 1981; and
4. that the case of **Sandwell v Perks** was superseded by **South Gloucestershire Council v Titley & another [2006]**.

Also, the appellant alluded to the general duty placed on public authorities by DDA. The appellant submitted that "need" was not restricted to the presence of a "qualifying adaptation". The need was not just for a bedroom. A bedroom was not a discrete unit; it was part of a household and a care environment. Mr Hunter required the facility of a safe, secure, non-threatening environment within which he could function to the best of his ability. In effect, the household, not just the bedroom, formed a "sanctuary" which was a necessary therapeutic environment for Mr Hunter.

The appellant presented the further argument that section 31A of the 1977 Order was incompatible with DDA as it failed to make adjustments in relation to practice, policy or procedure which failure made it impossible or unreasonably difficult for disabled persons to make use of the service provided for other members of the public.

The Respondent's Submission:

For the respondent, Mr Wolfe submitted, firstly, that the respondent was obliged to give effect to the application to the 1977 Order. The appellant had not drawn to the attention of the tribunal any facts or circumstances that suggested that the respondent had failed to comply with the provisions of Article 31A of the 1977 Order. Turning to the cases cited, in the **Sandwell v Perks** case the Court had found that there had to be a necessary causative link between the existence of a qualifying disability and the requirement of the use of a room in the property. In the case of **Howell Williams v Wirral Borough Council [1981] 79 LGR 697, CA** there was a reference to the intention of Parliament by Fox LJ..., *"It cannot have been the intention of Parliament to grant a rebate merely because a room is predominantly use by a disabled person...It seems to me that the user of the room must relate to the disability."*

However, Mr Wolfe for the respondent submitted that the most applicable case, on the facts, was the case of **South Gloucestershire Council v Titley & Clothier [2006] EWCA 3117 (Admin)**. On the facts of that matter, Mr and Mrs Clothier were the parents of two Down's 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 was no physical adaptation 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, observed that even if neither of Mr and Mrs Clothier's two 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**. Exactly the same argument could be applied in the appellant's circumstances. Therefore, the **Clothier** case was very helpful indeed, Mr Wolfe submitted.

Regarding the appellant's submission in respect of DDA, Mr Wolfe suggested that as it was Mr Hunter who had the disability, not the appellant, there was no question or issue of any possible discrimination on grounds of disability against the appellant. Further, section 59 of DDA stated expressly that nothing in DDA made unlawful any act done (a) in pursuance of any enactment; or (b) in pursuance of any instrument made by a Minister of the Crown under any enactment. That applied to the 1977 Order. There was therefore no possible argument in respect of DDA being applicable to the circumstances of this matter.

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 appellant 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 any person who resides in the hereditament and has a disability, such as might comply with Article 31A (2)(b).

Turning then to an examination of the facts and the application of Article 31A (2)(a), the tribunal must be satisfied that there is a facility which is required for meeting the needs of a person (in this case Mr Hunter) 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 Mr Hunter, or if such a room does not exist then an additional kitchen, bathroom or lavatory, being essential or of major importance to Mr Hunter's well-being by reason of the nature and extent of the disability.

The tribunal has made note of the submissions. The tribunal in determining the matter of interpretation of Article 31A (2) of the 1977 Order seeks some guidance from the cited English authorities, in the absence of any local authorities being referred to by the parties. These cases concern statutory provisions that are expressed in quite similar terms to the statutory provisions which concern this tribunal. These cases concerned the examination of the use of a room by a person with a qualifying disability.

Mr Wolfe has commented upon ***South Gloucestershire Council v Titley & Clothier***. The facts of that case are somewhat similar to the instant case in that Mr Hunter has a bedroom in the property where he will spend some time, perhaps arguably not as much time as seems to have been spent in ***Clothier***. Like ***Clothier*** there is no physical adaptation made to the bedroom. The "sanctuary" argument has also been advanced by the appellant, but not only in regard to the bedroom but rather in respect of the entire household. However, the tribunal notes that the Court of Appeal rejected the arguments in ***Clothier*** for the reason that if neither of the children had had any disability, each would have had their own bedroom anyway; neither bedroom was "additional".

The tribunal certainly understands how the appellant has, to an admirable extent, created a "sanctuary" in the property for Mr Hunter and Mr Hunter has derived great benefit from that. However, on the facts, the arrangement does not meet the qualifying tests posed by Article 31A of the 1977 Order.

Further, as DDA is inapplicable, there are no other arguments satisfactorily made out by the appellant. Thus, the appeal cannot succeed and consequently the tribunal's unanimous decision is that the appeal is dismissed.

**Mr James V Leonard, President
Northern Ireland Valuation Tribunal**

Date decision recorded in register and issued to parties: