

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

CASE REFERENCE NUMBER: 18/10

COLIN COOPER - APPLICANT
AND
DEPARTMENT OF FINANCE & PERSONNEL - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Ms Nessa Agnew

Members: Mr William Moore MRICS and Mr Peter Somerville

Belfast, 13 December 2010

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 applicant 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 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"). 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. The tribunal had before it the applicant's form of appeal to the tribunal (Form 2) which was received by the tribunal on 21 September 2010 along with a covering letter and copies of various documents including the following:-

1. The applicant's application for DPA dated 26 May 2010.
2. A letter dated 3 June 2010 from LPS indicating that the application was unsuccessful.
3. A letter dated 30 June 2010 from Mr Cooper which was treated as a request to review the decision not to award DPA.
4. A letter dated 6 July 2010 stating decision unchanged after review.
5. A second application form and covering letter dated 10 September 2010.
6. Letter from the LPS dated 14 September 2010.
7. A letter from the applicant to the respondent dated 17 September 2010.
8. A letter from the respondent to the applicant dated 20 September 2010.
9. A letter from the applicant to the respondent dated 22 September 2010.
10. A response dated 23 September from the respondent to Mr Cooper.
11. Mr Cooper's response to the respondent dated 27 September 2010.
12. LPS response to the applicant dated 29 September 2010.
13. Mr Cooper's response dated 5 October 2010.

14. LPS response to Mr Cooper's letter dated 11 October 2010.
15. Correspondence between the tribunal and the parties.
16. 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 dwellinghouse situated at number 25 Seafront Road Holywood, County Down BT18 0BB ("the property"). The property is stated to be owned by the applicant, but the tribunal had no other information regarding title, nor regarding the physical construction and characteristics of the property, save as is mentioned in the papers before the tribunal. The applicant is understood to be the ratepayer.

2. The applicant applied on two occasions to the respondent for DPA by applications dated 26 May 2010 and 10 August 2010.

3. On the application form none of the boxes were ticked in respect of the applicant's home indicating which facilities the property had for meeting the needs of a person with a disability. Mr Cooper had written "Hand rails at top and side of steps at front of home fitted following visit by OT. They also provided seat in shower unit." In Mr Cooper's second application he states in his form that the room which is wholly or mainly used by the person with a disability is a hallway and it is used as a hall.

4. On the second application form Mr Cooper further stated that "This and the other modifications to front steps (which you rejected) were considered by OT dept of Ulster Hospital to be necessary and warranted for me. The work was carried out by the OT dept who called at my home."

5. By letter dated 3 June 2010 the respondent wrote to the applicant rejecting the applicant'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 applicant was informed of his right to ask for a review of the decision.

6. By letter dated 30 June 2010 the applicant wrote to the respondent. Mr Cooper referred to the form which states that the discount is available for any household where a person concerned lives "and the property has been adapted" to meet the needs of his disability. He requested a copy of the wording as well as the case-law. He said that a hall should be considered to be a room and if he were to erect a rail in his hall would that qualify for the discount – he already has rails at the front steps.

7. On 6 July 2010 the respondent wrote to the applicant in regard to the review request confirming that the original decision should remain unchanged. The respondent stated in the letter that a shower seat and rails do not meet the scheme's qualifying criteria. The applicant was informed of his right to appeal to this tribunal. The LPS clarified that a hall is a room. The LPS also referred Mr Cooper to the case-law and stated that 'hand rails installed in any room of the house would not be reason alone to award rate relief. Rate relief would only be awarded if the room itself was used wholly or mainly by the person with a disability or therapy or other purpose'.

8. Mr Cooper wrote again on 17 September and responded to the LPS letter of 6 July. He stated that the room (hall) was used wholly by him as he is the only person living in the house. He pointed out that the LPS had not checked his medical history. His contention was that if a hand rail is installed because medical opinion is that it is a worthwhile aid to a medical condition then it was within the wording of the legislation. He disagreed with the LPS statement that 'Hand rails installed in a room...would not be reason alone to award rate relief' and questioned where this is stated in the legislation.

9. In his response of 20 September Mr Coey referred to the hand rails and said "Hand rails are not mentioned in the legislation and are, therefore, not one of the scheme's qualifying criteria". He went on to say " Rate relief cannot be awarded for hand rails, or indeed any other aids for disability, alone as they are not in the qualifying criteria set out in the legislation".

10. On 22 September Mr Cooper replied and took issue with the statement that hand rails are not mentioned in the legislation and that you cannot award rate relief for hand rails. Mr Cooper's view was that an exhaustive list of all alterations cannot be listed in the legislation and do not have to be mentioned in the legislation - Mr Cooper argued that the legislation stated that rate relief is available if a room in a dwelling has to be altered or adapted to meet the needs of the person occupying it and he said that that encompassed his situation. His view was that Article 17(3)(b) of the 2006 Order did not substantiate Mr Coey's assertion that hand rails are excluded.

11. Mr Coey responded by providing Mr Cooper with an appeal form.

12. Mr Cooper wrote again on 27 September and reiterated his argument about the legislation not listing all alterations. He further stated that his situation is fully described in Mr Coey's phrase "it is a room which is used wholly or mainly by the person with a disability for therapy, or other purpose, which is in the legislation and it is this that a decision is made". He referred again to the fact that his GP had never been contacted.

13. A very detailed response was issued by Mr Leonard Peden of LPS on 29 September 2010. He responded to the points raised by Mr Cooper by stating:

- the additional facilities are those as laid out in Article 17 of the 2006 Order
- a hallway could never be considered as being for the sole use of a person residing in a house
- he made no judgment as to the nature of a disability, although the LPS does require proof that the disability is permanent
- LPS decisions are not opinion based but based on legislation, case-law, decisions of the NIVT and historic good practice.

14. Mr Cooper wrote again on 5 October 2010 questioning the intent of the legislation and the LPS interpretation of it. Mr Peden wrote again on 11 October and recommended to Mr Cooper that he appeal to NIVT.

15. The appeal was received on 21 October and in the appellants' covering letter he stated that he has had an alteration made to his house which is for his sole use as he lives alone. The alteration was suggested by OT following a stay in hospital and it is a most useful alteration to his house for his condition. He also referred to the fact that his

medical condition has not been investigated with his GP. He attached the previously referred to letters of 20, 27, 29 September and 5 October 2010 and the first page of his application form.

16. 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).

In dealing with the disability issue the position of the LPS appears to be set out in Mr Peden's letter of 29 September in which he states that "We made no judgement as to the nature of the disability, although we do require proof that the disability is permanent". There is no evidence that LPS contacted Mr Cooper's GP and in the LPS case report it is stated

'LPS has not queried Mr Cooper's disability, although no medical evidence has been provided, due to the fact that we consider the property not to have any of the facilities which are required in order to qualify for rate relief'.

For the purposes of this appeal, the tribunal's view is that Mr Cooper is to be treated as a person with a disability for the purposes of the legislation. He stated in both of his applications that he has "atrial fibrillation" and "cardiomyopathy".

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 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 has presented the case that the hall with hand rails constitutes a facility, which is required to meet his physical needs. The appellant states that the hand 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 certainly understands that there is a room in the property (the hall) which has a hand rail fitted in order to address the medical and mobility issues to which Mr Cooper's application refers. The qualifying conditions imposed by Article 31A of the 1977 Order stipulate 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.

No evidence has been presented in respect of the existence of an additional kitchen, bathroom or lavatory. In relation to the hall which has been fitted with hand rails, although it may well meet Mr Cooper's needs and enhance his quality of life, it is in no way "additional".

The case-law encompasses the notion of something additional to the room. In the *Howell-Williams v Wirral Borough Council* 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 use of the room must relate to the disability."

The room in question is a hallway and the main function of a hall is to allow any person to enter and exit the property. A hall by its very nature cannot be said to be used wholly or only by one person, although in this case it is accepted as a finding of fact that Mr Cooper lives alone. No evidence has been presented as to how the hall is used to provide therapy or how it is of essential or major importance to Mr Cooper's wellbeing by reason of the nature and extent of his disability. There is nothing unusual about having a hallway and the addition of a handrail does not qualify the facility as being essential or of major importance-Mr Cooper could make alternative arrangements such as using a walking aid to provide him with stability while using his hall.

That being the case, the statutory test has not been satisfied by the appellant 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. Nessa Agnew, Chairman
Northern Ireland Valuation Tribunal**

Date decision recorded in register and issued to parties: