

NORTHERN IRELAND VALUATION TRIBUNAL

**The Rates (Northern Ireland) Order 1977, the Rates (Amendment) (Northern Ireland) Order 2006 and the Valuation Tribunal Rules (Northern Ireland) 2007
(as amended)**

Case Reference Number: 13/10

DAVID PINDER– Appellant

and

THE DEPARTMENT OF FINANCE AND PERSONNEL– Respondent

Chairman: Garrett E.O' Reilly

Members: Ms Siobhan Corr MRICS and Mr. Hugh Mulholland

Date of hearing: 04 October 2010

Background

1. The Appellant being aggrieved by a decision of the Land and Property Services (an agency of the Respondent) that he was not entitled to a rate rebate for property with a special facility for a person with a disability at 29, Sandhill Gardens, Belfast BT5 6FF (the Property) duly served a notice for a review of that decision.
2. On the review the Respondent confirmed the decision.
3. The Appellant being dissatisfied with the result of the review duly served a Notice of Appeal to the Valuation Tribunal.
4. Article 31A of the Rates (Northern Ireland) Order 1977 (the 1977 Order) was revised and amended by Article 17 of the 2006 Order of the Rates (Amendment) (Northern Ireland) Order (the 2006 Order) and by Article 31A (12B) a person is enabled to appeal to the Tribunal against the result of a review that he or she 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 Rates Disability Allowance.
5. This Hearing was an appeal by the Appellant against the result of the Respondent's review.

Legislation governing the Appeal

In so far as is material to this Appeal Article 31A of the 1977 Order provides—

- At (2) thereof----“(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;.....”

- At (3) thereof----“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)references to a facilitybeing 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”

- At (10) thereof----“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% of its capital value”
- At (12) thereof----“Any person who is aggrieved by a decision of the Department under paragraph (11A) 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;
- At (12A) thereof----“the Department shall serve on that person a notice of the result of the review.”
- At 12B thereof----“If that person is dissatisfied with the result of the review, he may appeal to the Valuation Tribunal.....”

Evidence and Information before the Tribunal

There was no personal appearance by or on behalf of either of the parties.

The parties having given their prior consent in writing in accordance with Rule 11 of the Valuation Tribunal Rules (Northern Ireland) 2007 the matter was determined upon the basis of written representations.

The following documents were before the Tribunal for consideration of the Appeal:-

1. LPS Disabled Persons Allowance Application Form dated the 19 April 2010 in the name of David Trevor Pinder for Rates Disability Allowance.
2. The first page of a letter dated the 21 April 2010 from the Department for Social Development detailing the payments of the Disability Living Allowance paid to Joan Pinder for “help with personal care and getting around”.
3. Unheaded Document dated the 10 June 2010 signed by a Rating Officer and by the Appellant.
4. LPS letter of refusal of Rates Disability Allowance dated the 11 June 2010.
5. Appellant's letter dated the 7 July 2010 requesting the review of the Respondent's decision to refuse Rates Disability Allowance for the Property.
6. LPS letter to the Appellant dated the 29 July 2010 confirming that the original decision of the LPS to refuse Rates Disability Allowance for the Property.
7. Notice of Appeal against the result of the decision by the LPS date stamped as received by the Northern Ireland Valuation Tribunal on the 16 August 2010.

The Facts

On the basis of the evidence and information the Tribunal was satisfied that there was no dispute between the parties on the following facts:-

1. The Appellant is the rate payer in respect of the Property.
2. The Property is a three bedroom house.
3. Joan Pinder (the Appellant's mother) is a person with a disability as defined in the legislation.
4. The Appellant's mother lives in the Property with the Appellant.
5. The Appellant's mother has a serious lung disease which necessitates the use of equipment known as an oxygen concentrator.
6. The oxygen concentrator is situated in a room in the Property and
 - is essential or of major importance for the needs of the Appellant's mother because of her disability,
 - is noisy and generates heat,
 - is operational for 16 to 24 hours a day,
 - was installed on the 16 November 2009,
 - is installed in an upstairs room in which there a small fridge has also been installed for the use of the Appellant's mother and there is also a bed and bedroom furniture in this room.
7. The Appellant's mother does not sleep in the room with the oxygen concentrator equipment but in another bedroom.
8. No one now sleeps in the room with the oxygen concentrator equipment.

The Submissions of the Parties

The Appellant contended that the room in which the oxygen concentrator is installed can no longer be considered as a bedroom as it is wholly used by his mother with her disability. The presence of a bed and bedroom furniture in the room is explained by the Appellant as being the only place to store them.

The Tribunal considered that on the facts the room in which the oxygen concentrator is installed could no longer properly be used and called a bedroom. The Tribunal also accepted in a three bedroom house, in which a mother and her adult son reside, that the storage of a bed and bedroom furniture in a third room, originally used and designated as a bedroom, was logical and reasonable.

The Respondent contended that

1. It is the oxygen concentrator not the room in which it is placed which is essential to the well being of the Appellant's mother by reason of the nature and the extent of her disability;
2. The room is a bedroom as it contains a bed and bedroom furniture as well as the oxygen concentrator;
3. The room is not an additional room;
4. No physical adaptations have been made to the room; and

5. The Decisions in the cases of *Howell Williams v Wirral Borough Council* [1981] 9 LGR 697, CA and *South Gloucester Council v Titley and Clothier* (2006) support the refusal of the Respondent to grant Rates Disability Allowance to the Appellant in respect of the Property.

If the decisions in *Howell Williams v Wirral Borough Council* [1981] 9 LGR 697, CA and *South Gloucester Council v Titley and Clothier* (2006) support the refusal to grant Rates Disability Allowance in this appeal then this Tribunal may be bound by them and in that circumstance the Tribunal must dismiss this Appeal without considering any other issues.

Accordingly the Tribunal first considered the decision in *Howell Williams v Wirral Borough Council* [1981] 9 LGR 697. The decision was not made on the legislation governing this appeal but the legislation is couched in very similar terms to Article 31(A) of the Rates Order 1977.

In the case of *Howell Williams v Wirral Borough Council*, the claimant had been refused a disability reduction by her Local Authority. The claimant argued that as she suffered from arthritis, she needed additional heating in her living room in the form of an electric heater and a night storage heater. The claimant applied for a reduction in her Council Tax under Regulation 3 of the Council Tax (Reductions for Disabilities) Regulations 1992 using the section that states:-

“a room, but not a bathroom, a kitchen or lavatory, which is predominantly used (whether for providing therapy or otherwise) by the person with the disability”

The claimant’s appeal was unsuccessful, as the court found that a ‘causal link’ had not been established between the room and the disabled person. Following the *Howell Williams* judgment, the need to show a ‘causal link’ between the room and the disabled person became essential when claiming a disability reduction.

In it 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.” and that

the statutory rates exemption relates to.... “to a room which is predominately used (whether for therapy or for other purposes) by, and is essential or of major importance to, the well-being of a disabled person by reason of the nature and extent of his disability.” and

He also stated that in his reasoned judgment.....“It seems to me that the used of the room must be related to the disability.”

The Tribunal accepted that *Howell Williams* is authority for rates relief not being available unless the use of a room by the person with disability was related to the disability. In this appeal the room contains oxygen equipment which the Appellant’s mother uses as a result of her disability and the room is used and required for meeting her needs. There is a causal link between the Applicant’s mother, the room and the equipment within the room. Accordingly the Tribunal considered that a decision on the facts of this appeal a decision to grant Rates Disability Allowance for the Property would not be inconsistent in any way with the *Howell Williams* decision.

The cases of *South Gloucester Council v Titley and Clothier* (2006) were also not based on the legislation governing this appeal and again the legislation is couched in very similar terms to Article 31(A) of the Rates Order 1977. They are two appeals from Valuation Tribunal decisions which allowed reductions in Council Tax. Mr. Justice Bean allowed both appeals primarily on the basis that there was no specific room for use by the person with the disability and there was no sense of an additional room and on the facts *South Gloucester Council v Titley and Clothier* (2006) is clearly distinguishable from this Appeal.

For the reasons herein set out the Tribunal determined that neither the cases of *Howell Williams v Wirral Borough Council* [1981] 9 LGR 697, CA and *South Gloucester Council v Titley and Clothier* (2006) support the refusal of Rates Disability Allowance in this Appeal. Indeed on the contrary on the facts of this appeal the Tribunal took the view that the two decisions could be reasonably interpreted to support the entitlement to Rates Disability Allowance for the Property.

Further the Tribunal also noted several decisions of the Northern Ireland Valuation Tribunal relating to the Rates Disability Allowance none of which would be inconsistent if the Tribunal decided to grant Rates Disability Allowance for the Property in this Appeal. In particular the Tribunal noted a recent decision of the Northern Ireland Valuation Tribunal of 17 September 2010 in an appeal by Donald McMillan against Department of Finance and Personnel (Case Reference 12/10) in which an order for Rates Disability Allowance was made on facts which could be considered as less favourable to the grant than the facts in this Appeal.

Accordingly the Tribunal turned to consider the other Respondent's submissions.

1. The Tribunal agreed that the oxygen concentrator equipment was essential to the well-being of the Appellant's mother by reason of the nature and extent of her disability but also decided on the evidence that the oxygen concentrator was of no help to the Appellant's mother without a room in which to install it.

The Tribunal considered a test for this submission might be the situation if the Property had been a two bedroom house and the Appellant had built an additional room for the oxygen concentrator equipment. In this situation would the Respondent dispute that this additional room was essential or of major importance to the well-being of the Appellant's mother by reason of the nature and extent of her disability and challenge the grant of Rates Disability Allowance?

2. The Tribunal did not have any difficulty in deciding that the room could now not be classified as a bedroom. By definition a bedroom is a room for sleeping and on the evidence it was not reasonably possible to sleep in the room.

3. The Tribunal agreed that the room was not an additional room for a three bedroom house but considered that this was not of any relevance or significance under the legislation governing this appeal.

4. The Tribunal agreed that no physical adaptations had been made to the room but considered that this was not of any relevance or significance under the legislation governing this appeal.

DECISION

Having regard to the facts and the authorities the Tribunal determined that the Appellant's mother resides in the Property in which there is a room wholly or mainly used by her with a facility which is essential or of major importance to her well-being by reason of the extent of her disability for her breathing needs and the Tribunal unanimously upholds the appeal and finds that the Appellant is entitled to a rate rebate from the 16 November 2009 for the property at 29, Sandhill Gardens, Belfast BT5 6FF for so long as the situation detailed herein continues in accordance with Article 31(A) (10) of the Rates Order 1977.

GARRETT E. O' REILLY
Legal Chairman
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: