

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

CASE REFERENCE NUMBER: 04/07

DECLAN LEADEN - APPLICANT
AND
DEPARTMENT OF FINANCE & PERSONNEL - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Members: Mr Tim Hopkins FRICS and Mr Dermot Mullan.

Belfast, 26 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"). 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) and copies of various documents including the following:-

1. The applicant's application for DPA dated 17 October 2007.
2. A letter dated 29 March 1995 to the applicant from Department of Health & Social Services ("DHSS"), regarding the award of Disability Living Allowance ("DLA").
3. A receipted invoice dated 26 February 2004 from Olympic Lifts addressed to Mrs Leaden in respect of installation of a Stannah 300 stairlift at the address, 107 Elmfield Road, Glengormley.
4. A letter dated "February 2007" to the applicant from SSA regarding a general increase in benefits.
5. Home Visit pro-forma document of the respondent dated 24 October 2007.
6. Letters from the respondent to the applicant dated 22 October 2007, 26 October 2007 and 12 November 2007.

7. A letter from the applicant to the respondent dated 5 November 2007.
8. A letter from the respondent to the tribunal dated 3 December 2007.
9. Correspondence between the tribunal and the parties.

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 107 Elmfield Road Glengormley, County Antrim BT36 6DP ("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 to the respondent for DPA by application dated 17 October 2007.
3. The property was inspected by the respondent on 24 October 2007, by a Mr E Gibson. Mr Gibson recorded on the Home Visit Pro-Forma dated 24 October 2007 as follows: "*Stair lift installed - Radiator restricts bottom level. Handrail fitted in bathroom. Stair lift installed however this does not obstruct any other part of the property. Adaptations do not meet any of the above qualifying facilities. Application refused*".
4. By letter dated 26 October 2007 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.

5. By letter dated 5 November 2007 the applicant wrote to the respondent requesting a review. After detailing a number of medical and mobility issues, the applicant states, *"The stair lift constitutes a facility, which is required to meet my physical needs, which an "additional kitchen" would not... It is a major adjustment to the house, as anyone who has one will tell"*.
6. On 12 November 2007 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, notwithstanding that the stairlift was a major alteration to the house and was required for meeting the applicant's needs, that did not meet the scheme's qualifying criteria. The applicant was informed of his right to appeal to this tribunal.
7. The applicant has been in receipt of Disability Living Allowance, as evidenced by the copy letter dated 29 March 1995 from DHSS. This states that the applicant was entitled to Disability Living Allowance from 10 February 1995 for life.
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).

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 applicant has not endeavoured to present any case that the property does have 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, nor an additional kitchen, bathroom or lavatory. There is no evidence that any such exist. Rather the applicant has presented the case that the stairlift constitutes a facility, which is required to meet his physical needs, which an "additional kitchen" would not. He states that the stairlift is a major adjustment to the property and thus 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 how the applicant in this case, like Mr Titley, has created a facility in the property by means of the stairlift installation in order to address the medical and mobility issues to which his application refers. However the mere fact of the creation of a facility within any property, without more, is insufficient to meet the qualifying conditions posed by Article 31A of the 1977 Order. To this tribunal it is evident that the relevant provisions relating to any hereditament must be satisfied by:-

1. Firstly, the existence of a relevant and qualifying facility which is required for meeting the needs of a qualifying person;
2. Secondly, 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.

For the applicant to succeed on the facts of this matter, the tribunal would have to be satisfied that, other than the foregoing matters expressly provided for by Article 31A (2) (a) (i) and (ii), any facility such as the stairlift which might be deemed required for meeting the needs of a qualifying person (qualified of course by the "essential or of major importance" test) is deemed to be included on account of the use of the word "including" in Article 31A (2) (a) of the 1977 Order. The tribunal does not take that view in the interpretation of these provisions of Article 31A (2) that a facility such as the applicant's stairlift is included within the remit of these provisions.

That being the case, 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.

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

Date decision recorded in register and issued to parties: