

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

CASE REFERENCE NUMBER: 12/10

DONALD McMILLAN - APPELLANT
AND
DEPARTMENT OF FINANCE & PERSONNEL - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Members: Mr Brian Sparkes FRICS and Mr Pat Cumiskey.

Belfast, 17 September 2010

DECISION

The unanimous decision of the tribunal is that the appeal is upheld and the appellant is entitled to a rate rebate for the property with a special facility for a person with a disability for so long as the situation remains as described in this decision.

REASONS

Introduction

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

The matter was determined upon the basis of written representations.

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

1. 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").

2. It is not in contention for the purposes of this appeal that the appellant, who resides in the property under discussion, meets the relevant statutory criteria as being a person who has a disability. Thus in this appeal the tribunal's focus is upon the premises and in particular the specific statutory criteria relating to premises which might give rise to an entitlement.
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;

(b) -.

(3) In paragraph (2)—

(a) -

(b), references to a facility.....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.

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 had before it the papers lodged in the appeal both in respect of the review by the Department and also in regard to the appeal to this tribunal and thus the tribunal also had before it a copy of the appellant's application for DPA and appeal form and also copy correspondence from the appellant and the Department.

The Facts

6. On the basis of the evidence and information before it, the tribunal determined, upon the balance of probabilities, the following material facts:-

- (a) The hereditament consists of a dwellinghouse situated at 23 Rathgill Drive Bangor, County Down BT19 7TE (“the premises”). The appellant is understood to be the ratepayer and is the occupier of the premises. His grandchildren stay with him occasionally. The appellant has a disability, pulmonary fibrosis, which necessitates the administration of oxygen by means of oxygen generation equipment to assist in breathing difficulties.
- (b) The tribunal had regrettably sparse information regarding the premises provided by the appellant and by the respondent but it appears that the premises comprises at least two bedrooms, these being one rather smaller bedroom and also a main bedroom, together with one bathroom upstairs, one living room and a kitchen/dinette.
- (c) The oxygen generation equipment necessitated for use with the appellant’s medical condition is apparently rather noisy and that noise persists day and night as it seems that the equipment is left turned on all or most of the day and the night. Consideration was given to locating this oxygen generation equipment in the smaller (spare) bedroom upstairs but it seems that the appellant was concerned at the level of noise when his grandchildren came to stay with him and used that smaller bedroom.
- (d) The uncontroverted evidence from the appellant is that the oxygen generation equipment is located in the living room and feeds a supply of oxygen by a system of pipes to the kitchen and the bedroom, by valve control operation. The Department’s report dated 8 June 2010 from Rating Officer, Mr Pat Cunningham, confirms the following:-

“Mr McMillan has an oxygen generator in his living room. Oxygen is then piped through to his kitchen – the television and suite of furniture etc now are placed in the kitchen area”.

The appellant himself states in a letter dated 17 May 2010 to Land and Property Services:-

“The dinette in my home is now used more as the living area”.

This therefore suggests that the oxygen generation equipment has effectively displaced normal household usage of the living room from the living room to the kitchen/dinette area. There is no evidence that the living room is used for any purpose other than to house the oxygen generation equipment.

- (e) The premises has no separate structural adaptation nor any additional kitchen, bathroom or lavatory (for the statutory qualifying purpose).
- (f) The appellant applied for DPA in respect of the premises by application dated 27 April 2010. By letter dated 6 May 2010 the Department wrote to the

appellant rejecting the appellant's claim for DPA on the grounds that the premises 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.

(g) By letter dated 17 May 2010 the appellant wrote to the Department requesting a review. He made the contention that the premises had an oxygen generator in what was (note the appellant's use of the past tense) the living room and that he was the person who mainly used this area for the purpose of his disability. The respondent inspected the premises (on a date that is not clear from the report but was probably 8 June 2010) and the resultant report is dated 8 June 2010 from Mr Cunningham. By letter dated 9 June 2010 the Department confirmed that the review request had been considered and that the original decision should remain unchanged, and in so stating making the specific observation that the living room was still used as a living room.

(h) Any remaining findings of relevant fact are as may be mentioned below.

THE CONTENTIONS OF THE PARTIES

7. In his case, the appellant has contended that the oxygen generation equipment is located in the living room and is needed for use both day and night. This oxygen generation equipment takes up space and is constantly noisy. No one can use the room due to the noise. The room is not available for normal use as a living room. This places the premises in a position of qualifying under the statutory provisions for a rebate of rates (DPA).
8. The Department as respondent, in rejecting this application for DPA, has contended that the premises does not qualify for DPA and has relied on case law authority. Mentioned in the Department's letter dated 9 June 2010 to the appellant is the case of ***Howell Williams v Wirral Borough Council [1981] 79 LGR 697, CA.***

THE TRIBUNAL'S DECISION

9. In order to succeed in this appeal (as the premises under appeal has no separate structural adaptation nor any additional kitchen, bathroom or lavatory of relevance under the 2006 Order, Article 17 (2) (a) (ii)), the appellant has to satisfy the tribunal on grounds of Article 17 (2) (a) (i) that the premises has a facility which is required for meeting his needs as a person residing in the premises who has a qualifying disability, including a facility which falls within the statutory framework applicable to these matters. Thus, the tribunal must be satisfied, as the legislation provides (with some paraphrasing for the sake of clarity) :-

"... that there is a facility which is required for meeting the needs of ... (the appellant)... including a facility ... (being) 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 appellant)".

and, (as qualified by Article 17 (3) (b)) *"...references to a facility.....being required for meeting the needs of (the appellant) are references to its being*

essential or of major importance to (the appellant's) well-being by reason of the nature and extent of the disability".

10. This tribunal in its earlier decisions in this statutory jurisdiction has followed the general guidance given in the case mentioned above in the Department's correspondence. As has earlier been observed by this tribunal, it is clear that the purpose of the applicable law encompasses the notion of something additional to or set apart from the norm. That is to be found in the proper interpretation of Article 17 of the 2006 Order and specifically in Article 17 (2) (a) (i) and (ii) and Article 17 (3) (b) as these amend the 1977 Order. In the case mentioned (and dealing with a rather similar statutory jurisdiction in England to that currently under consideration in this case), the case of **Howell Williams v Wirral Borough Council**, 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.*"
11. In the absence of any further argument or legal submission in this case, the tribunal must examine the proper interpretation of the words of the statute and the application of those words to the facts of the matter, such as they are. Here, the oxygen generation equipment had effectively displaced the "normal" household usage of the living room from that room into the kitchen/dinette area. That fact was certainly accepted by the officer who conducted the site visit, Mr Cunningham. There is no evidence that the living room was used for any purpose other than to house the oxygen generation equipment. Thus the observation contained in the Department's letter dated 9 June 2010 that the living room was still used as a living room does not seem to be based upon any specific evidence nor does it appear to be linked to the factual position as that had been observed and recorded in Mr Cunningham's report dated 8 June 2010. If there had been clear and cogent evidence presented in this case by the respondent that the living room indeed continued to be used as a living room as such, to counter the appellant's case, that would be a different matter. But the evidence of the appellant, rather sparse though it might be, is effectively unchallenged and indeed it must be said is rather supported by Mr Cunningham's report.
12. That being the best interpretation of the factual position, what do the statutory provisions have to say upon the matter? There is no doubt that in the living room there has been arranged what could be described as a "facility" which is required for "meeting the needs" of the appellant, that is to say the oxygen generation equipment that is designed to meet the appellant's breathing needs. The statutory definition is expressed as including a facility (being) a room; thus the living room (which is other than a kitchen, bathroom or lavatory) has to be wholly or mainly used (whether for providing therapy or for other purposes) by the appellant.
13. Is the living room "used" by the appellant? Use of any room can of course cover a multiplicity of situations. It appears that the appellant very probably does not spend any appreciable time in the living room. The function of the room seems, in the main, to be the housing and operation of the oxygen generation equipment. As matter of interpretation, the tribunal accepts the word "use" in its broad interpretation, as using the accommodation provided by the living room to provide a structure within which the facility needed might be operated and rendered effective. The definition of "use" in the Oxford English Dictionary is expressed as to, "*take , hold, or deploy (something) as a means of accomplishing or achieving something*", or to, "*exploit*

(a person or situation) for one's own advantage". That broad definition sits comfortably in accordance with the tribunal's interpretation of the word "use" in the statutory provision. On the facts, normal domestic use of that room was displaced and a specific use as mentioned above was engaged in by the appellant that accords with the words of the statute. The room was wholly or mainly used for the indicated purpose, upon the facts. There is little doubt (and none has been expressed in opposition to this appeal) that the operation of the oxygen generation equipment is essential or of major importance to the appellant's well-being by reason of the nature and extent of the disability.

14. The foregoing being the case, the room in question is, upon the apparent facts, wholly or mainly used by the appellant for providing "therapy", that is to say therapy in the form of the provision of oxygen to meet the appellant's needs. The tribunal did give some consideration to the issue that the provision of the oxygen generated in the living room was enjoyed at other locations within the house (it must be assumed) than in the room in which the oxygen was generated. However, both for want of evidence and also as a matter of interpretation, the tribunal is of the view that any matter potentially arising from that issue ought not of itself to cause this appeal to fail.
15. The appellant's appeal therefore succeeds, and that is by unanimous decision of the tribunal. The appellant is thus entitled to the rate rebate for a property with a special facility for a person with a disability for so long as the situation remains as above described.
16. In conclusion, the tribunal would make the general observation that in cases of this type (especially where there is to be no oral hearing enabling clarification of the facts to be made by direct evidence), the task of the tribunal in reaching a determination could be considerably assisted by a rather more comprehensive report on the respondent's part. That report might usefully address in some detail the statutory criteria for qualification of the premises and, in particular, might provide a comprehensive commentary upon the observed facts, insofar as these might relate to the criteria. A plan or sketch of any adaptation, facility or installation might perhaps be useful in some circumstances, together with a detailed observation as to the basis upon which any application for DPA had been rejected with particular reference to the material facts.

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

Date decision recorded in register and issued to parties: