

**NORTHERN IRELAND VALUATION TRIBUNAL**

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

**CASE REFERENCE NUMBER: 15/10**

**GERALD KELLY – APPELLANT**

**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 this appeal is dismissed.

**REASONS**

**1. Introduction**

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

The Appellant appealed against the outcome of a review of the decision of the Department that the Appellant was not entitled to claim Disabled Persons Allowance ("DPA").

Cllr Johnny McLaughlin and Mr. Kelly appeared on behalf of the Appellant and Mr Coey on behalf of the Respondent.

The Applicant, by claim form dated 1 February 2010, 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".

**2. The Law**

The statutory provisions are to be found in the 1977 Order. Article 31 A(12B) of the 1977 Order was inserted by Article 17(8) of the Rates (amendment) Northern Ireland (Order 2006) "the 2006 Order". Article 31 A(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 Persons Allowance ("DPA").

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;

(3) in paragraph (2) –

(a) –

(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 a major importance to that person's wellbeing by reason of the nature and extend of the disability.

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.

### **3. THE EVIDENCE**

The Tribunal heard oral evidence from both parties and had before it a copy of the Appellant's application for "DPA", the appeal form, and copies of the correspondence from the Appellant and the Department. It also had copies of two previous applications and the related correspondence.

### **4. THE FACTS**

On the basis of the information before it, the Tribunal determined upon the balance of probabilities, the following facts;

(a) The hereditament consists of a dwelling house situated at 28 Annaghilla Road, Augher, BT70 0BP ("the premises"). The Appellant is the rate payer.

(b) The premises is a two bedroom detached house. The Appellant made an earlier application for DPA in respect of the premises which was turned down.

A second application dated 9 July 2009 indicated that the premises has a bedroom which is used as a therapy and relaxation room by Mr Kelly as well as a bathroom specifically adopted for a disabled person.

(c) By letter dated 4 August 2009 the Department wrote to the Appellant rejecting the Appellant's claim for DPA on the grounds 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 within 28 days.

(d) A review was requested by the Appellant and was supported by Cllr McLaughlin. Mr Kelly had requested the review on the grounds that his late mother had previously received rates relief at this property. The letter of 12 August 2009 explained that in April 2007 a revised version of Disabled Persons Allowance was introduced which changed the qualifying conditions of the scheme and the fact that his mother previously received rate relief had no bearing on Mr Kelly's application. One of the qualifying conditions is an extra bathroom and in Mr Kelly's property there is only one bathroom and as such it does not meet the qualifying condition. In relation to the spare bedroom the Respondent indicated that "Unfortunately, it had been ruled in previous case law (Howell Williams v Wirral Borough Council, 1981; Sandwell Metropolitan Council v Perks 2003; South Gloucester Council v Titley and Clothier, 2006) that it is not appropriate to award rate relief where a room is being used as a bedroom".

(e) Cllr McLaughlin requested information as to who was responsible for bringing in the new Disability Rates Regulations and why it was necessary for such legislation to be brought in and this letter was responded to by Brian McClure, Head of Policy Rating Division in the Department of Finance and Personnel on 2 September 2009.

(f) Cllr McLaughlin by letter dated 7 September 2009 informed Land and Property Services of his intention to appeal.

(h) An appeal form was sent to Cllr McLaughlin on 11 September 2009 but it was not returned.

(i) A further application form was submitted on 1 February 2010. Again the application referred to the spare bedroom being used as a therapy room and also stated that there was an additional lavatory.

(j) Mr Pat Cunningham visited the property on 20 May 2010 and he described the property as being a bungalow and the bathroom as being modified to install a disabled access shower but noted that it is the only and main bathroom and lavatory. In relation to the bedroom being used by Mr Kelly, Mr Cunningham noted that it is a spare bedroom to the rear of the house which contains a bed, television and treadmill which Mr Kelly uses to do cardiovascular exercises. In relation to the additional lavatory, Mr Cunningham reported that this is contained in an outhouse to the rear of the property and that it is not used by the appellants although he did have plans

to install a new lavatory and wash basin for use when he is in his garden.

(k) By letter of 24 May 2010 Mr Cunningham advised Mr Kelly that his application for DPA had been unsuccessful; as 'There is no clear link between the Disability and the additional facilities'.

(l) Cllr McLaughlin requested a review on behalf of Mr Kelly by a letter of 1 June 2010. He also raised a number of queries.

(m) On 29 June Mr Coey responded to the queries. Cllr McLaughlin wrote again on 9 August 2010. Mr Coey responded on 11 August 2010 by stating that he had been corresponding with Cllr McLaughlin since April 2009 and advised Cllr McLaughlin of Mr Kelly's right to request a review or to appeal.

(n) The appeal was received on 27 September 2010.

The grounds of the appeal are:

That the facility for which Mr Kelly sought DPA had been adapted through a Disabled Occupational Social Services grant for the needs of Mr Kelly's mother and the same adapted bathroom facilities met Mr Kelly's disabled needs. Mr Kelly claimed that as a disabled person he is not being treated fairly or equally.

## **5. THE TRIBUNAL'S DECISION**

In order to succeed in this appeal the Appellant has to satisfy the Tribunal that the premises has a facility which is required for meeting the needs of Mr Kelly (as a person residing in the property who has a qualifying disability) including a facility which falls within the legal framework applicable to these matters. It is accepted by the Respondent that Mr Kelly meets the relevant criteria as a person who has a qualifying disability and on that basis the Tribunal's focus in this case is on the premises. Therefore the Tribunal must be satisfied that there is a facility 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 Kelly, or, if such a room does not exist, then (b) an additional kitchen, bathroom or lavatory, either of these (that is to say either (a) or (b)) being essential or of major importance to Mr Kelly's wellbeing by reason of the nature and extent of his disability.

Dealing with these in reverse order, there is no evidence of an additional kitchen, bathroom or lavatory in the premises. The property has one main bathroom and whilst it is accepted that the bathroom has been adapted, the property has only one bathroom and on that basis does not qualify under Article 17(2)(a)(ii).

The property does have an outside lavatory - Mr Coey submitted that it was not used and it would not qualify. Mr Kelly stated in his evidence that it was used by him if he was outside in summertime, sitting in the garden and that rather than going through the house, he would use the outside lavatory.

In the Tribunal's view this outside lavatory is not required to meet Mr Kelly's needs as from his own evidence, he only uses it if he is in his garden during the summer. The Tribunal is not of the view that it is essential or of major importance to Mr Kelly's wellbeing as is required if it is to comply with Article 17(3). Thus, if the appeal is to succeed the Tribunal must be satisfied that there is a room wholly or mainly used, whether for providing therapy or for other purposes by Mr Kelly which is essential or of major importance to Mr Kelly's wellbeing by reason of the nature and extent of his disability. Mr Kelly gave evidence that the room in question has a large single bed which is made-up, a treadmill and a large television resting on a chest of drawers. The evidence of Mr Cunningham from LPS is that it is still essentially being used as a bedroom. Cllr McLaughlin stated that Mr Kelly uses the room to do his exercises. He then rests for 20 minutes and the bed is used by Mr Kelly to rest. The television also incorporates a video player and Mr Kelly plays his exercise videotapes provided by his physiotherapist. The room is at the front of the building, there are two bedrooms in the premises - the other bedroom is used by Mr Kelly and his wife. Mr Kelly said he chooses to exercise indoors rather than going for walks, unsupervised. His mother's former bedroom has ended up becoming his exercise room/ treatment room. He said he spends up to one hour a day in that room. He does his exercises when his wife was in the house and is there to supervise him. Because of the nature of his disability, Mr Kelly has to be careful and has to be supervised when he exercises. Mr Kelly has a heart condition that leaves him short of breath and has pains in his joints, feet and legs.

Mr Kelly showed the Tribunal a plan of his house and pointed out the room in question to the Tribunal. Cllr McLaughlin pointed out that the guidance notes on the application form do not reflect the legislation.

Cllr McLaughlin stated that Mr Kelly's use of the room was part and parcel of Mr Kelly's daily routine and part and parcel of his medication.

This Tribunal has followed the general guidance given in the cases mentioned above in the Department's refusal of review. It is clear that the purpose of the applicable law encompasses the notion of something additional to the norm. That is to be found in the proper interpretation of Article 17 of the 2006 Order and specifically Article 17(2)(a)(i) and (ii) and Article 17(3)(b) as these amend the 1977 Order. The Tribunal has mentioned above the reference to the case of Howell-Williams -v- Wirral Borough Council. In that 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 user of the room must be related to the disability". The Appellant has indicated in his evidence that the room was converted from a bedroom into a treatment room and that the room is used for an hour each day. The treatment room may be a convenient place for Mr Kelly to carry out his exercises and then to rest but this could be done elsewhere in his home or he could carry out his exercises in another manner. It suits Mr Kelly but the Tribunal did not believe the treatment room was essential or of major importance to Mr Kelly's wellbeing. Under Article 17 of the 2006 Order the Appellant would have to establish that the room was of essential or of major importance to that person's wellbeing by reason of the nature and extent of the disability.

The Applicant would have to show that the room was predominantly used (whether for exercise, therapy, relaxation or for other purposes) by a disabled person and secondly that it is required for meeting the needs of that person. On the evidence before it this Tribunal cannot be satisfied that this room must be required for meeting the needs of this disabled person or that this room was of essential or major importance to Mr Kelly's wellbeing by reason of the nature and extent of his disability.

Thus, the appeal cannot succeed and consequently the Tribunal's unanimous decision is that the appeal is dismissed.

**Nessa Agnew, Chairman**  
**Northern Ireland Valuation Tribunal**

**Date decision recorded in register and issued to parties:** *3 February 2011*