NORTHERN IRELAND VALUATION TRIBUNAL

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

CASE REFERENCE NUMBER: 01/07

JOSEPH TONER - APPLICANT

AND

DEPARTMENT OF FINANCE & PERSONNEL - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr J V Leonard, President

Members: Mr Philip Murphy FRICS and Mr Bernard O'Kane.

Belfast, 20 November 2007

DECISION

The unanimous decision of the tribunal is that the appeal is dismissed as the appellant is not for the purposes of the Rates (Northern Ireland) Order 1977, as amended, a person who has a disability by reason of (a) being substantially and permanently disabled (whether by illness, injury, congenital deformity or otherwise) or (b) suffering from mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986 and there is no person who resides in the hereditament in this matter who has a qualifying disability for the purposes of Article 31A of the Rates (Northern Ireland) Order 1977, as amended.

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, by claim form dated 20 September 2007 and received by the Office of the Northern Ireland Valuation Tribunal on 5 October 2007, 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 primary legislation is 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 (being 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 (Disabled Person's Allowance - "DPA").

It might be useful for the purposes of this decision if the tribunal were to set out a little of the detail of the relevant statutory provisions.

Article 16 of the 2006 Order provides for an amendment to 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. Thus 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 April 2007.

2. Letters dated 19 April 2005 and 18 April 2006 to the applicant from Department of Social Development, Social Security Agency ("SSA"), regarding the award of Disability Living Allowance ("DLA").

3. A letter dated 16 January 2007 to the applicant from the Veterans' Agency.

4. A letter dated "February 2007" to the applicant from SSA regarding a general increase in benefits.

5. Home Visit pro-forma documents of the respondent (Form DPA6) dated 5 June 2007 and 29 August 2007.

6. Letters from the respondent to the applicant dated 24 July 2007, 17 August 2007, 23 August 2007 and 11 September 2007.

7. Letters from the applicant to the respondent dated 31 July 2007, 23 August 2007 and 28 August 2007.

8. Letters from the applicant to the tribunal dated 20 September 2007 and 17 October 2007.

9. A letter from the respondent to the applicant's General Practitioner, Dr Radcliffe, dated 3 September 2007 and Dr Radcliffe's report in response thereto dated 6 September 2007.

10. "Information Slip" document of the respondent dated 21 August 2007 and the respondent's, "LPS Rating Service Background Note Form", dated 30 August 2007.

11. 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 31 Drumlough Road, Rathfriland, Newry, County Down BT34 5DW ("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 for DPA by application dated 17 April 2007, received by the respondent on 26 April 2007.

3. The property was inspected by the respondent on 5 June 2007, by a Mr Mark Morrow. Mr Morrow recorded on the Home Visit Pro-Forma (DPA6) dated 5 June 2007 as follows: " *no adaptations fit the criteria. The bathroom is used by all the household + the additional room is a living area*".

4. By letter dated 24 July 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 31 July 2007 the applicant wrote to the respondent taking issue with the respondent's inspection and conclusions. That letter was treated by the respondent as being a request for a review. The respondent, by letter dated 17 August 2007, confirmed that the review request was being considered and by letter dated 23 August 2007 responded to a number of issues mentioned by the applicant in his letter of 31 July 2007.

6. The property was re-inspected by the respondent on 29 August 2007 by a Mr Pat Cunningham. Mr Cunningham recorded on the Home Visit Pro-Forma (DPA6) dated 29 August as follows (in answer to the question on the Form entitled – *"Does the property have any of the following qualifying facilities?*"), that there was "*an additional bathroom*", by ticking the appropriate box on the Form and by adding the number "(4)". Further, in answer to the question on the Form – "*If so, is the adaptation required for meeting the needs of the person with a disability?*", Mr

7. On 3 September 2007 the respondent wrote to the applicant's GP, Dr Radcliffe. By report dated 6 September 2007 made to the respondent on the respondent's pro-forma document for that purpose, Dr Radcliffe stated: " *I state that, in my opinion, the person named above is not substantially and permanently disabled (whether by illness, injury, congenital deformity or otherwise)*". The Doctor did add the additional comment in handwriting: "*He does suffer from IDDM* (which the tribunal understands to be a reference to insulin-dependent diabetes mellitus) *with frequent hypoglycaemic attacks + a triggering + locking left ring finger*". Evidently these latter the Doctor did not consider rendered the applicant "substantially and permanently disabled". The tribunal had no means of assessing the nature and extent of these described medical conditions from the Doctor's opinion save to note the Doctor's conclusions. This of course is material to the issue of whether the applicant was or was not substantially and permanently disabled.

8. By letter dated 11 September 2007 the respondent wrote to the applicant in regard to the review confirming that the original decision should remain unchanged. The letter referred to Dr Radcliffe's opinion that the applicant was not substantially and permanently disabled and that, it being a prerequisite for getting DPA that the person with the disability be disabled as per the (statutory) definition, the original decision was upheld. The applicant was informed of his right to appeal to this tribunal.

9. The applicant has been in receipt of Disability Living Allowance, as evidenced by copy letters dated 19 April 2005 and 18 April 2006 from Social Security Agency. These state that the applicant (at these two dates) was entitled to, "*middle care component for help with personal care from 12/08/2002 indefinitely*", and, "*lower rate mobility component for help with getting around from 12/08/2002 indefinitely*".

10. The applicant also produced with his claim for DPA two letters from Veterans' Agency dated 16 January 2007. These it must be stated conveyed no further information than that the applicant had made a claim to Veterans' Agency. The applicant nonetheless contended in his correspondence that he was,"*currently rated with a 60% disability from the Armed Forces*", as he put it. There was no corroboration of that claim amongst the papers that the tribunal could discern.

11. The applicant stated in the Application form for DPA, " *I am in receipt of a Veterans War Pension. I have been in receipt of a Disability War Pension following my discharge from the armed forces in 1987.... I suffer from both a physical and a mental disability*". There was no corroborative evidence placed before the tribunal to support that assertion. The applicant had mentioned the matter of wheelchair use in his letter dated 31 July 2007 to the respondent, but without stating (as far as the tribunal could discern from the letter) that he either possessed or used a wheelchair. There was no evidence to support the suggestion that the applicant used a wheelchair.

12. The applicant's correspondence with the respondent was rather elaborate in structure and at times very critical of the respondent's conduct. The tribunal spent some considerable time in reading that correspondence in order to endeavour to glean from that the applicant's assertions of fact material to the issues in the matter. The applicant asserted that a room existed which was wholly or mainly used by him as being a person with a disability. That, so the tribunal understands, was what the respondent has referred to as, "a large sun room" (in the "Information Slip" document dated 21 August 2007). The applicant has also asserted that a downstairs bathroom was for his sole use. The property it appears has four bathrooms (two ensuite). The tribunal had no specific evidence as to the appellant's mobility around the property such as would have assisted the tribunal to judge the applicant's use of the property generally and of the "sun room" and the bathroom or bathrooms in particular.

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—

(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.

In determining the statutory test the tribunal is required to pose and to endeavour to answer the following questions:-

1. Does a person reside in the property and have a qualifying disability?

2. If so, has the property the type of facility such as is mentioned in Article 31A (2) (as qualified by Article 31A (3A))?

This has been for the tribunal a rather difficult case in determining the answer to the first question. That difficulty is for the reason that the assertions of the applicant and any facts that the tribunal can determine from the evidence on balance do not lead the tribunal easily to conclude that the applicant does have such a qualifying disability. No one other than the applicant is asserted to have a qualifying disability in the appeal. The applicant asserts that he is,"....*currently rated with a 60% disability from the Armed Forces*", as he puts it. There is no evidence to support that. His application form for DPA stated (somewhat ambiguously it

must be said), " *I have been in receipt of a Disability War Pension following my discharge from the armed forces in 1987*", suggesting that that such a pension might have ceased. There was no corroborative evidence of any current receipt of Disability War Pension. Certainly there was evidence of some recent correspondence on the applicant's part concerning an application to Veterans' Agency. However, there was no confirmation of the outcome of that application nor any evidence of actual receipt of any such pension as the applicant asserts he was receiving.

However, the applicant certainly is in receipt of DLA. Nonetheless, the tribunal has no evidence as to the source of the assessment in regard to that benefit. There is a suggestion that the applicant might have some issue regarding walking or mobility. Once again, there is no specific evidence to assist the tribunal in any way in conducting an assessment of the nature or extent of that issue for statutory purposes. Evidence of receipt of DLA, without more, is insufficient.

Set against that paucity of evidence on the one side is the quite clear and unequivocal assessment on the part of the applicant's GP. As mentioned, Dr Radcliffe stated: " ... *in my opinion, the person... is not substantially and permanently disabled (whether by illness, injury, congenital deformity or otherwise)*". The Doctor did allude in his brief report to insulin-dependent diabetes mellitus and a triggering and locking left ring finger, but evidently the applicant's Doctor did not take the view that these latter issues rendered the applicant "substantially and permanently disabled". The Doctor indeed made no reference at all to any mobility issues nor to any other matters of physical or mental disability such as the applicant had asserted in the DPA claim dated 17 April 2007.

The tribunal finds that the most persuasive evidence in the matter is also the only specific and direct medical evidence. That is the evidence of Doctor Radcliffe. As the applicant's GP, Doctor Radcliffe must be taken to be fully conversant with all material issues regarding the claimant's state of health. That evidence, in answer to a direct and specific question, the tribunal finds the most compelling in the case. However, the tribunal looked at all of the evidence and assessed the appropriate weight to be attached to the evidence and examined any facts to be drawn from the evidence.

The first question (does a person reside in the property and have a qualifying disability?) has to be answered by considering any evidence that the applicant was substantially and

permanently disabled (whether by illness, injury, congenital deformity or otherwise) or suffered from mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986.

There was no evidence of mental disorder. That being the case, was there sufficient evidence that the applicant was both substantially and permanently disabled for the purposes of the 1977 Order? Notwithstanding the other matters put forward by the applicant, the tribunal concludes that the appellant's GP, knowing well, it must be presumed, the claimant's state of health, is best placed to answer that question. The Doctor has indeed clearly answered the question, without equivocation. The tribunal accepts the Doctor's opinion in that regard.

The unanimous determination of the tribunal is that the appellant is not for the purposes of the 1977 Order a person who has a disability by reason of (a) being substantially and permanently disabled (whether by illness, injury, congenital deformity or otherwise) or (b) suffering from mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986 and thus there is no person who resides in the hereditament in this matter who has a qualifying disability for the purposes of Article 31A of the 1977 Order.

That being the case, first test has not been satisfied by the appellant and it is unnecessary for the tribunal to address the second issue.

The tribunal's unanimous decision is that the appeal is dismissed.

Mr J V Leonard, President
Northern Ireland Valuation Tribunal