

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

CASE REFERENCE NUMBER: 30/09

MARK HAWTHORNE - APPELLANT
AND
DEPARTMENT OF FINANCE & PERSONNEL - RESPONDENT

Northern Ireland Valuation Tribunal

Date of hearing: 14 September 2009

Chairman: Ms A Grace

Members: Mr W Deddiss and Mr H Mulholland

DECISION AND REASONS

Introduction

1. There was no appearance before the Tribunal by or on behalf of the appellant and the respondent; both parties having indicated that they were content for the appeal to be disposed of on the basis of written representations.
2. The property the subject of the appeal (“the property”) is 13 Abbots Walk, Bangor, County Down, BT20 4EL. The appellant is the ratepayer.
3. On 9 June 2009 the respondent issued the outcome of a review of a decision of the respondent, which upheld the decision that the appellant is not entitled to Disabled Persons Allowance in respect of the appellant’s property because the property does not have any of the qualifying facilities as set out in Article 31A of the Rates (Northern Ireland) Order 1977.
4. The appellant appealed against that decision by a notice of appeal, which was received in the Tribunals Unit on 6 July 2009.
5. The following documents were before the Tribunal:

- Appellant's application form for Disabled Persons Allowance dated 17 April 2009
- Respondent's inspection report from Mr Cunningham, Rating Officer, dated 21 May 2009
- Respondent's decision issued in a letter from Land & Property Services, Department of Finance and Personnel, dated 26 May 2009
- Appellant's request from review dated 28 May 2009
- Respondent's review decision issued in a letter from Land & Property Services dated 9 June 2009
- Letter from Mr Easton, MLA, dated 12 June 2009
- Letter from the respondent's to Mr Easton, MLA, dated 15 June 2009
- Notice of appeal received 6 July 2009

The Law

6. The statutory provisions are set out in the Rates (Northern Ireland) Order 1977 ("the 1977 Order") as amended by the Rates (Amendment) (Northern Ireland) Order 2006.
7. Paragraphs 1, 2, 3, 3A and 4 of Article 31A of the 1977 Order, as amended, provide as follows:

31A. - (1) Subject to... the Department shall in accordance with the provisions of this Article, grant to the person mentioned in paragraph (4) a rebate from the rates chargeable in respect of a hereditament to which this Article applies.

(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) The person entitled to a rebate under this Article (a "rebate") is -

(a) the person with a disability if he is the occupier of the hereditament or makes payment by way of rent in respect of all or any of it; or

(b) any person who is a member of the same household as the person with a disability and either is the occupier of the hereditament or makes such payments as aforesaid.

8. Paragraph (2A) of Article 2 of the 1977 Order, as amended, states as follows;

2. - (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).

The Appellant's Evidence and Submissions

9. The appellant's evidence can be summarised as follows. In his application form he stated that his two sons have a disability. There is an extension downstairs that has a disabled bathroom with wheelchair access and a disabled shower unit. He also stated that the downstairs bedroom is so that his disabled children do not have to climb the stairs and that it has access for a wheelchair. More space had been provided due to incontinence and the corresponding need for changing the children. The property has one kitchen, one bathroom and one lavatory. His sons do not use a wheelchair indoors.

10. In his letter dated 28 May 2009 the appellant explained that they got a downstairs bedroom put in for his sons, which is for their use and that it meets the disability requirements of widened doors and low light switches. His eldest son has a wheelchair but he is not a full-time user of the chair at the moment. His health could deteriorate, which would then mean more use of the chair. There is sufficient floor space to permit the use of a wheelchair.
11. The letter from Mr Easton, MLA, dated 12 June 2009 stated that the appellant is his constituent. Mr Easton stated that the appellant had adaptations made to his home, which included a disabled bedroom extension including new shower and bathroom facilities on the ground floor. Mr Easton stated the bathroom in the appellant's house was originally downstairs and that at the time of the extension this was turned into downstairs storage for incontinence pants and other disabled aids etc. He stated that therefore the appellant's property has only one bathroom because there never was a bathroom upstairs.
12. The appellant's grounds of appeal are that the facilities provided are for his disabled sons. His eldest son is a wheelchair user but he does not require it 24/7 at the moment. In later years he could do and hence he has a new disabled bedroom/shower room. The facilities provided give his sons more access and space.

The Respondent's Evidence and Submissions

13. The respondent's evidence can be summarised as follows. The inspection report from Mr Cunningham, Rating Officer, Land & Property Services, dated 21 May 2009 stated that both the appellant's sons have a disability which affects their mobility long term and they both reside permanently downstairs in the property. The property has been extended to the rear to provide them with a ground floor bedroom and a bathroom has been added with a disabled access shower for their use. Mr Cunningham stated that this bathroom is the main and only bathroom/lavatory in the property and that it is also used by the rest of the household. There are four bedrooms upstairs. The eldest son is a wheelchair user but this is mainly outside the property and he does not at present need to use the wheelchair within the confines of the house.
14. The letter from Mr Watton, Rating Officer, dated 26 May 2009 stated that the appellant's application for Disabled Persons Allowance was unsuccessful because his property does not have any of the qualifying facilities that are required for meeting the needs of the person with a disability, as set out in Article 31A of the 1977 Order. These qualifying facilities are a room, other than a kitchen, bathroom or lavatory, which is wholly or mainly used by the person with a disability; or an additional

kitchen, bathroom or lavatory; and sufficient floor space to permit the use of a wheelchair used by and required for meeting the needs of the person with a disability.

15. The letter from Mr Coey, Senior Rating Officer, dated 9 June 2009 stated that he had considered the appellant's request to have the original decision, which was issued on 26 May 2009, reviewed. Mr Coey stated that he decided that this original decision should remain unchanged. He stated that the appellant's property was inspected on 21 May 2009 and found not to have any of the necessary qualifying facilities that are required for meeting the needs of a person with a disability, as set out in Article 31A of the 1977 Order. Mr Coey stated that the appellant's property had been extended to provide his disabled sons with a bedroom downstairs but that case law (*Howell Williams v Wirral Borough Council* [1981] 79 LGR 697, *Sandwell Metropolitan Council v Perks* [2003] EWHC 1749 (Admin), 2003, *South Gloucester Council v Titley and Clothier* [2006] EWHC 3117 (Admin)) held that it is not appropriate to award rate relief where a room is being used as a bedroom. He also stated that the extension also included a bathroom but that as this is the only bathroom in the property and is used by all the family, it does not meet the criteria for Disabled Person Allowance. He also referred to the appellant's evidence that the downstairs bedroom and bathroom are wheelchair accessible and stated that as a wheelchair is not used inside the property the appellant does not qualify for rate relief under the criteria in Art 31A of the 1977 Order.
16. The respondent has not disputed that the appellant's sons have a disability that satisfies the requirements of paragraph (2A) of Article 2 of the 1977 Order, as amended.

The Tribunal's Findings

17. In light of the evidence from both the appellant and the inspection report from Mr Cunningham, the Tribunal finds that the extension to the property has a ground floor bedroom for the appellant's two sons and a ground floor bathroom that has a disabled access shower. In light of the appellant's evidence in his application form, the inspection report from Mr Cunningham and the letter from Mr Easton, MLA, the Tribunal finds that this bathroom is the only bathroom/lavatory in the property and that it is used by the other members of the household as well as the two sons. In light of the appellant's evidence the Tribunal finds that the downstairs bedroom and bathroom are wheelchair accessible. In light of the evidence from the appellant, including his evidence in his application form that his sons do not use the wheelchair indoors, plus the evidence in the inspection report, the Tribunal finds that the appellant's eldest son uses a

wheelchair but that this is used outdoors and not within the living accommodation in the property.

18. To satisfy the requirements of the above paragraph (2) of Article 31A of the 1977 Order, as amended, the appellant's property must satisfy the provisions in either subparagraph (a)(i) or subparagraph (a)(ii) of paragraph (2) plus the provision in subparagraph (b) of paragraph (2) of Article 31A. To satisfy subparagraph (2)(a)(i) the appellant's property must include 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 person residing there who has a disability. The appellant stated in his application form that the room that is wholly or mainly used by the person with a disability for therapy or other purposes is the bedroom/bathroom. However a bathroom and lavatory are specifically excluded by the provision in subparagraph (2)(a)(i).
19. The Great Britain Court of Appeal decision in *Howell Williams v Wirral Borough Council* [1981] 79 LGR 697 is authority that the room must be predominantly used (for therapy or for other purposes) by, and is essential or of major importance to, the well-being of the disabled person by reason of the nature and extent of his disability. This principle that there must be an appropriative causative link between the disability and the requirement of the use of the room was affirmed in the High Court decisions of *Sandwell Metropolitan Borough Council v John Perks* [2003] EWHC 1749 (Admin) and *South Gloucester Council v Titley and Clothier* [2006] EWHC 3117 (Admin). All these decisions concern legislation that is similar to the relevant provisions of the 1977 Order and they are of persuasive authority. In *Howell Williams* the Court of Appeal held that a living room used by the applicant in that case was "...not essential or of major importance to the well-being of the applicant by reason of the nature and extent of her disability. She needs the living room as such, merely in the way that anybody, whether disabled or not, needs a living room as part of ordinary life. She does not need the room because of the nature and extent of her disability." The Court of Appeal also stated "It cannot have been the intention of Parliament to grant a rebate merely because a room is predominantly used by a disabled person; that is quite inconsistent with the language of the section. It seems to me that the user of the room must be related to the disability...the room must be required to meet the needs of the disabled person by reason of the disability."
20. In relation to the appellant's sons' bedroom the appellant stated in his application form that it is used for sleeping and playing. He also stated that the downstairs bedroom is there so that his disabled children don't have to climb the stairs. However there is no evidence that the appellant's sons would be unable to use the stairs and an upstairs bedroom with the assistance of a suitable aid if required, for example a stair lift. In any

event the appellant's letter of 28 May 2009 indicated that the only special adaptations in the downstairs bedroom were widened doors and low light switches and that there is more space. Furthermore the appellant stated in his application form that his sons do not use a wheelchair indoors. In light of the above case law and the available evidence the Tribunal finds that this bedroom is not essential or of major importance to the well-being of the appellant's sons by reason of the nature and extent of their disability. This is because they need the bedroom as such, in the way that anybody, whether disabled or not, needs a bedroom as part of ordinary life. If the appellant's sons had no disability they would still have their own bedroom anyway.

21. To satisfy the alternative provision in subparagraph (2)(a)(ii) of Article 31A, there needs to be an additional kitchen, bathroom or lavatory. However the evidence from the inspection report of Mr Cunningham and from Mr Easton shows that instead of an additional bathroom/lavatory there is still only one bathroom in the property.
22. Accordingly the Tribunal finds that the provisions in both subparagraphs (i) and (ii) of paragraph (2)(a) of Article 31A are not satisfied.
23. To satisfy the additional mandatory provision in subparagraph (2)(b) of Article 31A, there must be sufficient floor space in the property to permit the use of a wheelchair used by and required for meeting the needs of the person who resides in the property and has a disability. However subparagraph (2)(b) is subject to the provisions in subparagraph (3)(b) and paragraph (3A) of Article 31A. Subparagraph (3)(b) provides, inter alia, that the wheelchair must be essential or of major importance to the well-being of the person with a disability by reason of the nature and extent of the disability. Paragraph (3A) provides that a wheelchair is not required for meeting a person's needs if that person does not need to use it within the living accommodation in the property. The appellant's evidence is that his eldest son is a wheelchair user but that he does not require it full-time at the moment and his sons do not use a wheelchair indoors. In light of both the appellant's evidence and the evidence in the respondent's inspection report that the appellant's son does not at present need to use his wheelchair in the house, the Tribunal finds that the provisions of subparagraph (2)(b) of Article 31A are also not satisfied.
24. Accordingly as the neither of the alternative provisions in subparagraphs (i) and (ii) in subparagraph (2)(a) of Article 31A are satisfied plus the additional provision in subparagraph (2)(b) is also not satisfied, the Tribunal finds, on the balance of probabilities, that the requirements of Article 31A are not satisfied.

Decision

25. The unanimous decision of the Tribunal is that the appeal is dismissed.

26. The appellant is not entitled to Disabled Persons Allowance in respect of the property because the property does not have a facility that satisfies the requirements of Article 31A of the Rates (Northern Ireland) Order 1977, as amended.

**Ms A Grace, Chairman
Northern Ireland Valuation Tribunal**

Date decision recorded in register and issued to parties: