

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

CASE REFERENCE NUMBER: 31/08

ROBERT RUDDOCK - APPELLANT

AND

DEPARTMENT OF FINANCE & PERSONNEL - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Alan Reid

Members: Mr Bill Deddis and Mr Ronald Orr

Belfast, 8th December 2008

DECISION

The unanimous decision of the tribunal is that the appeal is dismissed.

REASONS

Introduction

- 1.1 This is a reference under Article 12B of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order").
- 1.2 By Notice of Appeal dated 10th October 2008 the Appellant appealed to the Northern Ireland Valuation Tribunal against the outcome of a review of a Decision of the Department of Finance and Personnel ("the Department") that the Appellant was not entitled to claim Disabled Persons Allowance ("DPA").
- 1.3 All parties to the Appeal had indicated that they were each content that the Appeal be disposed of on the basis of written representations in accordance with Rule 11 of the Valuation Tribunal Rules (Northern Ireland) 2007 ("the Rules") and accordingly there was no appearance before the Tribunal by or on behalf of any of the parties.

2. The Law

- 2.1 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"). 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".

2.2 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.

..... "

3. The Evidence

The Tribunal heard no oral evidence but had before it the Appellant's Notice of Appeal dated 10th October 2008 and copies of various documents including the following:-

- 3.1 The Appellant's application for DPA dated 5th March 2008
- 3.2 Home Visit pro-forma document of the Respondent dated 11th March 2008.
- 3.3 Letter from the Respondent dated 11th March 2008 refusing the Appellant's application for DPA.
- 3.4 The Appellant's application for DPA dated 18th June 2008
- 3.5 Document issued by the Social Security Agency ("SSA") to the Appellant indicating the amount of Disability Living Allowance ("DLA") payable to the Appellant's daughter Elizabeth Ruddock from 9th January 2008 to 8th April 2008 and from 9th April 2008 onwards
- 3.6 Letter dated 5th August 2008 from the Appellant to the Respondent
- 3.7 Home Visit pro-forma document of the Respondent dated 12th August 2008
- 3.8 Letter from the Respondent to the Appellant dated 13th August 2008
- 3.9 Letter dated 29th August 2008 from the Appellant's daughter Elizabeth Ruddock to the Respondent
- 3.10 Letter dated 4th September 2008 from the Respondent to Elizabeth Ruddock
- 3.11 Letter dated 2nd October 2008 from Jacqueline Ingram of Hollybank Centre of Natural Healing
- 3.12 Letter dated 9th October 2008 from the Respondent to the Tribunal
- 3.13 Correspondence between the Tribunal and the Parties

All of these documents had been provided to each of the Parties who had each been given an opportunity to consider and respond to them before being considered by the Tribunal.

4. The Facts

Based upon the information before it, the Tribunal determined, upon the balance of probabilities, the following facts:-

- 4.1 The hereditament is a dwellinghouse situated at 58 Annagora Road, Portadown, County Armagh BT62 4JE (“the Subject Property”). The Subject Property is stated to be owned by the Appellant who the Tribunal understood to be the rate payer. The Tribunal had no other information regarding title to the Subject Property nor regarding its physical construction and characteristics save as mentioned in the papers before the Tribunal and referred to herein.
- 4.2 The Appellant resides at the Subject Property with his wife and his twenty-eight year old daughter Elizabeth. Elizabeth Ruddock is in receipt of DLA both in respect of personal care and mobility.
- 4.3 The Appellant applied to the Respondent for DPA by Application dated 5th March 2008. Following a visit by the Respondent’s representative, Darryn Coey to the Subject Property on 11th March 2008 the Appellant’s application for DPA was refused by the Respondent because in the Respondent’s view the Subject Property did “not have any adaptations or additional facilities that meet the criteria for Disabled Persons Allowance”.
- 4.4 The Appellant again applied to the Respondent for DPA by application dated 18th June 2008. The application included brief details of Elizabeth Ruddock’s disability. This indicated that she suffered from Multiple Sclerosis which presented her with difficulties including with walking and getting around and lifting objects together with some visual problems. The application indicated that the Subject Property included a room, other than a kitchen, bathroom or lavatory, which was wholly or mainly used by Elizabeth Ruddock, this room being a downstairs room used for physiotherapy. The application provided the name of Elizabeth Ruddock’s GP but did not include any further medical evidence in relation to her disability.
- 4.5 The Respondent’s representative Pat Cunningham visited the Subject Property on 12th August 2008 and carried out an inspection. He completed a Home Visit pro-forma. The pro-forma lists five “qualifying” facilities with a blank “tick box” beside each as follows –
 - a. a room other than a kitchen, bathroom or kitchen or lavatory which is wholly or mainly used by the person with the disability
 - b. an additional kitchen
 - c. an additional bathroom
 - d. an additional lavatory
 - e. sufficient floor space to permit the use of a wheelchair

All of the ticked boxes were left blank and in answer to the question “if so is the adaption required for meeting the needs of person with the disability?” The answer “no” was ticked.

- 4.6 The Home Visit pro-forma also included the following information - *“Property has only one main bathroom and lavatory located on the first floor landing. Elizabeth has MS but does not receive therapy at home. She attends physio at Armagh Health Trust and has also went (sic) for reflexology at a private practice. The room used by Elizabeth is adjacent to her bedroom and is used as a sitting room/study. There is an exercise bike and exercise mat (rolled up) as well as television and writing desk”*. The pro-forma was signed and dated by Pat Cunningham and by the Appellant on 12th August 2008.
- 4.7 The Respondent wrote to the Appellant on 13th August 2008 rejecting the Appellant’s claim for DPA on the grounds that the Subject Property does not have any of the qualifying facilities which are required for meeting the needs of the person with the disability as set out in Article 31A of the 1977 Order. The Respondent in that letter informed the Appellant of his right to seek a review of the Decision.
- 4.8 On 29th August 2008 Elizabeth Ruddock wrote to the Respondent requesting a review. In the letter she stated *“I live with my elderly parents at 58 Annagora Road and I have received Disability Living Allowance since 2006. I suffer with disabling effects of the Multiple Sclerosis and as a result I have my bedroom and separate living room that opens directly to my bedroom for easy access. Very often I am confined to these two rooms due to poor mobility. I also require this room to do exercises that are advised by my Physiotherapist to help relieve spasms and assist in building muscle strength in my legs to try and prevent further spasms”*.
- 4.9 On 4th September 2008 the Respondent wrote to Elizabeth Ruddock and advised that having considered the request for review the original Decision on the application for DPA should remain unchanged. The Respondent stated - *“One of the scheme’s qualifying criteria is a room which is wholly or mainly used by a person with a disability. You applied on the basis that you have a bedroom and living room in the property. Unfortunately, it has been ruled in previous Case Law (Howell Williams -v- Wirral Borough Council 1981; Sandwell Metropolitan Council -v- Perks, 2003; South Gloucestershire Council -v- Titley and Clothier, 2006) that it is not appropriate to award rate relief where a room is being used as a bedroom or living room”*. The Respondent also informed Elizabeth Ruddock of the right to appeal the Decision to this Tribunal.
- 4.10 In a letter dated 9th October 2008 to the Tribunal the Appellant informed the Tribunal that the living room referred to by Elizabeth Ruddock in her letter of 29th August 2008 to the Respondent was really a “therapy room”. He stated that *“This is where she has therapy done and exercise recommended by her Physiotherapist. This is what Elizabeth classes as a must for her well being for living which is where she got the word living room from”*. He indicated that the letter of 29th August 2008 should read *“I suffer with disabling effects of Multiple Sclerosis and as a result I have my own bedroom and therapy room. I am very often confined to these two rooms due to poor mobility. I require my therapy room to do exercises that are advised by my Therapists and Physiotherapist to*

help relieve spasms and assist in building muscle strengths in my legs which is essential to try and prevent further spasms". He indicated that the Therapist was unable to do this on her premises as it was *"not suitable for Elizabeth's disability"*.

- 4.11 Jacqueline Ingram is a teacher and practitioner of yoga and complementary treatments. In her letter of 2nd October 2008 she referred to her experience of working with people suffering from Multiple Sclerosis and confirmed that she has *"regularly attended Miss Elizabeth Ruddock in the rooms she occupies of her father's home at 58 Annagora Road. One of these rooms she has specifically dedicated to her practice of yoga and other exercises and receiving treatments from both myself and her Physiotherapist"*.
- 4.12 The Tribunal had no evidence or information in regard to the property generally other than such as was contained in the foregoing documentation.

5. Appellant's Submissions

- 5.1 The Appellant's Submissions are set out in his letter of 9th October 2008 to the Tribunal. He argues that the room which he describes in that letter as a "therapy room" falls within the category of "a room other than a kitchen, bathroom or lavatory which is wholly or mainly used (whether for providing therapy or for other purposes)" by a person with a disability within the meaning of Article 31A (2)(a)(i) of the 1977 Order.
- 5.2 The Appellant also contends that the room in question falls within the qualifying criteria of sub-paragraph (2)(b) of Article 31A of the 1977 Order by virtue of there being sufficient floor space to permit the use of a wheelchair meeting the needs of Elizabeth Ruddock.
- 5.3 He contends that additional heating installation in the two rooms occupied by Elizabeth Ruddock fell within the criteria set out in what he referred to as Article 31(2)(a)(iii) of the 1977 Order entitling the Appellant to DPA.
- 5.4 He contends that the fact that the Subject Property had a garage for Elizabeth's car which provided "accommodation for a vehicle used by the disabled person" fell within the criteria set out in what he referred to as Article 31(2)(c)(i) entitling the Appellant to DPA.
- 5.5 The Appellant further contended that the "Therapy Room and garage" were essential or of major importance to Elizabeth's well being by reason of the nature and extent of her disability within the meaning of paragraph 3 of Article 31A of the 1977 Order.

6. The Respondent's Submissions

- 6.1 The Respondent submits that the Appellant's application is simply based upon the fact that the Appellant's daughter has a disability and also has a bedroom and living room in the Subject Property. Relying upon the authorities set out in the Respondent's letter of 4th September 2008 to Elizabeth Ruddock the

Respondent contends that DPA is not available where such room is being used as a bedroom or a living room.

7. The Tribunal's Decision

- 7.1 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. For such an Appellant to succeed, he must satisfy the Tribunal that the hereditament has a facility which is required for meeting the needs of a person who resides in it 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.
- 7.2 In determining the statutory test therefore the Tribunal is required to consider the following questions -
1. Does a person who has a qualifying disability reside in the property?
 2. If so, has the property the type of facility such as is mentioned in paragraph (2) of Article 31A of the 1977 Order as qualified by Article paragraph (3A) of Article 31A.
- 7.3 The Tribunal accepts as a fact that the Appellant's daughter Elizabeth Ruddock resides in the property. The Tribunal however must also consider whether or she has a disability in accordance with the legislation. Little evidence as to the extent of the disability is available to the Tribunal. There are many references in the documentation before the Tribunal to the fact that Elizabeth Ruddock suffers from Multiple Sclerosis. This has not been challenged by the Respondent nor has the Respondent sought to argue that as a result she is anything other than "substantially and permanently disabled" within the meaning of paragraph (2A) of Article 2 of the 1977 Order. Accordingly the Tribunal accepts that a person having a qualifying disability resides in the Subject Property.
- 7.4 The Tribunal then turns to consider the question of whether the hereditament has a facility which falls within the criteria set out in paragraph 2 of Article 31A of the 1977 Order. The Appellant contends that the room described by Elizabeth Ruddock as her "living room" and by the Appellant as her "therapy room" fulfills the necessary criteria. The Respondent contends, relying upon the authorities of Howell Williams -v- Wirral Borough Council 1981; Sandwell Metropolitan Council -v- Perks, 2003; South Gloucestershire Council -v- Titley and Clothier, 2006 that the room does not fall within the necessary statutory criteria because it is in essence used as a living room by Elizabeth Ruddock.

- 7.5 The Tribunal accepts on the evidence that the room is at times used by Elizabeth Ruddock for treatment by Jacqueline Ingram. The Tribunal had evidence from Jacqueline Ingram to this effect. However, the Tribunal also has to have regard to the evidence of the Respondent as contained within the comments of Pat Cunningham in the Home Visit pro-forma completed on 12th August 2008. In this he has recorded that Elizabeth receives treatments at Armagh Health Trust and elsewhere. He also records that the room is used as a sitting room or study and that whilst it contains an exercise bike and an exercise mat there is also a television and a writing desk. The Tribunal considers it significant that the pro-forma in question was also countersigned by the Appellant.
- 7.6 The three English authorities cited by the Respondent are authority for the proposition that there must be an appropriate causative link between the disability and the requirement for the use of the room.
- 7.7 In the Perks case (which dealt with English Council Tax legislation drafted in very similar terms to the relevant provisions of the 1977 Order) Mrs Perks was disabled and occupied a room in her son's house. Silber J said *"It is important that any Tribunal that has to consider whether or not a person is entitled to exemption under Regulation 3 should consider if there has been the appropriate causative link between the disability and the requirement for the use of the room, because the use of the room has to be essential or of major importance because of the nature and extent of the disability"*. He continued *"It is important to stress that the Howell Williams case is authority for the need for the causal link to which I have referred"*.
- 7.8 In the Williams case which was dealt with by the English Court of Appeal and also dealt with a living room Fox LJ giving the only reasoned judgement of the Court stated *"It cannot have been the intention of Parliament to grant a rebate really 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. Section 1(2) (a) refers to both user and to the fact that the room must be required to meet the needs of the disabled person because of the disablement. The form of the paragraph is such that the two requirements are very closely related; that, I think, is emphasised by the work "required" - the room must be required to meet the needs of the disabled person by reason of the disability"*.
- 7.9 The evidence before the Tribunal is that the room occupied by Elizabeth Ruddock in the Subject Property first and foremost is a day to day living room or study. It has a writing desk and a television. It has not been adapted in any way for the provision of therapy nor is it exclusively used for therapy. Following the authorities cited therefore, the Tribunal concludes that the room is not required for meeting the needs of a person who resides in the hereditament and has a disability within the meaning of the legislation.
- 7.10 As far as the Appellant's contention that there is sufficient floor space to permit the use of a wheelchair is concerned, no evidence has been submitted to the Tribunal to demonstrate that Elizabeth Ruddock uses a wheelchair within the

living accommodation in the Subject Property or at all much less that she needs to do so as set out in Paragraph 3A of Article 2 of the 1977 Order.

- 7.11 The Appellant submits that additional heating installation has been provided in Elizabeth's rooms and that there is a separate garage for her car. However, neither the heating installation nor the garage fall within the criteria of paragraph 2 of Article 31A of the 1977 Order. These categories of potentially qualifying facility are no longer included within Article 31A of the 1977 Order following the substitution of paragraphs (2) and (3) of Article 31A effected by the 2006 Order as referred to previously in this Decision. This contention is therefore not well-founded.
- 7.12 Applying the relevant statutory provisions and cited authorities to the facts of this case and having considered the submissions of the respective parties the Tribunal concludes that the Appellant's appeal cannot succeed. Accordingly, the unanimous decision of the Tribunal is that the appeal is dismissed.

**Mr. Alan Reid, Chairman
Northern Ireland Valuation Tribunal**

Date decision recorded in register and issued to parties: