

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

CASE REFERENCE NUMBER: 02/10

THOMAS LYTTLE AND TRACEY MCATEER – APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O’Neill

Members: Mr Philip Murphy FRICS and Ms Angela Matthews

DECISION

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

REASONS

Introduction

1. This is a reference under Article 12B of the Rates (NI) Order 1977 (as amended) (the 1977 Order).

2. There was no appearance before the tribunal by or on behalf of the appellant and the respondent, both parties having indicated that each was content to rely on written representations. In accordance with Rule 11 of the Valuation Tribunal Rules (NI) 2007 (as amended) an appeal can be disposed of on the basis of written representations if all the parties have given their consent in writing to that course of action.

3. The appellant appealed against the outcome of a review of a decision by the Department that the appellant was not entitled to claim Disabled Person’s Allowance (DPA).

The law

4. 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) (NI) 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 in 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 DPA.

5. As it appears in this case and is accepted by the respondent that Tom William Daniel Lyttle (being a son of the appellants) and who resides in the property meets the relevant criteria as a person who has a disability (Asberger's Syndrome) the tribunal's focus in this case is on the property and the statutory criteria relating to the property.

The evidence

6. The tribunal heard no oral evidence. The tribunal had before it the following documents:
 - (a) The appellant's application for DPA dated 30 October 2009;
 - (b) Inspection report by the respondent dated 15 January 2010;
 - (c) Letter from Social Security Agency re entitlement to disability living allowance dated 6 September 2007;
 - (d) Copy medical report dated 13 August 2007;
 - (e) Copy letter from the respondent dated 5 November 2009;
 - (f) Copy letter from the appellant to the respondent dated 30 November 2009;
 - (g) Copy letter from the respondent to the appellant dated 4 December 2009;
 - (h) Copy letter from the respondent to the appellant dated 18 January 2010;
 - (i) Copy letter from the appellant to the respondent dated 8 February 2010;
 - (j) The appellant's notice of appeal (form 2) to the tribunal;
 - (k) Letter from the appellant dated 16 June 2010 (enclosing letter from Jane Alford Autism Intervention Therapist dated 15 June 2010);
 - (l) Copy e-mail response from the respondent dated 17 June 2010;
 - (m) Correspondence between the tribunal office and the parties.

The facts

7. On the basis of such information as was before it the tribunal determined, upon the balance of probabilities the following facts:

- (a) The property consists of a dwelling-house situated at 5 Woodvale Gardens, Belfast, BT13 3LL (the property). The appellants are the ratepayers of the property.
- (b) The appellants applied for DPA in respect of the property by an application dated 30 October 2009 and indicated in the application that their dining room was used as a gaming room/sensory room and confirming that
- “Tom has preoccupations with gaming so much so that it is a very rigid attitude towards his x box, playstation and Wii. He becomes absorbed /obsessed with his interest. This room is solely used by Tom for gaming and for sensory wind down (chill time). Visual supports are in place. He has his own gaming chair in here and television to use his gaming products.”
- (c) By letter dated 5 November 2009 the respondent wrote to the appellants rejecting the claim for DPA and advising them of their rights to seek a review of this decision.
- (d) A review was sought and the property was inspected by the Department. A representative of the respondent stated in the report dated 15.01.10 that:
- “The dining room has Tom’s gaming chair, x box, playstation and TV. There is a lava lamp on the table. This room is used by Tom to ‘chill out’ in. There are no other adaptations to the property.”
- (e) The consequences of the review were that the Department indicated that its decision would remain unchanged, relying on the case of *Howell Williams v Wirral Borough Council* [1981].
- (f) The appellants in their notice of appeal to this tribunal draw attention to the fact that the respondent in their letter of 18 January 2010 made no mention of the fact that the room contains visual aids put in place for Tom by his autism intervention therapist. They also state that a white board in the room is used as a daily planner. Further the appellants state that this room is not used as a living room or a dining room. It is admitted that the room contains a dining table and a settee which are exclusively used by Tom.
- (g) The appellants have taken the time to write again in connection with the appeal to this tribunal emphasising the use of the white board in the room and that Tom’s room was used as a dining room before Tom’s diagnosis of Asbergers. An extract from their letter states:
- “This room is used solely by our son Tom. We are not in the financial position to throw out a dining room table that is presently in the room.

Tom uses this table for his own meal times and for homework or written therapy.”

The Tribunal’s Decision

8. In order to succeed in this appeal the appellant has to satisfy the tribunal that the property has a facility which is required for meeting the needs of Tom (as a person residing in the property who has a qualifying disability), including a facility which falls within the legal framework applicable to these types of cases. This means that there must be a room other than a kitchen or bathroom or lavatory which is wholly or mainly used (whether for providing therapy or for other purposes) by such a person. The facility must be of essential or of major importance to that person’s well being by reason of the nature and extent of the disability.

9. It is clear that the applicable law encompasses something outside of the norm. General guidance in this area is given by caselaw in cases such as *Howell Williams v Wirral Borough Council*.¹ 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.”

10. In *South Gloucestershire Council v Tittley & Clothier*,² two cases in the English High Court concerned the interpretation of English statutory Council Tax provisions which are in the essential parts expressed in broadly similar terms to the (Northern Ireland) 1977 Order. Mr Tittley was profoundly deaf and lived alone in a house with two bedrooms and a living room. He contended that the hearing box loop fitted in the living room, which relieved him of a life of silence, meant he was entitled to Council tax relief. The Judge stated:

“Mr Tittley uses the living room because it is a living room. He would do so anyway even if his hearing were unimpaired. It is the loop system, not the room in which it is placed, which is essential to his well-being by reason of the nature and extent of his disability. The room is in no sense additional....”

Similarly Mr and Mrs Clothier were the parents of two Down’s Syndrome children. Each of the children had a bedroom in the property where he or she spent a great majority of time each day alone. There was no physical adaptation made to the bedrooms. Mr and Mrs Clothier described each room as a ‘sanctuary’. The Court held that if the children had no disability but were

¹ [1981] RA 189.

² [2006] EWCA 3117 (Admin)

still living in the same house as their parents they would each have their own bedroom anyway. The difference would be that they would spend less time in it but neither bedroom is in any sense “additional”.

11. Regard was also had to cases in this tribunal. In *Ritchie v Department of Finance and Personnel* the Northern Ireland Valuation Tribunal held:

“Like Clothier there is no physical adaptation made to the bedroom. The “sanctuary” argument has also been advanced by the appellant, but not only in regard to the bedroom but rather in respect of the entire household... The tribunal certainly understands how the appellant has, to an admirable extent, created a “sanctuary” in the property for Mr Hunter and Mr Hunter has derived great benefit from that. However, on the facts, the arrangement does not meet the qualifying tests posed by Article 31A of the 1977 Order.”

12. Further, *Perry v Department of Finance and Personnel* concerned an application for DPA in respect of a property which had a bedroom converted into a quiet room used by Christopher who is a child with Asberger’s syndrome. The appellant stated that the room contained books and a computer and that the room was used for perhaps half an hour before school in the mornings and for longer periods in the evening by Christopher. The use of the room as a quiet room had been the idea of Christopher’s parents. In that case the appellant had provided medical evidence confirming the diagnosis of Asberger’s syndrome but did not provide any medical evidence in relation to the use of a quiet room by the person with the disability. In that case the Northern Ireland valuation Tribunal held on the evidence before it the tribunal could not be satisfied that the room was required to meet the needs of the disabled person nor that the room was of essential or major importance to Christopher’s well-being by reason of the nature and extent of the disability.

13. On the facts in this case the appellants state that the room is used for Tom’s privacy, gaming and sensory wind down (chill time). There are also visual supports and a white board in place in the room to assist Tom but there is no evidence of any physical adaptation to the room. The tribunal has also taken account of the letter dated 15 June 2010 from an Autism Intervention Therapist.

14. In this case however, following the line of authorities outlined above, the tribunal cannot be satisfied that this room must be required for meeting the

needs of this disabled person or is of essential or major importance to Tom's well-being by reason of the nature and extent of his disability.

15. Thus this appeal cannot succeed and so the tribunal's unanimous decision is that the appeal is dismissed.

Mr Charles O'Neill
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: