

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

CASE REFERENCE NUMBER: NIVT 15/08

OLIVER KING - APPLICANT
AND
DEPARTMENT OF FINANCE AND PERSONNEL - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Ms Nessa Agnew

Members: Mr William Deddis MRICS and Mr Paul McMinn

Belfast, 27 June 2008

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 31A(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 appellant 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 appellant appealed against the outcome of a review of a decision of the Department that the appellant was not entitled to claim Disabled Person's 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

This application was dealt with under rule 11 of the Valuation Tribunal Rules (N.I.) 2007. Under Rule 11(1) an appeal may be disposed of on the basis of written representations if all the parties have given their consent in writing.

The tribunal received written evidence from the appellant and from Mr Pat Cunningham and Mr Darryn Coey for the respondent.

On the basis of such evidence and information as was before it the tribunal determined, the following facts.

1. The hereditament consisted of a dwelling house situated at 76 Castlewellan Road, Newcastle, Co. Down BT33 0JP (“the premises”).
2. The appellant is the ratepayer.
3. The appellant applied for DPA by application dated 2 July 2007 received by the respondent on 18 July 2007.
4. The premises were inspected on 7 February 2008 by Pat Cunningham who recorded on the respondent's form that the property had the following qualifying facilities:
 - “(a) an additional bathroom (1).
 - (b) an additional lavatory (2)”.

In answer to the question "if so, is the adaptation required to meet the needs of the person with a disability" Mr Cunningham did not tick either box. In the space below which requested Mr Cunningham to give a brief description of the disability and how it links to the adaptations Mr Cunningham wrote:-

“Mr King has a number of additional lavatories throughout the property with 2 on the ground floor-one in the main bathroom and one in the utility room at the rear.

He has angina, raynaud’s disease and arthritis in his arms/wrists.

More info. will be requested from his G.P. to establish link between disabilities and need for additional lavatories/bathrooms.”

5. Mr Cunningham wrote to Dr. Leggett, the G.P. named by Mr King in his application form and asked him to complete a declaration regarding his patient Mr King. Dr. Leggett stated that in his opinion, Mr King is not substantially and permanently disabled (whether by illness, injury, congenital deformity or otherwise). He went on to state that Mr King “suffers from Angina and Arthritis”. The declaration was dated 20 February 2008.

6. On 26th February 2008 Mr Cunningham wrote to the appellant informing him that his application for DPA was unsuccessful as “Article 2 of the Rates (N.I.) Order 1977 does not apply to Oliver King”. He then provided in the letter for a review of the case within twenty eight days and asked Mr King to provide further evidence in support of his case.

7. The appellant replied by way of a note dated 7th March 2008 written on Mr Cunningham’s letter dated 26th February 2008 stating that “I suffer from serious heart complaint and 50% use of my hands. Please may I have review of this case”. He also stated, “I am of the opinion that my illness, suggested a discount in rates a/c”.

8. On 12th March, Darryn Coey, rating officer wrote to Mr King and informed him that LPS had written to his G.P. and that in his G.P.’s opinion, Mr King was not substantially and permanently disabled. He stated that “Therefore, please can you supply supporting medical evidence regarding your disability. Also, please supply evidence of any benefits that you receive in relation to your disability”. He asked Mr King to provide the information by 9th April 2008.

9. Mr King submitted a letter from the Social Services Agency confirming that he is entitled to Disability Living Allowance (“DLA”) lower rate care component indefinitely.

10. On 19th March 2008 Mr Coey wrote to the appellant and thanked him for providing evidence of DLA but asked him for further supporting medical evidence regarding his disability to prove that he is substantially and permanently disabled. He asked that the information be provided by 16th April 2008.

11. On 6th May 2008 Mr Coey wrote again to the appellant and informed him that the outcome of the review was that the original decision should remain unchanged and informed him of his right to appeal to this tribunal.

12. The appeal was received by the NIVT on 22nd March 2008. Mr King set out his grounds as follows:-

“My age is now short of 68 (sixty eight). I have been in ill health over the past 7(seven) years, cardio-vascular disease which included by-pass surgery, hypertension, and a further blocked artery which recently has been diagnosed.

My doctor has informed me, part-time work has been ruled out in the future. My state pension only pays 80% due to early years (10) as been unfranked. Recently I had a wash-hand basin and toilet installed in my bedroom which makes life easier when nature calls. As my ratepayer amount, is almost £1,500 p/a and I do not want to down-size, due to ill health, I would like some help in this matter.

My medication accounts for (7) tablets per-day. Please look favourable on this matter as some help would be appreciated.”

THE TRIBUNAL'S DECISION

Article 31A (12B) 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)?

The first question the tribunal should answer is whether or not Mr King has a disability in accordance with the legislation. The tribunal has obtained evidence from Mr King describing his medical condition. He also provided details of his medication. It is clear from the evidence he is in receipt of DLA, lower rate care component. However, the tribunal has no evidence as to the source of the assessment in regard to that benefit.

Mr King's G.P., Dr Leggett (in a declaration signed by him and dated 20th February 2008 stated that Mr King is not substantially and permanently disabled (whether by illness, injury, congenital deformity or otherwise).

Mr King was informed of this communication but did not provide any alternative medical evidence but rather a description of his medical difficulties.

The tribunal has had regard to the fact that Mr King was written to and provided with a number of opportunities to provide further medical 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 any such person was 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.

The unanimous determination of the tribunal in light of Dr Leggett's declaration of 20th February 2008 and in the absence of further medical evidence is that the

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

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

Ms Nessa Agnew

Chairman

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: