

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

CASE REFERENCE NUMBER: NIVT 2/08

JOHN McBRIDE - APPLICANT
AND
DEPARTMENT OF FINANCE AND PERSONNEL - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mrs Barbara Jemphrey

Members: Mr David McKinney FRICS and Mrs Deirdre Dorman

Belfast, 28 May 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 12B of the Rates (Northern Ireland) Order 1977, as amended (the 1977 Order).

The appellant Mr John McBride appeared in person.

Mr Pat Cunningham and Mr Darryn Coey appeared for the respondent.

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

The tribunal received oral 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 14 Killybearn Lane, Cookstown BT80 8SX (the premises).

The tribunal had no information regarding the title or the physical construction and characteristics of the premises, save as is mentioned in the papers before the tribunal

or was mentioned by the appellant in his oral evidence to the tribunal. The appellant confirmed the premises were jointly owned by himself and his wife Eileen McBride.

The appellant is the ratepayer.

2. The appellant applied for DPA by application dated 31 May 2007 received by the respondent on 13 June 2007.

3. The premises were inspected on 29 November 2007 by Pat Cunningham who recorded on the respondent's form that the property had the following qualifying facilities:

- “(a) a room, other than a kitchen, bathroom or lavatory which is wholly or mainly used by the person with a disability.
- (b) an additional; lavatory ”.

In answer to the question "if so, is the adaptation required to meet the needs of the person with a disability" Mr Cunningham indicated "no" by ticking the appropriate box on that form.

4. By letter dated 30 November 2007 the respondent wrote to the appellant rejecting the appellant's claim for DPA on the grounds that the premises did not have any of the qualifying facilities as set out in Article 31A of the 1977 Order. The appellant was informed of his right to ask for a review of the decision.

5. The appellant wrote to the respondent in an undated letter which was received by the respondent on 12 December 2007 taking issue with the respondent's determination.

The letter was treated by the respondent as being a request for a review.

6. The respondent by letter dated 18 December 2007 requested additional information from the appellant. The appellant responded to this in an undated letter to the respondent.

7. The respondent, by letter dated 23 January 2008, confirmed that the review request had been considered and the original decision should remain unchanged.

There followed further correspondence and the appellant made his appeal to this tribunal.

8. The remaining findings of relevant fact are mentioned below.

The Contentions Of The Parties

In his oral evidence and submissions the appellant explained that his appeal was two fold -

Firstly, in relation to his wife Eileen McBride and secondly, in relation to his son John Joe McBride.

The appellant confirmed that he lived at the premises along with his wife Eileen, son John Joe and three daughters aged 21, 19, and 14.

The appellant explained that his wife suffered from depression. No medical evidence was provided. He confirmed that his wife previously was a nurse but had suffered with depression for 14 years. She was on medication and attended the mental health unit at Cookstown every three months. The appellant indicated to the tribunal that his wife has spells of good health and spells of poor health. It was during those periods of poor health she withdrew to their bedroom.

The appellant confirmed to the tribunal that his son John Joe who was now 23 years of age was diagnosed with asperges syndrome when he was 4 years old. No medical evidence was provided.

The appellant confirmed that his son worked 26 hours per week for Tesco. He did not attend a day centre nor was he receiving any therapy or medication for his condition.

The appellant explained that his son's condition made him withdrawn, he did not easily socialise and he did not like his personal belongings being interfered with. The appellant told the tribunal his son had a large collection of toy cars.

The appellant explained that approximately 18 months ago he built on the additional room to the premises for John Joe to use as a living room.

The appellant confirmed he received no grant from the Health Trust for this nor did he make any application for such a grant.

The appellant confirmed that the room comprised a three-piece suite, flat screen TV and storage. He also confirmed that John Joe still had use of his bedroom. He confirmed there were no other adaptations to the premises.

The appellant confirmed there were two reception rooms in the premises which John Joe was free to use. He also confirmed that other family members were able and did use the additional upstairs living room.

Mr Cunningham for the respondent confirmed that he had carried out an inspection at the premises and the additional upstairs room was being used as a living room and recreational room. He also confirmed that this room was used by John Joe and other members of the family.

The respondent relied on cases of:

Howell Williams v Wirral Borough Council 1981 79 LGR 697. CA

South Gloucestershire Council v Tintley & Clothier 2006 EWCA 3117 (Admin).

Mr Cunningham contended there was no possible argument in respect of DPA being applicable to the circumstances of this matter.

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)?

This has been for the tribunal a rather difficult case in determining the answer to the first question.

Firstly, Mrs Eileen McBride, in relation to the appellant's assertions, it is clear from the evidence she is in receipt of DLA. However, the tribunal has no evidence as to the source of the assessment in regard to that benefit.

Evidence of receipt of DLA, without more, is insufficient.

Secondly, John Joe McBride, again it is clear from the evidence he is in receipt of DLA. However, the tribunal has no evidence as to the source of the assessment in regard to that benefit.

Evidence of receipt of DLA, without more, is insufficient.

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 is that the appellant Eileen McBride and John Joe McBride are not for the purposes of the 1977 Order persons who have 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.

Mrs Barbara Jemphrey

Chairman

Northern Ireland Valuation Tribunal