

NORTHERN IRELAND VALUATION TRIBUNAL

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

CASE REFERENCE NUMBER: 38/09

STEPHEN AND NUALA PERRY – APPELLANTS

AND

DEPARTMENT OF FINANCE & PERSONNEL – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr David Sharpe

Members: Mr Thomas Matthews and Mr Robert McCann

Belfast, 14th December 2009

DECISION

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

REASONS

1. Introduction

This is a reference under Article 12B of the Rates (Northern Ireland) Order 1977 as amended ("the 1977 Order").

The Appellant appealed against the outcome of a review of the decision of the Department that the Appellant was not entitled to claim Disabled Persons Allowance ("DPA").

Ms Nuala Perry appeared on behalf of the Appellants and Mr Coey on behalf of the Respondent.

The Applicant, by claim form dated 6 October 2009 and received by the Office of the Northern Ireland Valuation Tribunal on 7 October, appealed against the outcome of a review of a decision of the Department that the Applicant was not entitled to claim Disabled Persons Allowance "DPA".

2. The Law

The statutory provisions are to be found in the 1977 Order. Article 31 A(12B) of the 1977 Order was inserted by Article 17(8) of the Rates (amendment) Northern Ireland (Order 2006) "the 2006 Order". Article 31 A(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 Persons Allowance ("DPA").

As it appears in this case that Christopher Perry (being the son of Appellants Stephen and Nuala Perry and who resides in the property under discussion) meets the relevant criteria as being a person who has a disability (Asperger's Syndrome), the Tribunal's focus in this case is on the premises and the statutory criteria relating to the premises.

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, insofar as material to this appeal, provides-

(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;

(3) in paragraph (2) –

(a) –

(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 a major importance to that person's wellbeing by reason of the nature and extend of the disability.

Article 17 further provides that any person who is aggrieved by a decision of the Department may apply to the Department for a review by the Department of its decision and if that person is dissatisfied with the result of the review, he or she may appeal to the Valuation Tribunal.

3. THE EVIDENCE

The Tribunal heard oral evidence from both parties and had before it a copy of the Appellant's application for "DPA", the appeal form, medical and psychological reports relating to Christopher and copies of the correspondence from the Appellant and the Department.

4. THE FACTS

On the basis of the information before it, the Tribunal determined upon the balance

of probabilities, the following facts;

(a) The hereditament consists of a dwelling house situated at 36 Taunton Avenue, Belfast, BT15 ("the premises"). The Appellants are the rate payers.

(b) The premises is a three bedroom detached house. The Appellant applied for "DPA" in respect of the premises by application dated 4 August 2009 and indicated that the premises had a bedroom which had been converted into a quiet room and which was used by Christopher for relaxing and routine. Christopher did not sleep in the room.

(c) By letter dated 13 August 2009 the Department wrote to the Appellant rejecting the Appellant's claim for "DPA" on the grounds as set out in Article 31 A of the 1977 Order. The Appellant was informed of his right to ask for a review of the decision.

(d) By letter dated 4 September 2009 the Appellant wrote to the Department requesting a review. The Appellant contended that "the room used by my son is a room other than a kitchen, bathroom or lavatory and is wholly used by him due to his disability".

(e) By letter dated 11 September 2009 (following a visit on 10 September 2009) the Respondent confirmed that the review request had been considered and that the original decision would remain unchanged. In particular the Respondent indicated "it has been ruled in the case of (Howell Williams -v- Wirral Borough Council, 1981; that it is not appropriate to award rate relief where a room is being used as living-room".

(f) The Appellant provided medical evidence confirming the diagnosis of Asperger's syndrome but did not provide any medical evidence in relation to the use of a quiet room by Christopher.

5. THE TRIBUNAL'S DECISION

In order to succeed in this appeal the Appellant has to satisfy the Tribunal that the premises has a facility which is required for meeting the needs of Christopher (as a person residing in the property who has a qualifying disability), including a facility which falls within the legal framework applicable to these matters. Therefore the Tribunal must be satisfied that there is a facility which includes either a room (other than a kitchen, bathroom or lavatory), which is wholly or mainly used whether for providing therapy or for other purposes by Christopher, or, if such a room does not exist, then (b) an additional kitchen, bathroom or lavatory, either of these (that is to say either (a) or (b)) being essential or of major importance to Christopher's wellbeing by reason of the nature and extent of his disability.

Dealing with these in reverse order, there is no evidence of an additional kitchen, bathroom or lavatory in the premises. Thus, if the appeal is to succeed the Tribunal must be satisfied that there is a room wholly or mainly used, whether for providing therapy or for other purposes by Christopher, which is essential or of major

importance to Christopher's wellbeing by reason of the nature and extent of his disability.

This Tribunal has followed the general guidance given in the cases mentioned above in the Department's refusal of review. It is clear that the purpose of the applicable law encompasses the notion of something additional to the norm. That is to be found in the proper interpretation of Article 17 of the 2006 Order and specifically Article 17(2)(a)(i) and (ii) and Article 17(3)(b) as these amend the 1977 Order. The Tribunal has mentioned above the reference to the case of Howell-Williams -v- Wirral Borough Council. 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 relate to the disability". The Appellant has indicated in her appeal application that the room was converted from a bedroom and contains books and a computer and that the room is used for perhaps half an hour before school in the mornings and for longer periods in the evening by Christopher. She also stated that the quiet room was the idea of both Mr Stephen Perry and herself and that there was no supporting medical evidence requiring the room. Under Article 17 of the 2006 Order the Appellant would have to establish that the room was of essential or of major importance to that person's wellbeing by reason of the nature and extent of the disability.

In Howells-Williams -v- Wirral Borough Council Fox LJ held that "her use of the room was unrelated to her disability because she needed the room for ordinary living and not for meeting the needs of her disability in that she had no equipment fitted in there for therapy. Accordingly she was not entitled to the rating relief she sought". The Applicant would have to show that the room was predominantly used (whether for therapy or for other purposes) by a disabled person and secondly that it is required for meeting the needs of that person. On the evidence before it this Tribunal cannot be satisfied that this room must be required for meeting the needs of this disabled person or that this room was of essential or major importance to Christopher's wellbeing by reason of the nature and extent of his disability. It was considered by the Tribunal that Christopher's condition and his requirement for routine may have satisfied the required link between the use of the room and the disability but that the quiet room was not essential or of major importance to Christopher's wellbeing.

Thus, the appeal cannot succeed and consequently the Tribunal's unanimous decision is that the appeal is dismissed.

David Sharpe, Chairman
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: