

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

CASE REFERENCE NUMBER: 31/09

JAMES ORR - APPELLANT
AND
DEPARTMENT OF FINANCE & PERSONNEL - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Members: Mr Gordon Jackson FRICS and Mr Peter Somerville.

Belfast, 2 October 2009

DECISION

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

REASONS

Introduction

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

The appellant, Mr Orr, appeared in person.

Mr Darren Coey appeared for the Department as 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 Persons' Allowance ("DPA").

The Law

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"). 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. As it is agreed in this case that Grainne Orr (being a daughter of the appellant Mr Orr and who resides in the property under discussion) meets the relevant criteria as being a person who has a disability, the tribunal's focus in this case is on the premises and the statutory criteria relating to premises.

3. 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;

(b) -.

(3) In paragraph (2)—

(a) -

(b), references to a facility.....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.

4. 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.

The Evidence

5. The tribunal heard from the appellant, Mr Orr and from Mr Coey. The tribunal also had before it a copy of the appellant's application for DPA and appeal form and copy correspondence from the appellant and the Department.

The Facts

6. On the basis of the evidence and information, the tribunal determined, upon the balance of probabilities, the following facts:-
- (a) The hereditament consists of a dwellinghouse situated at 8 Norfolk Gardens, Glen Road, Belfast BT11 8DD (“the premises”). The appellant is the ratepayer. Mr Orr resides in the premises with his wife, his daughter Grainne who is aged 25 years and a granddaughter, aged 6 years. Grainne has had a

- (b) The premises comprises four bedrooms, one bathroom, two living rooms and a kitchen, hallway, stairs and landing. Mr Orr has owned and resided in the premises for 31 years. In 2008 a grant was obtained from Northern Ireland Housing Executive and Fold Housing Association which enabled work to be done to convert the bathroom in the premises. The work involved the installation of a shower and hand rails designed to assist with Grainne's disability. Further to that, Mr Orr has arranged for the installation of additional hand rails on the stairs and hand rails outside the rear door of the premises where a number of steps lead down into the garden of the premises.
- (c) Grainne has her own bedroom and spends the majority of her time at home with the granddaughter in the larger of the two living rooms, where there is a television set and a video/ DVD player. Mr and Mrs Orr tend to use the other living room. None of these two living rooms are in any way specially adapted to take account of Grainne's disability, nor is Grainne's bedroom.
- (d) The appellant applied for DPA in respect of the premises by application dated 4 June 2009. By letter dated 12 June 2009, the Department requested details of the number of bathrooms/lavatories the premises had. In response, Mr Orr wrote a note confirming that the premises had one bathroom/lavatory which had been converted to a shower room under disablement grants.
- (e) By letter dated 6 July 2009 the Department 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.
- (f) By letter dated 10 July 2009 the appellant wrote to the Department requesting a review. He contended that there were two rooms wholly or mainly used by a person with a disability these being one bedroom and one of two living rooms. He stated that Grainne had had learning difficulties since birth and needed continual support. The respondent, by letter dated 15 July 2009, confirmed that the review request had been considered and that the original decision should remain unchanged.
- (g) Any remaining findings of relevant fact are as may be mentioned below.

THE CONTENTIONS OF THE PARTIES

7. In his case made out to the tribunal, the appellant Mr Orr has laid particular emphasis upon the fact that he has been able to obtain a disability grant in respect of the conversion of the bathroom in the premises to take account of Grainne's disability. He cannot understand how "joined up government" as he puts it, cannot accept that the premises qualify for the rebate in rates when it is accepted that the premises qualify for a disability grant. Mr Orr does certainly concede that the premises only have one bathroom but he contends that that bathroom ought to qualify under the provisions. Mr Orr also accepts, at oral hearing, that there is no

other room in the premises specifically adapted for use by Grainne. Grainne has ready access to every room in the premises but she prefers spending time with the granddaughter in the larger of the two living rooms where she watches television and plays videos and DVDs.

8. The Department as respondent, in rejecting this application for DPA, had relied on a number of case law authorities which it is argued ought to be followed by this tribunal. These include the case of **Howell Williams v Wirral Borough Council [1981] 79 LGR 697, CA**. Also mentioned by the respondent is the case of **Sandwell v Perks [2003] EWCA 1749 Admin**, which latter was a case concerning the matter of a link stated as being requiring to be established between the existence of a qualifying disability and the requirement of the use of a room in a property. Finally, the respondent has relied on the case of **South Gloucestershire Council v Titley & Clothier [2006] EWCA 3117 (Admin)**. These cases have been rehearsed in earlier decisions of this tribunal.

THE TRIBUNAL'S DECISION

9. In order to succeed in this appeal, the appellant Mr Orr has to satisfy the tribunal that the premises has a facility which is required for meeting the needs of Grainne (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 (with the tribunal's emphasis) that there is a facility which includes either (a) a room (other than a kitchen, bathroom or lavatory), which is wholly or mainly used whether for providing therapy or for other purposes by Grainne, 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 Grainne's well-being by reason of the nature and extent of the disability.
10. Dealing with these in reverse order, there is no 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 Grainne, being essential or of major importance to Grainne's well-being by reason of the nature and extent of the disability.
11. This tribunal in its earlier decisions has followed the general guidance given in the cases mentioned above in the Department's submissions. 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**. There Fox LJ stated..., "*It cannot have been the intention of Parliament to grant a rebate merely because a room is predominantly use by a disabled person...It seems to me that the user of the room must relate to the disability.*" The tribunal notes the case mentioned by the Department, **South Gloucestershire Council v Titley & Clothier [2006] EWCA 3117 (Admin)**. On the facts of that matter, Mr and Mrs Clothier were the parents of two Down's syndrome children, each of whom 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". On appeal,

the Court of Appeal in England, dealing with English statutory Council Tax provisions which are in the essential parts thereof expressed in broadly similar terms to the 1977 Order provisions, observed that even if neither of Mr and Mrs Clothier's two children had had any disability whatsoever but were still living in the same household as Mr and Mrs Clothier, each would have had their own bedroom anyway - neither bedroom was in any sense "additional". The Court of Appeal thus affirmed its earlier decision in *Howell Williams*.

12. In this case there is no evidence that there is a room which qualifies (under the first possibility mentioned in paragraph 9 above) as being additional, distinct or different. Indeed the appellant, Mr Orr, has, very fairly it must be said, not tried to make out that case before this tribunal. He has predominantly relied in his arguments upon the bathroom and the grant availability for the recent conversion to a shower room. However, the difficulty for Mr Orr is that there is no additional bathroom for meeting Grainne's needs as a person with a disability; that additional bathroom is very clearly required by the provisions mentioned above.
13. Thus, the appeal cannot succeed and consequently the tribunal's unanimous decision is that the appeal is dismissed.

**Mr James V Leonard, President
Northern Ireland Valuation Tribunal**

Date decision recorded in register and issued to parties: