

**NORTHERN IRELAND VALUATION TRIBUNAL**

**The Rates (Northern Ireland) Order 1977 (as amended) and the Valuation  
Tribunal Rules (Northern Ireland) 2007**

**Case Reference Number 33/09**

**Steven Coney and Rose Coney - Appellant**

**And**

**Department of Finance and Personnel – Respondent**

**Northern Ireland Valuation Tribunal**

**Chairperson: Mrs Mary O'Neill**

**Members: Mr Tim Hopkins FRICS and Mr David Rose**

**Belfast 9 November 2009**

**DECISION**

The unanimous decision of the Tribunal is that this 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 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”).

There was no appearance before the Tribunal by or on behalf of the Applicant nor the Respondent, both parties having indicated that each was content to rely on 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 Applicant, by claim form dated 21 August 2009 and received by the Office of the Northern Ireland Valuation Tribunal on 24 August 2009, 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".

### **The Law**

1. 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").
2. As it is agreed in this case that Steven Coney (being the husband of Appellant Mrs Rose Coney 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 the 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;

(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.

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 had before it a copy of the Appellant's application for "DPA", the appeal form and copies of the correspondence from the Appellant and the Department.

## **THE FACTS**

6. 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 8 Innishmore Gardens, Coalisland, Co Tyrone BT71 4DL ("the premises"). The Appellant is the rate payer.

(b) The premises is a two bedroom bungalow. The Appellant applied for "DPA" in respect of the premises by application dated 22 July 2009 and indicated that the premises had "a private back room"... "which is wholly or

mainly used by the person with a disability for therapy or other purposes” and when asked what the room was used for indicated “staying in – resting – sleeping”.

(c) By letter dated 5 August 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.

(d) By letter dated 8 August 2009 the Appellant wrote to the Department requesting a review. The Appellant contended that “the back room of our house” is used “to deal with his mental/physical needs”... “now he has a degenerative spine condition and he very rarely leaves this room and it is fully equipped to deal with his disability”.

(e) By letter dated 12 August 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 previous case law (Howell Williams –v- Wirral Borough Council, 1981; Sandwell Metropolitan Borough Council –v- Perks, 2003; South Gloucestershire Council –v- Titley and Clothier, 2006) that it is not appropriate to award rate relief where a room is being used as living-room or a bedroom”.

## **THE TRIBUNAL’S DECISION**

7. 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 Mr Coney (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 Mr Coney, 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 Mr Coney’s wellbeing by reason of the nature and extent of his disability.

8. 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 Mr Coney, which is essential or of major importance to Mr Coney's wellbeing by reason of the nature and extent of his disability.
  
9. 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 Mr Coney "suffers mental anxiety, acute panic attacks --- degenerative spine condition" and that "the room is arranged and furnished with his condition prioritised" and that Mr Coney's "bed and seat in this room are equipped to ease his spine". 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 Mr Coney's wellbeing by reason of the nature and extent of his disability.

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

Mary O'Neill

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: