

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

CASE REFERENCE NUMBER: 01/07

JOSEPH TONER - APPELLANT
AND
DEPARTMENT OF FINANCE & PERSONNEL - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Members: Mr Philip Murphy FRICS and Mr Bernard O'Kane.

Belfast, 10 March 2008

DECISION ON REVIEW

The unanimous decision of the tribunal on review is that the decision of the tribunal issued to the parties on 11 December 2007 is revoked. The tribunal unanimously determines that the appellant is for the purposes of the Rates (Northern Ireland) Order 1977, as amended, a person who has a disability by reason of being substantially and permanently disabled (whether by illness, injury, congenital deformity or otherwise) and the appellant is a person who resides in the hereditament in this matter who has thus a qualifying disability for the purposes of Article 31A of the Rates (Northern Ireland) Order 1977, as amended. Further, the tribunal unanimously determines that the subject hereditament is one in which there is a facility which is required for meeting the needs of a person who has a disability in that the said facility is essential or of major importance to that person's well-being by reason of the nature and extent of the disability. Thus the facility meets the requirements of Article 31A (2) (a) (ii) and Article 31A (3) (b) of the Rates (Northern Ireland) Order 1977, as amended, and therefore Article 31A (10) is applicable and the hereditament qualifies for a rebate. The tribunal Orders accordingly.

REASONS

INTRODUCTION

This is review of the tribunal's decision ("the decision") in respect of a reference under Article 12B of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The decision was issued to the parties by the Secretary of the Northern Ireland Valuation

Tribunal ("the Secretary") on 11 December 2007. On 14 December 2007 the Secretary received an email from the appellant requesting an appeal against the decision. The appellant then wrote to the Secretary by two letters both dated 21 December 2007 clarifying that he was seeking a review of the decision, attaching copy documents and setting out grounds for a review of the decision. By letter dated 28 February 2008, the respondent wrote to the Secretary setting forth the respondent's position in regard to the matter in the light of further documentation and information then available to the respondent. The matter was then listed for a review hearing on 10 March 2008. There was no appearance before the tribunal at the review hearing by or on behalf of the appellant and the respondent, both parties having indicated that each was content to rely upon representations in writing. The statutory and factual background to the matter is set forth in the decision and is only repeated in this review decision insofar as necessary.

THE LAW

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 (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").

Article 16 of the 2006 Order (amending the 1977 Order) provides as follows —

- " (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 and amends Article 31A of the 1977 Order (substituting for paragraphs (2), (3), (10) and (12)) as follows—

- " (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) -

(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 Valuation Tribunal Rules (Northern Ireland) 2007 ("the Rules") provide as follows in respect of review of any decision of the tribunal:-

"21.—(1) If, on the application of a party or on its own initiative, the Valuation Tribunal is satisfied that—

(a) its decision was wrong because of an error on the part of the Valuation Tribunal or its staff; or

(b) a party, who was entitled to be heard at a hearing but failed to be present or represented, had a good reason for failing to be present or represented; or

(c) new evidence, to which the decision relates, has become available since the conclusion of the proceedings and its existence could not reasonably have been known or foreseen before then; or

(d) otherwise the interests of justice require,

the Valuation Tribunal may review the relevant decision.

(2) An application for the purposes of paragraph (1) —

(a) may be made immediately following the decision at a hearing; or

(b) if not so made, shall be delivered to the Secretary within 14 days of receipt by the party making the application of written notice of the decision,

and shall be in writing stating the reasons in full.

(3) -

(4) -

(5) -

(6) Following review of a decision the Valuation Tribunal may—

(a) vary or set aside the decision;

(b) vary or revoke any order made in consequence of that decision; and

(c) where a decision is set aside, may order a rehearing before either the same or a different tribunal.

(7) -

(8) In this rule “decision” means a decision which is a final determination of the proceedings”.

THE EVIDENCE

There was before the tribunal the following evidence additional to what had earlier been before the tribunal in arriving at the decision that is now subject to review:-

1. A letter dated 21 December 2007 from the appellant attaching a copy of a letter dated 31 December 2007 from the appellant’s General Practitioner, Doctor Radcliffe.
2. A letter dated 21 December 2007 from the appellant setting out grounds for review and attaching a letter dated “January 2007” from Abbey National Plc and a Certificate of Disablement dated 18 December 2007 from Service Personnel & Veterans Agency.
3. A letter dated 28 February 2008 from the respondent to the Secretary.

4. Copy emails and correspondence between the Secretary and the parties.

THE FACTS

On the basis of such additional information as is now before it on review the tribunal determines, upon the balance of probabilities, the following material facts:-

1. The hereditament consists of a dwellinghouse situated at number 31 Drumlough Road, Rathfriland, Newry, County Down BT34 5DW ("the property"). The appellant resides in the property.
2. The property has four bathrooms, one of which is on the ground floor and is used by the appellant during the day. This information is supported both by the content of the letter dated 28 February 2008 from the respondent to the tribunal for the purposes of this review and also from the evidence earlier placed before the tribunal to the effect that the property was inspected by the respondent on 29 August 2007 by the respondent's Mr Pat Cunningham. Mr Cunningham had recorded on the Home Visit Pro-Forma (DPA6) dated 29 August 2007 (in answer to the question on the Form entitled – "*Does the property have any of the following qualifying facilities?*"), that there was "*an additional bathroom*", by ticking the appropriate box on the Form and by adding the number "(4)". Further, in answer to the question on the Form – "*If so, is the adaptation required for meeting the needs of the person with a disability?*", Mr Cunningham ticked the box marked "yes". Mr Cunningham further recorded on the Form the following comments: "*Mr Toner walks with a slight limp. He also keeps a pair of crutches in the house to help him get around when his condition worsens. There are 4 bathrooms in the property, and Mr Toner uses the one at ground level when he is downstairs*".
3. By report dated 31 December 2007 Dr Radcliffe states in respect of the appellant: "*This patient has requested me to supply him with information to support his submission to the Northern Ireland Valuation Tribunal where he contends that his disability has been called into question. He has drawn my attention to a letter addressed to me.... In that letter it contained an attachment which I completed and returned on the 6th September 2007. I am concerned as to the format of the questioning re what is "substantially and permanently disabled". Mr Toner is not in a wheelchair, for example, which is the format that I was answering. However, he is in receipt of Disability Living Allowance on an indefinite basis and is also receiving a War Pension at the 60%. Therefore, I will now answer the question re whether Mr Toner is "substantially and permanently disabled" as YES. He is a long term patient and he will never recover. I express regret re my initial answer to the questioning but I do feel that it should be more specific as "substantially and permanently" can mean different things to different people*".
4. By Certificate of Disablement dated 18 December 2007 from Service Personnel & Veterans Agency it is confirmed that the appellant is currently receiving War Disablement Pension from that Agency at 60% in respect of four medical conditions attributable to service in the Royal Air Force. These include the conditions of *Bilateral Trigger fingers* and *Diabetes Mellitus* that were referred to in the Appellant's Doctor's certificate dated 6 September 2007 and also conditions called "*Left*

Dupuytren's Contracture" and "*Peripheral Neuropathy and Retrinopathy*" (in respect of which latter conditions the tribunal has no further information).

THE TRIBUNAL'S DECISION ON REVIEW

Article 31A (12 B) 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 appellant 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, as is mentioned in the decision which is now the subject of this review, 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 (see Article 2A of the 1977 Order)?
2. If so, has the property the type of facility such as is mentioned in Article 31A (2) (as qualified by Article 31A (3) of the 1977 Order)?

Rule 21 of the Rules provides that, on the application of a party (in this case the appellant), the tribunal may review its decision if it is satisfied that—

(i) new evidence, to which the decision relates, has become available since the conclusion of the proceedings and its existence could not reasonably have been known or foreseen before then; or

(ii) otherwise the interests of justice require.

The tribunal treated the appellant's application for review as falling under these two potential heads of application for review. There is a possible issue regarding whether or not the new evidence had become available since the conclusion of the proceedings and its existence could not reasonably have been known or foreseen before then. However, the tribunal prefers to take a liberal and purposive approach in this matter (as this is a relatively

new statutory jurisdiction) in respect of the construction of both potential heads of review, subject to the closing comments that follow at the end of this decision being noted.

The tribunal thus addressed in this review, in the light of the evidence and information now before the tribunal and with reference to the provisions of Article 31A (2) (a) (i) and (ii) and Article 31A (3) of the 1977 Order, the issue of whether the following issues had now been addressed:-

Does the appellant reside in the property?

The tribunal is satisfied that this is the case and thus Article 31A (2) (a) and Article 31A (3) (a) of the 1977 Order are complied with.

Is the appellant a person with a potentially qualifying disability?

Examining this issue, the tribunal now has the following significant evidence and information:-

(a) By Certificate of Disablement dated 18 December 2007 Service Personnel & Veterans Agency has confirmed that the appellant is currently receiving War Disablement Pension from that Agency at 60% in respect of four medical conditions attributable to service in the Royal Air Force. These include the conditions of *Bilateral Trigger fingers* and *Diabetes Mellitus* that were referred to in the appellant's Doctor's certificate dated 6 September 2007 and also to the conditions called "*Left Dupuytren's Contracture*" and "*Periphoral Neuropathy and Retrinopathy*". As mentioned, the tribunal has no further or fuller information regarding these two latter conditions.

(b) By Report dated 31 December 2007 the appellant's Doctor, Dr Radcliffe, has reviewed his earlier opinion as indicated in the said certificate dated 6 September 2007. The Doctor has now stated in his December report that in his professional opinion he does consider that the appellant is "substantially and permanently disabled"; the appellant is what he describes as, " a long term patient and he will never recover", as the Doctor puts it.

Further to the foregoing, the respondent Department, in the said letter dated 28 February 2008 to the tribunal has confirmed that the respondent now accepts that the appellant is substantially and permanently disabled.

Is any qualifying disability both substantial and permanent ?

The tribunal must be satisfied that the qualifying disability is both substantial and permanent (or that there is a mental disorder, as defined, which latter is not applicable in this case). The tribunal has little doubt from the evidence and information contained in the Doctor's Report and from the Certificate from the Service Personnel & Veterans Agency now to hand that the qualifying disability is permanent.

In regard to the issue of "substantial" the tribunal notes that the evidence of the appellant currently receiving War Disablement Pension at a level of 60% would seem to place the matter in the category of "substantial" without any difficulty. The Doctor also places the matter in the category of "substantial" and indeed the Doctor makes reference in his Report to the appellant being in receipt of state benefits in order to corroborate that assessment.

Considering the foregoing and noting the respondent's attitude to the matter, the tribunal determines that it is satisfied that the qualifying disability is both substantial and permanent and thus Article 2A (a) of the 1977 Order is complied with.

The first test is therefore satisfied. Thus the tribunal's earlier decision which is now subject to this review must be varied accordingly.

In the decision, the tribunal was not required to address any further issues in view of its finding upon the qualifying disability issue. In the light of the foregoing finding on review, the remaining issue must now be addressed by the tribunal.

Does the property have a qualifying facility?

Examining the second issue as to qualifying facility, the tribunal now has the following evidence and information:-

By means of the said letter dated 28 February 2008 the respondent has confirmed the following:-

"We have also confirmed that Mr Toner's property has the qualifying facilities for Disabled Persons Allowance as per Article 31A of the Rates (Northern Ireland) Order 1977 as inserted by Article 17 of the Rates (Amendment) (Northern Ireland) Order 2006. One of the qualifying facilities is an additional bathroom. When the property was inspected on 29 August 2007, it was ascertained that the property had four bathrooms, one of which is on ground floor level and is used by Mr Toner during the day".

Generally, the respondent, by means of the said letter dated 28 February 2008, has confirmed that the view taken by the respondent is that the qualifying criteria have been met and the respondent is content that DPA should now be awarded.

Noting the foregoing, the tribunal is satisfied that the property does have an additional bathroom. Furthermore, the tribunal on balance is satisfied that this additional bathroom constitutes a facility which is required for meeting the needs of a person who has a disability (the appellant) in that this facility is essential or of major importance to that person's well-being by reason of the nature and extent of the disability. Thus the facility meets the requirements of Article 31A (2) (a) (ii) and Article 31A (3) (b) of the 1977 Order and thus Article 31A (10) of the 1977 Order is applicable and the hereditament qualifies for a rebate.

THE TRIBUNAL'S ORDER

This being the case, the tribunal Orders in accordance with Article 30A of the 1977 Order and Rule 19 of the Rules that the hereditament shall be subject to a rebate of 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.

THE TRIBUNAL'S CONCLUDING REMARKS

In conclusion, the tribunal would wish to make the observation that it must be recognised that it is incumbent upon any person making application to this tribunal to ensure that all proper evidence and information to support a case is placed before the tribunal in a timely manner. It cannot be assumed that the tribunal can arrive at conclusions of fact unsupported by evidence. If that task had been properly attended to by or on behalf of the appellant in this case, considerable time and expense would have been saved and the necessity to conduct this review would have been obviated.

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