

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

Mr G Madill – APPELLANT 28/13

AND

Land and Property Services - RESPONDENT

Northern Ireland Valuation Tribunal

Date of hearing: 26th February 2014

Chair: Mr M Flanigan

Members: Mr E Spence and Ms A Matthews

DECISION AND REASONS

The parties relied upon written submissions only.

The appellant, with a disability of having no right-hand, suffers from psoriatic arthritis which affects his joints, and also suffers from synovitis in his little finger on the left hand which affects his grip. He resides at 7 Greer Park Drive, Belfast.

The appellant applied for special rates relief for persons with a disability under the Rates (Northern Ireland) Order 1977 (“the Order”). The legislation which was amended by Art 17 of the Rates (Amendment) (Northern Ireland) Order 2006, states as follows:-

- 31a – (1) Subject to paragraph 5, 7 and 8, the department shall in accordance with the provisions of this article grant to the person mentioned in paragraph 4 a rebate from the rates charged for in respect of a hereditament to which this article applies.
- (2) This article applies to a hereditament in which there is a facility which is required for meeting the needs of a person who resides in the hereditament and who 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 or bathroom or lavatory and the hereditament in which there is sufficient floor space to permit the use of a wheelchair used by and required for the needs of the person who resides in the hereditament and has a disability.

By his written application of 21st June 2013, the appellant sought relief on the basis that a spare room in his home was wholly or mainly used for therapy and exercise purposes, to store prosthetic limbs, spare hands and stump socks, to exercise his arms and shoulders to relieve pain, to maintain prosthetic arms and hands and to charge batteries for an electric arm.

The respondent carried out an inspection on 4th July 2013 and on that occasion, viewed a room which contained various prosthetic limbs together with a bed and sofa and TV. By letter of 5th July 2013, the rating officer refused the application on the grounds that a bedroom was not regarded as a qualifying facility and that the main use of the room was as a bedroom.

By letter of 26th July 2013, the appellant notified the respondent that he had been forced to change rooms for therapy purposes and asked for the new room to be viewed by the rating officer. A rating officer examined the room on 29th August 2013 and on that occasion found that the room was used for storage of prosthetic limbs together with a cycling machine and a table.

Following this inspection the rating officer refused the application for disability relief by letter of 5th September 2013 and in that letter repeated that the application was being refused on the grounds that the room was “found to be a bedroom with a bed sofa TV etc.- where therapy is conducted. Unfortunately I cannot grant rate relief where a room is being used as a bedroom”.

The appellant appealed that decision to the Northern Ireland Valuation Tribunal.

Discussion and Decision.

As a result of enquiries raised by the Tribunal the respondent confirmed that the room inspected on 29th August did not contain the bed sofa and TV that had been referred to. The appeal was therefore determined on the basis of a room containing prosthetic limbs, used for therapy, pain relieving exercise and the storage of items related to the appellant's disability.

The respondent sought to rely upon the decision in the case of *Howell Williams v Wirral Borough Council* (1981). This was a decision under the Rating (Disabled) Persons Act 1975 (“the Act”) which applied in England & Wales. Section 1(2)(a) of the Act provides for a rebate in relation to “a hereditament in which a room other than a bathroom or lavatory is predominantly used whether for therapy or other purposes and is required for meeting the needs of a disabled person who resides in the hereditament”.

The facts in that case involved the claim by the disabled person in respect of a living room which contained in addition to an electric fire, a night storage heater to provide additional heating because of the respondent ratepayer's disability. The respondents in their decision letter highlighted the quotation in the judgement of Fox LJ “It cannot have been the intention of Parliament to grant a rebate merely because a room is predominantly used by a disabled person... the user of the room must relate to a disability”.

Fox LJ in the leading judgement dealt with the use of the living room as follows:- “ it is clear in my view that the living room as such is not essential or of major importance to the wellbeing of the respondent rate payer by reason of the nature and extent of the disability. She needs the living room as such merely in the way that anybody whether disabled or not needs the living room as part of ordinary life”.

The Tribunal agrees with that decision although it must be viewed in the light of the facts in that case; the facts in the instant appeal are very different. The appellant's case is that the spare room (viewed on 29th August 2013) was used for storage, maintenance and cleaning of the appellant's prosthetic arms and other equipment as well as for the exercise

that he took in order to provide pain relief.

The use claimed by the appellant was not in dispute. The Tribunal noted that the kind of user claimed by the appellant had been envisaged by the court in *Howell Williams v Wirral Borough Council*. In that case Fox LJ stated "If a disabled person requires an additional room in the flat to house a particular piece of equipment which is necessary by reason of disablement---- the case might fall within paragraph (a) because assuming the room to be predominantly used in the way provided by sub paragraph (a), the room would be used because of the disability".

In order to obtain special rates relief the disabled person must satisfy the test set out in the Order. The Order, recited in full above, uses the phrase "wholly or mainly" rather than the term "predominantly" which appears in the Act. By electing to use a term such as "wholly or mainly" the Order provides for the fact that a room can have other uses which may be either occasional or subsidiary to its main use.

It is a fact of modern living that a room will rarely be used exclusively for one activity and for that only. While it could not have been the intention of Parliament to grant a rebate merely because a room is predominantly used by a disabled person, neither can it have been the intention of Parliament that a room which is wholly or mainly used for therapy or for other purposes by a disabled person should fail to attract relief merely because it has some subsidiary or ancillary use.

The Tribunal is satisfied on the basis of the appellant's submissions that a spare room at 7 Greer Park Drive, Belfast was wholly or mainly used for storage, maintenance and cleaning of the appellant's prosthetic arms and other equipment, as well as for exercise to provide pain relief.

The respondent has accepted that the room inspected on 29th August 2013 did not contain a bed and sofa, and therefore the Tribunal was not required to determine whether the presence of a bed in a room was of itself a bar to an application to obtain rates relief under Article 31a.

The application for disabled rates relief was granted.

Signed by the Chairman,

Michael Flanigan

Date decision recorded in register and issued to parties: 11th March 2014