

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

**Case Reference Number – 33/15**

**Martin Higgins - APPELLANT**

**and**

**Department of Finance and Personnel – RESPONDENT**

**NORTHERN IRELAND VALUATION TRIBUNAL**

**Date of Hearing: 1 September 2016**

**Chair – Garrett E. O' Reilly**

**Members: Eric G. Spence and Angela Matthews**

This reference is an appeal under Article 31A 12(B) of the Rates Order (Northern Ireland) as amended (the 1977 Order) and comes before the Northern Ireland Valuation Tribunal in the following circumstances:-

1. The Appellant made an application for a Disabled Persons Allowance (DPA) as a person claiming a rebate from rates chargeable for a property with a special facility for a person with a disability being the property at 7, Rathowen, Lisnaskea, County Fermanagh BT92 0PF (the Property).
2. Following an inspection visit to the Property by a District Valuer the Rating Officer wrote and advised the Appellant of the decision that his application had been unsuccessful.
3. The Appellant wrote and requested the Respondent to review the decision.
4. The Senior Rating Officer considered the review request and decided the original refusal decision should remain unchanged.
5. The Appellant served a Notice of Appeal against the decision of the Respondent on the Northern Ireland Valuation Tribunal.

## **Representation**

The Appellant appeared in person and Mr. Martin and Mr. Peden appeared on behalf of the Respondent.

## **Schedule of Documents before the Tribunal**

1. Notice of Application for Disabled Person Allowance dated 4 December 2014 (the DPA Application);
2. Report of Darrell Martin dated 31 March 2015 on the Property (the Report);
3. Letters of Refusal dated 2 April 2015 of Simon Watton and of confirmation of receipt of request for review of the refusal dated 24 April 2015 of Simon Watton;
4. Letter of decision of Bronagh Dobbin dated 28 July 2015 whereby the Appellant was advised that the review had been unsuccessful;
5. The Notice of Appeal (undated but acknowledged as being received on 4 November 2015) whereby the Appellant appealed the result of the review (the Notice of Appeal);
6. Letter of the Appellant supplemental to the Notice of Appeal, undated but acknowledged as being received on 17 June 2016, (the Supplemental Letter); and
7. The Medical report dated 21 April 2015 of Dr. Michael Smyth on the condition of Shane Higgins (the Medical Report)

## **The Law**

1. Article 31A of the 1977 Order and in particular (1), (2), (3), (8), (11A), (12), (12A) and (12B) thereof.
2. Article 2A of the 1977 Order
3. Howell Williams v Wirral Borough Council (1981) 79 LGR 697 CA; South Gloucestershire v Malcolm Titley and Michelle and Michael Clothier (2006) EWHC 3117
4. Ritchie v Department of Finance and Personnel (Case Reference Number: 02/07); Perry v Department of Finance and Personnel (Case Reference Number: 38/09); and Thomas Lyttle and Tracey Mc Ateer v Commissioner of Valuation for Northern Ireland (Case Reference Number: 02/07).

## **Submissions and Evidence**

It was noted that the Notice of Appeal was not received within the statutory time limits. The Respondent did not raise any issue in this regard.

Mr. Higgins referred the Members to his representations and stated that their son was autistic. He submitted that the basis of his appeal was set out in the DPA Application, in the grounds of appeal detailed in the Notice of Appeal and in the Supplemental Letter.

The Appellant explained in great detail the changes and additions made to convert the sitting room in the Property into Shane's room. It had been a second sitting room in their home and was provided by his wife and him to enable Shane to have a designated place in the Property because of his autism. He also explained why some things in Shane's room on initial inspection might be considered as being usable by other family members. He stated that this is not so as the room has been designated for Shane's use only. By way of example in relation to the television in Shane's room he said that the family watched another television in the Property not because the family did not, and would not want, to be with Shane and watch with him but because Shane wanted to watch his own programmes and repeatedly watch the same programmes alone without them. Mr. Higgins also explained that a further reason that the family did not, and could not, use Shane's room and their resultant virtual exclusion from it was the severe distress caused to Shane by any minor displacement of items in his room. He stressed that the family used the other sitting room and not Shane's room as they would generally not be welcome in Shane's room.

He then highlighted Shane's many medical difficulties and referred to the Medical Report.

He surmised that it might have been that the assessor who inspected the Property in March 2015 was not familiar with or had knowledge of Shane's condition. He said that because of Shane's disability that there was a need for Shane to have his own room and that the contents and fittings of the room were for Shane's sole use and therapeutically beneficial for him.

Mr. Martin was invited to ask Mr. Higgins any questions but he said that he had no questions.

The Members questioned Mr. Higgins. When he was asked by Mr. Spence if he considered Shane's room to be essential or of major importance for Shane's wellbeing his immediate answer was that the room was vital.

Mr. Higgins also answered further questions about Shane's medical condition, the family situation, and gave clarification about Shane's individual toilet requirements.

He was asked about Shane's school situation and he said that Shane had been disciplined in the last two consecutive years at his Grammar School and he had to be sent by individual taxi to school. The Appellant also gave evidence that at school Shane has an educational statement, a full time classroom assistant and dedicated one to one supervision during school break times as a result of his autism.

When invited to make and clarify the Respondent's case Mr. Martin simply said that he had nothing to add to the Report which he had made following his inspection on 21 March 2015 and referred to the Refusal Letter.

The Tribunal pointed out to Mr. Martin that there seemed to be a paucity of information in his Report upon which to make and base a decision to refuse a DPA Application.

The Members referred Mr. Martin to the evidence that Shane's room had been a sitting room in the Property which was now being used for Shane's own personal use and asked Mr. Martin for his comments (having regard to that evidence) as to why it should not be classified as "a room, other than a kitchen, bathroom or lavatory, which is wholly or mainly used by the person with a disability". Mr. Martin responded by saying that Shane's room was not for the exclusive use of Shane. The Chairman pointed out that the wording in the legislation in this regard related to such a room being used "wholly or mainly used by the person with the disability for treatment or therapy" and he asked Mr. Martin's opinion as to what he considered to be the difference between mainly and exclusively in the context of a DPA application. Mr. Martin said that he could not see any difference. Mr. Peden intervened and advised that the interpretation of his Department was that the meaning of mainly and exclusive was one and the same. He explained that this interpretation followed the decisions in case law and other DPA decisions of the Northern Ireland Valuation Tribunal and Case law.

Mr. Peden then referred to a legal case which he said confirmed the Departmental approach as being correct but did not have the document with him. He could not remember it but volunteered to go to his office and get it. However, as it happened the Tribunal secretariat had already organised the Northern Ireland Valuation Tribunal Decision which exhaustively covered the case and gave it to Mr. Peden. Mr. Peden confirmed that the cases referred to and the wording used in that Decision would be the reason for the refusal to award a DPA rebate.

When Mr. Martin was asked for his views about the further changes made in Shane's room since March 2015 Mr. Martin and Mr. Peden used the same argument of the precedent of the Case Law and Northern Ireland Valuation Tribunal Decisions making it unnecessary for them to be considered by the Department.

The Members then considered the only other evidence of the Respondent of the reason for the refusal of the DPA Application. It was contained in the Review in which the Senior Rating Officer confirmed the refusal to make the DPA Rebate. The

Senior Rating Officer said that she had “taken into account your application and a home visit completed”. Mr. Martin advised that he believed there would not be any further visit by Mrs Dobbin or anyone to inspect the Property and in particular Shane’s room. He thought that in the review Ms. Dobbin can only have been referring to his March 2015 inspection in making her decision to refuse the review.

Further reference is made in the DPA Application to medical information but there was no evidence and it was unclear if Dr. Smyth MRCP, who was specified in the appropriate section of the DPA Application as being Shane’s doctor and the Respondent had permission to contact him about Shane’s disability, had been contacted by anyone or indeed if Mr. Martin or Ms. Dobbin had seen the Medical Report as part of the process. The Medical Report was dated later than the date of the Inspection but before the refusal of the DPA Application by Simon Watton (the Rating Officer).

Dr. Smyth issued the Medical Report by letter dated 21 April 2015 confirming Shane’s medical issues and gave further medical information; the Senior Rating Officer’s refusal to review the decision letter is dated 25 April 2015. While it is clear that having a disability is only a part of the statutory criteria process to be established to enable the grant of a DPA rebate it is a fundamental part and she makes no mention that disability is conceded and says simply that the reason for her refusal decision is “the Application and the home visit”. Mr. Martin and Mr. Peden were not able to comment as to whether Ms. Dobbin had knowledge of the Medical Report.

### **Reasons and Decision**

The Members carefully considered the Submissions of the Appellant and the Respondent and the Law and noted the wording of the relevant part of Art. 31A (12) (2)(a) of the 1977 Order in relation to a DPA Application

“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;.....”

They considered for the Appellant to succeed in this appeal and establish that he was entitled to the award of a DPA Rebate in respect of the Property it was necessary for him to satisfy the Tribunal that

1. Shane is a resident member of his household.

The Tribunal noted that there was no submission that Shane is not a resident member of the Appellant's household and from the evidence was satisfied on this point.

2. Shane has a disability.

The Tribunal noted there was no suggestion either in the Report or in the Review that Shane's autism is not a disability. Further the Members also noted the medical evidence of Shane's condition was not challenged by the Respondent. The Tribunal is also satisfied on this point.

3. Shane requires a room in the Property, which is not a kitchen, bathroom or lavatory, for meeting the needs of his disability and that room is used by Shane wholly or mainly for providing therapy or other purposes.

The Members consider that there are four hurdles to be cleared by the Appellant in point 3 above to be successful in his appeal.

The first hurdle is that the room for meeting the needs of Shane's disability is not a kitchen, bathroom or lavatory. It was noted that the Respondent acknowledges that it had formerly been a sitting room and so the Members are satisfied that the Appellant has cleared the first hurdle.

The second hurdle is that Shane requires the room for meeting the needs of his disability. The Appellant offered a wealth of evidence to show that Shane required such a room for his needs and they were being met by the combination of individual items now part of and in the room. The Medical Report also stated that Shane needed a room as a sensory room as he has severe sensory issues. On reviewing the evidence the Respondent ticked a box in the Report which indicated that the room adaptation was not required to meet the Shane's needs but did not offer any reason for doing so. In the Review there is no mention by Mrs. Dobbin that Shane did not require a room. The Tribunal is satisfied that the Appellant has cleared the second hurdle.

The third hurdle is that the room is wholly or mainly used by Shane for providing therapy or other purposes.

The Respondent did not state that use of the room by Shane was therapeutic but the Appellant and the Medical Report made it absolutely clear that the room is used for Shane's therapeutic use and so the Members deemed it unnecessary to consider "other purposes" use.

The fourth and final hurdle and supplemental to the third hurdle is that the room is used wholly or mainly by Shane. The consistent evidence of the Appellant in the DPA application, the Notice of Appeal and the Supplemental Letter and the verbal evidence was that the room was used solely by Shane.

The Respondent did not challenge the Appellant's evidence. Instead the Respondent said that this is the procedure which has been adopted for these DPA Applications and they are treated in this way because previous Northern Ireland Valuation Tribunal Decisions and Case Law decisions have dismissed similar DPA appeals. The Respondent submitted that this Tribunal was therefore bound to follow these decisions and must refuse the Application and dismiss the appeal.

The Respondent was adamant that the room had to be for the exclusive use and not mainly for the use of a person with a disability. In fact the Members were not convinced from the evidence that it might well be that a DPA Application was immediately refused because an exclusive use was not certain and there was any indication of the possibility of any other user (however limited).

However the Members were satisfied on the facts and the evidence that the room was certainly mainly for Shane's use (and maybe even exclusively insofar as any room can be for a person's exclusive use).

The Appellant's evidence as to Shane's condition and the need for Shane's room was impressive.

The Members found his evidence to be highly credible. The Members agreed that a conscious decision had been made by Shane's parents to change the usage of the subject room from one that was available for use by the whole family into one that was dedicated to therapeutic use by Shane as a result of his disability. The Members also held that the medical evidence, in the Medical Report from Shane's general practitioner, supported the necessity of Shane having a dedicated room for these purposes.

Accordingly the Members unanimously considered that the facts and the evidence indicated that the statutory DPA criteria had been complied with and that it should consider the Case Law and Northern Ireland Valuation Tribunal Decisions upon which the Respondent based and justified its approach to this DPA Application and had indicated that this Tribunal would either be bound or be persuaded to follow.

1. In *Howell Williams v Wirral Borough Council* (1981) 79 LGR 697 CA the decision of the Court of Appeal to disallow the equivalent of DPA Rebate was in respect of similar legislation was based on the following reasons and set out general guidelines and is helpful:

“(1) the living room was not essential or of major importance to the wellbeing of the respondent ratepayer by reason of the nature and extent of her disability, since she needed the living room in the way that anybody, whether disabled or not, needed a living room as part of ordinary life;

(2) it was the heating, not the room, which was necessary by reason of the nature and extent of the respondent ratepayer's disability”

In this DPA Application before the Tribunal the Members were satisfied on the facts and evidence that Shane's room in the Property is not a sitting room but in the nature of an additional room and was required for Shane's disability. Further it was clear that the bulk of Shane's use of the room clearly relates to his disability.

2. *South Gloucestershire Council v Malcolm Titley* (2006) EWHC 3117 is based on similar legislation and an application was refused primarily because the room to which the application relates was a living room which was at all times being used as a living room (in which there was equipment) and which was not in any sense additional.

3. *South Gloucestershire Council v Michelle and Michael Clothier* (2006) EWHC 3117 is again based on similar legislation and an application was refused because of the dual user of a bedroom for a person with a disability as a bedroom and for the disability. This is a case of there being no additional room in the house for the use.

4. *Alan Ritchie v Department of Finance and Personnel* (Case Reference Number: 02/07) is based on a DPA application and appeal to the Northern Ireland Valuation Tribunal under Art 31A(12B). The appellant did not seek to argue that any room in the property was specially adapted or used by the person with the disability. The facts were that the person had free access to every room in the property and he readily availed of that access and it was submitted that the household (not any specific area) formed a "sanctuary" which was a necessary therapeutic environment. The Northern Ireland Valuation Tribunal dismissed the appeal. The facts of this appeal are in no way similar to this appeal.

5. *Stephen Perry and Nuala Perry v Department of Finance and Personnel* (Case Reference Number: 38/09) is also based on a DPA rebate application and appeal to the Northern Ireland Valuation Tribunal under Art 31A(12B). The appellant failed to provide any medical evidence and to show that the room was predominantly used (whether for therapy or for other purposes) by a disabled person and also that it was required for meeting the needs of that person.

6. In *Thomas Lyttle and Tracey McAteer v Commissioner of Valuation* (Case Reference Number: 02/07) is also based on a DPA rebate application and appeal to the Northern Ireland Valuation Tribunal under Art 31A(12B). This appeal was heard on written representations. In this Hearing the Tribunal was not satisfied that the room was required for meeting the needs of the disabled person or essential or major importance to that person's wellbeing by reason of the nature and extent of his disability.

Every case and tribunal hearing seems distinguishable from the facts and evidence given in this appeal.

It seemed that the Respondent adopted "a one cap fits all" approach to DPA Applications and its Inspection and Review procedures. The Members did not accept that this was the appropriate way to process a DPA rebate application. The Members considered the individual facts of every DPA Application should be



considered by the Respondent in accordance with the legislation and believed if this had been done then it might not have refused to award this DPA rebate application.

The Tribunal unanimously allowed the appeal and ordered that the DPA rebate be paid from the 1 April 2014 being the commencement date of the rating year upon which the DPA Application was made.

**Garrett E. O' Reilly – Chairman**

**Northern Ireland Valuation Tribunal**

**Date decision recorded in register and issued to parties: 8 September 2016**

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