Judicial Communications Office

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COURT DELIVERS JUDGMENT ON RATES RELIEF

Summary of Judgment

The Court of Appeal[1] today held that the Northern Ireland Valuation Tribunal erred in its interpretation of the Rates (Northern Ireland) Order 1977 when it awarded a Disabled Persons Allowance on the basis that the applicant had ramps to the front and back doors to her home.

Mrs Mary Quinn ("the respondent") is a person with a disability for the purposes of Article 31A of the Rates (Northern Ireland) Order 1977 ("the 1977 Order"). She applied to the Department of Finance ("the Department") for special rates relief in the form of Disabled Persons Allowance ("DPA"). The application was refused by the Department on the basis that she did not qualify for DPA as there were no qualifying facilities in her home. Mrs Quinn appealed to the Northern Ireland Valuation Tribunal ("the Tribunal") which awarded her DPA on the basis that the ramps to the front and back door of her home were facilities necessary to meet her needs and that they were qualifying facilities within the terms of Article 31A(2)(a) of the 1977 Order. The Tribunal maintained its decision on review. The Department brought the matter to the Court of Appeal by way of a case stated.

The decision of the Tribunal dated 5 April 2017

The relevant provisions of the 1977 Order are set out at paragraph [11] of the judgment. The Tribunal held that the words in Article 31A(2)(a) "including a facility of either of the following descriptions" did not limit the qualifying facilities to those then listed in sub-paragraphs (i) and (ii)[2]. It stated that "the qualifying facilities are not limited to those listed in [(i) & (ii)] but that other facilities should also be considered provided the facility is required to meet the needs of the disabled person." While the ramps were not one of the listed facilities the Tribunal held that they were qualifying facilities on the basis that they "were facilities necessary to meet the respondent's needs, specifically the need to gain access to and from her home." On that basis the Tribunal awarded the respondent DPA.

The Tribunal's review decision dated 27 September 2017

The Department applied for a review of the decision submitting that the Tribunal had erred in its approach to the legislation in two broad areas:-

(a) The use of the word "including" in Article 31A had no relevance and should be ignored;

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[1] Lord Justice Stephens delivered the judgment of the Court. The panel was Lord Justice Stephens, Lord Justice Treacy and Mr Justice Maguire.

[2] Article 31A(2)(a) provides: "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) That case law had established that the disabled relief was only available where there was a room and that the room had to be additional to other rooms within the premises (this relied on previous decisions of the Tribunal which supported the approach taken by it and which followed the case law in England and Wales).

In its decision dealing with the review the Tribunal stated that it was not persuaded that it had made an error in its decision dated 5 April 2017 asserting that Article 31A of the 1977 Order should be read as a whole concluding that the special rates relief is available for a property "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 …" The Tribunal took the view that the phrase "including either of the following" should be read as meaning that what followed were examples of facilities that could attract the relief but that the class of facilities was not a closed one. It rejected the Department's submission that the word "including" had no relevance and should be ignored for the purposes of interpreting the legislation.

The Tribunal noted that the legislative provisions in Northern Ireland differed from the equivalent provisions in England and Wales which required there to be a room as a precondition to the obligation to grant a rebate (as opposed to the Northern Ireland Order which uses the term 'a facility' and not a room). The Tribunal considered that the word "facility" should be given its normal and usual meaning so that the ramps satisfied the requirement in that they were "a facility which is required for meeting the needs of a person who resides in the hereditament and who has a disability."

The legislative provisions in this jurisdiction

The obligation on the Department to grant a rebate from the rates chargeable in respect of the hereditament arises if Article 31A applies. There was no issue before the Tribunal or the Court of Appeal in relation to the following aspects of Article 31A:

(a) A hereditament is not confined to the interior of the dwelling so the ramps were "in the hereditament;"
(b) The word "facility" is not defined in the 1977 Order but it is an amenity which enables something to be done so that the ramps are a facility;
(c) The respondent resides in the hereditament;
(d) She is the occupier of the hereditament;
(e) She has a disability; and
(f) The ramps are essential or of major importance to her well-being by reason of the nature and extent of her disability.

The only issue was therefore whether Article 31A "applies." If it does then the respondent is entitled to DPA. The Court said this depends on the true construction of Article 31A(2)(a). The Court said that the ramps are not facilities within either 31A(2)(i) or (ii) but they are "a facility". So the question was whether the descriptions or classes of facilities in (i) and (ii) are limiting and are exhaustive of the types of facility which enable a person to qualify for DPA. The Department relying on context including the purpose of the legislation and also relying on the word "either" contended that the descriptions of the facilities given in (i) and (ii) amount to an exhaustive and definitive list of facilities so that the Tribunal was in error when it found that those facilities were not exhaustive.

Legal principles as to statutory construction

The legal principles state that the "basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed." The Parliamentary intention is to be derived from the terms of the Act as a whole read in its context but "… that is not to say that attention should be confined and a literal interpretation given to the particular provisions which give rise to difficulty." The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. The Court referred to potential constructions of the word "include" in previous jurisprudence. It considered the word to be ambiguous and said that its meaning will depend on context which includes purpose. It can be used (a) to enlarge or extend a natural meaning; (b) for clarity to resolve any doubt or for emphasis; or (c) to confine by providing an exhaustive definition of the meaning of the preceding words.

Discussion

The question for the Court of Appeal was what meaning to attribute to the word "including" in Article 31A(2)(a). It was of the view that the word was being used as the equivalent of "meaning and including" so that it was used in a restrictive sense as providing an exhaustive list of the facilities. The Court arrived at that conclusion for the following reasons:

- There is an exclusive element in (i) and (ii) in that a kitchen, bathroom or lavatory is excluded unless it is "additional." On that basis the descriptions in (i) and (ii) are performing the function of limiting the preceding words. If the preceding words were not limited by the facilities in (i) and (ii) then, for instance a kitchen, which was not additional, could still give rise to Article 31A applying together with the obligation to grant a rebate. The Court also noted that the heating installation facility (which was repealed in 2006) had an exclusive element so that not only had there to be a heating installation but it also had to provide heating in two or more rooms. If it did not do so then Article 31A did not apply and the obligation to grant a rebate did not arise. Furthermore the garage facility (which was also repealed in 2006) also had an exclusive element in that it excluded temporary use;
- The amendments in 2006 which resulted in the repeal of the heating installation and garage facilities would be ineffective unless the word "including" provides an exhaustive definition of the meaning of the preceding words. If it did not then both a heating installation facility and a garage facility would still fall within the natural and ordinary meaning of the preceding words. In that way the repeal of those two facilities in 2006 would have been to no effect;
- To resolve the meaning of the word "including" in Article 31A(2)(a) it is permissible to look to the purpose of the legislation and its historical context. The Court accepted that the fundamental purpose of Article 31A is to provide rate relief where a dwelling's rateable value is increased by the facility which is required for meeting the needs of a person who resides in the hereditament and who has a disability. This purpose can be clearly discerned from Article 31A(11) as originally enacted in 1979. In short the purpose of Article 31A is to provide a rate rebate which must be referable to rates incurred as a result of the requirement of a facility. Furthermore the mischief that the DPA was designed to remedy was additional space and facilities that result in a higher valuation. The Court was content to rely on Article 31A(11) as originally enacted in order to discern the purpose of the legislation. That purpose was that persons with a disability should not be penalised if they need more space and special facilities in their home, which can result in a higher valuation than would otherwise be the case if the space or facilities were not required. It considered that the purpose would be undermined if any facility falling within the natural and ordinary meaning of the preceding

words gave rise to the obligation to grant a rebate. If that was so then, for instance a grab rail in the hallway of a dwelling which had no impact on the rateable value but which was a facility which was required for meeting the needs of a person who resides in the hereditament and who has a disability, could give rise to the obligation to grant a rebate of 25%. That would not be in accordance with the purpose of the legislation but rather would undermine that purpose. The Court considered that an exhaustive meaning of the word "including" secures the legislative purpose.

Conclusion

The Court concluded that the qualifying facilities in Article 31A(2) of the 1977 Order are limited to those listed in (i) & (ii). It answered the questions posed in the case stated as follows:

(a) Was the Tribunal correct in making a distinction between the word "facility" used in Article 31A and the word "room" used in both the Rating (Disabled Persons) Act 1978 and the Council Tax (Reductions for Disabilities) Regulation 1992?
There is a distinction between the word "facility" used in Article 31A and the word "room" used in both the Rating (Disabled Persons) Act 1978 and the Council Tax (Reductions for Disabilities) Regulation 1992;

(b) Did the Tribunal's decision comply with the stated policy behind the legislation by allowing disabled facilities that impact adversely upon the open market value of a hereditament to be taken into account for the purpose of disabled rates relief?
The policy behind Article 31A of the 1977 Order is to provide rate relief where a dwellings rateable value is increased by the facility which is required for meeting the needs of a person who resides in the hereditament and who has a disability;

(c) Did the Tribunal err in its interpretation of Article 31A(2)(a) by finding that the two classes of facilities required for meeting the needs of a person who resides in the hereditament and who has a disability in Article 31A(2)(a)(i) and (ii) were non-exhaustive?
Yes.

(d) If the answer to (c) is no, what is the proper interpretation of Article 31A(2)(a)?
This question does not arise.

NOTES TO EDITORS

This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (https://judiciaryni.uk).

ENDS

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