

**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 – 40/13**

**William Wilkinson - Appellant**

**and**

**Department of Finance – Respondent**

**NORTHERN IRELAND VALUATION TRIBUNAL**

**Date of Hearing 24 October 2016**

**CHAIR – Garrett E. O' Reilly**

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

This 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. An application for a Disabled Persons Allowance (DPA) was made for rate rebate in respect of a property with a special facility for a person with a disability at 11, Windsor Crescent, Cookstown, County Tyrone BT80 8EZ (the Property).
2. The DPA rate rebate was refused following an inspection of the Property and the Appellant was duly advised that the application had not been successful.
3. The Appellant requested the Respondent to review the decision to refuse the DPA rate rebate.
4. The Respondent considered the review request and confirmed that the original refusal decision would remain unchanged.
5. The Appellant served Notice of Appeal on the Northern Ireland Valuation Tribunal against the review decision of the Respondent.

**Change of Title**

In accordance with Section 1 of the Departments Act (Northern Ireland) which came into operation on 8 May 2016 under Article 2 of the Departments (2016 Act)

Commencement Order (Northern Ireland) 2016 and in pursuance of its statutory powers under the Valuation Tribunal Rules (Northern Ireland) 2007 the Tribunal changes the name of the Respondent to the Department of Finance.

### **Representation**

The Appellant stated in the Notice of Appeal that he requested a hearing and that he was content for the appeal to be disposed of by written representations. Further, in a letter dated 28 September 2016 from Anne Birt, on behalf of Mr Wilkinson, the Tribunal was notified that Mr Wilkinson was unable to attend a hearing due to ill health. The Appeal was therefore disposed of by written representations and Mr Wilkinson did not appear at the Hearing.

Eamon J. O' Neill made written representations in a letter supplemental to the Notice of Appeal and in a further letter dated 17 August 2016 on behalf of the Appellant and Anne Birt also made a written representation in the letter dated 28 September 2016 on behalf of the Appellant.

The Respondent was represented by Mr. Martin of Land and Property Services (LPS) at the Hearing.

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

1. LPS Letter of dated 28 November 2013 (the Refusal Letter) advising the Appellant that the DPA rate rebate application in respect of the Property had not been successful;
2. LPS Review Letter dated 19 December 2013 (the Review Letter) confirming the refusal of DPA rate rebate;
3. Notice of Appeal dated 14 January 2014 (the Notice of Appeal) whereby the Appellant appealed the result of the review together with a letter of Eamon J. O' Neill supplemental thereto (the Supplemental Letter) and the further Letter of Eamon J. O' Neill dated 17 August 2016 (the Further Letter);
4. Medical reports of Dr. Paul Flanagan dated 02 January 2014 and 10 August 2016 on the health of the Appellant (the Medical Reports);
5. Letter of Anne Birt dated 29 September 2016 (the Barr Letter); and
6. LPS Letter dated 11 October 2016 whereby the Respondent clarified the reason for the refusal to grant DPA rate rebate (the Clarification Letter).

### **The Law**

Article 31A of the 1977 Order generally details the criteria for the grant of DPA rate rebates in respect of hereditaments.

In particular Article 31A 2(a)(i) and (ii) which states as follows

“2(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”.

### **The Case Law**

1. Howell Williams v Wirral Borough Council (1981) 79 LGR 697 CA; South Gloucestershire v Malcolm Titley and Michelle and Michael Clothier (2006) EWHC 3117

2. Ritchie v Department of Finance and Personnel (Case Reference Number: 02/07); Perry v Department of Finance and Personnel (Case Reference Number: 38/09); Thomas Lyttle and Tracey McAteer v Commissioner of Valuation for Northern Ireland (Case Reference Number: 02/07); and Martin Higgins v Department of Finance and Personnel (Case Reference Number 33/15).

### **Submissions**

The Appellant’s submissions were contained and made in the Supplemental Letter, the Further Letter and the Birt Letter. The arguments therein for the grant of DPA rate rebate in respect of the Property showed that the Appellant resides in the Property and had a disability (as confirmed by the Medical Letters) and also advised that the Property was a ground floor flat. Much of the representations related to wheelchair use in the Property.

The Respondent’s submissions were made in the Refusal Letter and in the Clarification Letter. It seems that the Property is a purpose built one bedroom, one living room, one kitchen and one bathroom ground floor flat. The arguments therein were intended to explain and clarify that the criteria for the grant of a DPA rate rebate required more than an Applicant for DPA to be resident in the Property and to have a disability.

### **Reasons and Decision**

The Tribunal noted that the Notice of Application was not included among the Documents but decided that while it would be appropriate to have the originating DPA application a decision on the merits of the appeal was not prejudiced by its absence.

The Members then carefully considered the Documents before the Tribunal, the Law and the Case Law.

They noted the wording of Article 31A(2)(a) and had no difficulty in deciding that the Appellant was resident in the Property and had a disability within the definition of the Rates Order.

However they also noted that there was no evidence that the Property had been adapted to include either of the facilities specified in Article 31A(2)(a)(i) or (ii) of the 1977 Order. In fact it seemed to them that the Property may simply not have been capable of being adapted to enable a successful application for DPA Rate rebate to be made.

In their view to be successful in the DPA Application there was a need for an additional facility in the Property as specified in Article 31A(2)(a)(i) or (ii) and the Members were supported by the Case Law in that a common feature of all the binding and persuasive cases relating to DPA rate rebate (or a legislative equivalent) is that a part of a property is converted for the needs of the disabled resident and that part is used wholly or mainly for the use of the disabled resident.

The members considered that the appeal may have been brought because the Refusal Letter, the Review Letter and even the Clarification Letter may have tended wrongly to focus the Appellant's mind on the reason for refusal to grant DPA rate rebate related to wheelchair user in the Property. Wheelchair user was not considered by the Tribunal to be of any relevance in this appeal as it was their view that the DPA application could not succeed because of the lack of an additional facility.

Accordingly having considered all the facts, the Submissions and the evidence the Members unanimously dismissed the appeal.

Garrett E. O' Reilly – Chairman

Date decision recorded in register and issued to parties: 3 November 2016