

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

CASE REFERENCE NUMBER: 32/18

AC and MC – APPELLANT

AND

DEPARTMENT OF FINANCE – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O’Neill

Members: Mr Hugh McCormick FRICS and Ms Angela Matthews

3 September 2019

DECISION

The unanimous decision of the tribunal is that this appeal is dismissed.

REASONS

Introduction

1. This is a reference under Article 12B of the Rates (NI) Order 1977 (as amended) (the 1977 Order).
2. There was no appearance before the tribunal by or on behalf of the appellant and the respondent, both parties having indicated that each was content to rely on written representations. In accordance with Rule 11 of the Valuation Tribunal Rules (NI) 2007 (as amended) an appeal can be disposed of on the basis of written representations if all the parties have given their consent in writing to that course of action.
3. The appellant appealed against the outcome of a review of a decision by the Department of Finance (the Department) that the appellant was not entitled to claim Disabled Person’s Allowance (DPA).

The Law

4. The statutory provisions are to be found in the 1977 Order. Article 31A (12B) of the 1977 Order was inserted by article 17(8) of the Rates (Amendment) (NI) 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 (the respondent in 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. This is referred to as DPA.

The Evidence

5. The tribunal heard no oral evidence. The tribunal had before it the following documents:
 - (a) The appellant's application for DPA dated 22 March 2018;
 - (b) Letter from the appellant's daughter's consultant dated 6 July 2017;
 - (c) Copy letter from the Social Security Agency dated 16 March 2018
 - (d) Copy letter to the appellant from the respondent dated 28 June 2018 indicating an award of DPA was unsuccessful;
 - (e) Copy email from the appellant to the respondent dated 8 July 2018 seeking a review of the decision not to award DPA to the appellant;
 - (f) Copy inspection report dated 5 September 2018;
 - (g) Copy letter from the respondent to the appellant dated 13 September 2018 confirming the review decision not to award DPA;
 - (h) Copy notice of appeal against the decision of the respondent not to award DPA received 7 December 2018
 - (i) Copy email dated 14 December 2018 of the respondent's objection to the submission of the appeal notice outside the time limit;
 - (j) Copy order of the tribunal dated 19 December 2018 ordering that time for an appeal be extended to 7 December 2018;
 - (k) Copy email from the appellant to the tribunal dated 3 February 2019;
 - (l) Copy email from the respondent dated 3 April 2019;
 - (m) Copy email from the appellant dated 7 May 2019;
 - (n) Copy email from the respondent dated 23 May 2019;
 - (o) Correspondence between the tribunal office and the parties.

The Appellant's Submissions

6. The property consists of a dwelling-house (the property). The appellants are the ratepayers of the property.
7. The appellants applied for Disabled Persons Allowance (DPA) in respect of their daughter A, who was born in early 2017. A has Down syndrome –

Trisomy 21. Their application for DPA indicated that A will have reduced movements and attends physiotherapy where home-based exercises are prescribed. They refer to the fact that the room has the additional soft flooring to aid falling/movement. There is also sensory stimulation in the room as children with Down syndrome can benefit from additional sensory stimulation and so they have a number of sensory aids and controllable colour lighting in the room to aid this. They also enclosed a copy of a report from A's consultant paediatrician who, among other things, confirmed that A has Trisomy 21.

8. The appellants in their notice of appeal state that they have a daughter with Down syndrome. The room identified in their house is used for safe play, physiotherapy and sensory stimulation. The original decision of the respondent stated that books were in the room indicating that it was not used solely by their daughter. The appellants state that books are used by their daughter for visual learning, also books are part of normal items that a young child should have access to in the room. The room contained many toys/sensory/learning to aid speech, motor skills coordination, sensory stimulation and otherwise. The appellants state that this is a room dedicated to providing their daughter with the best tools to progress in life and they believe rate relief is appropriate as a five person family they have used the downstairs room solely for her.
9. The appellants contend that their disabled daughter is almost 2 years of age and their other daughter is 3 years old. It is unreasonable to expect that their other daughter should somehow not enter the room in question. They indicated that the room is mainly used by A.
10. The appellants confirmed that there are 15 boxes of toys in the room. These are for A's use and part of current and ongoing therapy related to physiotherapy, speech and language and occupational therapy.
11. The appellants confirmed that the room contains items which are clearly for young children and are used within that room. They indicate that their 19 year old daughter has no interest in using any of these items for play. The toys are used to stimulate and motivate A during exercises for physio and occupational therapy, aiding speech and communication, fine and gross motor control and general physical and mental development.

12. In relation to the books stored in the room, these are stated to be age appropriate for A and are used to stimulate, motivate and bring on communication and learning and general development. Children with Down syndrome are considered to benefit from visual learning and these are in the room to aid her development and learning.
13. The appellants argue that A is the main user of the room.
14. The appellants indicate that the room has no television or any electrical equipment other than sensory lights and associated sensory toys so the 19-year old does not use the room in any manner.
15. The appellant contends that the room they have designated and adapted is of major importance to the well-being of their daughter due to the nature of her disability. The appellants refer to a paper on Down syndrome which states “progress in basic gross and fine motor skills is important because the ability to carry out the movements has direct and practical benefit on a child’s daily living and independence, motor progress is also important because these abilities also influence social and cognitive development”. The appellants conclude that the room is clearly of major importance to their daughter’s development and has major life impact for her.

The Respondent’s Submissions

16. The respondent in its decision not to award DPA states that on inspection A does exercises given by the occupational therapist in the room, learning to sit and stand. The room is used by both the appellants’ children and all toys are stored in it. There was found to be therapy lighting and sensory lights to stimulation. Therefore, the respondent stated that it cannot be considered to be wholly or mainly used by the person with the disability.
17. On the review application the respondent indicated that its decision remained unchanged. It referred to the fact that on inspection of the relevant room for the purposes of the review application it was found that the room contained a settee. The room also housed 21 boxes of toys that could be used by the other children living in the house (aged 2 and 19 respectively). There were also noted to be bookshelves in the room which contained books which are

used for reading to A. The report also confirmed that A attends occupational therapy once a month and is on a programme for learning development. In view of this the respondent decided not to amend its decision not to award DPA due to the fact that the therapy/sensory room was used by both children and all toys and books are stored in it. The respondent further stated that the room was not used wholly or mainly by the person with the disability.

18. The respondent contends that the room was being used by others other than A. They were of the view that the room was not being used mainly by the disabled person in this case.

19. The respondent referred to the case of *R (on the application of Hanson) v Middlesbrough Borough Council* (High Court, 2006). In this case the respondent stated that the Valuation Tribunal had misdirected itself on three counts:

- (a) It reformulated the statutory test of being of essential or of major importance into what he judged to be a more stringent requirement of being physically or extremely difficult;
- (b) It erroneously concluded that the additional en-suite bathroom was not essential or of major importance to the disabled person because, even without it, she could still occupy the property; and
- (c) It erred in importing a further test into the equation: would a future purchaser be able to detect that the property had been altered to meet the needs of the disabled person?

The Tribunal's Decision

20. The law in relation to these cases is contained in article 31A of the Rates (NI) Order 1977 (as amended) which states that (subject to certain paragraphs) the Department shall grant a rebate to a hereditament to which this article applies.

21. Art 31A(2) is pertinent to this and states:

“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 for other purposes) by such a person; or
- (ii) An additional kitchen, bathroom or lavatory..."

22. It is further clarified in art 31A(3)(b) that references to a facility 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.

23. In the light of the legislation, in order to succeed in this appeal, the appellant has to satisfy the tribunal on four matters:

- (a) that the property has a facility which is required for meeting the needs of a person who resides in the hereditament. The facility must be essential or of major importance to that person's well-being by reason of the nature and extent of the disability;
- (b) the appellant must reside in the property and have a disability;
- (c) the facility must be a room which is not a kitchen, bathroom or lavatory or be an additional kitchen, bathroom or lavatory;
- (d) it must be wholly or mainly used (whether for providing therapy or for other purposes) by such a person.

24. In this case it is clear that the appellants reside in the property with their daughter A. Therefore, it is clear that A resides in the property.

25. It is clear that A has a disability. Evidence in the form of a medical report from A's consultant paediatrician confirms this.

26. The tribunal is also satisfied that the room is not a kitchen, bathroom or lavatory and that it is used wholly or mainly by the appellant.

27. In relation to the issue of whether the room is wholly or mainly used by A. The respondent contends that this is not the case in that the room has toys in it and is used by both A and her sister. The appellants however make the point that it is impossible to prevent an elder sibling (aged 3 years) from entering the room. In this case the tribunal is satisfied that the room is being used

wholly or mainly used by A. It is further accepted by the tribunal that the room is being used for therapy exercises. The room, and its contents are used to stimulate and motivate A during exercises for physio and occupational therapy, aiding speech and communication, fine and gross motor control and general physical and mental development. Therefore, the appellant has passed the conditions laid out in (b) to (d) above.

28. The main issue to consider is whether the room constitutes a facility which is required for meeting the needs of the appellant. It has to be essential or of major importance to the appellant's well-being due to the nature and extent of the disability.
29. In this matter the respondent has referred to the case of *R (on the application of Hanson) v Middlesborough Borough Council* [2006] EWHC 1700 (Admin). In that decision reference was made to the decision of the Court of Appeal in England in *Williams v Wirral Borough Council* [1981] 79 LGR 697.
30. In the *Williams v Wirral Borough Council* case guidance on the phrase "essential or major importance to a disabled persons well-being" was given. In that case the court considered the case in which an applicant who suffered from arthritis and had claimed relief in respect of a living room which contained a storage heater. The heater was required due to her disability. The Court of Appeal held per 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; that is quite inconsistent with the language of the sections. It seems to me that the user of the room must be related to the disability." In the case the court held that the applicant used the room as a living room because she needed a living room and not because of her disability.
31. In *R (on the application of Hanson) v Middlesborough Borough Council* the English High Court held that the Valuation Tribunal in England had misdirected itself in three respects:
 - (a) The tribunal failed to apply the correct test in that it had reformulated the test of "essential or major importance" with one of "extreme difficulty";
 - (b) The tribunal failed to appreciate that the test was one of "essential or major importance" and not just essential;

(c) The tribunal imported a further test of whether a potential purchaser would be able to detect the alteration to the property.

In that case the judge determined that an en-suite bathroom was of major importance to the disabled person because it reduced the risk of her getting injured while bathing.

32. In *South Gloucestershire Council v Titley and Clothier* [2006] EWHC 3117 (Admin) the English High Court considered provisions which are broadly in the same terms as the relevant parts of the Rates (NI) Order 1977. Mr Titley was profoundly deaf and lived alone in a house with two bedrooms and a living room. He contended that the hearing box loop fitted in the living room, which relieved him of a life of silence, meant he was entitled to Council tax relief. The judge stated:
- “Mr Titley uses the living room because it is a living room. He would do so anyway even if his hearing were unimpaired. It is the loop system, not the room in which it is placed, which is essential to his well-being by reason of the nature and extent of his disability. The room is in no sense additional...”
33. Similarly, Mr and Mrs Clothier were the parents of two adult children with Down syndrome. Each of their children had a bedroom in the property where he or she spent a great majority of time each day alone. There was no physical adaptation made to the bedrooms. Mr and Mrs Clothier described each room as a ‘sanctuary’. The Court held that if the children had no disability but were still living in the same house as their parents they would each have their own bedroom anyway. The difference would be that they would spend less time in it but neither bedroom is in any sense ‘additional’.
34. In this case the tribunal has carefully considered all the submissions by the appellant and respondent. The onus is on the appellant to prove that the room is required to meet the needs of the disabled person. It has to be essential or of major importance to the appellant’s well-being due to the nature and extent of the disability. The appellants have adduced evidence to demonstrate that their daughter A has a disability. The room is being used by A. It is used to stimulate and motivate A during exercises for physio and occupational therapy, aiding speech and communication, fine and gross motor control and general physical and mental development.

35. However, in the light of the line of authorities outlined above, the tribunal cannot be satisfied that the room is required to meet the needs of the disabled person as per the terms of the legislation.

36. Therefore, the tribunal cannot be satisfied that this room must be required for meeting the needs of the appellant as a disabled person or is of essential or major importance to his well-being by reason of the nature and extent of his disability.

37. Thus, the appeal cannot succeed and so the tribunal's unanimous decision is that the appeal is dismissed.

Mr Charles O'Neill
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 9th October 2019