

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 – 12/16

Mary Quinn - Appellant

and

Department of Finance – Respondent

Chairman – Mr Michael Flanigan

Members – Mr Philip Murphy and Mr David Rose

Hearing – 27th September 2017

Application for Review

Background

Premises: 38 Derrygonigan Road, Cookstown

The appellant appealed to the Northern Ireland Valuation Tribunal (“the Tribunal”) against the decision of the Respondent refusing disabled rates relief in respect of the premises at 38 Derrygonigan Road, Cookstown.

The appellant applied for special rates relief for persons with a disability under the Rates (Northern Ireland) Order 1977 (“the Order”), The appellant sought the disabled rates relief because her home had ramps to both the front door and back door, and a disability walk in shower. The relevant part of the Order 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 chargeable in respect of a hereditament to which this Article applies.

(2) 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 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
- (b) a hereditament in which there is sufficient floor space to permit the use of a wheelchair used by and required for meeting the needs of the person who resides in the hereditament and has a disability.

The appeal had been assessed on the papers on 5th April 2017 and the Tribunal issued its written decision to the parties on 10th May 2017. The written decision set out the reasons for the decision and factual basis for it.

The Respondent applied under Regulation 21 of the Valuation Tribunal Rules (Northern Ireland) 2007 (“the Rules”) for a review of the decision specifically under Regulation 21(1) (a) of the Rules that the decision was because of an error on the part of the Tribunal.

The respondents served both a written application for review with grounds for appeal and a skeleton argument. The appellant did not make submissions in response and did not attend.

The Respondents case was that Tribunal had erred in its approach to the legislation in two broad areas:-

- 1) That Art 31A(2) of the Order gave an exhaustive list of the facilities that could attract the special relief and therefore was only available in cases where there was a room which satisfied the requirements of 31A (2) (a)(i) or (ii). In support of this the Respondent submitted that the use of the word “including” in Art 31A had no relevance and should be ignored.
- 2) That the 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. The previous decisions of the Northern Ireland Valuation Tribunal supported the approach taken by the Respondent and had followed the case law in England and Wales.

The Tribunal decision of 10th May 2017 set out in some detail how the Tribunal had reached its decision and need not here be recited again. The Tribunal has carefully considered the submissions of the Respondent and is not persuaded that it made an error in its decision.

In so far as the Tribunal has been invited to justify its decision we would make the following points. The approach of Tribunal was that Art 31A should be read as a whole. The special rates relief at issue is available for 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”. The Tribunal took that view that the phrase “disabled facilities including either of the following” should be read as meaning that what followed were examples of the facilities that could attract the relief but that the class of facilities was not a closed one. It was submitted by the respondent that words “including” had no relevance and should be ignored for the purposes of interpreting the legislation. The Tribunal was not persuaded by this novel approach to statutory interpretation.

The Tribunal was aware of the case law in England and Wales and that those cases had been followed on occasions by other decisions of the Valuation Tribunal. Those decisions are of interest and inevitably fact sensitive. The Tribunal was not directed to any case in which access ramps had been at issue. The other factor which influenced the Tribunal was that the wording of the special relief for disabled persons in Northern Ireland differed significantly from that in England and Wales.

The Northern Ireland Order refers to facilities whereas the English legislation refers to rooms.

The Respondent relied upon the decision of the Court of Appeal in *Howell-Williams v Wirral BC* (1981) LGR 697CA. This decision considered the relevant provision in the Rating (Disabled Persons) Act 1978 which reads as follows:-

(1) Subject to the provisions of this Act, the rating authority for any area in England and Wales shall grant a rebate in respect of the rates chargeable in any hereditament which is situated in the area and to which this section applies

(2) This section applies to;

(a) A hereditament in which a room other than a bathroom or lavatory is predominately used (whether for providing therapy or for other purposes) by and is required for meeting the needs of the disabled person who resides in the hereditament

(b) The hereditament in which there is an additional bathroom or lavatory which is required for meeting the needs of the disabled person who resides in the hereditament.

The other decision which the Respondent submitted was of particular importance and was that of *South Gloucester Council v Titley and Clothier* (2006) EWHC 3117. In that case the court considered regulation 3 of the Council Tax (Reductions for Disabilities) Regulation 1992. Those provisions read as follows:-

(1) Subject to paragraph (4) a person is a knowledgeable person for the purposes of these regulations if:-

(a) he is a liable person as regards a dwelling which is the sole or main residence of at least one qualifying individual and in which there is provided;

(i) a room which is not a bathroom, a kitchen or a lavatory and which is predominately used (whether for providing therapy or otherwise) by and is required for meeting the needs of any qualifying individual resident in the dwelling or,

(ii) a bathroom or kitchen which is not the only bathroom or kitchen within the dwelling and which is required for meeting the needs of any qualifying individual resident in the dwelling or,

(iii) sufficient floor space to permit use of a wheelchair required to meeting the needs of any qualifying individual resident in the dwelling.

The English cases which had been followed by the Northern Ireland Valuation Tribunal placed a clear emphasis on the need for there to be a room. This was hardly surprising giving the wording of both Rating (Disabled Persons) Act 1978 and the Council Tax (Reductions for Disabilities) Regulations 1992. By contrast the Northern Ireland Order uses the term “a facility” not a room and the Tribunal was not persuaded that it had erred by not following the above cases.

In this case the appellant Mrs Quinn had sought disabled relief on the basis of the ramps which have been installed to the front and rear of the premises giving access and egress from her dwelling house. The Respondent accepted for the purposes of the legislation that the Appellant was a disabled person and that the ramps were required to accommodate her disability. The Tribunal in this case gave the word “facility” its normal and usual meaning and took the view that the ramps at the appellant’s home satisfied the requirements of Art 31A 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". Given the appellant's mobility problems it was difficult to see how the ramps could be viewed as anything else.

The respondent invited the Tribunal to treat the term facility as meaning the same as a room. The view of the Tribunal was that the words "a facility" particularly when followed by "including either of the following" must have been intended to provide for a larger class of facilities for the disabled to be considered.

The Tribunal does not consider that the decision of 10th May 2017 was wrong because of an error on the part of the Tribunal or its staff and the application for a review under regulation 21(a) of the Rules is refused.

Signed: Michael Flanigan – Chairman

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to all parties: 25th October 2017