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

CASE REFERENCE NUMBER: 19/19

AB19 - APPELLANT
AND
DEPARTMENT OF FINANCE - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Members: Mr T Hopkins FRICS and Dr P Wardlow.

Belfast, 9 July 2020

DECISION

The unanimous decision of the tribunal is that the appeal is not successful for the reasons provided below and the appeal is accordingly dismissed by the tribunal.

REASONS

Introduction

This is a reference under Article 12B of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). In view of the nature of this appeal the tribunal has sought to redact the identity of the appellant (who is hereinafter referred to as "AB19" or "the appellant") and also identifying details of the hereditament under consideration.

The appellant, AB19, appeared via videolink, Mr Damien Campbell, Mr Thomas Scallan and Mr Mark Mulholland appeared for the Department of Finance ("the Department") as respondent by videolink and the tribunal Members participated also by this means, this procedure being in accordance with the Interim Practice Direction made by the President dated 16 June 2020.

The appellant appealed against the outcome of a review of a decision of the Department that the appellant was not entitled to claim Disabled Persons' Allowance ("DPA").

The Law

1. The relevant 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) (Northern Ireland) Order 2006 ("the 2006 Order"). Article 31A (12B) enables a person to appeal to the Northern Ireland Valuation Tribunal against the result of a review by the Department (the respondent to this appeal) of a decision that a person

is not entitled to a rate rebate for a premises with a special facility for a person with a disability. This is referred to as Disabled Person's Allowance ("DPA").

2. As it is agreed in this case that the appellant, who resides in the premises under discussion, meets the relevant criteria as being a person who has a disability, the tribunal's essential focus is upon the premises and the tribunal is accordingly not required to address the statutory provisions regarding whether the appellant has or has not a qualifying disability, nor is residence an issue, save to confirm that these statutory criteria have been met by the appellant.

3. Article 17 of the 2006 Order (amending the 1977 Order) provides for rate rebates for certain hereditaments with special facilities for persons with a disability. Article 17 insofar as material to this appeal provides—

" (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 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; 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 a person who resides in the hereditament and has a disability.

(3) In paragraph (2)—

(a) …..

(b) subject to paragraph (3A), references to a facility or a wheelchair 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.

(3A) a wheelchair is not required from meeting a person's needs if he does not need to use it within the living accommodation comprising or included in the hereditament."

4. Article 17 further provides that any person who is aggrieved by a decision of the Department may apply to the Department for a review by the Department of its decision and if that person is dissatisfied with the result of the review, they may appeal to the Northern Ireland Valuation Tribunal.

The Evidence

5. The tribunal heard from the appellant, AB19, and on behalf of the Department respondent, from Mr Damien Campbell, with Mr Thomas Scallan and Mr Mark Mulholland. The tribunal also had before it a copy of the appellant's application for DPA and appeal form and correspondence and other documents from the appellant and the Department. A considerable volume of information and evidence that was placed by the appellant before the tribunal for consideration, related to such matters as prescribed medication, social work reports, evidence of State benefits and documents pertaining to the regrettably lengthy and complex medical history of the appellant. None of this is in any doubt. On account of the fact that the respondent Department accepts, without any issue whatsoever, that the appellant has a qualifying disability for the purpose of the statutory provisions under consideration, a large part of this evidence did not need to be considered in detail by the tribunal. This is for the reason that the foregoing evidence was largely relevant to issues not requiring to be determined, as these issues had already been fully conceded in this appeal by the Department. The appellant has also helpfully provided a number of coloured photographs of the interior of the premises which are useful in illustrating the arrangements prevailing in the bedroom and in the bathroom and also the use of the dining room to set out medication.

The Facts

6. On the basis of the evidence and information, the tribunal determined, upon the balance of probabilities, the following material facts:-

   (a) The hereditament under discussion consists of a dwelling house situated at [***address redacted by tribunal***] County Fermanagh ("the premises"). The appellant is the ratepayer and he is the sole resident of the premises. As mentioned, he has a qualifying disability and in that regard some years ago (the tribunal understands from the appellant's oral evidence, in 2012) the appellant converted an existing downstairs bathroom to a "wet room" shower room and also at that time external wheelchair ramps were installed to enable the appellant to access the premises by wheelchair, if he required to do so. The appellant made it entirely clear that he no longer requires the use of a wheelchair. Indeed he has not required a wheelchair for a lengthy period, on account of intensive physiotherapy provided at the time of his illness, which was thankfully successful. The appellant also has a downstairs bedroom adjacent to the bathroom in which he has had installed a "Willowbank" adjustable bed, together with a hoist mechanism that has been supplied by Occupational Therapy services. The appellant's evidence was that a downstairs dining room was set aside to hold the appellant's medication, which was stored and set out on a table and also arranged to enable the appellant to have injections administered, together with a daybook which was to be completed by the appellant's carer, from Lakeland Community Care. The appellant also has a home help who calls routinely. The appellant also alluded to "future" kidney dialysis, but any such regime had not yet been implemented and was merely anticipated by the appellant in the future.

(b) Accordingly, the relevant facilities which have to be considered by the tribunal consist of the following: (i) one downstairs "wet room" bathroom; (ii) one bedroom with an adjustable bed and hoist mechanism; (iii) one dining room purposed for setting out the appellant's medication and ancillary use; and (iv) external access ramps which might facilitate wheelchair access, if any such was required (although there is no current requirement for that, nor has there been for many years). The tribunal had no other evidence of physical facilities or adaptations to the premises to accommodate the appellant's disability.

(c) The appellant provided some references to his having made some manner of a prior application, but according to the Department the appellant applied for DPA in respect of the premises by application completed by him and dated 29 April 2019 and the tribunal had sight of a copy of that application. In this application form, at Section 3A, the appellant has appropriately identified the matter, by placing an "X" in the relevant box next to the section in the form identifying: "*A room, other than those listed below, which is wholly or mainly used by the person with a disability for therapy or other purpose. Any room used as a bedroom will not qualify*". Further, the appellant after the query in the form "*What room is it*?" has inserted the words, "Down Stairs Bedroom". After the query set out in the form, "*What is it used for?"* the appellant has inserted the words, "Sleeping & Resting". The remaining parts of Section 3A of the form were not completed by the appellant save for the final section where he has completed that by placing an "X" in the relevant box in answer to the question, "*Does the person with a disability use the wheelchair indoors?* This latter completion of the form appears to suggest that the appellant was indicating to the Department that a wheelchair was indeed used indoors. However, the clear evidence to the contrary was that the appellant had not used a wheelchair indoors in the premises, certainly not for a considerable number of years prior to this application. The tribunal found this latter somewhat puzzling, but resolved the matter by concluding at hearing that the appellant had made an error in this respect.

(d) By letter dated 6 June 2019 the Department wrote to the appellant acknowledging the appellant's claim for DPA, which had been received on 3 May 2019. By letter dated 28 August 2019, the Department wrote to the appellant confirming that his application had been unsuccessful as his premises did not have any of the qualifying facilities which were required for meeting the needs of the person with a disability, as set out in Article 31A of the 1977 Order. The appellant was informed of his right to ask for a review of that decision.

(e) By email dated 5 September 2019 the appellant communicated with the Department and this was treated as constituting a request for a review. The Department also dealt with an issue raised by the appellant whereby the appellant contended that he had had to send a second application with supporting material as his first application could not be found by the Department. The Department clarified that the appellant's application for DPA was received on 3 May 2019 and that a letter of acknowledgement had been issued on 6 June 2019 and, further, that the Department had no record of any earlier application for DPA made by the appellant. By letter dated 10 September 2019 the Department referred to the appellant's request for a review and indicated that the Department had considered the appellant's

request and had decided that the original decision on his application should remain unchanged as he did not have the qualifying facilities. The appellant was advised of his entitlement, if he remained dissatisfied, to appeal that (review) decision to the Northern Ireland Valuation Tribunal.

(f) The appellant has, accordingly, instituted an appeal (Form 2) dated 10 October 2019 and time was duly extended by Order of the President dated 29 October 2019 to enable the appeal to proceed, which appeal was otherwise out of time.

(g) Any remaining findings of relevant fact and contentions of the parties are as mentioned below.

THE CONTENTIONS OF THE PARTIES

7. In his case made out to the tribunal, the appellant has laid particular emphasis upon various aspects of his (regrettably very protracted and unfortunate) medical condition and history, any consequent medication and various State benefits received and other things going towards the proof of his disability. These matters are not in any way in contention and his condition and disability, as has been fully set out in evidence, is accepted without question by the respondent Department and consequently by the tribunal. In his grounds of appeal set forth in Section 3 of the appeal form (disregarding irrelevant matters or matters not requiring to be proven as they are common case) the appellant has referred to: (i) since 2012, adapting his home with a wet shower and wheelchair ramps; and (ii) having bought a special adjustable electric bed for his downstairs bedroom. He did not expressly refer to the use of the dining room for medication administration and other purposes in the appeal form, but nonetheless the tribunal has taken account of other references made to that latter in the papers. In summary, the appellant's contention is that the premises ought, without any doubt, to qualify for rating relief upon the grounds of the appellant's disability and adaptations made to the premises.

8. For the respondent Department, after having set out a brief timeline illustrating key dates and then a summary of the evidence in the case, the Department has stated its position with reference to Section 3A of the appellant's application form. Therein, the appellant has identified a "downstairs bedroom" which is stated to be used for "sleeping and resting". It is the view of the Department that this is not a qualifying facility as the appellant needs a bedroom in the same manner as anybody else would need one and it is therefore not, "essential or of major importance to his well-being by reason of the nature and extent of his ability". In the Department's submission it is made clear that the Department does not dispute the appellant's disability. However, a premises is not eligible for DPA simply because a disabled person lives in the premises. To qualify, a premises must have a qualifying facility required to meet the needs of a disabled resident. The photographs provided did not illustrate any facilities that met the criteria necessary for a successful application for DPA. For example, the bathroom with walk-in shower was not an additional bathroom as prescribed in legislation and was therefore not a qualifying facility. The addition of handrails and ramp also did not constitute qualifying facilities. The Department in this submission also referred to a number of legal authorities which shall be alluded to further below. It is contended that these authorities ought to be followed by this tribunal. These include the case of ***South Gloucestershire Council***

v Titley & Clothier [2006] EWCA 3117 (Admin) and ***Appeal No. 4315M79512/134C, Appellant v St Helens Council*** and the tribunal is grateful for the provision by the Department of a copy of this latter case, the former being an authority to which this tribunal has referred in a number of earlier cases involving this statutory jurisdiction.

THE TRIBUNAL'S DECISION

9. It might be helpful if the tribunal first referred to a relatively recent case heard by the Northern Ireland Court of Appeal concerning this jurisdiction which has provided considerable guidance and assistance to the tribunal in the determination of these cases. This case was not referred to by the Department in submissions but it is nonetheless very helpful in understanding the essential principles underlying the legislation. This Court of Appeal case is of binding authority upon the tribunal. The case is ***The Department of Finance v Mary Quinn [2019] NICA 41,*** a judgement delivered by the Court of Appeal on 4 September 2019. In the Court's judgment, after having conducted a review of the evolution and history of the Northern Ireland statutory provisions and any connection with equivalent legislation in England and Wales, this (selected) part of paragraph 33 of the judgement of Stephens LJ delivered in the case on behalf of the Court is instructive:

> *[33] … 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. We accept 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. ….. 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. …. . However, we consider 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. We consider that an exhaustive meaning of the word "including" secures the legislative purpose*.

10. Bearing in mind the helpful guidance available from the foregoing (and the Court's judgment generally) about the purpose and intent of the legislation, the tribunal's focus must be upon the relatively narrowly-depicted list of matters identified by the appellant in the all-important statutory context that must be applied.

11. In order to succeed in this appeal, the appellant has to satisfy the tribunal that the premises has a facility which is required for meeting his needs as a person residing in the premises who has a qualifying disability. Therefore, the tribunal must be satisfied that there is a facility which includes either (a) a room, other than a kitchen, bathroom or lavatory, which is wholly or mainly used (whether for providing therapy

or for other purposes) by him, or if such a room does not exist then (b) an additional kitchen, bathroom or lavatory, either of these facilities (that is to say either (a) or (b)) being essential or of major importance to his well-being by reason of the nature and extent of his disability. The issue of wheelchair requirement (see Article 17 (2)(b) and (3)(b) and (3A)) shall be subject to further reference below.

12. Dealing with these matters in reverse order, there is no additional kitchen, bathroom or lavatory in the premises. Thus, if the appeal is to succeed the tribunal must be satisfied that there is a room wholly or mainly used whether for providing therapy or for other purposes by the appellant, being essential or of major importance to the appellant's well-being by reason of the nature and extent of his disability. A "kitchen, bathroom or lavatory" is expressly excluded from this latter focus by Article 17 (2)(a)(i) by inclusion of the words "other than" in reference to the room in question.

13. In similar terms, although the appellant has it seems not expressly put this forward as a point in his appeal, he has nonetheless mentioned the external access ramps facilitating possible wheelchair access. However the evidence is that no wheelchair is used and indeed none has been used for a very considerable period of time. The tribunal is accordingly able to discount this as being an issue in support of the appellant's appeal. Under the statutory provisions, references to a facility or a wheelchair 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 and actual use (see Article 17 (3)(b) and (3A)). However, as a wheelchair is not used, the issue of whether there is or is not sufficient floor space to permit the use of a wheelchair (see Article 17 (2)(b)) is of no concern. None such is used by the appellant nor required for meeting the needs of the appellant, notwithstanding that he otherwise resides in the hereditament and has a disability.

14. The recent Court of Appeal decision of ***The Department of Finance v Mary Quinn*** is of considerable assistance in determining this appeal. This tribunal in its earlier decisions has followed the general guidance given in a number of legal authorities including one mentioned above in the Department's submissions. As is clear from ***Quinn*** the purpose of the applicable law encompasses the notion of something additional to the norm. That is to be found in the proper interpretation of Article 17 of the 2006 Order as this amends the 1977 Order. In ***Howell Williams v Wirral Borough Council [1981] 79 LGR 697, CA,*** Fox LJ stated…, "*It cannot have been the intention of Parliament to grant a rebate merely because a room is predominantly used by a disabled person……It seems to me that the user of the room must relate to the disability*." The tribunal, further, notes the case mentioned by the Department of ***South Gloucestershire Council v Titley & Clothier***. On the facts of that matter, Mr and Mrs Clothier were the parents of two Down's syndrome children, each of whom had a bedroom in the premises 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". On appeal, the Court of Appeal in England (dealing with English statutory Council Tax provisions which are in the essential parts thereof expressed in broadly similar terms to the 1977 Order, as amended) observed that even if neither of Mr and Mrs Clothier's two children had had any disability whatsoever but were still living in the same household as Mr and Mrs Clothier, each would have had their own bedroom anyway - neither bedroom was in any sense "additional". The Court of Appeal therein affirmed its earlier decision in ***Howell Williams***.

15. In this case there is a bedroom and a shower room but no evidence that there is a room which qualifies as being additional; indeed the appellant has not tried to make out that case. He has predominantly relied upon proof of his disability (which is not in contention) and the conversion of a downstairs bathroom, albeit some considerable time ago, into a "wet room". In his bedroom there is a "Willowbank" adjustable bed, together with a hoist mechanism. The tribunal's unanimous view is that the bathroom is not a qualifying facility. The tribunal reminds itself of the words of the Court of Appeal in ***Quinn,*** rejecting the contrary proposition: "*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 tribunal takes a similar view in respect of the bedroom and this does not need any further elaboration. Further to that, nothing in terms of the arrangements prevailing in the dining room for medication use and other matters assists the appellant.

16. For these reasons, the appeal cannot succeed and consequently the tribunal's unanimous decision is that the appeal is dismissed.

Signed: Mr James V Leonard, President
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 16 July 2020