

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: 9/19

MC and SC – APPELLANT

AND

DEPARTMENT OF FINANCE -RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O’Neill

Members: Mr Hugh McCormick FRICS and Ms Noreen Wright

Date of hearing: 20 April 2021, Belfast

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

1. 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 the appeal the tribunal has sought to redact the identity of the appellants (who are hereafter referred to as MC and SC or the appellant) and also identifying details of the hereditament under consideration.
2. There was no appearance before the tribunal by or on behalf of the appellants or the respondents, both parties having indicated that each was content to rely on written representations.
3. The appellants appealed against the outcome of a review decision by the Department of Finance (the respondent) that the appellants were not entitled to claim Disabled Persons Allowance (DPA).

The law

4. The statutory provisions are to be found in the 1977 Order, Article 31A(12B) as inserted by Article 17(8) of the Rates (Amendment) (NI) Order 2006 (the 2006 Order). The legislation entitles a person to appeal to this tribunal where as a result of a review the respondent has decided that a person is not entitled to DPA.
5. Article 31A currently states (as far as is material to these proceedings):
“(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 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) references to a person who resides in a hereditament include references to a person who is usually resident there; and
 - (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 for meeting a person's needs if he does not need to use it within the living accommodation comprising or included in the hereditament."

The evidence

6. The tribunal heard no oral evidence. The tribunal had before it the following documents:
 - a. The application for DPA dated 4 December 2018.
 - b. Copy letter to the appellant dated 20 December 2018 indicating that the application for DPA was unsuccessful.
 - c. Copy letter from the appellant to the respondent dated 21 February 2019.
 - d. Copy inspection report by the respondent dated 16 April 2019.
 - e. Copy letter to the appellant dated 22 May 2019 regarding the review of the decision not to award DPA.
 - f. Copy application to the Valuation Tribunal received 27 June 2019.
 - g. Copy order of the Valuation Tribunal dated 6 August 2019 extending time to deliver a Notice of Appeal under Rule 5(b) of the 2007 Rules.
 - h. Correspondence between the tribunal office and the parties.

The appellant's submissions

7. In this case the hereditament consists of a dwelling-house (the property) in which in the application form for DPA the appellant MC is stated to be the ratepayer and SC is stated to be the person with a disability.
8. The appellants applied for DPA regarding SC who is having treatment for short term memory problems and cognitive impairment following an infection and seizures. He is also having treatment for Parkinson's Disease.

9. In the notice of application for DPA the appellant states that the bath was removed in 2016. A walk-in shower and shower seat was installed for SC as he could not use the bath due to his illness. They had to replace the bath with a shower. There is also a rail around the toilet and a folding seat at the sink. The application indicates that SC could not use the bathroom without these alterations. As part of his care package, a carer calls each morning to help SC wash and dress.
10. The application form is accompanied by a report detailing a care plan for SC.
11. In the application for a review of the decision of the respondent not to award DPA, the appellants refer to work they are currently undertaking in the form of construction of a sunroom at the front of the property. The form goes on to state SC will sit in the new room which has a view of the front of the home down the driveway. This view gives SC some stimulus and he will be more settled there. Currently he does not have a view and gets irritable. The room will provide great therapeutic benefit to SC. The application to this tribunal further states: we have also put on a small sunroom for SC to sit in as he just sits in it during the day.

The respondent's submissions

12. The respondent accepts the evidence as stated by the appellants in their application and the information regarding the care package for SC that SC has a disability within the definition of the legislation.
13. In respect of the facilities in respect of the application, the respondent states that the application is in respect of a bathroom. This is an existing facility and has been modified from a bath to a walk-in shower and furthermore it is the only bathroom in the property. Therefore, the respondent submits that it is not additional nor is wholly or mainly used by SC.
14. In respect of the sunroom that has been built on the property, the respondent states that this is more like a porch. It is built on at the front of the house with two swivel recliner chairs in the hall. The sunroom is the main entrance to the house and so would be used by all visitors. It is argued that there is nothing to indicate that this new room is of major importance to SC. The respondent found on inspection that the room was not used wholly or mainly used by the person with the disability for therapy or other purposes and that the room is used as the entrance to the property.
15. The respondent referred in its submissions to the decision of *Appellant v Peterborough Council* – in that case it is submitted that the appellant used her living room as a quiet room for therapy but the tribunal dismissed that as the tribunal could not find a causative link between the disabled person and the need for the room or facility which must be of essential or major importance.

The tribunal's decision

16. The law in relation to these cases is contained in Article 31A of the 1977 Order (as amended). The tribunal finds it helpful to consider the principle underlying the legislation as referred to by the Northern Ireland Court of Appeal in the decision in *Department of Finance v Quinn* [2019] NICA 41, in which Stephens LJ (as he then was) stated:

[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"

17. It is clear from this case that the legislation encompasses something that is additional to the norm. In other words, the tribunal has to consider the relatively narrow-depicted list of matters identified in the statutory context. To succeed the appellant has to satisfy the tribunal that the property has a facility which is required for meeting the needs of a person who resides in the property and who has a disability. Therefore the tribunal must be satisfied that there is a facility which includes either (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, and either (a) or (b) being essential or of major importance to his well-being by reason of the nature and extent of his disability.
18. In this case it is clear that SC resides in the property and has a disability. This was not disputed by the respondent.
19. In respect of the bathroom, the appellant indicates that this has been adapted with the bath being taken out and a walk-in shower installed. Therefore, there is no additional bathroom in the property and the appellant cannot succeed in the application for DPA in respect of the conversion of the bathroom.
20. In relation to the sunroom the appellant states that SC sits in the sunroom during the day. This gives him a view of the driveway in front of the house. In considering the case law in this area, the tribunal is mindful of the statement of Fox LJ in *Howell Williams v Wirral Borough Council* [1981] 79 LGR 697 when he said
"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."
21. In that 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. Also of relevance is the case of *South Gloucestershire Council v Titley and Clothier*. In that case Mr and Mrs Titley had to adult children with Down syndrome. Each of the children had a bedroom in the property where they spent a great majority of time each day alone. There was no physical adaption to the rooms. On appeal, the Court of Appeal in England (dealing with English Council Tax provisions which are in the essential parts broadly in similar terms to the 1977 Order) observed that even if neither of the children had a

disability each would have had their own bedroom anyway. The Court of Appeal affirmed its earlier decision in *Howell Williams*.

22. The respondent also referred to another case which is called Appeal No 0540M191153/037C. In that case, the appellant had contended that larger accommodation was needed due to her medical needs and in particular the front lounge was needed as a chill out room when anxiety, depression and panic attacks occurred as it was a large room and close to the front door which gave easy access to leave the house. It was also a place of rest when peace and quiet were needed from fatigue caused by cirrhosis. In addition, the front bedroom was only used by the appellant due to frequent night terrors. In that case the panel accepted that there has to be a causative link between the disabled person and the need for the room or a facility which must be of essential or of major importance to the disabled occupier. In that case the panel held that the rooms were a living room and a bedroom as opposed to a room that was required to provide therapy or other treatments and so there was not a room that met the criteria.
23. In this case the sunroom is used by the appellant during the day. It has not been adapted for any other purpose. As the respondent has stated it is the main entrance to the house and so is used by visitors to the home. The tribunal therefore cannot conclude that the sunroom is wholly or mainly used by the person with the disability in that it is used by others.
24. In relation to the use of the room it has to be used for meeting the needs of the person with a disability for providing therapy or for other purposes. In this case the room is used as a quiet room for SC to sit in. Therefore, the tribunal concludes that the room is used for day to day activities and cannot fall within the definition of being wholly or mainly used for providing therapy or for other purposes for a person with a disability. As mentioned in *Department of Finance v Quinn*, the Court of Appeal stated:

We accept that the fundamental purpose... 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... 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."
25. Therefore, in this case the tribunal cannot be satisfied that the sunroom meets the requirements of the legislation such as that an award of DPA can be made. The bathroom is not an additional room and it also does not fall within the ambit of the statutory definition.
26. Therefore, this 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: 04 August 2021