

*Maxine Lees - Access Road to D.H.  
Zimbabwe Land Register to the  
Plan - Enclosed*

MJG/EE/11

Commissioner's File: CIS/129/1993

SOCIAL SECURITY ACT 1986

SOCIAL SECURITY ADMINISTRATION ACT 1992

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A  
QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Stephen Anthony Kaniok

Social Security Appeal Tribunal: Truro

Case No: 333:07203

1. I dismiss the adjudication officer's appeal against the decision of the social security appeal tribunal dated 26 November 1992 as that decision is not erroneous in law: Social Security Administration Act 1992, section 23.

2. This is an appeal by the adjudication officer against the unanimous decision of a social security appeal tribunal dated 26 November 1992 which to a certain extent allowed the claimant's appeal from a decision of the local adjudication officer issued on 1 May 1992 as follows, "The claimant's income support includes interest on Mortgage and Home Improvements Loan totalling £65,285.51. He is not entitled to interest on the full £85,000 that he borrowed because there is no evidence that this relates to house purchase or home improvements."

3. A large number of detailed matters had arisen in relation to the adjudication officer's decision but the only matter with which I am concerned is that in partially allowing the claimant's appeal the tribunal allowed as "eligible interest" interest on a further part of the overall loan of £85,000 of an approximate sum of £5,500, money borrowed for the construction of an access road to the claimant's home. It is against that part of the tribunal's decision that the adjudication officer in effect appeals. There is no 'cross-appeal' by the claimant against the tribunal's disallowing that part of the loan which related to the purchase of a Land Rover and trailer. I not consider that any such cross-appeal would be allowable.

4. The adjudication officer's appeal, received on 15 February 1993, reads as follows (paragraphs 4, 5 and 7),

"[The tribunal] .. made further findings of fact, including the fact that approximately £5,000 of the loans in question had been raised to pay for the construction of a road to [the claimant's] property to allow access necessary for the renovation of the home. The road ran across [the claimant's] land for 20% of its course and across that of his neighbour for the rest. The tribunal allowed the claimant's appeal to the extent that the interest payable on that part of the loan taken out to pay for the building of the access road should be treated as eligible interest, the exact amount of that part of the loan to be established by the adjudication officer. The tribunal's reason for that decision was that building of the road was a measure undertaken with a view to improving the home's fitness for occupation and fell within the provisions of sub-paragraph 8(3)(k) of Schedule 3 to [the Income Support (General) Regulations 1987 - S.I. 1987 No. 1967]... I submit that the tribunal erred in law in deciding that the provisions of sub-paragraph 8(3)(k) could be applied to the construction of an access road running in part across neighbouring land, albeit one that allowed improvements to be made to the home. I submit that the context of this sub-paragraph makes it clear that the improvements referred to are ones made to that part of the dwelling occupied as the home and not any other property and that no help can be given with the disputed cost accordingly."

5. The tribunal made detailed findings of fact and gave detailed reasons for decision in its record of decision on form AT3. It is clear they took the utmost pains with this case. The claimant lived in a cottage situated on the banks of a tributary to a river. The tribunal's relevant findings of fact read as follows,

"The only access [in 1987 when the claimant bought the cottage] was by way of a pathway leading through a neighbouring property, and planning permission to widen that pathway to create better access was not granted. ...By 1989... there was still a genuine risk of it being condemned as unfit for habitation... Initially, some improvements had been carried out by using the river, that being the only practical access, with which to transport necessary materials etc. - When the extent of the renovations became apparent, the claimant was faced with the major problem of how to obtain necessary better access for the vehicles that would be involved in the renovation. Tribunal e.g. have no reason to doubt the evidence submitted today that the scaffolding firm emphasised that they would need good road access to bring their equipment to the cottage, and tribunal accept that water-borne access would similarly be impracticable for all the other necessary renovation activities. The claimant's neighbour was a farmer, who owned land that eventually bordered on a public road about a mile away. The farmer agreed, provided [the claimant] paid all the costs involved, to allow [the

claimant] to construct a hard core/concrete road across his property to [the claimant's] land, the road remaining the farmer's property, the farmer allowing [the claimant] a permanent right of way over such road. Due to the nature of the agreement it was not necessary to apply for normal full planning permission, which would have been refused, the road construction assisting the farmer as well as [the claimant] in providing better access for them both. Tribunal accept that probably about 80% of the road travelled across over the farmer's field, the final 20% over [the claimant's] land to his cottage. This road was constructed, thus providing the necessary access to renovate the claimant's property, ..."

6. The law on the matter is contained in regulation 17 of and Schedule 3(2) to the above-cited Income Support (General) Regulations 1987. Regulation 17(e) simply provides that a claimant's applicable amount may include any amounts determined in accordance with schedule 3 (Housing Costs). Schedule 3 so far as is relevant to this case provides as follows,

"SCHEDULE 3  
HOUSING COSTS  
ELIGIBLE HOUSE COSTS

1. Subject to the following provisions of this schedule, the amounts which may be applicable to a person in respect of mortgage interest payments or other prescribed housing costs... (applicable amounts) are

(a) - (aa) . . . . .

(b) interest on loans for repairs and improvements to the dwelling occupied as the home;  
. . . . .

Interest on loans for repairs and improvements to the dwelling occupied as the home

8(1) There shall be met under this paragraph an amount in respect of interest payable on a loan which is taken out, with or without security, for the purpose of -

(a) Carrying out repairs or improvements to the dwelling occupied as the home;  
. . . . .

(2) . . . . .

(3) In this paragraph 'repairs and improvements' means major repairs necessary to maintain the fabric of the dwelling occupied as the home and any of the following measures undertaken with a view to improving its fitness for occupation -

(a) Installation of a fixed bath, shower, wash basin, sink or lavatory, and necessary associated plumbing;

- (b) Damp proofing measures;
- (c) Provision or improvement of ventilation and natural lighting;
- (d) Provision of electric lighting and sockets;
- (e) Provision or improvement of drainage facilities;
- (f) Improvement in the structural condition of the dwelling occupied as the home;
- (g) Improvements to the facilities for storing, preparing and cooking food;
- (h) Provision of heating, including central heating;
- (i) Provision of storage facilities for fuel and refuse;
- (j) Improvements to the insulation of the dwelling occupied as the home;
- (k) Other improvements which are reasonable in the circumstances."

It was under sub-paragraph (k) of paragraph 3 that the tribunal made their favourable decision in this case.

7. The expression used in paragraph 8 of schedule 3, "the dwelling occupied as the home" is defined in regulation 2 of the Income Support (General) Regulations 1987 as follows,

" 'Dwelling occupied as the home' means the dwelling together with any garage, garden and outbuildings, normally occupied by the claimant as his home including any premises so occupied which it is impracticable or unreasonable to sell separately, in particular in Scotland, any croft land on which the dwelling is situated;"

8. The tribunal, and indeed the claimant's representative in submissions to the Commissioner, lay stress on the definition in paragraph 8(3) of schedule 3 to the 1987 Regulations reading as follows,

"In this paragraph 'repairs and improvements' means major repairs necessary to maintain the fabric of the dwelling occupied as the home and any of the following measures undertaken with a view to improving its fitness for occupation.."

9. The point is made that there is a contrast between the definition of "major repairs" which have to be "necessary to maintain the fabric of the dwelling occupied as the home" (my underlining) and the definition of "improvements" which makes no reference to the fabric of the dwelling occupied as the home but

is wider in terms ie "any of the following measures undertaken with a view to improving its [ie the dwelling's] fitness for occupation". In my view that point is validly made. If it had been desired to restrict improvements to the actual fabric of the home it would have been easy for paragraph (3) of paragraph 8 to do that. I must therefore hold that the use instead of the broad phrase "any of the following measures undertaken with a view to improving its fitness for occupation" were meant to have a wider meaning.

10. I am fortified in this view by the fact that paragraph (e) of paragraph 8(3) refers to "provision or improvement of drainage facilities". It would be quite possible that such facilities would require the acquisition of an easement of drainage over adjoining land and yet money spent on such an improvement would qualify. The 'sweeping-up' case in subparagraph (k) (other improvements reasonable in the circumstances) is not necessarily confined to the dwelling occupied as the home if in fact the improvements are measures "undertaken with a view to improving the fitness of the home for occupation." Certainly sub-paragraph (k), though it must be read in the context of the preceding paragraphs, is not confined to improvements of the same kind (ejusdem generis) as those in the preceding paragraphs.

11. Once it is decided, as I have done, that the character of this work ie the construction of the road over an adjoining farmer's land was capable in law of coming within subparagraph (k) of paragraph 8(3), then whether the actual improvement that was done and its costs were "reasonable in the circumstances" within paragraph 8(3)(k) was a matter for the tribunal itself to use its discretion. Provided that I am satisfied that that discretion was used judicially, taking into account all relevant factors, I cannot interfere. I see no reason in this present case to interfere with the tribunal's exercise of its discretion, which was clearly exercised with the utmost care.

12. Consequently, the adjudication officer's appeal is dismissed and the local adjudication officer will now need to obey the tribunal's direction as to quantification of the proper cost attributable to the cost of building the road. If there is any problem or dispute about that it should be referred back to the original tribunal (if it is possible still to constitute it) that heard this case, as I have affirmed their decision.

13. I should stress that this decision is based on the somewhat unusual and special facts of the case. It is not necessarily a precedent for other cases where monies may have been expended on alleged improvements, the work being done on premises which are not owned or occupied by the claimant. Each case must depend

on its own facts. It is perhaps noteworthy to remark that in the present case the claimant obtained a "permanent right of way" as a result of the expenditure. That right of way would thereafter be an 'appurtenance' to the dwelling occupied as the home.

(Signed) M.J. Goodman  
Commissioner

(Date) 18 August 1993