

Housing Costs - interest on loans for repairs
and improvements - can a loan taken out ^{to build}
an extension be covered?

DGR/SH/29



30/94

Commissioner's File: CIS/453/1993

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

1. My decision is that the decision of the social security appeal tribunal given on 16 December 1992 is erroneous in point of law, and accordingly I set it aside. I direct that the appeal be reheard by a differently constituted tribunal who will have regard to the matters mentioned below.

2. This is an appeal by the claimant, brought with the leave of the tribunal chairman, against the decision of the social security appeal tribunal of 16 December 1992.

3. On 11 May 1992 the claimant sought a review of his award of income support, so as to allow the inclusion therein as "eligible interest" the interest on £3,000 borrowed from a building society to finance the construction of an extension to his kitchen and the installation of a shower. On 21 September 1992 the adjudication officer disallowed the claim on the ground that the conditions in paragraph 8 of Schedule 3 to the Income Support (General) Regulations 1987 [S.I. 1987 No.1967] were not satisfied. In due course, the claimant appealed to the tribunal, who in the event in substance upheld the adjudication officer, but did allow as "eligible interest" the interest payable on so much of the loan as was properly attributable to the cost of installing the shower and lavatory. The position was somewhat complicated by the fact that, in addition to the £3,000 the claimant had borrowed from the building society, he had also borrowed from his brother-in-law a further sum of £4,000 free of interest, and in order to arrive at the "eligible interest" it was necessary to determine to which of the two loans the relevant cost was attributable. The tribunal endeavoured to provide for how this problem should be met.

4. The tribunal made very extensive and helpful findings of fact. They said as follows:-

"On 11.5.92 the claimant requested a review of his award of income support to include therein interest on the loan taken out for the carrying out of certain work in his home. The home as it existed before the work had a bathroom upstairs with bath, wash basin and toilet and there was also an outside toilet. The size of the kitchen as it existed before the work was approximately 9ft by 6ft and contained cooker, top with space underneath, sink and central heating boiler in the position shown on the plan with the appeal papers. There was also a washing-machine in the kitchen. There had been a window over the sink but this was bricked up where a garage was erected incorporating that wall of the kitchen. The work for which a loan was obtained comprised a built-on extension at the rear approximately 11ft by 13¹/₂ft with a small shower room at the rear fitted out with a toilet and facilities for a shower (the shower unit itself has apparently not been fitted). There is a space between the 2 extensions presumably to comply with the building by-laws. A new kitchen was fitted out with a double drain a sink and also contains a central heater boiler, the cooker and washing-machine from the old kitchen and a fridge freezer. A deep freezer has now been acquired and is installed in the former kitchen together with an industrial sewing machine. After the garage had been built the former kitchen had no facility for extraction. The microwave oven has also been moved to the new kitchen in which there are now a table and chairs so that, as compared with the old kitchen, the new one can be used as a dining kitchen. The claimant obtained a loan of £3,000 from the Tipton and Coseley Building Society and the balance of the cost of £7,000 was met by the loan of £4,000 from the claimant's brother[?-in-law]. Interest is not charged on the latter loan. The claimant's physical condition is such that on occasion he has difficulty in getting up the stairs. He is in receipt of invalidity benefit and disabled living allowance. The old kitchen was dark because of the bricking up of the window compared with the new kitchen."

5. The relevant regulation is paragraph 8(3) of the Schedule 3 to the Income Support (General) Regulations 1987. This defines the "repairs and improvements" in respect of which the interest on loans raised to meet them is eligible for inclusion in a claimant's income support. The repairs and improvements are defined as meaning:-

"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, lavatory and necessary

associated plumbing;

(b)-(j) ...

(k) other improvements which are reasonable in the circumstances."

6. The tribunal considered that an extension did not fall within the above definition. They said:-

"The whole tenor of the definition indicates that the definition is concerned with the building as it exists and does not include the construction of an extension. As an extension is not an improvement within the definition sub-paragraph (k) does not apply."

This is a misconstruction of the statutory provision. Apart from meaning repairs in the narrow sense directed to the existing structure, it is quite clear that the term "repairs and improvements" includes "measures undertaken with a view to improving [the building's] fitness for occupation" provided such improvements are "reasonable in the circumstances" (see sub-paragraph (k)). An extension is not precluded; indeed it is really often a positive improvement. The only restriction on such an improvement is that it be reasonable.

7. Difficulty has arisen as to whether in this context the word "reasonable" should be construed subjectively or objectively, whether the reasonableness should be viewed solely from the standpoint of the needs of the person undertaking the improvements or whether such reasonableness should be viewed purely objectively. This matter was considered in CIS/749/91, where the Commissioner held that the test was objective. The point could be important. Suppose, for example, the owner of a house decided to extend it because he had a large family, his action could be said to be perfectly reasonable from his standpoint, but objectively it could be contended that it was unreasonable in that there was no comparable market increase in value. There are many houses which, because of their location and basic structure and size, do not, when extended, derive an increase in financial value comparable with the expense incurred. Indeed, there are some extensions which would even devalue a property. Accordingly, whether the subjective or objective test should be applied is crucial in determining in any particular case the reasonableness or otherwise of the relevant improvement.

8. Although the approach in CIS/749/91 is simple and straightforward, I am inclined to doubt its appropriateness in the context of paragraph 8(3)(k). It would seem to me that reasonableness should not be construed solely from either a subjective or objective standpoint. Whether a particular improvement was reasonable should, in my view, be judged by balancing the advantage to the person carrying out the improvement against the consequences viewed objectively. Thus, if a person extended the property in circumstances where such extension would not be reflected in any comparable increase in

its value, but did so because he had a large young family, and was likely to live there for many years, it could be said that overall the exercise was reasonable. But if the owner carried out such an extension to such a property to accommodate his family, but the children were on the point of leaving home, then it could be said, looking at the picture overall, that the exercise was not reasonable. Accordingly, I consider that the relevant project must be viewed not solely from a subjective or objective standpoint, but overall in the broadest possible fashion.

9. Manifestly, in the present case the extension was clearly an improvement as far as the claimant was concerned, but whether it was reasonable, in the light of the definition I have tried to give the term, would depend in part on other considerations, such as the increased value (if any) given to the property, and the length of time he and his family were likely to live there. These are matters which need to be investigated by a tribunal.

10. Accordingly, as the tribunal misconstrued the effect of paragraph 8 I must set aside their decision as being erroneous in point of law, and direct that the appeal be reheard by a differently constituted tribunal. That tribunal will approach the matter in the way indicated above.

11. I allow this appeal.

(Signed) D.G. Rice
Commissioner

(Date) 14 March 1994