NORTHERN IRELAND VALUATION TRIBUNAL

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

CASE REFERENCE NUMBER: NIVT 5/26

CD26 - APPELLANT

AND

DEPARTMENT OF FINANCE - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James Leonard, President

Members: Mr Brian Reid FRICS & Mr Garry McKenna.

Hearing: 25 June 2026, 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 this appeal the tribunal, as it does in all cases of this type, has sought to redact the identity of the appellant (who is hereinafter referred to as “CD26” or “the appellant”) and also identifying details of the hereditament under consideration have been redacted, for the same reason, the premises being located in County Fermanagh. The appellant did not appear, having indicated that he was content for the matter be determined on foot of any written representations. This was expressly confirmed in a letter to the tribunal dated 5 June 2026 from the appellant’s legal representatives, Messrs PJ Flanagan & Co. The same applied to the position of the respondent being the Department of Finance (“the Department”). 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

2. The relevant statutory provisions considered by the tribunal in this appeal 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").

3. Of fundamental significance in this case is that it is agreed that the appellant, who resides in the premises under discussion, meets the relevant criteria, as being a person who has a qualifying disability. Once the Department has indicated agreement concerning any appellant meeting the relevant criteria, there is no need whatsoever for such an appellant to present medical evidence or information to the tribunal in an endeavour to prove the attainment of the qualifying criteria. This is so for the reason that the threshold has already been attained by such an appellant on account of the concession being made by the Department concerning qualification. This is such a case where the appellant, notwithstanding the Department's concession, regrettably felt that he was nonetheless obliged to provide a considerable amount of medical evidence and information to the tribunal, which the tribunal did not need to consider. It is hoped that this point will be understood by future appellants to the Valuation Tribunal, in that once the Department has conceded that the person has a qualifying disability for the statutory purpose, the only focus shall be then upon whether the premises meet or do not meet the statutory criteria. Accordingly, the tribunal's essential focus, in this case, shall be upon the premises.

The Statutory Provisions

4. 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.”

5. Article 17 of the 2006 Order 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

6. As this appeal was by way of written evidence and representations only and as the tribunal heard no oral evidence from either the appellant or the respondent, the tribunal carefully examined any written evidence and information available from the documentation. 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. The tribunal also noted that the claimant was represented by solicitors, Messrs PJ Flanagan & Co, who had made representations on behalf of the appellant in a letter dated 5 June 2026, the content of which and the documents annexed were noted by the tribunal, including a written submission from the appellant dated 25 May 2026. It has to be observed that some information and evidence that was placed by the appellant before the tribunal for a consideration (and further by his legal representatives), related to medical assessment matters, entitlement to disability state benefits and to a “blue badge” pertaining to the regrettably lengthy and complex medical history of the appellant. None of this is in any doubt whatsoever. Because the respondent Department accepts, without any issue whatsoever, that the

appellant has a qualifying disability for the purposes of the statutory provisions under consideration in this case, a large part of this evidence which the appellant and his representatives wished to be considered by the tribunal did not need consideration in detail. This is for the reason that the foregoing evidence was largely irrelevant to issues which were required to be determined. The technical qualification of the appellant on grounds of disability had already been fully conceded in this appeal by the Department and required no specific determination by the tribunal because of that concession.

The Facts

7. On the basis of the evidence and information, the tribunal determined, upon the balance of probabilities, the following material facts. The hereditament under discussion consists of a dwelling house situated at [*address redacted by tribunal*] located in County Fermanagh ("the property"). The appellant is the ratepayer and he lives alone in the property. As mentioned, he has a qualifying disability. Some years ago (the tribunal understands from the evidence, in 2007) whilst the appellant was hospitalised, a plumber attended the property, together with an occupational therapist and a family relative, and discussions took place concerning how best to adapt the property in order to meet the claimant's disability needs. It was assessed that there was no need to add extra rooms, but it was agreed that adaptations were necessary to remove the existing bath and to install a wet (room) shower and also to build a wheelchair ramp at the back door. The work was duly completed in and around that time. The claimant was duly discharged from hospital, once this work had been completed. The appellant in his written submissions to the tribunal provided confirmation that (in 2026) a physiotherapist had assessed living quarters at ground floor level in the property, had inspected the wet room and the ramp and confirmed that the appellant used a new rolator on the ramp. The physiotherapist, after this inspection, informed the appellant that his home was very safe, with no trip hazards. Accordingly, the evidence was that the adaptations currently in place to the property met and still meet the required needs of the appellant's disability.

8. The Department tendered a Presentation of Evidence in the case on 20 March 2026. This commences by mentioning the following facts: 5 February 2026 – an application form was received for Disabled Persons Allowance (DPA) from the appellant; 9 February 2026 – the Departmental decision-maker decided that the appellant was not entitled to DPA and the appellant was notified of this decision; 17 February 2026 – a letter was received from the appellant requesting a review of the original decision; 23 February 2026 - the departmental decision-maker looked again at the original decision, but

decided not to change it. The appellant was notified of this decision on the same day; 27 February – the appellant made a telephone call to the respondent Department advising that he had forwarded a letter and to contact his doctor for further information; 2 March 2026 – further medical evidence, including a letter of appeal, was received from the appellant. The grounds of appeal were that the appellant appealed the decision not to award DPA based on the decision by the Department that the property did not meet the qualifying criteria.

9. The Presentation of Evidence records the evidence in the case as being, firstly regarding disability, that the appellant was entitled to higher rate of Disability Living Allowance, mobility and care, and that the Department was consequentially satisfied that the appellant was a person to whom Article 16 of the 2006 Order applied in that he was considered "substantially and permanently disabled" for the statutory purpose. Regarding the premises, the facility was identified as being a shower/bathroom and lavatory. In his application form the appellant (regrettably incorrectly identified by a different name, but taken by the tribunal presumably to be a specific reference to the appellant) stated that he wished to apply concerning "*a room other than those listed below which is wholly or mainly used by the person with disability for therapy or other purpose*". Under the question "*what room is it*?" the appellant states "*bathroom has been adapted*" and under "*what is it used for?*" he states "*wet room for showering*".

10. Concerning the reasoning for the Departmental decision, the concession is made regarding the appellant's qualifying disability (and thus, again, this is not a further issue for consideration by the tribunal). The Department states that the bathroom consists of an existing facility which the applicant had confirmed had been modified to a wet room/shower. The appellant (again an incorrect name is used, but it is presumed that the Department intended to refer specifically to this appellant) had confirmed that this was the only room within the property (under consideration) and had confirmed that he had no need for an additional facility, as he lived alone. The Departmental decision-maker decided that this was not an additional facility and therefore that it did not meet the criteria for entitlement to DPA under Article 31A (2) of the 1977 Order. The Presentation of Evidence cited the case of *Luton Borough Council v Ball 2001,* being a case where the taxpayer had converted a bathroom into a shower to meet her needs, but relief was refused. In making the decision, the judge in that case had said that what was necessary was a consideration of the purpose of the regulations. The judge stated that the purpose of the regulations was to relieve an eligible person of what would otherwise be an increase in their Council Tax liability when they needed a room in a dwelling which was required from meeting the needs of a qualifying individual residing

in the dwelling. However the judge in that case found that there was no "additional room".

11. The tribunal noted the appellant's application for DPA, dated 4 February 2026 which was received by the Department on 5 February 2026. The tribunal noted that the application details are seemingly consistent with those mentioned in the Presentation of Evidence in that the application focuses specifically on the adaptation of the bathroom in 2007 as a wet room for showering and also refers to a ramp being placed at the back door of the property in 2007. It is noted that the appellant has also indicated in the application form that he did not use a wheelchair indoors, whereby he ticked the appropriate box in the form to confirm this fact.

THE TRIBUNAL'S DECISION

12. It might be helpful if the tribunal first referred to a 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 Northern Ireland 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 judgment 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 judgment of Stephens LJ (as he then was) 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."

13. 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 matters identified by the appellant, however in the all-important statutory context that must be applied to the case by the tribunal.

14. In order to succeed in this appeal, the appellant is required to satisfy the tribunal that the property has a facility which is required for meeting his needs as a person residing in the premises who has a qualifying disability. Therefore, applying the essential focus, 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. As this has been tangentially raised by being mentioned in the appeal in view of the evidence of the ramp installed in the property, the issue of wheelchair requirement (see Article 17 (2) (b) and (3) (b) and (3A)) shall be subject to further brief reference below. It is noted that there is no current evidence of the appellant using a wheelchair but rather he appears to use a rolator at this ramp, and certainly not a wheelchair inside the property.

15. Dealing with these matters, there is no <u>additional</u> 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. There is no specific evidence concerning this apart from what has been mentioned above.

16. 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, no wheelchair is used internally in the property and the appellant has expressly stated that. The tribunal is accordingly able to discount this as being an issue in support of the appellant's appeal. As a wheelchair is not used inside the property, 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 in this case.

17. The Court of Appeal judgment in ***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. The case mentioned above in the Department's submissions is noted but the Court of Appeal case is binding upon the tribunal. 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 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***.

18. In this case there is 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". The tribunal's unanimous view is that the identified 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*".

19. Whilst the tribunal entirely understands that this determination may be disappointing for the appellant, the tribunal is obliged to apply the statutory provisions and the interpretation of the law from such cases which are binding upon the tribunal as ***Quinn.*** For these reasons, the appeal cannot succeed and consequently the tribunal's unanimous decision is that the appeal is dismissed.

Signed: James Leonard

Mr James Leonard, President

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 20 July 2026