

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: NIVT 11/22E

C McC – APPELLANT

AND

DEPARTMENT OF FINANCE – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Francis Farrelly

Members: Timothy Hopkins and Brian Reid

Date of hearing: 18th October 2022

DECISION

The unanimous decision of the tribunal is that this appeal is Dismissed.

REASONS

Introduction

1. This is a reference under Article 12B of the Rates (NI) Order 1977 (as amended) (the 1977 Order).

The Law

2. The 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) (NI) Order 2006 (the 2006 Order). Article 31A (12B) enables a person to appeal to the tribunal against the result of a review by the Department (the respondent in this appeal) of a decision that a person is not entitled to a rate rebate for a property with a special facility for a person with a disability. This is referred to as DPA.

The Tribunal's Decision

3. In the light of the legislation, to succeed in this appeal, the appellant must satisfy the tribunal on four matters:
 - (a) that the property has a facility which is required for meeting the needs of a person who resides in the hereditament. The facility must be essential or of major importance to that person's well-being by reason of the nature and extent of the disability;
 - (b) the appellant must reside in the property and have a disability;

- (c) the facility must be a room which is not a kitchen, bathroom or lavatory or be an additional kitchen, bathroom or lavatory;
 - (d) it must be wholly or mainly used (whether for providing therapy or for other purposes) by such a person.
- 4. The appellant is the owner and occupier of a three-bedroom semi-detached house.
- 5. As a child she was diagnosed as having encephalitis. She lived with her parents. Her parents died in 2020. She now lives alone and is assisted by carers who call. She was in receipt of DLA and now receives PIP's and ESA.
- 6. She applied on 17 May 2022 for a reduction in her rates under the Disabled Person's Allowance provision established by article 31 A of the Rates (Northern Ireland) Order 1977. She advised that her mobility was restricted, and stairs presented a problem. Consequently, she now has her bedroom downstairs and installed a new bathroom and walk-in shower.
- 7. Her application was refused by the respondent on 30 June 2022. Reference was made to section 31 A of the Rates (Northern Ireland) Order 1997. The relevant part is as follows:

Rate rebates for certain hereditaments with special facilities for persons with a disability.

31A.—(1) Subject to paragraphs (5), (7) and (8), the Department shall...grant...a rebate from the rates ...

(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.

- 8. Her application was refused because her home did not have any of the qualifying facilities set out in article 31A. The phrase 'including a facility' was considered by the Valuation Tribunal in the decision of Mary Quinn NIVT 12/16. In that case, the appellant had mobility issues and had ramps installed for access to a property. The tribunal concluded that whilst the ramps were not on the listed facilities in the legislation they nevertheless were facilities to meet the appellant's needs and therefore she was entitled to the rate relief. The tribunal found that the purpose behind article 31A was to provide relief where a property's rateable value had increased because of a facility being provided to meet the needs of someone with a disability. Consequently, it applied wide interpretation.

9. The matter was appealed by way of case stated to the Northern Ireland Court of Appeal (Quinn [2019] NICA 41.) The Court of Appeal considered whether the descriptions or classes of facilities specified in article 31A limited the wording of facilities to meet the needs of a person with a disability. In setting out the facilities the legislation used the phrase 'including.' The Court of Appeal had regard to the various amendments to the legislation as well as the equivalent legislation in England and Wales. The Court of Appeal found the use of the word 'includes' was ambiguous in the circumstance and dependent on the context. The view was that in that instance it was being used in a restrictive sense relating to an exhaustive list of facilities.
10. It is clear from the Social Security benefits in payment that the appellant has a disability resulting in additional needs. However, whilst the walk-in shower has been installed there is no facility in place as specified to get the relief provided by the legislation.
11. Following representations by the appellant's MLA the original decision was reviewed but not changed as per a letter from the respondent dated 18 July 2022.
12. Our task is to see if the legislation has been properly applied. We can understand the appellant feeling aggrieved as she is someone who has genuine needs and yet no relief is being afforded to her. However, to get the relief the changes to her home must come within the terms of section 31A. The Court of Appeal has interpreted the scope of the section as being limited. We find in line with this that the appellant has not shown the necessary facilities are in place. Consequently, we would affirm the respondent's decision.

Chairman: Francis J. Farrelly

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 01 February 2023