

**NORTHERN IRELAND VALUATION TRIBUNAL  
THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED) AND THE  
VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007  
CASE REFERENCE NUMBER: NIVT 12/16**

**MARY QUINN - APPELLANT  
AND  
DEPARTMENT OF FINANCE - RESPONDENT**

**Northern Ireland Valuation Tribunal**

**Chairman: Michael Flanigan  
Members: Philip Murphy, Valuer and David Rose, Lay**

**Date : 5 April 2017**

**DECISION & REASONS**

**Facts**

The parties relied upon written submissions only.

The appellant, suffers from Rheumatoid Arthritis in her back, hips, and knees. She has asthma and back pain. She uses a Trike and a walking stick to get around inside the house. She is in receipt of Disability Living Allowance, Higher Rate care component and Higher Rate mobility component indefinitely. She resides at 38 Derrygonigan Road Cookstown.

The appellant applied for special rates relief for persons with a disability under the Rates (Northern Ireland) Order 1977 ("the Order"), The appellant sought the disabled rates relief because her home had ramps to both the front door and back door, and a disability walk in shower. The relevant part of the Order which was amended by Art 17 of the Rates (Amendment) (Northern Ireland) Order 2006, states as follows:-

31A – (1) Subject to paragraph 5, 7 and 8, the Department shall, in accordance with the provisions of this Article, grant to the person

mentioned in paragraph (4) a rebate from the rates chargeable in respect of a hereditament to which this Article applies.

(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 who 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, or 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 the person who resides in the hereditament and has a disability.

By letter of 19<sup>th</sup> May 2016 the Respondent refused the application for Disabled Persons Allowance (“DPA”). The grounds for the refusal were that the property did not have any of the qualifying facilities which are required to meet the needs of the person with a disability. The letter went on to paraphrase the Order stating that the “qualifying facilities” are:

- a. A room, other than a kitchen, bathroom or lavatory, which is **wholly or mainly used** by the person with a disability; or
- b. An **additional** kitchen, bathroom or lavatory; and
- c. Sufficient floor space to permit the **use of a wheelchair** used by and required for meeting the needs of the person with a disability

The appellant asked for a review of the decision and after review the decision was upheld on 5<sup>th</sup> August 2016. The decision letter of 5<sup>th</sup> August 2016 reiterated that the grounds for refusal that the appellant did not use a wheelchair and that the appellant did not have any other qualifying facilities.

The appellant appealed that decision to the Northern Ireland Valuation Tribunal.

## **Discussion and Decision**

The first issue to be determined is whether the appellant is a person with a disability within the terms of the Order. The Respondent did not dispute this and the Tribunal was satisfied on the papers that the appellant resided in the hereditament and had a disability which affected her mobility including access to and egress from the hereditament.

Given that both parties made written submissions only it was not possible to explore the reasons beyond what was contained in the written decision of the Respondent (5<sup>th</sup> August 2016); however it seems reasonable to assume that the Respondent was not disputing that the appellant needed the ramps to gain access to her home but that the ramps were not a “qualifying facility” within the terms of 31A (2) recited above.

The next issue to be determined by the Tribunal was the effect of the word “including” in Article 31A(2)(a). Was the correct approach to limit the inclusion under this Article to the examples listed therein, or was the Tribunal entitled to look at other examples of facilities required to meet the needs of the disabled person, not listed in the Article, to determine if they could qualify for a rebate.

The term “shall include” was recently the subject of the decision by the Social Security Commissioner (A2/16-17(JSA) when examining whether good cause was limited to the examples given in the legislation or whether the term “shall include” meant that other causes could be considered. The conclusion of Commissioner Stockman was:-

“However the use of the term “shall include” indicates that these are not the only grounds on which good cause may be established and a Tribunal should also consider whether there are any other circumstances relevant ... which are capable of amounting to good cause”.

While not identical to the term “including” the Tribunal does find assistance in the analysis of the words “shall include” in the above case particularly as the term precedes a list of examples, similar to the construction of article 31A.

The Tribunal is satisfied that the correct approach to the use of the word “including “ in the Order is that the qualifying facilities are not limited to those listed in the Order but that other facilities should also be considered provided the facility is required to meet the needs of the disabled person. In the instant case the Tribunal is satisfied that ramps to both the front and back door of the hereditament were facilities necessary to meet the appellant’s needs, specifically the need to gain access to and from her home. The Tribunal finds that the said ramps were qualifying facilities within the terms of the Order and that the appellant was entitled to disabled persons rates relief. The appeal is granted.

**Michael Flanigan, Chairman**

**Northern Ireland Valuation Tribunal**

**Date decision recorded in register and issued to parties: 10<sup>th</sup> May 2017**