

**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 35/21**

**AB35– APPELLANT**  
**AND**  
**DEPARTMENT OF FINANCE –RESPONDENT**

**Northern Ireland Valuation Tribunal**

**Chairman: Mr Charles O’Neill**  
**Members: Mr Hugh McCormick and Ms Noreen Wright**

**Date of hearing: 13 December 2021, 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 the appeal the tribunal has sought to redact the identity of the appellant (who is hereafter referred to as AB35 or the appellant) and also identifying details of the hereditament under consideration.
2. This matter proceeded by what has been referred to as a hybrid hearing, with the tribunal members in the tribunal room and the appellant joining by an audio link and the representatives of the respondent appearing by a videolink.
3. The appellant appealed against the outcome of a review decision by the Department of Finance (the respondent) that the appellant was not entitled to claim Disabled Persons Allowance (DPA).

**The law**

4. The statutory provisions are to be found in the 1977 Order, Article 31A(12B) as inserted by Article 17(8) of the Rates (Amendment) (NI) Order 2006 (the 2006 Order). The legislation entitles a person to appeal to this tribunal where as a result of a review the respondent has decided that a person is not entitled to DPA.
5. Article 31A currently states (as far as is material to these proceedings):  
“(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 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) references to a person who resides in a hereditament include references to a person who is usually resident there; and
  - (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 for meeting a person's needs if he does not need to use it within the living accommodation comprising or included in the hereditament."

The legislation goes on to provide 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 he or she may appeal to the Northern Ireland Valuation Tribunal.

### **The evidence**

6. The tribunal heard oral evidence from both parties. The tribunal had before it the following documents:
  - Application for DPA
  - Letter from the respondent regarding its decision dated 7 July 2021
  - Letter from the respondent regarding a review dated 19 July 2021
  - Notice of appeal received 2 August 2021
  - Presentation of evidence of the respondent
  - Correspondence between the tribunal office and the parties.

### **The appellant's submissions**

7. The appellant states that she is in receipt of Personal Independence Payment, Employment Support Allowance and Industrial Injuries benefit. She suffers from urine and bowel incontinence.
8. In relation to the accommodation in her home, the appellant advised that she has a shower room upstairs. This was changed from a bathroom into a shower room as she is no longer able to use a bath. She has a shower handle and a seat in the shower room. There is also a disabled toilet upstairs.
9. In relation to her downstairs accommodation, the appellant states that she uses the back door to her home rather than the front as there are steps up to her front door. Downstairs she has a small computer room "under the stairs". In this room she has a commode which she uses during the daytime as she would be unable to get to the toilet upstairs in time. In this room there is no wash hand

basin rather there is a bottle of hand sanitiser. The commode is emptied by the appellant's daughter in law.

10. The appellant admits that she would not wish to have major work carried out to the property and would not want a plumbed toilet downstairs as there would be upheaval in getting this done. The appellant states that no one else uses the commode downstairs.
11. The appellant did submit at the hearing that there were instances where there would be lavatories which are not plumbed in the traditional sense. For instance, there could be toilets at concert venues which are not plumbed in but which would be recognised as "dry toilets". Therefore, she submitted that she should be entitled to DPA in light of her situation.

### **The respondent's submissions**

12. The representatives of the respondent indicated that it was not objected to that the appellant had a disability and that this was fully appreciated.
13. The respondent indicated that the issue is that the commode in the downstairs room did not meet the requirements of the legislation in that it was not, in its submission, an additional lavatory. The respondent did accept that the appellant had converted the bathroom upstairs into a shower room but this did not represent an additional bathroom and therefore this conversion did not qualify the property under the terms of the legislation. The respondent indicated that there was not an additional bathroom upstairs in that the bathroom had been converted into a shower room. This meant that it did not fulfil the requirements of the legislation and therefore the appellant was not entitled to DPA.
14. The respondent also indicated that as the commode is a portable facility it considered that the additional room was not of essential or major importance to the appellants' wellbeing.

### **The tribunal's decision**

15. At the outset, the tribunal wishes to state that it accepts the evidence given by the appellant in relation to her disability and has every empathy with her circumstances. However, the tribunal must interpret each case in accordance with the legislation.
16. The law in relation to these cases is contained in Article 31A of the 1977 Order (as amended). There are several questions which the legislation in this area requires to be answered for an entitlement to DPA to be made out. These are:
  - a. Is there a facility in the hereditament for a person who resides in the hereditament?
  - b. Does that person have a disability?
  - c. Is there a facility consisting of (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 person OR an additional kitchen, bathroom or lavatory?

d. Is the facility required for meeting the needs of a person in that it is of essential or major importance to that person's well-being by reason of the nature and extent of the disability?

17. In this case it is accepted that the appellant does have a disability. It is also accepted that she resides in the property. Therefore, the first two questions may be answered in favour of the appellant.

18. The main issue in this case involves consideration of the third question concerning the nature of the facility. This is the question which the tribunal has to focus on.

19. The first consideration in relation to this question is to consider the second limb of this test. Does this property have a facility which is an additional kitchen, bathroom or lavatory?

20. In considering this issue the tribunal is bound by the decision of the Northern Ireland Court of Appeal in the *Department of Finance v Mary Quinn* [2019] NICA 41 (the Quinn case). The tribunal also derives assistance from the decision in that case.

21. The Quinn case involved consideration as to whether it was possible to bring into the definition of facility in the legislation other qualifying facilities. In that specific case the reference was to ramps to the front and back door of the home. In the Quinn case Stephens LJ (as he then was) stated:

*[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"*

22. It is clear from the Quinn case that the legislation encompasses something that is additional to the norm. In other words, the tribunal has to consider the relatively narrow-depicted list of matters identified in the statutory context.

23. In this case it is accepted by the parties that there is a commode which has been inserted into a room under the stairs which is described by the appellant

as a computer room. It is accepted that this commode is not fixed or attached in the room. It is mobile and is emptied during the day. There is a shelf in the room with hand sanitiser on it. There is no wash hand basin in this room. The question for the tribunal is whether the commode in this room constitutes a lavatory.

24. In *Luton Borough Council v Ball* the tribunal had to consider the terms of the Council Tax (Reduction for Disabilities) Regulations 1992 which are somewhat similar to the legislation in Northern Ireland. In that case the appellant had removed the original bathroom and the wall between the bathroom and a separate WC was demolished to create a new room that housed a disabled person's shower and sufficient wheelchair access should the necessity arise. The tribunal had to consider whether this shower-room constituted an additional room that was not a bathroom. This was important because to be an eligible person for the purpose of the regulations the tribunal had to be satisfied that the room was not a bathroom. The tribunal had looked at the Oxford Paperback definition of bathroom as "a room containing a bath and a bath is a large container for water in which one sits to wash all over.

25. The local authority appealed the decision and in the High Court Turner J stated:

*"It is perfectly obvious in the present case that the regulations do not specifically equate a bathroom with a shower room; nor yet do the regulations specifically distinguish between the two. That is, in my judgment, not the end of the question. It is, in my judgment, as I have already indicated, necessary to contemplate what is the statutory purpose of these particular regulations. The answer, in my judgment, plainly to relieve an eligible person of what would otherwise be an increase in their council tax liability when they needed a room in their dwelling" which is required for meeting the needs" of a qualifying individual resident in the dwelling. In the present case there is no additional room required to meet the needs of the respondent. So it is necessary to consider, given the implied statutory purpose of the regulations, whether when the phrase "a bathroom" or "a kitchen" is used, by itself it must be taken to exclude a shower. In my judgment, when the expression, whether in reg 3(1)(a)(i) or (ii), is used, it is used descriptively rather than as a definition of the actual room. If the expression is used descriptively as being a room in which the eligible person carries out their normal ablutions, whether in a bath or by way of a shower, there is, in my judgment, no problem in discovering the proper meaning of the word "bathroom" where it appears in reg 3(1) of these regulations."*

26. In that case in respect of the bathroom, the appellant indicated that this has been adapted with the bath being taken out and a walk-in shower installed. The tribunal in that case had held that the shower-room was different to a bathroom. On appeal to the High Court, the judge held that the conversion of the bathroom into a shower room meant that the shower room fell within the meaning of a bathroom and therefore there was no additional bathroom in the property.

27. In this case which appears before the tribunal however, the circumstances are different in that the appellant has placed a commode downstairs in the room under the stairs which is otherwise described by the appellant as a computer room. It is not a fixed toilet and there is no wash hand basin in the room. There

is no plumbed in toilet. The commode is portable and can and is removed from the room to empty it.

28. Therefore this is not a lavatory as one would associate a lavatory as having a fixed, flushing toilet and usually a wash hand basin. Therefore, this is not an additional lavatory for the purposes of this legislation. It is appropriate to consider the words of Stephens LJ in the *Quinn* case

*“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.”*

29. The next question to consider is whether this room is a room which is required for meeting the needs of a person who resides in the hereditament and has a disability.
30. In considering the case law in this area, the tribunal is mindful of the statement of Fox LJ in *Howell Williams v Wirral Borough Council* [1981] 79 LGR 697 when he said

*“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.”*

31. In that case the court held that the applicant used the room as a living room because she needed a living room and not because of her disability. Also of relevance is the case of *South Gloucestershire Council v Titley and Clothier*. In that case Mr and Mrs Titley had to adult children with Down syndrome. Each of the children had a bedroom in the property where they spent a great majority of time each day alone. There was no physical adaption to the rooms. On appeal, the Court of Appeal in England (dealing with English Council Tax provisions which are in the essential parts broadly in similar terms to the 1977 Order) observed that even if neither of the children had a disability each would have had their own bedroom anyway. The Court of Appeal affirmed its earlier decision in *Howell Williams*.
32. In relation to the use of the room it has to be used for meeting the needs of the person with a disability for providing therapy or for other purposes. Therefore, the tribunal concludes that the room is used for day to day activities and cannot fall within the definition of being wholly or mainly used for providing therapy or for other purposes for a person with a disability. Therefore, in this case the

tribunal cannot be satisfied that the computer room meets the requirements of the legislation such as that an award of DPA can be made. The bathroom upstairs is not an additional room.

33. As mentioned in the Quinn case the Court of Appeal stated:

*“We accept the fundamental purpose... 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,, 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 preceeding words gave rise to the obligation to grant a rebate.”*

34. Therefore, in this case the tribunal cannot be satisfied that the computer room meets the requirements of the legislation such that an award of DPA can be made. The computer room is not an additional lavatory.

35. Therefore, this appeal cannot succeed and so the tribunal’s unanimous decision is that the appeal is dismissed.

**Chairman : Mr Charles O'Neill**

**Northern Ireland Valuation Tribunal**

**Date recorded in register and issued to the parties: 06 April 2022**