

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 27/18

G – APPELLANT

AND

DEPARTMENT OF FINANCE – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O’Neill

Members: Mr Christopher Kenton FRICS and Ms Angela Matthews

29th May 2019

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).
2. There was no appearance before the tribunal by or on behalf of the appellant and the respondent, both parties having indicated that each was content to rely on written representations. In accordance with Rule 11 of the Valuation Tribunal Rules (NI) 2007 (as amended) an appeal can be disposed of on the basis of written representations if all the parties have given their consent in writing to that course of action.
3. The appellant appealed against the outcome of a review of a decision by the Department of Finance (the Department) that the appellant was not entitled to claim Disabled Person’s Allowance (DPA).

The Law

4. 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 Evidence

5. The tribunal heard no oral evidence. The tribunal had before it the following documents:
 - (a) The appellant's application for DPA dated 27 March 2018;
 - (b) Letter from the respondent to the appellant's General Practitioner dated 19 April [sic] 2017;
 - (c) Letter from the respondent to the appellant dated 6 June 2018;
 - (d) Letter from the appellant's General Practitioner dated 26 June 2018;
 - (e) Letter from the respondent to the appellant's General Practitioner dated 25 July 2018;
 - (f) Copy inspection report dated 7 September 2018;
 - (g) Copy letter from the respondent to the appellant dated 10 September 2018 indicating an award of DPA was unsuccessful;
 - (h) Copy letter from the appellant to the respondent dated 26 September 2018 seeking a review of the decision not to award DPA to the appellant;
 - (i) Copy letter from the respondent to the appellant dated 6 November 2018 confirming the review decision not to award DPA;
 - (j) Notice of appeal against the result of a review by the Department of its decision that a person is not entitled to a rebate for a property with a special facility for a person with a disability received 22 November 2018;
 - (k) Copy email from the appellant to the tribunal dated 17 December 2018;
 - (l) Copy email from the respondent dated 27 February 2019
 - (m) Copy email from the appellant dated 5 March 2019
 - (n) Correspondence between the tribunal office and the parties.

The Appellant's Submissions

6. The property consists of a dwelling-house (the property). The appellant is the ratepayer of the property.

7. The appellant, had a stroke at a young age which resulted in the loss of power/strength on his right-hand side and in addition severely affected his ability to write.
8. The appellant has converted a downstairs room into a rehabilitation/strength/flexibility room. He indicates that this room is solely used by himself for rehabilitation in conjunction with his stroke. There is a mat in the room on which he stretches and carries out balance exercises. In addition, he has handgrips that he uses in this room to improve his grip. He also practices his handwriting at a desk he has set up in this room. He further indicates that the room is solely converted to assist with his disability.

The Respondent's Submissions

9. The respondent states that the appellant lives alone in the property. The room described in the application was stated to be a downstairs living room that has a mat, weights and a trampoline in it. It has two settees, a television in the room and shelves that contain CDs. The respondent was of the view that the room does not have any qualifying facilities to allow for an award of DPA.

The Tribunal's Decision

10. The law in relation to these cases is contained in Article 31A of the Rates (NI) Order 1977 (as amended) which states that subject to certain paragraphs the Department shall grant a rebate to a hereditament to which this article applies. Article 31A(2) is pertinent to this and states:

“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 for other purposes) by such a person; or
- (ii) An additional kitchen, bathroom or lavatory...”

11. It is further clarified in Article 31A(3)(b) that references to a facility 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.
12. In passing the tribunal notes that in review letters to applicants for DPA the respondent should be careful to state expressly the test involved as stated in the Rates (NI) Order 1977 as outlined above.
13. In order to succeed in this appeal, the appellant has to satisfy the tribunal on four matters:
 - (a) that the property has a facility which is required for meeting the needs of the appellant. 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.
14. In this case it is clear that the appellant resides in the property. There appears to have initially been some confusion among the medical evidence as to whether the appellant had a disability. However, the matter was clarified in the letter from the appellant's General Practitioner dated 26 June 2018 in which she states that the appellant suffers from a chronic disability and at this stage there is no real potential for recovery. Therefore, the tribunal is satisfied that the appellant is a person who has a disability. The tribunal is also satisfied that the room is not a kitchen, bathroom or lavatory and that it is used wholly or mainly by the appellant. Therefore, the appellant has passed the conditions laid out in (b) to (d) above.
15. The main issue to consider is whether the room constitutes a facility which is required for meeting the needs of the appellant. It has to be essential or of major importance to the appellant's well-being due to the nature and extent of the disability.

16. In this case the appellant uses the room to practise and improve his handwriting. He also uses it for balance exercises. The room contains a mat, weights and a trampoline. It also contains a television and two settees. There is no evidence of any physical adaptation of the room.

17. The tribunal has carefully considered all the submissions by the appellant and respondent. The onus is on the appellant to prove that the room is required to meet the needs of the disabled person. It has to be essential or of major importance to the appellant's well-being due to the nature and extent of the disability. While the appellant adduced evidence to demonstrate that he has a disability, insufficient evidence was forwarded to the panel to suggest that the room was required to meet the needs of the disabled person as per the terms of the legislation.

18. Therefore, the tribunal cannot be satisfied that this room must be required for meeting the needs of the appellant as a disabled person or is of essential or major importance to his well-being by reason of the nature and extent of his disability.

19. Thus, the appeal cannot succeed and so the tribunal's unanimous decision is that the appeal is dismissed.

Signed: Mr Charles O'Neill, Chairman

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 3 July 2019