

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

CASE REFERENCE NUMBER: NIVT 44/24E

EF – APPELLANT

AND

DEPARTMENT OF FINANCE – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Michael Flanigan

Members: Andrew Tough and Robert McCann

Date of hearing: 4th March 2025

DECISION

The unanimous decision of the Tribunal is that this appeal is **Dismissed**.

REASONS

Introduction

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

The Law

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 Disabled Persons Allowance (DPA).

The Evidence

This appeal was dealt with on the papers without an oral hearing and the Tribunal is grateful to both sides for their written submissions. In keeping with the established practice, the Tribunal has anonymised references to the appellant who is referred to as “EF” above and has removed any identifying details for the hereditament under consideration.

The Tribunal's Decision

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.

Art 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...”

It is further clarified in Art 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.

In the light of the legislation, 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 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 which is wholly or mainly used (whether for providing therapy or for other purposes) by such a person;
- (d) or be an additional kitchen, bathroom or lavatory.

The appellant EF raised three substantive issues in this appeal which can be summarised as follows

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That the appellant is entitled to DPA because:

1. He received DPA at a previous address over several years and that the facilities at that address were similar to the facilities at his current address.

2. That the premises have a qualifying room as defined by Art 31A(2)(a)(i) which he uses for therapy or other purposes but which is also his combined lavatory bathroom/walk in shower room.
3. That the premises have a qualifying room which is his living room in which he receives therapy for mental health issues primarily relaxation and meditation.

The Tribunal dealt with each of the grounds of appeal as follows:

The DPA is an allowance against the rates charged for a hereditament on the rating list. A successful applicant must have a disability and must reside in the premises for which the allowance is claimed. Examination of Art 31A above makes it clear that the allowance is based upon the facilities in the premises in which the applicant resides. The appellant is seeking the DPA for the premises in which he currently resides and must prove that the premises in which he resides have a qualifying room i.e. one which satisfies the definition contained within Art 31A(2)(a)(i) set out above.

The Tribunal must decide the appeal by reference to the facilities which exist in the premises in which the appellant currently resides and applying the law to those premises. This Tribunal is not bound in any way by a decision taken by LPS in relation to other premises. It can only examine the facilities which are available in the premises which are the subject of the appeal and apply the law to those premises. The history of DPA awards for other premises have no relevance therefore to the merits of this appeal.

In terms of the facilities which are in the premises, the appellant made two separate and cases.

The appellant accepted that the premises did not have an additional kitchen toilet or bathroom and submitted his appeal on the basis that there was qualifying room used wholly or mainly for therapy or other purposes. The appellant submitted that the qualifying room was the room which contained his bathroom walk in shower and toilet. He used this room for applying various creams gels, and for washing himself during the day. The appellant's case was that this was a room used wholly or mainly for therapy or other purposes, but which also "happens to be the lavatory/bathroom/walk in shower with grab rail".

The Tribunal could not accept the appellants argument. The legislation is clear that the qualifying room under Art 31(2)(a)(i) must be,

“A room other than a kitchen , bathroom or lavatory which is used wholly or mainly for providing therapy or for other purposes”.

This provision is clear and unambiguous. In order to be a qualifying room it must be a room other than a kitchen bathroom lavatory. The Tribunal therefore rejected the argument that the appellants combined walk-in shower, toilet bathroom was a qualifying room under Art31a because it was used for therapy.

The appellant subsequently submitted that the qualifying room was his living room because he used it to relax and meditate. In an email of 27th January 2025 the appellant submitted as follows:

“In my living room I use podcasts and applications on my phone streamed to my Smart Television to enable me to relax and I do this all the time. I realise now that I didn’t apply the right way as I thought the qualifying route for me was through Disabled facilities namely a bathroom. Not realising that all along I qualified in another way”.

The appellant then refers to making a fresh application to LPS using the “appropriate route”. The Tribunal is unaware of the contents of the fresh application. The Tribunal has before it the current appeal which includes the submission that the appellant's living room is a qualifying room because of the way it is used for therapies which address the appellants mental health. This is a short statement with little detail other than the sentence quoted above. It may be that the appellant will develop this argument further and give more information about this qualifying room in another application. Such application will first have to be considered by the Respondent in the usual manner. The Tribunal makes no finding on this submission other than that there was insufficient evidence before the Tribunal now which would allow it to accept that the living room was used wholly or primarily for therapy or other purposes.

There being no further grounds of appeal, the appeal is dismissed.

Chairman: Michael Flanigan

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 31/03/2025