

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

**CASE REFERENCE NUMBER: 25/09**

**VINCENT GILLESPIE - APPELLANT**  
**AND**  
**DEPARTMENT OF FINANCE & PERSONNEL - RESPONDENT**

**Northern Ireland Valuation Tribunal**

**Date of hearing: 14 September 2009**

**Chairman: Ms A Grace**

**Members: Mr W Deddis and Mr H Mulholland**

**DECISION AND REASONS**

**Introduction**

1. There was no appearance before the Tribunal by or on behalf of the appellant and the respondent; both parties having indicated that they were content for the appeal to be disposed of on the basis of written representations.
2. The property the subject of the appeal (“the property”) is 14 Church Crescent, Bangor, County Down, BT20 3EF. The appellant is the ratepayer.
3. On 28 November 2008 the respondent issued the outcome of a review of a decision of the respondent, which upheld the decision that the appellant is not entitled to Disabled Persons Allowance in respect of the appellant’s property because the property does not have any of the qualifying facilities as set out in Article 31A of the Rates (Northern Ireland) Order 1977.
4. The appellant appealed against that decision by a notice of appeal, which was received in the Tribunals Unit on 11 May 2009. By order dated 3 June 2009 the time for appealing was extended.

5. The following documents were before the Tribunal:
- Appellant's application form for Disabled Persons Allowance dated 21 August 2008
  - Respondent's decision issued in a letter from Land & Property Services, Department of Finance and Personnel, dated 9 September 2008
  - Appellant's request from review received 3 November 2008
  - Respondent's inspection report from Mr Cunningham, Rating Officer, dated 27 November 2008
  - Respondent's review decision issued in a letter from Land & Property Services dated 28 November 2008
  - Notice of appeal received 11 May 2009
  - Letters from the appellant dated 26 April 2009, 15 May 2009 and 25 May 2009
  - Letters from the Social Security Agency dated 29 July 2008 and 6 August 2008

### **The Law**

6. The statutory provisions are set out in the Rates (Northern Ireland) Order 1977 ("the 1977 Order") as amended by the Rates (Amendment) (Northern Ireland) Order 2006.
7. Paragraphs 1, 2, 3, 3A and 4 of Article 31A of the 1977 Order, as amended, provide as follows:

31A. - (1) Subject to... 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 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.

(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.

(4) The person entitled to a rebate under this Article (a "rebate") is -

(a) the person with a disability if he is the occupier of the hereditament or makes payment by way of rent in respect of all or any of it; or

(b) any person who is a member of the same household as the person with a disability and either is the occupier of the hereditament or makes such payments as aforesaid.

8. Paragraph (2A) of Article 2 of the 1977 Order, as amended, states as follows;

2. - (2A) For the purposes of this Order a person has a disability if he -

(a) is substantially and permanently disabled (whether by illness, injury, congenital deformity or otherwise); or

(b) suffers from mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986 (NI 4).

### **The Appellant's Evidence and Submissions**

9. The appellant's evidence can be summarised as follows. In his application form he stated that his wife has a disability. To meet the needs of his wife a chair lift was installed to the stairs in the property, the separate toilet and bathroom were made into one bathroom and the entrance door to this bathroom was widened. His wife does not use a wheelchair indoors. She uses a wheeled zimmer frame. The submitted

letters from the Social Security Agency indicated that his wife has an award of disability living allowance that includes an award in respect of the care component.

10. In his letter received 3 November 2008 the appellant explained that he had the toilet and bathroom altered and the door widened to facilitate his wife's movements to enter and to enable sufficient space therein to permit use of a wheelchair when necessary. He had the chair lift installed to enable her to use the bathroom and bedroom. His letter dated 15 May 2009 also explained that he had the wall removed between the toilet and bathroom and the door to the bathroom widened to facilitate the use of a wheelchair if needed and that the bath was removed and replaced by a walk-in shower.
11. The appellant's grounds of appeal are that his wife meets the Disabled Persons Allowance requirements because the property has been adapted to meet her needs.

### **The Respondent's Evidence and Submissions**

12. The respondent's evidence can be summarised as follows. The letter from Mr Hynes, Rating Officer, Land & Property Services, dated 9 September 2008 stated that the appellant's application for Disabled Persons Allowance was unsuccessful because his property does not have any of the qualifying facilities that are required for meeting the needs of the person with a disability, as set out in Article 31A of the 1977 Order. These qualifying facilities are a room, other than a kitchen, bathroom or lavatory, which is wholly or mainly used by the person with a disability; or an additional kitchen, bathroom or lavatory; and sufficient floor space to permit the use of a wheelchair used by and required for meeting the needs of the person with a disability.
13. The inspection report from Mr Cunningham, Rating Officer, dated 27 November 2008 stated that the property does not have any of the qualifying features required for meeting the needs of the person with a disability. Mr Cunningham stated that the appellant's wife has poor mobility and walks with the aid of a 3-wheeled rolator and that a chair lift was installed because she cannot negotiate stairs. He stated that the main bathroom on the first floor had the door widened and the bath removed and a disabled access shower installed to facilitate her rolator/zimmer. He also stated that the adaptations are to an existing facility.
14. The letter from Mr Coey, Senior Rating Officer, dated 28 November 2008 stated that he had considered the appellant's request to have the original decision, which was issued on 9 September 2008, reviewed. Mr Coey

stated that he decided that this original decision should remain unchanged. He stated that the appellant's property was inspected on 27 November 2008 and found not to have any of the qualifying facilities as per Article 31A of the 1977 Order.

15. The respondent has not disputed that the appellant's wife has a disability that satisfies the requirements of paragraph (2A) of Article 2 of the 1977 Order, as amended.

### **The Tribunal's Findings**

16. In light of the evidence from the appellant and Land & Property Services, the Tribunal finds that the previously separate bathroom and toilet had been made into one bathroom and the entrance door to this bathroom was widened, the bath was removed and replaced with a disabled access shower and a chair lift was installed to the stairs in the property. We also find that the appellant's wife uses a wheeled zimmer/rolator.

17. To satisfy the requirements of the above paragraph (2) of Article 31A of the 1977 Order, as amended, the appellant's property must satisfy the provisions in either subparagraph (a)(i) or subparagraph (a)(ii) of paragraph (2) in addition to the provision in subparagraph (b) of paragraph (2) of Article 31A. To satisfy subparagraph (2)(a)(i) the appellant's property must include a room, other than a kitchen, bathroom or lavatory, which is wholly or mainly used (whether for providing therapy or for other purposes) by the person residing there who has a disability. However the available evidence of facilities and adaptations concerning rooms in the appellant's property relates to the bathroom and lavatory and these two types of room are specifically excluded by the provision in subparagraph (2)(a)(i). There is no evidence that the property includes a different room that satisfies that above provision. To satisfy the alternative provision in subparagraph (2)(a)(ii) of Article 31A, there needs to be an additional kitchen, bathroom or lavatory. However the available evidence shows that instead of an additional bathroom or an additional lavatory, which is in addition to the previous bathroom and separate lavatory, the property now has the one room that is a combined bathroom and lavatory. Accordingly the Tribunal finds that the provisions in both subparagraphs (i) and (ii) of paragraph (2)(a) of Article 31A are not satisfied.

18. To satisfy the additional provisions in subparagraph (2)(b) of Article 31A, there must be sufficient floor space in the property to permit the use of a wheelchair used by and required for meeting the needs of the person who resides in the property and has a disability. The appellant's evidence is that the wall between the previous bathroom and separate toilet was removed and the door to the bathroom widened to facilitate the use of a wheelchair if needed. However subparagraph (2)(b) is subject to the

provisions in subparagraph (3)(b) and paragraph (3A) of Article 31A. Subparagraph (3)(b) provides, inter alia, that the wheelchair must be essential or of major importance to the well-being of the person with a disability by reason of the nature and extent of the disability. Paragraph (3A) provides that a wheelchair is not required for meeting a person's needs if that person does not need to use it within the living accommodation in the property. In light of both the appellant's evidence and the evidence in the respondent's inspection report that the appellant's wife uses a wheeled zimmer/rolator and does not use a wheelchair, the Tribunal finds that a wheelchair is not actually used by the appellant's wife within the living accommodation in the property. The Tribunal finds therefore that the provisions of subparagraph (2)(b) of Article 31A are also not satisfied.

19. Accordingly as the neither of the alternative provisions in subparagraphs (i) and (ii) in subparagraph (2)(a) of Article 31A are satisfied plus the additional provision in subparagraph (2)(b) is also not satisfied, the Tribunal finds, on the balance of probabilities, that the requirements of Article 31A are not satisfied.

20. In view of the descriptions of the qualifying facilities in paragraph (2) of Article 31A, the Tribunal finds that the installation of a stair lift in the appellant's property also does not satisfy the requirements of Article 31A.

### **Decision**

21. The unanimous decision of the Tribunal is that the appeal is dismissed.

22. The appellant is not entitled to Disabled Persons Allowance in respect of the property because the property does not have a facility that satisfies the requirements of Article 31A of the Rates (Northern Ireland) Order 1977, as amended.

**Ms A Grace, Chairman**  
**Northern Ireland Valuation Tribunal**

**Date decision recorded in register and issued to parties:**