

# THE VALUATION TRIBUNAL FOR ENGLAND



*Council tax liability appeal; The Local Government Finance Act 1992; The Council Tax (Reductions for Disabilities) Regulations 1992; meeting the needs of a qualifying individual; second bathroom; discount for student status; appeal allowed.*

RE: 4 Bocking Close, Huntingdon, Cambridgeshire, PE29 6LF ("the subject property")

APPEAL NUMBER: VT00010280

BETWEEN:	S M	Appellant
	and	
	Huntingdonshire District Council	Respondent
	(Billing Authority)	

BEFORE: Mr A Clark (Vice President of the Tribunal)

CLERK: Mrs A Sloan

HEARING: Remote hearing No.3 on 24 August 2022

APPEARANCES: S M (Appellant)  
Ms E Haworth (interpreter for appellant)  
Mr N Dearnley (Billing Authority's representative)

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## Summary of decision

1. Appeal allowed. I found that there was a second bathroom in the subject property required for meeting the needs of a qualifying individual and therefore the Disabled Band Reduction (DBR) should be granted.

## Introduction

2. This appeal has been brought pursuant to section 16 of the Local Government Finance Act 1992 ("the 1992 Act"). The appellant's notice of appeal was received by the Tribunal on 8 February 2022. The grounds for her appeal challenged the BA's decision of 22 December

2021 not to reduce the band of the appeal property by way of a DBR relating to her mother's disability.

3. At the appellant's request, the Tribunal engaged the services of Ms Haworth to assist with translation during the hearing.
4. The appellant lives at the subject property with her husband M M, their children, and her mother Y V. There was no dispute that Y V is a disabled person who resides at the subject property and is therefore a qualifying individual for the purposes of DBR, but the respondent BA decided that all of the criteria for the reduction was not met.
5. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered before coming to my decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

### **Preliminary issue**

6. Before the hearing began, the appellant raised a concern that there were documents missing from the joint evidence bundle supplied to the Tribunal by the respondent BA. She referred specifically to a number of attachments to an email she had sent to the BA on 14 July 2022.
7. Mr Dearnley confirmed the attachments were received and provided page numbers within the evidence bundle. The appellant then confirmed she was content that her submission was there and available for my consideration.

### **Issue**

8. The issue before me was to determine whether the BA was correct to refuse a DBR for the subject property.
9. The appellant raised a secondary issue in her appeal form and oral presentation as she felt that a discount should also be granted to reflect her status as a student.

### **Evidence and submissions**

10. In order to assist the appellant and with the agreement of all parties, I varied the model hearing procedure and invited the BA's representative to present his case first.
11. Mr Dearnley confirmed that there was no dispute that the appellant's mother, Y V, met the criteria for a 'qualifying individual' as set out in the regulations. However, he did not believe that the second test regarding the situation at the property was met and, as both criteria must be met for the reduction to be granted, he asked me to dismiss the appeal.
12. The appellant stated that she felt the BA should apply a reduction to her council tax on two grounds. Firstly, that she was a full-time student from September 2021 and secondly that her mother was disabled. She explained that she and her husband had purchased the subject property because it was larger than their previous home and the layout better suited her mother's needs. She explained the living arrangements at the property and stated that she felt all the criteria had been met. The appellant was critical of the information provided on the BA's website as she stated the information was not clear and did not explain that there

needed to be adaptations to the property for the DBR to be granted. Mr Dearnley confirmed he would feedback the comments regarding the website, but he clarified that the website served to provide awareness of potential reductions but would not usually set out the full legal test.

## **Decision and reasons**

13. Section 13 of the 1992 Act set out powers for the Secretary of State to make regulations regarding reduced amounts of council tax payable where prescribed conditions were met. Section 13(6) specifically related to a dwelling where a disabled person had their sole or main residence. The relevant regulations were The Council Tax (Reductions for Disabilities) Regulations 1992 ("the Regulations").
14. Regulation 3 of the Regulations set out the criteria that needed to be met for a band reduction to be applied to a property:

### **3 Eligible persons**

*(1) ...A person is an eligible person for the purposes of these Regulations if –*

*(a) he is a liable person as regards a dwelling which is the sole or main residence of at least one qualifying individual and in which there is provided –*

*(i) a room which is not a bathroom, a kitchen or a lavatory and which is predominantly used (whether for providing therapy or otherwise) by and is required for meeting the needs of any qualifying individual resident in the dwelling; or*

*(ii) a bathroom or kitchen which is not the only bathroom or kitchen within the dwelling and which is required for meeting the needs of any qualifying individual resident in the dwelling; or*

*(iii) sufficient floor space to permit the use of a wheelchair required for meeting the needs of any qualifying individual resident in the dwelling; and*

*(b) as regards the financial year in question, an application is made in writing by him or on his behalf to that authority.*

*(2) For the purposes of paragraph (1), and subject to paragraph (3), references to anything being required for meeting the needs of a qualifying individual are references to its being essential or of major importance to his well-being by reason of the nature and extent of his disability.*

*(3) A wheelchair is not required for meeting an individual's needs if he does not need to use it within the living accommodation or included in the dwelling concerned.*

*(4) ...*

*(5) Where the liability of a liable person who is an eligible person is joint and several, an application made by him for the purposes of these Regulations shall be treated as also made on behalf of each of the other liable persons.*

15. Although the parties were in agreement that the appellant's mother, Y V, was a qualifying person residing at the subject property, paragraph 1(a) (i) to (iii) set out the essential criteria that needed to be met in order to qualify for a band reduction due to a disability. I understood that the appellant had made the application on two grounds.
16. The application form for the DBR completed by the appellant stated that the room concerned was her mother's bedroom and referred to a second bathroom. However, at the hearing, she provided further detail on the living arrangements. She confirmed that her mother has a bedroom upstairs in the house which is used simply as a bedroom. However, her disability means that the appellant wanted her to have space downstairs where she could relax and feel safe without having to climb the stairs when the family were out. The appellant provided me with photographs showing the step free access to the front door and confirmed the hallways were wide enough to accommodate a wheelchair. When questioned on this point, she confirmed her mother does not use a wheelchair in the house, but they wanted to be prepared for that situation should her health further deteriorate in the future. The appellant confirmed her mother has a long-term disability but does not need adaptations to the property at this time. She stated that she had purchased the subject property with her mother's needs in mind and 'needs' and 'adaptations' are different.
17. When asked for further detail on the property, the appellant confirmed it is a five-bedroom house. She and her husband have one bedroom shared with their youngest child, her twin daughters share a bedroom, and her mother has her own bedroom. There are two further bedrooms unoccupied in the house. The room used by Y V on the ground floor is separate to the kitchen and dining room. It is furnished with a television, cupboard, wardrobe, chair and also a bed. The appellant explained that her mother needs to rest regularly, and this room is a place where she can rest in private and do her therapist prescribed exercises without having to climb the stairs. There is also a ground floor bathroom with a shower which was suitable for her mother's use., but the appellant confirmed that this did not need adaptation.
18. During the hearing, the clerk to the Tribunal referred the parties to case law which may be relevant. The cases were the High Court judgments *Sandwell Metropolitan Borough Council v Perks* [2003] CO/712/2003 and *South Gloucestershire Council v Titley and Clothier* [2005] CO/10647/2005 and CO/1291/2005 and the Court of Appeal judgment *Howell Williams v Wirral Borough Council* [1981] 79 LGR 697. These cases established that there must be a relationship between the disability and the use of the room in question. As these judgments had not been cited in the joint evidence bundle, I asked the parties if they would like an adjournment to read the judgments if circulated by the clerk. Neither party asked for such an adjournment.
19. I understood that the bedroom on the first floor was Y V's primary sleeping area and found that this did not meet the criteria for DBR as its use was purely as a bedroom in the same way other members of the family used their bedrooms. It appeared to me that Y V's mobility was such that she was not confined to the ground floor and would use her bedroom upstairs in the evening. I therefore turned to the ground floor room used by Y V.
20. Regulation 3,(1)(a)(i) states – "*a room which is not a bathroom, a kitchen or a lavatory and which is predominantly used (whether for providing therapy or otherwise) by and is required for meeting the needs of any qualifying individual resident in the dwelling*".

21. I found the judgment *Howell Williams v Wirral Borough Council* to be relevant. In that case, the disabled person claimed a living room qualified for DBR. The judgment stated that the living room in that case was –

*“... not essential or of major importance to the well-being of the applicant by reason of the nature and extent of her disability. She needs the living room as such, merely in the way that anybody, whether disabled or not, needs a living room as part of ordinary life. She does not need the room because of the nature and extent of her disability.”*

*“It cannot have been the intention of Parliament to grant a rebate merely because a room is predominantly used by a disabled person; that is quite inconsistent with the language of the section. It seems to me that the user of the room must be related to the disability. Section 1(2)(a) refers to both user and to the fact that the room must be required to meet the needs of the disabled person because of the disablement. The form of the paragraph is such that the two requirements are very closely related; that, I think, is emphasised by the word “required” – the room must be required to meet the needs of the disabled person by reason of the disability.”*

22. After considering the evidence placed before me, both in the bundle and orally by the parties, I was not satisfied the test for DBR was met in respect of the ground floor room in this case. Y V appears to use the ground floor room as a sitting room for everyday living, where she can relax and rest away from the rest of the family. There is a bed in the room, but it is not her primary bedroom as the appellant confirmed Y V sleeps upstairs. There appears to be no specialist equipment or furniture in the room and the appellant confirmed it was not adapted in any way. I therefore concluded that the room is used as a separate sitting room where Y V can have a degree of privacy, but its use is not directly related to her disability.

23. I then turned to the second point on the application form completed by the appellant, where she had indicated that there was a second bathroom in the property. Regulation 3 paragraph (1)(a)(ii) states –

(ii) *a bathroom or kitchen which is not the only bathroom or kitchen within the dwelling and which is required for meeting the needs of any qualifying individual resident in the dwelling; or*

24. Paragraph 2 of the Regulations states that the extra bathroom must be–

*“...essential or of major importance to his well-being by reason of the nature and extent of his disability”*

25. The appellant had stated that the ground floor bathroom contained a shower rather than a bath and Y V used this room to wash and care for herself without having to climb the stairs when the family were not home. I understood that Y V had a number of medical conditions and some limited mobility. Whilst I noted she was not confined to the ground floor, as the Appellant confirmed she sleeps upstairs, I understood that she was not able to climb the stairs without assistance. With limited mobility, I also appreciated that a shower would make washing easier than a bath.

26. It appeared to me that the BA had overlooked this second part to the application and had been concerned more with asking questions about what alterations or adaptations had been made to the property. There is no requirement in the regulations for adaptations but rather

that the room in question must be related to the disability. On the evidence presented to me at the hearing, I was satisfied that the ground floor bathroom was essential or of major importance to Y V's well-being by reason of the extent of her disabilities. I understood that, without the extra bathroom on the ground floor she may have either been confined to the upper floor or been required to climb the stairs without assistance during the day, which could result in a fall. I was therefore persuaded that the criteria for the DBR was met under paragraph 1(a)(ii) of the regulations and the appeal should be allowed.

27. The appellant had made submissions both in writing and orally at the hearing regarding her contention that she should receive a discount for being a full-time student. That is an entirely separate matter which is not related to the criteria for a DBR. The DBR results in the council tax for the property being calculated using a lower valuation band. A full-time student may qualify for an exemption or discount/disregard if there is only the student resident or if there is only one other resident who is not disregarded for council tax purposes. However, I found that this issue was not the subject of the appellant's grievance to the BA or the decision of 22 December 2021 giving appeal rights to the Tribunal on the subject of DBR. Therefore, it is beyond the scope of this appeal. It remains open to the appellant to discuss or dispute the issue of student discounts with the BA and ultimately bring a new appeal to the Tribunal on that matter if she wishes.

## **Order**

28. Under the provisions of Regulation 38(1) and (9) of the Valuation Tribunal for England (Council Tax and rating Appeals) (Procedure) Regulations 2009, the Tribunal orders the billing authority to grant a Disabled Band Reduction from 19 December 2020.

The billing authority must comply with this order within two weeks of the date of its making.

**Date:** 5 September 2022

**Appeal number:** VT00010280

## **Appeal Rights**

Any party who is aggrieved by the Tribunal's decision has the right of appeal to the High Court on a question of law. Any such appeal should be made within four weeks of the date of this decision notice.