

VALUATION TRIBUNAL FOR ENGLAND



Council Tax Liability Appeal; Local Government Finance Act 1992; Council Tax (Reductions for Disabilities) Regulations (SI 1992 No. 554); qualifying criteria in dispute; additional bathroom; appeal allowed.

RE: Iona, Ashford Road, Kingsnorth, Ashford TN23 3ED

APPEAL NUMBER: VT00012455

BETWEEN:	J C	Appellant
	and	
	Ashford Borough Council (Billing Authority)	Respondent

PANEL: Ms R Sharma (Presiding Senior Member)
Mr C J Williams (Senior Member)

CLERK: Mrs L Horne

REMOTE HEARING ON: Friday 3 March 2023

APPEARANCES: Mrs N Stevens representing Ashford Borough Council

Summary of decision

1. Appeal allowed. The panel held that the appellant was entitled to a reduction under regulation 3(1)(a)(ii) of the Council Tax (Reduction for Disabilities) Regulations 1992.

Introduction

2. The appeal had been accepted by the Tribunal as an appeal made under section 16 of the Local Government Finance Act 1992. The appellant disputed the Billing Authority's decision dated 19 July 2022 that she was not entitled to a Disabled Band Reduction (DBR) in accordance with the Council Tax (Reductions for Disabilities) Regulations 1992 (as amended).

3. The effect of awarding the reduction would be to charge council tax at one band lower than the actual band.
4. The appellant did not attend the hearing, but she had requested that the appeal proceed in her absence.
5. This tribunal decision document is not and does not purport to be a verbatim record of proceedings. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issues in dispute

6. Whether the appellant was entitled to a DBR reduction on the grounds that she had extended her living room and/or had an additional bathroom.

Evidence and submissions

7. The bundle provided by the Billing Authority contained the parties' submissions and supporting documents, and included: photographs of the appeal property; an inspection report following a visit made to the appeal property on 23 January 2023; a letter from the appellant's GP; a copy of the DBR application; and a copy of *Hanson v Middlesborough Borough Council* [2006] EWHC 1700 (Admin).
8. The appellant disputed the Billing Authority's decision to refuse DBR as her lounge had been extended to give her more space and there was an additional bathroom predominantly used by her.
9. With reference to the living room extension, Mrs Stevens submitted that increasing the floor space in a room was not sufficient grounds to qualify for DBR. This was the living room within the property, and it was not required predominantly to meet the appellant's needs.
10. With reference to the additional bathroom, Mrs Stevens explained that the appellant had purchased the appeal property as a bungalow and subsequently extended upwards to provide an additional bathroom and bedrooms on the first floor. The bathroom on the ground floor was the existing bathroom within the property. The property was fully functional without the addition of the upstairs area and it was therefore submitted that the appellant did not qualify for DBR.
11. Reference was made to paragraphs 7 and 15 of *Hanson v Middlesborough Borough Council* in support of the Billing Authority's decision.

Decision and reasons

12. In reaching this decision, the panel had regard to the relevant legislation, namely, regulation 3 of the Council Tax (Reductions for Disabilities) Regulations 1992 (as amended). The relevant parts are reproduced below and any one of them has to be satisfied for an application for a DBR to be successful:

“3 (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.

(b)

(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 it 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 the individual's needs if he does not need to use it within the living accommodation comprising or included in the dwelling concerned.

(4) ...

(5) ...

13. Within these regulations a 'qualifying individual' was identified as:

“qualifying individual” means a person who is substantially and permanently disabled (whether by illness, injury, congenital deformity or otherwise).

14. There was no dispute that the appellant was a qualifying individual and therefore there was no requirement for the panel to consider this point further.

15. The application had been made on the basis of regulation (3)(1)(a)(i) for the extension to the living room and (3)(1)(a)(ii) for the additional bathroom.
16. In arriving at the decision that regulation (3)(1)(a)(i) was not applicable, the panel was guided by a number of precedent cases. Of particular significance was the Court of Appeal judgment in the case of *Howell Williams v Wirral Borough Council* [1981] CA, in which it was held that a living room was not essential or of major importance to the well-being of the respondent ratepayer by reason of the nature and extent of her disability, since she needed the living room in the way that anybody, whether disabled or not, needed a living room as part of ordinary life.
17. In support of the Billing Authority's decision to refuse DBR under regulation 3(1)(a)(ii), reference had been made to *Hanson v Middlesbrough Borough Council*, specifically paragraphs 7 and 15:
7. The Tribunal found that this second requirement was not met. Their reasons were as follows:

“The appellants have provided written evidence from their GP to show that the ‘extra facility’ is of major importance to Mrs Hanson. Her quality of life is improved by the bathroom facilities in the superior en suite bathroom converted from the former bedroom accommodation. The Tribunal acknowledge the opinion of Dr Hargate but accept his judgment is based on his personal knowledge of Mrs Hanson. The Tribunal have to consider the circumstances with regard to the criteria set out in the relevant legislation. In the light of the bathroom facilities which already existed at the property, the extra facility is not considered to be of essential or major importance to Mrs Hanson's well-being. The appellants would be able to occupy the property if this additional bathroom had not been created. From the evidence submitted by the parties, if the property was vacant a potential purchaser would not be able to detect that the bungalow had been adapted or altered in a manner to accommodate the specific needs of a disabled person.”

15. Mr and Mrs Hanson have a further point. The Tribunal stated that the property had an en suite bathroom prior to Mr and Mrs Hanson's alterations. This, say the Hansons, is simply incorrect. There was a shower, but for someone in Mrs Hanson's circumstances this was very different from a bath and bidet. Mr and Mrs Hanson say that the Tribunal misread the plans.

18. It was clear to the panel that in its reference to paragraph 7 of the *Hanson* judgement, the Billing Authority had relied on the original Valuation Tribunal decision which had been overturned. The High Court had in fact allowed the appeal and held that the Tribunal had misdirected itself in law in three respects, as set out in paragraph 19:

“First, they have failed to apply a test of major importance because they equated that with a test of extreme difficulty without, and extreme is a harder test to satisfy than major. Secondly, they failed to apply a test of major importance because, having found that it was not essential, they failed to appreciate that there is the alternative and lesser requirement of major importance. Thirdly, they introduce a further requirement which is unwarranted, namely what a potential purchaser would be able to detect.

19. When Mrs Stevens was asked to comment on the relevance of *Hanson* given that the Tribunal decision was overturned, she stated that she retracted any reference to it.

20. The panel considered that the Billing Authority had misdirected itself by following the Tribunal’s reasons in *Hanson*. It was also apparent that the Billing Authority had focused on the fact that the bathroom used by the appellant was the original bathroom on the ground floor. With reference to regulation (3)(1)(a)(ii) the panel found no requirement for the bathroom to have been added:

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.

21. The bathroom on the ground floor was not the only bathroom within the dwelling. The panel had to determine if it was required for meeting the needs of the appellant. The letter from the appellant’s GP referred to chronic back pain and back problems, disc degeneration and reduced mobility. She was advised if mobility exacerbated her pain, she should avoid stairs unless absolutely necessary. In consideration of the nature and extent of her disability, the panel was satisfied that the bathroom was of major importance to the appellant’s well-being.

22. In view of the foregoing, the panel determined that the appellant was entitled to reduction under regulation 3(1)(a)(ii) of the Council Tax (Reduction for Disabilities) Regulations 1992.

23. In the absence of a requested start date, the panel decided that the reduction should apply with effect from 1 March 2022, the date the appellant submitted her application.

Order

24. Under the provisions of Regulation 38(1) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders Ashford Borough Council to allow a reduction under the Council Tax (Reduction for Disabilities) Regulations 1992 with effect from 1 March 2022.

25. Under Regulation 38(9), the Billing Authority must comply with this order within two weeks of the date of its making.

Date:

Appeal number: VT00012455

Right of appeal

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.