IN THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION
ADMINSITRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

7th December 2006

B e f o r e :

THE HON MR JUSTICE BEAN

Between:

South Gloucestershire Council	**Appellant**
- and -	
Malcolm Titley	**Respondent (CO/10647/2005)**
Colin John Clothier	**Respondent (CO/1291/2005)**

On appeal from the Severnside Valuation Tribunal

(Transcript of the Handed Down Judgment of
WordWave International Ltd
A Merrill Communications Company
190 Fleet Street, London EC4A 2AG
Tel No: 020 7421 4040 Fax No: 020 7831 8838
Official Shorthand Writers to the Court)

Mr Ian Wightwick (instructed by Andrew Griffiths, South Gloucestershire Council) for the Appellant
Mr Daniel Kolinsky for the Respondent Malcolm Titley, instructed by RNID Casework Services
The Respondent Mr Clothier in person

HTML VERSION OF JUDGMENT

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1. These two appeals are brought by South Gloucestershire Council against decisions of Valuation Tribunals allowing reductions in council tax to the Respondent taxpayers. The jurisdiction of this court arises under regulation 51 of the Valuation and Community Charge Tribunals Regulations 1989 (SI 1989/439), as amended in 1993 (by SI 1993/292), providing for an appeal to the High Court on a question of law.

2. The Local Government Finance Act 1992 s 13 permits the Secretary of State to make regulations providing for a reduction in the council tax which a person is liable to pay, by reference to a number of factors. These include in particular, by virtue of section 13(6): -

   " a. a disabled person having his sole or main residence in the dwelling concern;

   b. the circumstances of, or other matters relating to, that person;

   c. the physical characteristics of, or other matters relating to, that dwelling."

3. The relevant regulations made by the Secretary of State are the Council Tax (Reductions for Disabilities) Regulations 1992 (SI1992/554), as amended. Regulation 3, so far as material, provides; -

   "(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 reference 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 comprising or included in the dwelling concerned'.

4. A "qualifying individual" is defined by regulation 1(2) as a person who is substantially and permanently disabled by illness, injury, congenital deformity or otherwise.

5. If the conditions laid down by the Regulations are satisfied the council tax payable on the property is reduced by one band, except in the case of band A where a percentage reduction is applied. There is no further reduction for a second qualifying room.

The facts and the findings of the tribunals

Mr Titley

6. Mr Titley, the respondent in the first case, is profoundly deaf. He lives alone in a house with two bedrooms and a living room. The living room is fitted with a hearing loop box, about the same size as a television digital box, connected to other appliances. The evidence is that the hearing loop relieves Mr Titley from what would otherwise be a life of silence. He can hear the television and radio, and visitors including his grandchildren, provided that he stays in the living room.

7. The tribunal found that:

> "the hearing loop and associated equipment certainly are for his well-being and the room is predominantly used for that purpose as he occupies the house. The room may be a living room, but that does not alter the fact that it is predominantly for his use. Without the adaptations in there, his quality of life could be much impaired."

8. On this basis the tribunal allowed Mr Titley's appeal against the Council's refusal to grant a reduction in his council tax. This made it unnecessary to resolve an alternative argument put forward by Mr Titley, that his use of one of the bedrooms as a study also entitled him to a reduction. The parties are agreed that if the council's appeal concerning the living room is allowed the study issue should be remitted to the tribunal.

Mr Clothier

9. In Mr Clothier's case the household consists of five members: Mr and Mrs Clothier, Michelle, Michael and Abigail. Mr and Mr Clothier are parents of Michelle and Abigail and custodians of Michael. Michelle, who is 33, and Michael, who is 20, both have Downs Syndrome and it is common ground that they are "qualifying individuals" within the meaning of regulation 1(2). Each of them has a bedroom where he or she spends a great majority of time each day alone. There is no physical adaptation to the bedrooms. Mr Clothier described each room as a sanctuary. There is medical evidence supporting his argument that Michelle and Michael need to experience a safe environment where they can respectively enter their own private world, which the respective bedrooms provide.

10. The valuation tribunal found that:

> "the two rooms are predominantly used for meeting the needs of the disabled persons by providing a therapeutic environment as required under [regulation] 3(1)(a)(i). The rooms do provide space for the well-being of the individual and [this does] in the view of the tribunal form a direct causal link between the bedroom and the disability. It is a therapeutic environment for the individuals and a place to which they can return without concern."

The authorities

11. The leading case is Howell-Williams v Wirral BC (1981) 79 LGR 697, CA. The appellant lived alone and was disabled by arthritis. In the living room of her home there was an electric night storage heater in addition to an ordinary fire. The Court of Appeal held that she was not entitled to a disablement rebate.

12. The law then in force was the Rating (Disabled Persons Act) 1978, and the tax payable was domestic rates rather than council tax. However, section 1(2)(a) of the 1978 Act was in essentially the same terms as regulation 3(1)(a)(i) of the 1992 Regulations, and section 1(3) of the 1978 Act likewise corresponded to regulation 3(2) of the 1992 Regulations. Fox LJ, with whom Oliver LJ agreed, said:-

> "The applicant seeks to bring her case within section 1(2)(a). That paragraph imposes two requirements: first, that the room must be predominantly used (whether for therapy or for other purposes) by a disabled person; and secondly that it is required for meeting the needs of that person. The meaning of the latter requirement is expanded by section 1(3), which provides that references to anything being required for meeting the needs of a disabled person are references to its being "essential or of major importance to his well-being by reason of the nature and extent of his disability". Section 1(2)(a) must therefore be rewritten as referring to a room which is predominantly used (whether for therapy or for other purposes) by, and is essential or of major importance to, the well-being of a disabled person by reason of the nature and extent of his disability. The living room is predominantly used by the applicant, who is the sole occupant of the flat. But one has to ask: is the living room essential, or of major importance, to her well-being by reason of the nature and extent of her disability? The question has to be posed in relation to the room itself, because it is evident from section 1(2)(a) that it is the room which must be required for meeting the needs of the disabled person.
>
> It is clear, in my view, that the living room, as such, is 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.
>
> That, however, is not the end of the matter. The living room is equipped with a night storage heater because the applicant needs extra heat on account of her disability. I should add that the heater is simply an additional heater; it is not an item which affects the rateable value. Her rates are just the same as they would be if she did not have the storage heater. The judge decided that because the additional heating was necessary by reason of the applicant's disability, it could be said that the room was of essential or of major importance to her well-being by reason of the nature and extent of her disability. I do not feel able to accept that. What is necessary by reason of the nature and extent of the applicant's disability is the heating, not the room. Of course, she needs a room in which to put the heater, but I think that the real question is: Why is she using the room? 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 sections. 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.

> It seems to me that the applicant uses the living room simply because, like anybody else, she needs a living room, and not because of her disability. She uses it as an ordinary living room; she requires it as a room to live in, and not as a room to put the heater in. She needs the heater to give her extra warmth because of her disability; she might equally need extra blankets on her bed, but that would not have the consequence that her bedroom because a room within section 1(2)(a). If a disabled person requires an *additional* room in the flat to house a particular piece of equipment which is necessary by reason of the disablement – for example, a kidney machine – the case might fall within paragraph (a) because, assuming the room to be predominantly used in the way provided by paragraph (a), the room would be used because of the disability; but the applicant does not use her living room because of her disability. In my view, therefore, section 1(2)(a) does not apply to this case". [emphasis added]

13. Mr Kolinsky, on behalf of Mr Titley, points out that under the 1978 Act another class of property that qualified for a reduction was a "hereditament which is equipped with a heating installation for providing heating in two or more rooms, being heating required for the needs of a disabled person who resides in the hereditament". He observes that Fox LJ referred to this section as a further reason for his conclusion (saying that Parliament had made express provision for heating equipment but only if the equipment served two or more rooms, which was not the case before the court), and that the judgment may be treated as obiter in so far as it refers to the need for an additional room. It is indeed correct that Fox LJ referred to this now repealed heating provision, but the reference forms such a subsidiary part of his judgment that it does not in my view detract from the authority of the passage I have quoted in paragraph 12.

14. I was referred to two other authorities in the Administrative Court. In Luton BC v Ball [2001] EWHC Admin 328 the respondent, who was disabled by arthritis and other serious illnesses, had had various adaptations made to her home including the replacement of a bathroom and separate WC by a shower room. Turner J held (at paras 10 and 14):

> "It is necessary first to consider the context of the statutory material which is in play: that is to say, the purpose of the statutory instrument in question is to provide for discounts from council tax in what I would simply describe as "appropriate cases". The context is what used to be known as rating, now council tax. Some of the essential elements in a valuation for rating purposes of a hereditament will have consisted of the numbers of rooms and the areas of rooms, leading in the end to a valuation of that hereditament for rating purposes. Such indeed was precisely the statutory context in the case of Howell-Williams v Wirral BC. The first holding there was to the following effect: the 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 ability, since she needed the living room in the way that anybody, whether disabled or not, needed a living room as part of an ordinary life…..
>
> It is, in my judgment, as I have already indicated, necessary to contemplate what is the statutory purpose of these particular regulations. The answer, in my judgment, plainly is to relieve an eligible person of what would otherwise be an increase in their council tax liability when they needed a room in their dwelling "which is required for meeting the needs" of a qualifying individual resident in the dwelling. In the present case there is no *additional* room required to meet the needs of the respondent." [emphasis added]

15. After holding that there is no difference between a shower room and a bathroom for the purposes of the regulations, Turner J allowed the council's appeal.

16. In R (Sandwell MBC) v Perks [2003] EWHC 1749 Admin Mrs Perks was disabled and occupied a room in her son's house. A valuation tribunal decision allowing a disablement reduction in the council tax otherwise payable was set aside by consent. Silber J said:-

> "It is important that any tribunal that has to consider whether or not a person is entitled to exemption under regulation 3 should consider if there has been the appropriate causative link between the disability and the requirement for the use of the room, because the use of the room has to be essential or of major importance because of the nature and the extent of the disability…. It is important to stress that the **Howell -Williams** case is authority for the need for the causal link to which I have referred".

17. Although this judgment seems to have attracted a good deal of attention in the local authority trade press, it was a judgment on an unopposed application, and however distinguished the judge the authority of the case is inevitably diminished by that fact. Nevertheless, I agree with what Silber J said.

18. Mr Kolinsky also cited three valuation tribunal decisions upholding claims to disablement band reduction by blind taxpayers who used a bedroom or box room to house special equipment. In the West Sussex Valuation Tribunal case decided on 8 February 2005 (appeal number 3835M20234/148C/1), for example, the taxpayer had a voice-aided computer, scanner, CD player and other equipment in a 2m x 2m box room. He needed these to be in a separate room not used by other members of the family, both because it was essential that he should have peace and quiet for the purpose and so that other family members did not move the equipment around. Had he not been disabled this would not have been necessary. Mr Wightwick, for the Council, did not challenge the correctness of this decision.

19. Mr Wightwick also referred me to two paragraphs in the Council Tax Practice Note number 2: Liability, Discounts and Exemptions, prepared by the Department of the Environment (as they then were), other government departments and all the local authority associations:-

> "40. The liable person may apply for a reduction in the bill under SI 1992/554. A reduction is applicable if one of the following is a feature of the dwelling, and is required as essential or of major importance to the well-being of a disabled person (child or adult) resident in the dwelling because of the nature and extent of his disability:
>
> (a) a room other than a bathroom, kitchen or lavatory which is used predominantly by the disabled person;
>
> (b) an additional bathroom or kitchen; or
>
> (c) sufficient floor space inside the property to allow for wheelchair circulation.
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> In deciding whether this condition applies, authorities should consider whether, if the room or extra feature were not available:
>
> (i) the disabled person would find it physically impossible or extremely difficult to live in the dwelling;

(ii) his health would suffer or the disability would be likely to become more severe.

41. Regulation 3(2) of SI 1992/554 states that for these purposes 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.'

This implies that the room or space concerned must be required by the disabled resident as a result of his disability, and that it would not be required if he were not disabled. In this sense the room or space must be 'extra'. However, a reduction may be granted in respect of an extension or any existing room; there is no requirement that the accommodation has been specially adapted or constructed."

20. I can find no basis in the regulations for a requirement that without the room or extra feature the disabled person must find it physically impossible or extremely difficult to live in the dwelling, or that his health would suffer or the disability would be likely to become more severe; though such factors would point inexorably to the requirements of the Regulation being satisfied. But, as will be seen below, I consider that paragraph 41 of the Practice Note is correct in saying that the room must be extra (or, as Fox LJ and Turner J put it, additional), in the sense that it would not be required for the relevant purpose if the qualifying individual were not disabled.

The construction of regulation 3

21. It is clear, even without recourse to the judgment of Fox LJ in the Howell-Williams case, that on a grammatical construction of regulation 3(1)(a)(i) there must be a room which is:

(1) not a bathroom, kitchen or lavatory;

(2) predominantly used by a qualifying individual, whether for providing therapy or otherwise; and

(3) essential or of major importance to his well-being by reason of the nature and extent of his disabilities.

22. In both of the cases before me requirements (1) and (2) are obviously fulfilled. The issue concerns requirement (3). This must add something to (1) and (2), otherwise regulation 3(1)(a)(i) would not contain the words "and is required for meeting the needs of". Indeed, if the intention of Parliament or the Secretary of State had been to allow a reduction in council tax of one band to any household including someone who is substantially and permanently disabled, it would have been simple enough to say so.

23. I consider that some assistance in the interpretation of regulation 3(1)(a)(i) is provided by 3(1)(a)(ii). A sole kitchen or bathroom is essential or of major importance to a disabled person, but it is essential or of major importance to almost any household. However, even if a sole bathroom or kitchen has been adapted for a disabled person, it does not qualify the property for a disabled band reduction because of the exclusionary words in regulation 3(1)(a)(ii). By contrast, a second bathroom or second kitchen can do so, whether or not predominantly used by the disabled person. This is, I suspect, because while in the majority of houses (as opposed to flats or bungalows) there is no bathroom on the ground floor, such a facility may have to be added if the household contains a qualifying individual who cannot manage the stairs. Conversely, if the disabled person

lives on an upper floor a kitchen may have to be added there. There are no doubt some instances of large properties that had bathrooms on every floor even before the household contained a disabled person and whose owners obtain a windfall reduction under the Regulations. But the intention of the legislator appears to be that a room which will qualify is in most cases one which would not otherwise be required for the relevant purpose (say a ground floor room converted to a bathroom, or a bathroom added as an extension to the ground floor). Similarly under regulation 3(1)(a)(iii) the additional space necessary for the use of a wheelchair within the property (for example where doorways have to be widened) allows the property to qualify for a reduction. Reducing council tax by one band compensates the taxpayer, not precisely but by the application of a broad brush, for the fact that some additional space is required for the use of the disabled person.

24. Turning to the facts of the present cases, Mr Titley's case seems to me indistinguishable from that of Mrs Howell-Williams. Mr Titley uses the living room because it is a living room. He would do so anyway even if his hearing were unimpaired. It is the loop system, not the room in which it is placed, which is essential to his well-being by reason of the nature and extent of his disability. The room is in no sense additional. In his case, therefore, the council's appeal is allowed, the decision of the valuation tribunal quashed, and the case remitted to the tribunal to consider Mr Titley's alternative application based on his use of the second bedroom as a study.

25. Mr Clothier's case is more difficult, and in my judgment closer to the borderline. But in the end I conclude that the result is the same. Michelle is 33 and Michael is 20. If they had no disability but were still living in the same house as Mr and Mrs Clothier, they would each have their own bedroom anyway. The difference would be that they would spend less time in it, but neither bedroom is in any sense "additional". Accordingly in Mr Clothier's case also the council's appeal is allowed and the decision of the valuation tribunal quashed.

Costs

26. Mr Titley has been supported on this appeal by the Royal National Institution for the Deaf, and it was sensibly agreed between the council and the RNID that whichever side was successful would seek no order as to costs. But Mr Clothier, who has acted in person throughout, was originally warned in a letter from the council's solicitor that if the council's appeal were to succeed he could be liable for a large sum in costs. I am glad to say that after the intervention of a councillor this threat was withdrawn and the Council agreed not to seek costs. But it is a matter for concern that an individual who is successful, in a tribunal where no costs are awarded, in a case which brought him a gain of £142.31 per year should be exposed (subject to judicial discretion) to a potential costs liability running into thousands of pounds if that decision is reversed on appeal. This is a topic which the Council on Tribunals may wish to consider. In the present cases, by consent, I make no order as to costs.