

HOWELL WILLIAMS v WIRRAL BOROUGH COUNCIL

COURT OF APPEAL

[1981] RA 189

HEARING-DATES: 18 May 1981

18 May 1981

CATCHWORDS:

Rebates -- Disabled persons -- Flat -- Living room -- Night storage heater -- Required for the disability -- Ratepayer seeking rebate on room -- Room not required by reason of the disability -- No rebate -- Rating (Disabled Persons) Act 1978, s. 1.

HEADNOTE:

The respondent ratepayer occupied a flat consisting of two bedrooms, one living room, a bathroom, a kitchen and a hall. The respondent ratepayer lived there alone and it was not disputed that she was a disabled person for the purposes of the Rating (Disabled Persons) Act 1978 by reason of the degree of arthritis from which she suffered. The living room contained, in addition to an electric fire, a night storage heater to provide additional heating because of the respondent ratepayer's disability. The night storage heater made no contribution to the rateable value of the flat (rendering valueless any application for a rebate under s 1 (2) (b) which provided for a rebate by reference to the rateable value attributable to any facility) and only provided heating in one room (preventing an application for a rebate under s 1 (2) (c) which provided for a rebate where a heating installation provided heating in two or more rooms). The ratepayer applied for a rebate under s 1 (2) (a) which applied to "a hereditament in which a room other than a bathroom or lavatory is predominantly used (whether for providing therapy or for other purposes) by and is required for meeting the needs of a disabled person who resides in the hereditament". The application was refused by the rating authority but the ratepayer's appeal against that decision was allowed by the county court. The rating authority appealed to the Court of Appeal contending that the room was not required for meeting the needs of a disabled person, and they referred to s 1 (3) which provided that references to anything being required for meeting the needs of a disabled person were references to "its being essential or of major importance to his well being by reason of the nature and extent of his disability".

HELD: The appeal must be allowed because the respondent ratepayer was not entitled to a rebate under s 1 (2) (a) of the 1978 Act for the following reasons:

(1) 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 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;

(2) it was the heating, not the room, which was necessary by reason of the nature and extent of the respondent ratepayer's disability

INTRODUCTION:

APPEAL by the rating authority to the Court of Appeal against a decision of the Birkenhead County Court (His Honour Judge Paterson) allowing the ratepayer's appeal against the rating authority's refusal of the ratepayer's application under s 1 of the Rating (Disabled Persons) Act 1978 for a rebate in respect of flat 3, Village Court, Village Road, West Kirby, Merseyside.

COUNSEL:

Mark Hedley for the rating authority.

John Martin for the ratepayer.

PANEL: Oliver and Fox LJ

JUDGMENTBY-1: FOX LJ

JUDGMENT-1:

FOX LJ: This is an appeal from a decision of His Honour Judge Paterson, sitting in the Birkenhead County Court; he allowed an appeal by Mrs Howell **Williams** the respondent, from a decision of the **Wirral** Borough Council as the rating authority, refusing her application for a rate rebate under the Rating (Disabled Persons) Act 1978. Section 1 (1) of that Act provides as follows:

"(1) Subject to the provisions of this Act, the rating authority for any area in England and Wales shall grant a rebate in respect of the rates chargeable on any hereditament which is situated in the area and to which this section applies".

Subsection (2), so far as material, is as follows:

"This section applies to -- (a) a hereditament in which a room other than a bathroom or lavatory is predominantly used (whether for providing therapy or for other purposes) by and is required for meeting the needs of a disabled person who resides in the hereditament".

There then follows, in para (b) to (f), a description of other hereditaments to which the section applies; I need only mention (c) and (d), which are in these terms:

"(c) a hereditament which is equipped with a heating installation for providing heating in two or more rooms, being heating required for meeting the needs of a disabled person who resides in the hereditament; (d) a hereditament in which there is any other facility which is required for meeting the needs of a disabled person who resides in the hereditament".

By s 1 (5) it is provided that the rebate in respect of any hereditament should be of an amount determined by sch 1 to the Act. Those amounts are in some cases flat rate rebates, and in some cases are computed by reference to such part of the rateable value as is attributable to the circumstance in question; for example, in cases within s 1 (2) (a), the rebate is equal to the rates that would have been chargeable on the hereditament for the rebate period if the rateable value were £30, and in cases within s 1 (2) (c) and (d), the rebate is to be equal to the rates that would be chargeable on the hereditament for the rebate period if its rateable value were so much only of the rateable value as is attributable to the heating installation, or the facility, as the case may be.

The respondent ratepayer occupies a flat consisting of two bedrooms, one living room, a bathroom, a kitchen and a hall. The flat is the hereditament for the purposes of the Act. The respondent ratepayer lives there by herself; it is not disputed that she is a disabled person for the purposes of the Act, by reason of the degree of arthritis from which she suffers.

The case relates to the living room, which contains, in addition to an electric fire, a night storage heater to provide additional heating because of the respondent ratepayer's disability; the room itself contains no heater which is in any way unusual.

It will be observed that the statute provides, by s 1 (2) (c), for a rebate where the hereditament is equipped with a heating installation for providing heating for meeting the special needs of a disabled person. That relief, however, is, by the express terms of the statute, limited to cases where the heating installation provides heating in two or more rooms. The heating equipment in the present case does not satisfy that requirement; it heats the living room only. The respondent ratepayer seeks to bring her case within para (a) of s 1 (2). 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 s 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 respondent ratepayer 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 para (a) that it is the room which must be required for meeting the needs of the disabled person.

It is clear, my view, that the living room, as such, is not essential or of major importance to the well being of the respondent ratepayer 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 respondent ratepayer 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 respondent ratepayer'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 respondent ratepayer'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 section. It seems to me that the user of the room must be related to the disability. Paragraph (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 respondent ratepayer 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 became a room within para (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 para (a) because, assuming the room to be predominantly used in the way provided by subpara (a), the room would be used because of the disability; but the respondent ratepayer does not use her living room because of her disability. In my view, therefore, s 1 (2) (a) does not apply to this case. That conclusion is, I think, consistent with the fact that the basis of the respondent ratepayer's case is her need for the heater, and Parliament has made express provision for heating equipment, but only if the equipment serves two or more rooms, which is not the present case. Whether the case falls within para (d), I need not consider; the respondent ratepayer does not rely upon that paragraph, which only gives a rebate by reference in effect to the increase in rateable value attributable to the facility, and there is none in this case.

We were referred to the decision of the House of Lords in the case of *Vandyk v Oliver (VO)*. That case is of interest as part of the historical background to the 1978 Act, but it was concerned with a statute in quite different terms and does not, I think, give guidance on the present point. I sympathise with the respondent ratepayer in her disability, but it does not, in my view, entitle her to the relief from rating which she is seeking. I would allow the appeal.

JUDGMENTBY-2: OLIVER LJ

JUDGMENT-2:

OLIVER LJ: I agree, for the reasons given by my Lord, Lord Justice Fox, that the appeal should be allowed; I do not feel that I can usefully add any observations of my own.

DISPOSITION:

Appeal allowed.

No order as to costs.

SOLICITORS:

Sharpe Pritchard & Co, agents for Solicitor to **Wirral** Borough Council (for the appellant rating authority); Bell & Joynton (for the respondent ratepayer).