



TC02817

Appeal number: TC/2010/07787

VAT- Exempt Supplies – Cultural services - preliminary issue as to whether certain sites of the Wildfowl and Wetland Trust comprising captive collections of animals and nature reserves were “zoos” within the meaning of Item 2 of Group 13 of Schedule 9 VATA 1994 – each site was a “zoo” – preliminary issue determined in appellant’s favour

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

WILDFOWL AND WETLAND TRUST

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S
REVENUE & CUSTOMS**

Respondents

**TRIBUNAL: JUDGE SWAMI RAGHAVAN
SHAHWAR SADEQUE**

**Sitting in public at 45 Bedford Square, London on 30 October and 1 November
2012**

David Milne QC for the Appellant

**Christiaan Zwart, instructed by the General Counsel and Solicitor to HM
Revenue and Customs, for the Respondents**

DECISION on PRELIMINARY ISSUE

Introduction

1. The appellant, the Wildfowl and Wetland Trust (WWT) is a well-known
5 organisation which was established in 1946 to bring people and wildlife together and
to engage and inspire them to take an interest in the natural world. It operates 9 sites
open to the public at various locations around the United Kingdom. The preliminary
issue for decision is whether each of 7 particular sites of the appellant are “zoos”
within the meaning of VAT legislation which provides exemption from supplies for
10 certain cultural services.

2. The underlying appeal concerns consolidated appeals for claims for output tax
on admission fees during the periods 1 January 1991 to 30 September 1996 and 1
April 2006 and 31 December 2008 (the net claim for these periods is £329,714 and
£993,777 respectively together with interest) and an appeal against an assessment for
15 the period 1 January 2009 and 30 September 2010 in relation to admission fees in the
amount of £468,633.

3. On 4 May 2012 the Tribunal directed a preliminary issue hearing on “whether
the seven sites of the Appellant at Arundel, Castle Espie, London, Llanelli, Martin
Mere, Slimbridge and Washington are “zoos” within the meaning of Item 2 of Group
20 13 of Schedule 9 to the Value Added Tax Act 1994” (“VATA 1994”).

4. The appellant argues that the normal meaning of “zoo” both generally and in the
context of Group 13 of Schedule 9 VATA 1994 is “a place where wild animals are
kept for breeding, study or exhibition to the public” which is the definition set out in
the Shorter Oxford English Dictionary (SOED) and which reflects the way “zoo” is
25 defined in European and domestic legislation on regulation of zoos. Each of the sites
enable visitors to observe collections of captive birds and other animals. While each
of the seven sites are situated in places which enable visitors who are so inclined to
watch free wild birds at a distance they say only a small minority of visitors do this.

5. HMRC disagree the sites are “zoos”. Within the seven sites not all animals are
30 contained but there are those that are free to come and go as they please. Those
contained are ancillary to the principal purpose of each site namely as a wildfowl
centre. They say the centres are animal *and* habitat-centric not just animal centric.

Evidence

6. On behalf of the appellant we had a witness statement and oral evidence from
35 Kevin Peberdy which was cross-examined. Mr Peberdy is Director of Centre
Developments and has held this position since 1 January 2006. He has been employed
by the appellant since 1 September 1989, and has been a member of WWT since the
age of 6. He is a qualified ecologist and has first hand knowledge of all of WWT’s
sites visiting them each at least 3 times a year. We found Mr Peberdy to be a highly
40 credible and impressive witness. He came across as extremely knowledgeable and
passionate about the work of WWT. But, his passion in no way detracted from the

straightforward way he responded to cross-examination and to the Tribunal's questions. He was considered in his approach and was concerned to make sure he gave accurate answers.

5 7. We also had a witness statement from Martin Spray, who was Chief Executive of the appellant since 1 March 2004 but did not hear oral evidence from him.

10 8. On behalf of the Respondents we had a witness statement and heard oral evidence which was subject to cross examination from Andrea Wedley, an officer of HMRC employed at the Stroud VAT Office. As part of her duties, which included the audit of records and VAT returns of VAT registered businesses, Ms Wedley had visited the appellant's site at Slimbridge on a number of occasions.

15 9. Further to an application from the appellant, the Tribunal also undertook a site visit. Although the appellant had requested a visit to the site at Slimbridge for reasons principally of cost and convenience the Tribunal directed that its site visit would be to the London site at Barnes. This took place on 31 October 2013. The Tribunal also directed that in lieu of a site visit the appellant could provide evidence in the form of photos and maps for the other sites.

10. The materials before the Tribunal included the following:

- (1) Copies of scale maps of each of the sites.
- (2) Copies of visitor maps of each of the sites.
- 20 (3) Copies of visitor leaflets for each of the sites.
- (4) Excerpts from the appellant's website in relation to some of the sites.
- (5) Photos taken by employees of the appellant at various points around the relevant sites.
- (6) Summary Report dated October 2012 on a Visitor Behaviour Study
25 prepared by Kate Measures Consulting from data collected on 24 October 2012.
- (7) Copy of a "Walkabout Guide" available for purchase at the London Barnes site setting out details of suggested walks.
- (8) Correspondence between the parties.

30 **Law**

11. From 17th May 1977, Council Directive 77/338/EEC ("the Sixth Directive") provided, under Title X, Exemptions:

35 " Article 13A: Exemptions for certain activities in the public interest which Member States shall exempt under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any possible evasion, avoidance or abuse, including:

(n) the supply of certain cultural services, and the supply of goods closely linked thereto, by bodies governed by public law or by other cultural bodies recognised by the Member State concerned; ...”

5 12. The UK’s implementation of this provision appears in Group 13 of Schedule 9 of VATA 1994 which was enacted with effect from 1 June 1996. This exempts, insofar as is relevant:

“Item 2: The supply by an eligible body of a right of admission to –

(a) a museum, gallery, art exhibition or zoo; or

10 (b) a theatrical, musical or choreographic performance of a cultural nature.”

13. The Zoo Licensing Act 1981 (“ZLA 1981”), and the regulations made under it, lay down substantial conditions for the licensing and regulation of “zoos” as defined.

14. Section 1(2) of ZLA 1981 provides:

15 “In this Act “zoo” means an establishment where wild animals (as defined in Section 21) are kept for exhibition to the public otherwise for the purposes of a circus and otherwise than in a pet shop; and this Act applies to any zoo to which members of the public have access, with or without charge for admission, on more than seven days in any
20 period of 12 consecutive months.”

15. Section 21 of the Zoo Licensing Act 1981 defines “wild animals” as “animals not normally domesticated in Great Britain”.

16. Council Directive 1999/22/EC relating to the keeping of wild animals in zoos requires Member States to impose certain requirements relating to regulation of zoos. It defines “zoos” as follows:
25

“Article 2

Definition

30 For the purpose of this Directive, “zoos” means all permanent establishments where animals of wild species are kept for exhibition to the public for 7 or more days a year, with the exception of circuses, pet shops and establishments which Member States exempt from the requirements of this Directive on the grounds that they do not exhibit a significant number of animals or species to the public and that the exemption will not jeopardise the objectives of this Directive.”

35 *Dictionary definition*

17. The SOED definition of “zoo” is:

“A place where wild animals are kept for breeding, study or exhibition to the public.”

Background facts

18. In 1946, Sir Peter Scott founded WWT to bring people and wildlife together and to engage and inspire them to enjoy and take an interest in the natural world. He established 4 core aims- conservation, research, education and recreation. Today, it
5 manages 9 wetland visitor centres with important nature reserves, 7 of which carry one or more national and international designation. WWT has a longstanding and respected history of studies and research into wild birds, particularly in the fields of migration and population studies.

19. On 9th February 1989, the WWT adopted Rules including, at [2] Objects, for
10 the promotion and conservation and study of wildfowl and the wetlands forming their habitat. On 16th December 1993, the WWT was incorporated. Its Memorandum of Association states the object of the Trust is to:

15 “promote the conservation and study of wildfowl and the wetlands forming their habitat and to undertake any activity which in the opinion of the Council is calculated to promote knowledge of and interest in wildfowl in all parts of the world, and to maintain an establishment at Slimbridge, and such other branch establishments as the Council may think fit, which will provide facilities for the conservation of wildfowl and wetlands; the scientific study of wildfowl and their wetland
20 habitat; the dissemination of knowledge and understanding of wildfowl, wetlands and conservation; and to the provision of educative recreational opportunities...”

20. On 1st January 1994, WWT applied for VAT registration. It was subsequently registered for VAT from that date.

25 21. Sir Peter Scott’s interest was especially in ducks, geese and swans but in recent times the captive collections have been diversified so they are not exclusively birds but also include several species of wetland mammals and amphibians from a number of countries. The species presented at each centre vary.

30 22. WWT operates 9 centres across the UK. Two of these centres (Caerlaverock in Scotland, and Welney in Norfolk) do not have captive collections of birds. The appeals do not concern these centres but the remaining 7.

35 23. The centres include areas visible to visitors (at least seasonally), visitors paths, and buildings or structures with visitor access. These include visitor centres, refreshment kiosks and gift shops. The organisation within these areas is shown by a visitor map.

24. WWT charges for admission. It advertises through the usual channels which today include a presence on-line and on social media. It has a website which carries details in relation to each centre.

40 25. From 1991 to date, or later where, as in the case of the London site, the site was created after that date, each of the centres have become licensed under section 6 of ZLA 1981.

26. WWT are required to keep certain records according to classifications set out under ZLA 1981. We accept these records as reliable and that schedules prepared by the appellant derived from these records relating to each centre have been compiled accurately.
- 5 27. WWT exhibits in the order of 6400 animals of the Class Aves (birds) consisting of 189 different species. 50 of these birds could be classified as animals that could be domesticated in the United Kingdom. It holds 134 animals of Class Mammalia (of 5 species) and at least 248 animals of the Class Amphibia (of 47 different species).
- 10 28. Of the captive animals 5,578 (163 species) of birds, 15 (3 species) of mammals and 226 (43 species) of amphibian are not native to the UK. These include for example Short-clawed otters (native to Asia), North American Otters, Poison Arrow frogs, Caribbean flamingos, Greater and Lesser Flamingos (native to Africa) and Chilean Flamingos.
- 15 29. These figures are for 2011. The precise numbers of course change but from Mr Peberdy's evidence we find that the composition and numbers of animals held did not change materially over the period in issue. There were in the relevant period additions of particular types of animal. At Slimbridge, the mammal exhibits including otters and beavers were new, and in Washington there had been an addition of captive cranes
- 20 30. The mammals are held in enclosed areas surrounded by fencing or large tanks and are typically fronted by glass or other viewing structures. Amphibians are held in glass tanks with areas where handling of the more exotic species is allowed under supervision of the amphibian keeper. Some birds are held in aviaries (i.e. areas enclosed around the sides and enclosed to the sky) with access to visitors through a double gate portal or in enclosed "tropical house" conditions.
- 25 31. The majority of the captive birds are held in enclosures of various sizes and are typically held in mixed assemblages often themed around a geographic or habitat organiser e.g. birds of South America, or Australia or species typical of "reed swamp" or "tropical woodlands". Some, which are rare, or which are not compatible with mixing with others, are held in single exhibit enclosures.
- 30 32. The impression of a visitor (which was confirmed by our site visit in relation to Barnes and on viewing photographs of enclosures at the other sites) is that the captive birds are kept in naturalistic settings which seek to replicate so far as possible those which are typical of their geographic area or habitat.
- 35 33. Where birds are not kept in aviaries, captivity is achieved through the combination of fencing around the enclosure and pinioning or feather cutting.
- 40 34. The food provided to the captive birds attracts other birds such as pigeons, gulls and "feral" ducks. The appellant seeks to control and deter these birds to prevent them breeding within the appellant's centres and provides alternative sites away from the captive collection. At any one time some of the non-aviary exhibits will contain a number of free-flying feral birds.

35. Some sites e.g. Slimbridge, Washington and London also keep domestic species of birds such as domestic ducks. The numbers of these are small by comparison to the numbers of captive wild birds and other animals kept at the corresponding site.

5 36. An electric fox-proof fence protects the boundary of the area containing the captive collections. Apart from at the Arundel site where this fence runs around the boundary of the whole of the site the fence encloses a smaller subset of the area within the site.

Complying with the regulatory requirements of the Zoo Licensing Act 1981

10 37. Each of the 7 centres in issue in this appeal is licensed to operate a zoo (under the ZLA 1981 in England and Wales and under the Zoo Licensing Regulations (Northern Ireland) 2003 in relation to Castle Espie) and was licensed for the duration of the period at issue for the relevant site.

15 38. Administration of the ZLA rests with local authorities. The Secretary of State also maintains a list of zoo inspectors and sets detailed standards for zoo management with which all facilities licensed under the Act are expected to comply. Five of the seven sites are visited every six years by a team of inspectors comprising up to three individuals from the council and up to two nominated by the Secretary of State after consultation with the local authority from its list of inspectors who are chosen due to their knowledge in the field. There are also interim inspections involving a similar team of inspectors three years after a license is renewed and once a year by local council inspectors to ensure zoo license conditions are being met. The WWT sites at Barnes and Washington have a dispensation which allows for inspection by a smaller team of inspectors (as explained at [40] below). The first license granted runs for four years. Renewal licences or fresh licences after that run for six years.

25 39. Section 14 of the ZLA deals with dispensations for particular zoos in England. Under Section 14(1), the Secretary of State may direct that the Act shall not apply to a zoo, or that the sections 10 and 11 (which deal with periodical and special inspections respectively) shall not apply. The direction is subject, amongst other matters, to the relevant local authority being of the opinion that such a direction should be made because of the small number of animals kept in the zoo or the small number of the kinds of animal kept there. No such direction has been made in relation to the seven WWT centres.

35 40. Under s14(2) of the ZLA the Secretary of State has power to direct the inspection be conducted by such inspector or inspectors the Secretary of State appoints. This direction is envisaged to be made where the inspection regime (up to 3 council nominated inspectors, and 2 nominated by the Secretary of State) is too large for the zoo having regard to the small size of the zoo or the small number of the kinds of animals kept there. A schedule based on information supplied to the Department for Food and Rural Affairs (Defra) by local authorities in relation to Defra zoos operating in England and dated October 2009 shows that the Barnes and Washington centres have a Schedule 14(2) dispensation.

41. In order to meet the requirements of the ZLA the appellant employs specialist bird, mammalian and amphibian keepers to undertake day to day care of the captive animal collection. The staff are supported by qualified veterinary staff based at the appellant's headquarters in Slimbridge backed up by a network of local veterinary support. The appellant also employs a Captive Animal Manager with responsibility for coordination of best practice husbandry and collection/breeding planning across all Centres and a Zoo Registrar to maintain and coordinate record keeping of all captive animal stock.

42. The appellant is an active member of BIAZA (the British and Irish Association of Zoos and Aquariums), a conservation, education and wildlife charity founded in 1966 to see sound principles and practices of captive animal management widely adopted in the British Isles and Ireland. Only zoos and aquariums meeting the zoo licensing definitions can become members of BIAZA. The current chairman of BIAZA is also a trustee of the appellant. The centre participates in the BIAZA scheme to exchange animals between other licensed facilities for the purpose of conservation and breeding.

Wildlife reserves

43. Each of the 7 centres each have wildlife reserves which allow visitors to explore natural wetland habitats. Birds and other wildlife may be observed, in particular from various specially designed shelters known as hides. Access to some of these nature reserve parts is seasonally controlled. On some sites the reserve may be explored for example on a Land rover safari or on others using boats.

Geographical description of sites

44. We were able to examine scale maps of the sites. From evidence given by Mr Peberdy it was highlighted to us which parts of the various sites comprised captive collections and which comprised the nature reserve element.

45. As a general observation the areas comprising the nature reserve element exceed the size of the areas comprising the captive collections at each of the sites.

46. All of the sites contain bodies of water. They all have an access point to the site from the car park to a visitor centre area with paths which go through the captive collections and also around the perimeter of the water edges to hides.

What we noted from the site at Barnes, London

47. On the approach to the visitor centre from the car park there were a series of banners and signs stating "wetlands are....[various things]". In the visitor centre area there was a cafeteria, gift shop, a theatre for school visits and a "Discovery centre" (a building with artificial mock ups of wetland habitats around the world including for instance coral reefs). There was also an observation area overlooking a lake with a large glass window, telescopes, and a whiteboard upon which numbers of migrating birds could be written. The numbers were in the low hundreds.

48. There was a network of paths with a route which wound its way through a number of collections. The environment varied according to the habitat. Each of the captive collections had an interpretation board describing the distribution of animals and their habitat. There was a demonstration in progress watched by a group of adults and children of the otters in the otter enclosure being fed. The keeper gave a live commentary using a mike set on the otters' behaviour.

49. The nature reserve element of the site was termed the "wildside" and was beyond a gate. The interpretation signs were different from the captive collection area. The pathway led to bird hides which looked out onto the reservoir. Although there was a short cut from the visitor centre to this area, the sign posted way markings indicated a more circuitous route through the various captive collections.

50. Our perception was that the nature reserve area was geographically far larger than the rest of the site containing the captive collections and other facilities. On the day we visited there were significantly more visitors in the captive collection area than in the nature reserve area.

51. The London site differs from other sites in that the domestic exhibits / pond-dipping are outside the bounded area whereas elsewhere these exhibits are mixed in with the captive collections. Every site has a pond-dipping activity (taking a sample of pond water to examine it for pond-life). The London site also differs from other sites in that it does not allow visitors to participate in bird feeding in the captive collection area. Visitors are only able to watch the birds being fed.

The "Walkabout guide"

52. A "Walkabout" guide can be bought in the gift shop for £2.50. This includes suggested walks, a bird identification chart, a section on how the reserve was created, seasonal wildlife to look out for and a checklist of wild birds. This describes different walks that can be taken and a list of birds to spot. Some of the walks include walking around the captive exhibits. From Mr Peberdy's evidence we accept there is a low likelihood of seeing all of the listed birds on any one day. The frequency at which birds may be spotted as indicated in the guide is gauged over a long period. We also accepted Mr Peberdy's evidence that a low percentage of visitors buy this guide (or its equivalent in relation to the other sites) at London and at the other sites.

Visitor maps

53. At each site visitors may obtain site maps. These are not to scale. On the key to the map, amongst the usual facilities noted such as toilets, gift shop, restaurant, there is also a symbol showing a pair of binoculars denoting "Wildlife viewpoint". These appear next to hides where wild non-captive birds can be observed. The key for Llanelli is in a different format, the hides are listed out separately and so are the captive collections containing descriptions such as "European pen". The captive collections are marked by descriptions of varying specificity e.g. "Birds of the frozen North". In the case of Castle Espie there is simply a "Waterfowl collection (the plumbs)". In relation to London we noted that the descriptions on the map in fact

broke down to more detailed collections i.e. there were more captive bird collections than were apparent from the site map.

Marketing / advertising materials more generally

54. WWT produces leaflets for each of the centres. The leaflets have 8 panels and follow a common format. The leaflet sets out details of how to get to the site and an invitation to shop, to eat, and to become a member. It describes WWT as a “leading conservation organisation saving wetlands for wildlife and people across the world” and states that the site is one of nine visitor centres across the UK. It includes a panel suggesting what can be seen season by season.

55. The particular content of the leaflet varies according to centre. We looked at each of them, but set out some description of the one for Arundel by way of a representative example. The photographs feature several pictures of wetland habitats, children playing, feeding birds, close-up picture of birds and of other animals such as a water vole and an insect, a couple standing by some specialist viewing apparatus. In a series of panels headed “So many wild days” the copy reads:

“...ride a guided boat through bustling wetlands. Explore towering reedbeds to wonder at wildlife. From natural play areas to modern bird hides – take time to discover, watch, learn or play...a day of adventure – join evening bat walks, morning bird walks or photography and disiscoping workshops. Walk a wobble log at Pond skaters. Tower above at Tree Creepers play area. Explore the insects of the Meadow Maze...a day to watch wildlife ...Catch kingfishers flashing over the water. Spy water voles from a wetland boat safari. Hear buntings and warblers along the reedbed boardwalk surround by the South Downs. Watch busy sand martins fly just feet away....a day to get closer. Get nose to beak with exotic birds, take a dip at the Pond Explorer. Greet duckling families in springtime. Inhale scents at Wetlands secrets plant house.”

56. Looking at these materials while there is mention / implicit reference to the captive collections through references e.g. to getting “nose to beak” with exotic birds, pictures of flamingos or other exotic birds, or to meeting the otter family at certain sites, the preponderance of marketing feature pictures of wetland habitats, pictures of birds, animals and insects where it is not clear whether they are kept in an exhibit or not and of variously children, families and adults carrying out nature related activities and exploring wetland habitats.

57. The term “zoo” is not used in any of the literature or in the naming of any of the sites in issue.

The particular sites

58. We set out below certain facts which are specific to the particular sites in issue.

Arundel

59. The site receives estimated visitor numbers of 30-40,000 per year. The number of captive animals in 2011 was 425 of which 74% were non-native.

5 60. The entire area of the site (captive collection and nature reserve) is surrounded by the predator fence. The captive collections are spread over a relatively large area.

61. According to a website extract the site is 26 hectares and consists of “naturalised landscapes and wetland habitats”. At one end of the site there is a network of ponds and channels where visitors can go on a “Wetlands discover boat safari”. This entails going on silent-running boat skippered by an expert guide. The website section entitled “our nature reserve” sets out the following:

15 “Just beyond the displays of exotic species and main visitor areas at WWT Arundel, there is a tranquil area of ponds and reeds where a rich variety of British wildlife favourites – including dragonflies, glow-worms, grass snakes, kingfisher, many warblers, water shrews and water voles – can be observed living naturally and free.”

62. We find from Mr Peberdy’s evidence that the number of wild birds coming in (20-40) warblers was low compared to other sites. There were breeding birds over summer but no wintering birds.

Castle Espie

20 63. The site receives estimated visitor numbers of 20-25,000 a year. The number of captive animals in 2011 was 392 of which 78% were non native. Two animal specialists are employed.

London

25 64. The site receives estimated visitor numbers of 200,000 per year. The number of captive animals in 2011 was 199 of which 88% were non-native. A small number of domestic ducks are kept. The site employs 3-4 animal specialists.

65. The site won the “favourite nature reserve” prize from Countryside magazine in 2012.

30 66. From the information in the Walkabout guide we find the site covers 43 hectares but not all of this is accessible.

Llanelli

67. The number of captive animals in 2011 is 514 of which 88% are non-native. Three animal specialists are employed.

Martin Mere

68. The site receives estimated visitor numbers of 160,000 a year. The number of captive animals in 2011 was 1722 of which 84% were non-native. It employs 7-8 animal specialists.

5 *Slimbridge*

69. The site receives estimated visitor numbers of 220,000 a year. The number of captive animals in 2011 was 3685 of which 90% were non-native. The site employs 9-10 animal specialists (who also act as central support for other sites).

Washington

10 70. The site receives 30-40,000 visitors a year. The number of captive animals in 2011 was 814 of which 91% were non-native. The site also has a collection of domestic ducks.

Visitor Behaviour Study

15 71. We had before us a study and report which were prepared by Kate Measures Consulting. The consultancy has over 14 years experience in the “visitor destination, culture and heritage environment”. The consultants work with broad range of international, national, regional and local clients to develop and evaluate interpretation products, visitor experiences and engagement strategies.

20 72. Mr Peberdy explained to us that WWT had commissioned a series of studies by independent consultants over the last 2 years. It was part of Mr Peberdy’s job to know where to direct expenditure. Understanding visitor behaviour and motivations was relevant to that responsibility and to the better design of facilities. As an example, an insight that there was a social group aspect to visitors’ enjoyment of the centre might encourage greater availability of circular arrangements in seating areas.

25 73. The study focused on the key research question:

“What proportion of visitors’ time is spent in “zoo” areas compared to the wider reserve during a visit to WWT Centres?”

74. WWT were also interested in the following:

30 “Are there any distinct trends in proportion of usage dependant on visitor segment?”

35 75. The study aimed to build a picture of how visitors physically use the space at the centre and how this broke down proportionally for a typical visit. The visitors who agreed to participate were tracked during their visit to a WWT centre using a GPS unit. While the visitors were told about the general purpose and extent of the study they were not told what the research question was in the hope this would minimise them changing their behaviour. They completed an anonymous survey to assess which visitor segment they fell into. The GPS trackers were not attached to visitors until

after they had arrived at the Centre and passed through the ticket buying/membership card area. The data was later analysed via co-ordinates recorded and overlaying data onto an aerial photo and map of the Centre.

5 76. The survey tracked 20 visiting groups over 3 days at the Martin Mere WWT Centre in Lancashire. The tracking device was attached to only one person in the visiting group. Based on an average of 2.5 people per visiting group the survey reports that at least 50 persons' movements were tracked. Two of the three study days were carried out in the school half term period.

10 77. The survey found that, on average, visitors spent 86% of their visit in the "zoo type areas" of the WWT centre. The "zoo type areas" were defined as the enclosures and paths alongside the enclosures, catering outlets including restaurant, retail outlets, welcome and ticketing area, toilets and baby change facilities, static exhibitions and interpretation zones.

15 78. Visitors were segmented according to different categories. Mr Peberdy explained that criteria relating to whether for instance visitors came with children or not were more relevant than e.g. age or social status. The particular categories used in the survey and their meaning as explained to us by Mr Peberdy were as follows (the percentages of the Martin Mere site "study population" are also set out):

20 (1) "Learn Together Families" (40%), and "Fun Time Families"(25%), (the focus of the former being education, the latter entertainment), "Social Day Outers"(0%),

(2) "Social Naturalists" (5%), and "Social Birders" (0%), visitors whose interest was in spending time with friends,

25 (3) "Interested Naturalist"(10%) and "Interested Birders" (0%), (wildlife hobbyists, interested for example in taking wildlife photography, "expert birders" (5%), (who in Mr Peberdy's experience constituted a small segment of the visitor population); and

(4) "Sensualists" (15%) a catch-all category for those who had an eye for well-designed and presented environments.

30 79. In relation to what were described as the "adult only segments" i.e. not the learn together or fun time together families it is stated that they spent 70% of their time in the "zoo type areas". The corresponding percentage for the family segments was 93%.

80. The survey found the average time spent at the WWT centre was 2 hours 56 minutes.

35 81. The study also set out a pie chart showing the percentage of segments in the total visitor population to all the WWT centres (it was not clear whether this was the 7 centres or the 9). This shows the Family segment make up 35% of the visitor population.

40 82. Mr Peberdy's evidence was that there were no surprises to him in relation the survey's overall findings and that for each of the 7 centres under consideration the

findings reflected his experience that most visitors spent the majority of their time exploring the captive exhibits.

83. The Respondents query the evidential weight and relevance of Mr Peberdy's views and the relevance of evidence on where visitors spend their time. These points are considered further in the discussion section below.

Parties' submissions

84. Both parties were in agreement that the task of the Tribunal was not to define what the term "zoo" meant, but to look at each site and at what it provides objectively to see whether it can fairly be described as a "zoo". This was the approach taken by the VAT Tribunal in the case of *Trebah Garden Trust v CCE* (2000) VAT Decision 16598 where one of the issues for determination was whether a restored Victorian garden which containing a collection of trees and shrubs was a "museum" for the purposes of item 2 of Group 13 of Schedule 9 of VATA 1994.

85. Nevertheless, it is necessary to have some idea of what the term means in order to determine whether or not each of the sites fall within the term. The term "zoo" is not defined in VATA 1994 and it must therefore be given its normal meaning having regard to the context in which it appears. The word "zoo" is short for "zoological park" or "zoological garden".

86. The appellant argues that whether one looks at definitions used in the European Directive, the Zoo Licensing Act 1981, the SOED, or in Wikipedia, these all lead to the definition set out in SOED: "a place where wild animals are kept". The term "wild" means not domesticated. The appellant says all of the sites keep significant numbers of captive birds. People go to see the captive birds, a minority look at wild non-captive birds. All of the sites are "zoos". The appellant clarified they were not arguing the sites were zoos *because* the sites were subject to the Zoo Licensing Act 1981 but that this fact was something which was relevant to take into account.

87. It should be noted that although much earlier in the dispute there appeared to be a point made by the Respondents about the normal meaning of zoos encompassing places where the ordinary person on the street would expect to see animals such as lions, tigers and elephants, this line of argument was not pursued at hearing.

88. There was no issue between the parties that just because a captive collection of animals focussed on a particular type of animal, in this case birds, it could not therefore fall within the meaning of "zoo".

89. The Respondents' arguments against the sites being "zoos" are based on the elements present and provided on the sites which do not relate to the captive collections. The Respondents argue that admission is to an overall defineable place known as wetland centres and which centre on a particular habitat, namely wetland. Some birds are kept in enclosures but there are also numerous uncontained animals (e.g. free migrating birds) incapable of qualifying as "kept" by reason of their actual migratory habits and which are free to come and go. While the intensity of the

experience of seeing the wild birds which are not kept varies from centre to centre it is an integral part of the experience. It is clear from the website materials, and leaflets produced that what is on offer is not animal centric but habitat *and* animal centric. The Respondents' criticism of the appellant's argument is, as Mr Zwart put it, a case of the "zoo" tail wagging the "wetland centre" dog. The appellant is taking one component and applying it across the whole of the supply to a particular place so that the whole becomes the zoo including the habitat focussed areas and the wild areas.

Discussion

90. We consider that the definition "a place where wild animals are kept for breeding, study or exhibition to the public" is reflective of the normal meaning of the term "zoo". There is no issue between the parties that the animals which are captive are so held for exhibition to the public. As set out in our findings above the overwhelming proportion of the captive exhibits are made up of species of wild animals not native to the UK. The species also include certain rare and endangered species and species such as the Nene, a Hawaiian goose which thanks to the conservation efforts of the WWT has been saved from extinction.

91. But, even if the wild animals which were kept were those which were native to the UK, a place where such native wild animals were kept could still fall into the definition of "zoo".

92. The crux of the issue between the parties is whether it is fair to describe each of the sites as "places where wild animals are kept" given the full extent of the site and what else is provided there.

93. That issue is to be determined by assessing the relevance and weight of the evidence we received and the findings of fact we made. But, before doing that there is an issue between the parties as to the relevance of the time of the supply to such evidence which we must deal with.

Time of supply: Relevance of pre and post admission evidence

94. The Respondents argued that it was relevant to consider the timing at which the supply of admission was made to the place. They say it is the "pre-admission offer" i.e. what a person anticipates they will get which is relevant. It is therefore relevant to look at what is set out on the appellant's website and their leaflets. But, once visitors are on the site, the supply has already been made. This point is relevant to any reliance the appellant places on post-admission evidence such as the visitor behaviour study and Mr Peberdy's evidence as to where visitors tended to spend their time once they have already been admitted.

95. In support of the argument that once in the zoo the supply had already been made, we were referred by the Respondents to the VAT Tribunal case of *Twycross Zoo East Midland Zoological Society v HMRC* (2007) VAT Decision 20439. There, the Tribunal considered the issue of the scope of Item 2 of Group 13 in relation to a

supply of access for “animal encounters”. At [22] the Tribunal expressed the view that “what is exempted is the physical admission to the Zoo.”

96. The appellant says the case is of limited help and points out that in this case the only admission in issue is the one admission to the site. There is only one supply.

5 97. In *Twycross* it was common ground that the provision of “animal encounters” was a single supply. The encounters were pre-booked, but the participant gained access to the zoo in the same way as everybody else and paid the admission fee. The Tribunal considered how “right of admission” should be construed and found the term could not be extended to encompass all of the cultural services offered by the zoo.

10 98. We do not see how the Tribunal’s conclusion in *Twycross*, that what is exempted is the physical admission to the zoo, helps the Respondents in determination of the preliminary issue before us. That issue is whether the sites are “zoos” for VAT purposes. In *Twycross* it was not in issue that Twycross Zoo was a “zoo” for VAT exemption purposes. That the time of supply is at the point of admission does not mean that when it comes to determining whether the place to
15 which admission is given falls within a certain definition, anything that happens afterwards in that place is not relevant. At a very basic level for any given supply in relation to a particular visitor even if we could not look at what the visitor did once they were admitted it would nevertheless we think be relevant in assessing objectively
20 what was provided at the place to take into account how the site was used by previous visitors. We disagree with any suggestion that the Tribunal can only have recourse to the claims made to visitors prior to admission. Such a result would be surprising. A place which through its advertising and marketing sought to attract people to it on a pretext that it was a zoo but in fact was no such thing would nevertheless be a “zoo”
25 for VAT purposes.

99. Such an approach would, we think, also be at odds with the approach of the Tribunal in *Trebah Garden Trust* which as stated above both parties agreed was the correct approach to adopt. There the legislation in question also contained the reference in item 2 of Group 13 to “right of admission to”. In looking objectively at
30 what the place was, in that case whether the gardens were a “museum”, and at what was being provided, the Tribunal, although it did make brief reference (at [16]) to how the gardens were marketed, did not restrict itself to such “pre-admission” evidence.

100. It is not that “pre-admission” marketing claims etc. will be irrelevant; we agree
35 they are matters that ought to be taken into account. But, we see their relevance as deriving from any light they may throw on what the place in issue is, and what is provided there.

101. There are a number of factors to consider in weighing up whether each of the sites is a “zoo” i.e. a place where wild animals are kept. Before considering these
40 there are two issues which go to whether the captive collections have qualities which mean they are incapable of being considered to constitute a zoo and which can, we think, be addressed in relatively short order.

102. First, we disagree with any suggestion that a place cannot be a zoo because feral birds and other native wildlife e.g. pigeons can come and go into the exhibits. It is a virtual certainty that there will be some sort of animals e.g. insects, rodents or pigeons that will be able to negotiate whatever preventative measures are put in place so as to come and go into sites which are undisputably zoos, particularly where such zoos feature open-air exhibits. To make it a requirement that in order to satisfy the definition of a zoo that every single animal in the particular place must be captive would mean in practice that no places would ever qualify.

103. Second, to the extent it is apparent that in relation to three sites, London, Washington, and Slimbridge, there are captive populations of domesticated birds (ducks) we find the numbers of these are insignificant when compared with the numbers of the captive non-domesticated birds. Their presence does not result in captive exhibits that would otherwise be found to constitute a zoo from not being found to be so.

15 *Licenses under Zoo Licensing Act 1981*

104. Over time, from 1991 each of the sites became subject to licenses under the Zoo Licensing Act 1981 or analogous Northern Irish provisions in respect of Castle Espie. The appellant does not seek to argue that the sites are zoos simply by virtue of holding such licences but they say it is a factor to take into account. The definition of “zoo” for ZLA purposes incorporates the reference to zoos being a “place where wild animals are kept”. None of the centres are subject to a direction under s14(1)(a) ZLA in respect of small or non-diverse collections. Two centres, Barnes and Washington appear to have a direction for a reduced number of inspectors pursuant to a direction under s14(2) when an inspection is carried out. The fact the centres are licensed under the regulatory regime in place for zoos is consistent, in our view, with there being no issue with WWT’s captive collections satisfying the notion within the term “zoo” of wild animals being kept.

105. We note also that the name and situation/ location or address of the zoo is stated for each centre to be the full postal address of the centre and no distinction is made as to the licences being in respect of a smaller area within that location. Beyond that observation the fact that licenses are held in respect of each site does not help significantly with the issue of whether the whole site as opposed to a smaller area within it is to be regarded as a “zoo” for VAT purposes. In passing we note that in relation to the stocklists of animals produced for the purposes of the licensing regime we were invited by the Respondents to draw an analogy with case-law authorities in relation to planning law to the effect that the zoo license documents, being public documents, are to be construed by reference to their “four corners” (*R v Ashford Borough Council ex p Shepway District Council* [1998] EWHC Admin 488 and *R v Carter Commercial Developments Limited oao Mendip District Council* [2002] EWCA Civ 1994). The analogy does not we think take the matter further in relation to the animal stocklists as they confirm that at each site there are significant numbers of captive wild animals and we did not understand it to be argued that those stocklists contained any significant overstatements or omissions. But, if it is correct that the zoo license documents are to be construed according to their four corners, the fact they do

not specify a more precise area within the address of the Wetland centre is on the face of it, we think, supportive of the appellant's case.

Marketing

106. We have considered the various leaflets, and website excerpts where provided
5 in relation to each site. In relation to the London site we were also able to view the banners advertising the centre from outside.

107. In weighing the relevance of this material towards indicating what visitors are drawn to the centre to do and what they do once they get there we take account of the fact that a zoo properly falling within the definition would be unlikely to devote major
10 marketing effort to emphasising that they hold captive exhibits. A visitor who gives it any thought will appreciate that captivity, by whatever particular means it is achieved, is the corollary of being able to go to a place to see a wild animal that they would not normally be able to see. They are, we think, unlikely to be receptive towards having that fact highlighted to them.

108. Nevertheless, even after taking this into account, while there is some allusion to the captive collections through e.g. getting "nose to beak" with exotic birds, some pictures of birds e.g. brightly coloured flamingos which are obviously non-native to the UK, and to feeding times with otters, it is fair to say these references implicit or otherwise to the captive collections are on par or even subsidiary to the pictures and
15 marketing claims in relation to other experiences available at the centres (i.e. those related to nature reserve parts of the site, watching wild birds, or experiencing different habitats or activities for children e.g. pond-dipping.)

109. The Respondents drew our attention to the fact that nowhere in any of these materials or indeed in the names and signage of the centres is the word "zoo"
25 mentioned. While it is something we take into account the absence of a reference to "zoo" cannot in our view carry any significant weight. Calling a place a zoo or referring to it as such would not establish that it was a zoo. The appellant highlighted a number of names in Defra's list of zoos which did not contain the word zoo in their name but for instance had reference to "wildlife" or "wild animal" or "safari" or
30 indeed to no animal at all such as an aquarium called "the Deep". While we did not receive any evidence on which, if any, of these locations were "zoos" for VAT purposes, it seems improbable that, for instance Whipsnade Wild Animal Park would not be considered to be a zoo because it did not contain the word in its name.

Geographical area

110. As indicated in our findings, in each centre, the areas not comprising the captive exhibits and the pathways around them exceeded the areas that were dedicated to the captive exhibits. Sometimes this was by a significant factor. The appellant's answer to any suggestion this weighs in the Respondents' favour is that this is irrelevant. Visitors do not come to see large areas of land, they come to see birds, and the captive
35 birds at that. We consider the relevance of this to the question of whether the site as a whole is a "zoo" below.

Visitor maps

111. We think the relevance of the content of the visitor maps, which are not to scale, is in how they may influence where visitors choose to go to and how they allocate their time amongst the attractions. The maps show various features including amenities of interest to visitors, the location of captive exhibits, through exhibit names with geographical or habitat or bird descriptors and the location of various bird hides overlooking the nature reserve elements of the site. Both the exhibit and nature reserve elements are in our view reflected roughly on a par and we cannot say that one is given prominence over the other for any of the sites.

10 *Time that visitors spend on site – Mr Peberdy’s evidence, Visitor behaviour survey and extrapolation from survey*

112. While overall we find the visitor behaviour report to be a credible piece of independent evidence in so far as it makes findings in relation to where the surveyed population spent their time, there are some underlying points about it which mean we hesitate to adopt all its findings in so far as they apply to visitor behaviour more generally across the board and in relation to other sites. These are that the sample size is relatively small (20) particularly in view of the large amounts of visitors to each of the site which range from 20,000 to 30,000 to 200,000 plus. Also, if in the course of an average 3 hour visit, visits to retail, eating venues and toilets are included, then the differential between time spent at the captive collection and time spent in the nature reserve is perhaps less marked than the survey suggests.

113. We give more weight to Mr Peberdy’s evidence (which was subject to cross-examination) as to where he saw visitors spending their time. We find that most of the visitors spend the greater part of their time exploring the captive collections as opposed to the nature reserve elements. We find this from Mr Peberdy’s evidence based upon his 25 years experience of WWT, his regular visits to each of the centres and the fact that it was part of his job to decide where resources were allocated and therefore he had in interest in establishing where visitors spent their time. Although we have some reservations about extrapolating the precise percentages of the visitor behaviour report to visitor behaviour at each of the sites Mr Peberdy’s evidence is consistent with the broad thrust of the report that the majority of visitors spend the majority of their time experiencing the captive collection elements of the sites. It is also consistent with our observations from the site visit where we noted that there were significantly more visitors wandering around the captive collection areas than visitors in the nature reserve / and other areas. That is of course one observation event but there was no reason for us to think that the distribution of visitors on the day we visited was particularly abnormal.

Objects of WWT

114. The Respondents say WWT holds itself out as respected in migratory studies and not animal captivity and that captivity appears contrary to its four core aims of conservation, research, education and recreation. The appellant, correctly in our view, highlights that the fact the centres keep birds in order for the public to better appreciate them is part of a means to conservation and that in any case the appellant’s

5 motive is irrelevant. We agree the appellant's motive in running the centres is not relevant. What is relevant is what the site is and what happens there. In any case we see nothing inconsistent with the appellant's involvement in captive collections and its objects, in particular the dissemination of knowledge and understanding of wildfowl.

Weighing the various factors

10 115. In relation to the Respondents' argument that the centres encourage appreciation of habitats as well as animals the appellant emphasises that habitat and animal appreciation go together. Animal appreciation in an appropriate habitat is an activity of a zoo and the Zoo Licensing Act 1981 requires the appellant to do this. From the pictures we saw and our impressions of the site visit it was clearly apparent that the captive exhibits were kept in spacious and appropriately designed habitats. There were elements of the site e.g. at London the exhibit on wetlands around the world, the fritillary meadow which contained certain species of plants, which were targeted
15 towards appreciation of the wetland habitat by itself. But, we find that these elements were minimal when compared to the size and range of the captive exhibit areas. The numerous references to "wetland" in marketing and informational materials and of course the name of the appellant reflect that this is the concept or common theme around which the display exhibits, primarily animal exhibits, are organised.

20 116. When it comes to balancing the various factors on the one hand we have the geographical allocation of land, which points in the Respondents' favour and the impression of the marketing materials and leaflets which also points in their favour (although not as clearly) to weigh as against the evidence in relation to where the majority of visitors actually spend their time when on the sites which weighs in the
25 appellant's favour.

117. We think it is relevant to note that the ordinary meaning of the zoo carries within it the notion of the animals being kept for public exhibition. This rather suggests that there will be a public to whom to exhibit to. It suggests to us in this context that what visitors do once they are on the sites should carry more weight than
30 the fact that as a matter of land allocation the non-captive collection areas occupy more area than the captive collection areas.

118. In placing greater weight on people focussed factors over land allocation, we also note that the term "zoo" in VATA 1994 arises in the context of the UK's discretion to specify an exemption for the supply of certain "cultural services" and
35 that the context of culture, is such that it cannot exist in a vacuum without reference to some kind of human impact or interaction.

119. When it comes to balancing the evidence from the marketing materials against that on visitor behaviour we note that in this case there is a mismatch between the marketing materials and what visitors do on the site. While it is relevant to consider
40 the marketing materials, their purpose is, we think, primarily to throw light on what it is that visitors do at the site given the likely but not inevitable correspondence between what claims are made to them and what they then do.

120. Direct evidence of what visitors do on the site is, we think, to be preferred to the evidence inferred from marketing materials where that does not point in the same direction. Further, to the extent it is relevant to consider the reason why visitors are attracted to come to the site we think evidence of what they do once they get to the site provides an indication of the reason they came.

121. In this case we think that while the majority of visitors would not, if asked, say they had come to see a variety of captive bird collections they would, we think, say they wanted to be able to see some birds they would not normally have a chance to see up close. Further, if they gave the matter any thought they would accept that their expectation would likely be achieved when collections of birds are kept rather than relying on wild birds happening to fly in.

122. While there may be enthusiasts for whom the nature reserve elements and migratory and other non-captive birds are the draw we think they fall into the minority of visitors. Similarly we were not persuaded the reason why visitors come is to experience a wetland habitat per se. The attraction is in being sure to see birds and other animals which come from that kind of that habitat in pleasant naturalistic surroundings.

123. The evidence that the majority of visitors are likely to spend the majority of their time experiencing the captive collections also reflects the fact that while the captive collections will be available to see whatever day someone visits the same is not true at all in relation to the wild non-captive birds. In contrast to the 2 sites of the appellant at Caeverlock and Welney where we were told there were seasonal spectacles e.g. of wintering birds in the order of 20,000 to 30,000 to see the numbers to be spotted e.g. in the Barnes centre would be in the hundreds at most. At Arundel the numbers were more like 20 to 30. Even where more significant numbers could be spotted at other sites, this would be a particular seasonal observation, and not all year round.

124. We do not find the Respondents' argument that the habitat experience and the experience of watching non-captive birds in the nature reserve are an integral part of the experience offered at the site to be borne out by the evidence.

125. The Respondents referred us to passages in *Card Protection Plan Ltd. v Customs and Excise* (Case C-349/96) in support of taking an objective approach. We were also referred by the Respondents to a VAT Tribunal decision *Chewton Glen Hotels Ltd* (2008) VAT Decision 20686 as an example of a case where even though a supply was capable of falling within an exemption (in that case the supply of a room), the supply of other services (what was being offered there was a wedding services package) could take the supply out of the exemption.

126. That we should approach the issue on an objective basis was not in dispute and we explain above why despite the Respondents' concerns we are satisfied Mr Peberdy's evidence enables us to make findings which are relevant to the objective nature of the sites. The circumstances of the *Chewton Glen* decision are, as the appellant pointed out, some way apart from the current case. The issues raised are not

comparable either in that we do not think the argument the taxpayer raised in *Chewton Glen* that a wedding package could be characterised as a supply of room hire can be compared to the issue of whether a particular place can fairly be described as a “zoo”.

Approach to construction of exemption

5 127. In relation to the approach to be taken to statutory construction of “zoo” for VAT purposes the Respondents referred us to the following:

128. In *Stichting Uitvoering Financiële Acties v Staatssecretaris van Financien* (Case C-348/87), the European Court of Justice considered the former Sixth Directive, Article 13(A)(1)(f) and held at [13] that (emphasis added):

10 “It is clear from the foregoing that the terms used to specify the exemptions envisaged by Article 13 of the Sixth Directive are to be interpreted strictly since they constitute exceptions to the general principle that turnover tax is levied on all services supplied for consideration by a taxable person.”

15 129. The Respondents also refer to *Customs and Excise Commissioners v Zoological Society of London* (Case C-267/00), where the Advocate General stated at [19] that:

20 “I agree that exemptions from VAT should be strictly interpreted but should not be whittled away by interpretation. The Commission is right in that regard to contrast the notions of “strict” and “restrictive” interpretation. As a corollary, limitations on exemptions should not be interpreted narrowly, but nor should they be construed so as to go beyond their terms. Both the exemptions and any limitations on them must be interpreted in such a way that the exemption applies to that to which it was intended to apply and no more. Thus, I would agree with the Society that it is appropriate to consider the purpose of the relevant provisions in their context.

25 130. In *Twycross Zoo*, the Tribunal considered at [4] the issue of the scope of Item 2 of Group 13 in relation to a supply of access for “animal encounters”. At [5-6], the Tribunal held that the exemptions in Article 13(A)(1)(n) of the Sixth Directive, now
30 Article 132(i)(n) of the Consolidating Directive, had been implemented by means of section 31 and Group 13 of Schedule 9, in particular Item 2. At [16], the appellant’s counsel submitted that:

35 “the Directive requires Member States to exempt the supply of “certain cultural services” but it is left to each individual Member State to determine the scope of their own domestic cultural exemption. The UK has exempted the right of admission to “a Zoo” and it is that wording which has to be construed strictly but not unduly restrictively. The liability of animal encounters will depend upon whether what is supplied falls within the exempting provision of Item 2. If not, it falls
40 to be taxed at the standard rate.”

131. The Tribunal in *Twycross* noted at [18] the approach of the Advocate General in the *London Zoo* case at [19] (see above).

132. The appellant argues that the Respondents' arguments about construing strictly but not restrictively are not strictly on point. The Article 132(1)(n) exemption is for cultural services and this is implemented in statute. It is not that we have to construe "zoo" strictly rather than we have to construe it to ensure that it is a cultural service. It is not being suggested that what the appellant is doing is not something which is cultural.

133. We agree with the appellant that the above cases are not directly on point. But, in any case even on HMRC's view that the term should be construed "strictly but not restrictively" we do not think that anything significant turns on this. Our assessment of the facts and circumstances in relation to the particular sites is that they do fall within the term "zoo". They are for the reasons discussed above places where wild animals are kept for public exhibition. Reaching that conclusion has not required us to take an interpretation of the term "zoo" which goes beyond a strict but not restrictive interpretation of that term.

15 *Respondents' argument that "zoo" issue raised late*

134. The Respondents draw attention to the fact that despite the fact there were three centres holding zoo licenses pre 1996 it was only 8 years later in 2004 that the subjective view of WWT changed to suggest that what it had been before 2004 in some way qualified as a "zoo". WWT would have been involved in the consultation which led to the introduction of the legislative exemption for "zoos" and could be expected to have appreciated their position since then. However, they did not raise the issue of their sites being "zoos" until 8 years later.

135. The appellant explained that it was not until 8 years after 1996 that the legal position became clear enough because of two matters.

136. First, the UK's implementation had introduced conditions for exemption which precluded most voluntary organisations from claiming if they had paid employees who were involved in management and administration. In 2002 the ECJ in the *London Zoo* case decided that only the top layer of the governing body did not need to get paid. There could be a paid executive board as long as they reported to trustees who were volunteers. Customs and Excise had said that bodies such as WWT would not qualify because they had a paid executive. There had therefore not been any point in contesting the zoo issue at that point in time. In 2002 after *London Zoo* Customs and Excise issued Notice 28 of 2003. This said bodies could qualify for the exemption provided their trustees were not paid. The effective date of the treatment was deferred to 1 June 2004 (on the basis that supplies becoming exempt meant bodies would not get their input tax back). At that time the legislation applying in respect of 1996/7 precluded claims going back more than 3 years.

137. Second, the litigation in *Fleming / Condé Nast* then opened the door to make claims.

138. The appellant says these two issues combined to explain why the “zoo” issue was not raised until 2004 and no adverse conclusion may be drawn from WWT not raising the issue until then.

5 139. In our view even if the appellant could have raised the issue sooner and there was no explanation for why it did not, this would not make any difference to the issue before us which is whether as an objective fact the particular sites are zoos for VAT purposes. The appellant’s subjective views as to whether and when they thought their sites were zoos for VAT purposes do not assist us on whether the sites were objectively zoos. Nor can there be any issue in our view that any late raising of the issue casts a shadow over the credibility of the appellant’s evidence in particular that 10 of Mr Peberdy. That being the case it is not necessary to reach a conclusion on the appellant’s explanation for why the zoo issue was raised when it was (although there is nothing on the face of it to suggest the appellant’s account is unreasonable).

Conclusion

15 140. Having considered the evidence in relation to each of the sites we come to the view that each of them is a “zoo” within the meaning of Item 2 Group 13 Schedule 9 VATA 1994. Each contain substantial captive animal collections and we are satisfied that the majority of visitors spend the majority of time exploring the captive exhibits which allow them to appreciate birds they would not normally get to see up close. The 20 fact that there are nature reserve elements occupying a greater land area, that there are certain “habitat-centric” aspects to the sites, and that the habitat of wetland is a common thread running through how the centres are organised and marketed does not detract from the centres being “zoos”.

141. Our determination of the preliminary issue is therefore in the appellant’s favour.

25 142. This document contains full findings of fact and reasons for the preliminary decision. Any party dissatisfied with this preliminary decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are 30 referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**SWAMI RAGHAVAN
TRIBUNAL JUDGE**

35

RELEASE DATE: 6 August 2013