



TC02832

Appeal number: TC/2012/06183

VAT – zero rating-construction or conversion of existing building-planning condition prohibited residence throughout the year- not eligible for zero rate but eligible for reduced rate of 5%-appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

CATERING SOLUTIONS (NORTH EAST) LIMITED Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S Respondents
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE BARBARA KING
JOHN DAVISON**

Sitting in public at North Shields on 21 May 2013

**Malcolm Tindle, accountant and Brian Glover, company director for the
Appellant**

Bernard Haley of HM Revenue and Customs, for the Respondents

DECISION

The Issue

1. The appellant has appealed against a Notice of Assessment made by HMRC that VAT should be applied at the 5% rate by the appellant company for the periods 05/10 and 08/10 and not at the zero rate as contained in the VAT returns. This determination results in the sum of £9129 tax being in dispute.

Background and evidence

2. Brian Glover is a director of the appellant company Catering Solutions (North East) Limited. Malcolm Tindle is an accountant with a firm of accountants who have given advice to the appellant company and who do the returns and accounts for the appellant company.

3. In 2006 Mr Tindle obtained planning permission in connection with a piece of land in Sparty Lea Northumberland. He had bought this with the intention of asking the appellant company to convert a virtually derelict barn on the land, into a house which he would then use himself for part of the year and would let out as a holiday rental for other periods.

4. Planning permission was obtained on 27 October 2006 and clause 15 of that permission reads

20 This permission relates to the provision of holiday accommodation. For the purpose of this condition, holiday accommodation is defined as accommodation which shall not be occupied by the same person, or group of persons, for a period in excess of six weeks during any one calendar year.

25 The accommodation hereby permitted shall not authorise the use of the proposed development for human habitation during the period of two consecutive weeks from the 6th January each year, or such other consecutive time period of two weeks as may be agreed in writing by the Local Planning Authority

30 In order to facilitate the policing/enforcement of the foregoing a register of occupiers of the premises to which this planning permission relates shall be made available to any officer of the Local Planning Authority upon request following 24 hours notice.

35 Reason: To ensure that the property is used for holiday accommodation only and to prevent permanent residential use in a location where such development would be inappropriate in accordance with Policy TM15 of the Tynedale District Local Plan

5. The planning permission was amended in 2007 and on 2 February 2011 retrospective permission was given for some items, but neither of these amendments affected clause 15.

6. Mr Glover produced photographs, taken in 2007, which showed the barn before work started. The barn then consisted of two gable end stone walls with very little in between. A photograph taken at a slightly later date showed that part of the gable wall at the north end had been taken away.

5 7. Mr Glover gave evidence that after he started work a further part of the north gable wall had to be removed for structural reasons and also part of the south gable wall.

8. Architects drawings, dated 24 November 2010, of the dwelling were produced with a shaded central area shown on the north and south elevations, said to represent the area of wall on the completed building, remaining from the existing building as at 10 2007.

The VAT law.

9. Section 30 VATA 1994 provides that supplies of goods or services of the description specified in Schedule 8 are zero rated.

15 10. Group 5 of Schedule 8 deals with the construction or conversion of buildings.

11. Item no 1 deals with

The first grant by a person

(a) constructing a building –

(i) designed as a dwelling or number of dwellings; or

20 (ii)intended for use solely for a relevant residential purpose or relevant charitable purpose; or

(b) converting a non- residential building or a non residential part of a building into a building designed as a dwelling or number of dwellings or a building intended for use solely for a relevant residential purpose,

25 of a major interest in, or in any part of , the building, dwelling or its site.

12. Note 13 provides that

The grant of an interest in, or any part of –

(a) building designed as a dwelling or number of dwellings; or

30 (b) the site of such a dwelling;

is not within item 1 if

(i) the interest granted is such that the grantee is not entitled to reside in the building or part throughout the year; or

35 (ii) residence there throughout the year, or the use of the building or part as the grantee’s principal private residence is prevented by the terms of a covenant, statutory planning consent or similar permission.

13. Note 16 provides that

For the purposes of this Group, the construction of a building does not include

- (a) conversion of an existing building
- 5 (b)
- (c)

14. Note 18 provides that

A building only ceases to be an existing building when:-

- (a) demolished completely to ground level; - or
- 10 (b) the part remaining above ground level consists of no more than a single facade or where a corner site, a double facade, the retention of which is a condition or requirement of statutory planning consent or similar permission.

15 15. Section 29A VATA 1994 provides that supplies of goods or services of the description specified in Schedule 7A are charged at a reduced rate of 5%.

16. Item 1 in Group 6 of schedule 7A covers residential conversion.

17. Notes 2 and 3 provide that qualifying conversions include those where the premises being converted alter the number of residential dwellings afterwards.

20 18. Note 10 provides that a conversion is not a qualifying conversion unless planning permission has been obtained

19. In this case the building was previously a barn and now is one dwelling and thus HMRC accept that it qualifies for reduced VAT. In schedule 7A there is no restriction about residence throughout the year.

25 **The Appellants arguments**

20. Mr Tindle considered that such a large proportion of both the north and south gable walls had been demolished, leaving behind only 17% or less of the area of 'wall' of the building, that this was equivalent to demolishing all but one wall of the existing building.

30 21. Mr Tindle also considers that as the south west corner of the building presents itself to the incoming road, the building could be considered as being on a corner site.

22. Thus he asks that the legislation be interpreted as meaning that one facade or a double facade means the equivalent of one wall or two walls and that in the case of this building less than this remained above ground before reconstruction began. It
35 should therefore be classed as a construction and not a conversion

23. In respect of the planning condition Mr Tindle stated that he uses the property at week-ends for maintenance of the property and land, usually staying for one night, in addition to some longer stays. This he identified did not breach the six weeks mentioned in the planning conditions, but at the same time it amounts to him having
5 use of the building throughout the year. He therefore argues that the dwelling is not caught by note 13 to Group 5 in schedule 8.

Arguments on behalf of HMRC.

24. HMRC contend that note 18 clearly refers to a single facade or a double facade. Facade means '*the face of a building especially the front*' and that this refers to either
10 one wall if that wall faces directly onto the front or if it is a corner site the two walls which join at the corner facing the front can be considered as a double facade.

25. Two gable end walls, or parts of them, are not joined by a corner and cannot therefore come into the consideration of a double facade.

26. In any event HMRC contend that the planning condition restricts the ability of
15 anyone to reside in the dwelling throughout the year and therefore the dwelling is caught by note 13 and does not therefore come within Item 1.

27. Mr Haley confirms that HMRC now accepts that the conversion of the building was not done in breach of any planning condition as the retrospective condition was approved by a planning officer as the construction was being carried out. HMRC had
20 at the beginning of their investigations, thought that the work had been carried out in breach of the planning permission as originally given.

28. HMRC accept that the conversion of this barn into a dwelling falls with schedule 7A and the rate of VAT on the supply should therefore be 5%

29. Mr Haley confirmed to the Tribunal that HMRC are not now imposing a penalty
25 on the appellant company as they have accepted that the error has not occurred through carelessness on behalf of the appellant company.

Discussion and Reasons.

30. We considered schedule 8 and found that note 13 is dealing first of all with whether someone can reside in the dwelling throughout the year. In this case it is quite
30 clear that the planning restriction in clause 15 of the permission prevents this. No application to the planning authority to remove the planning condition has been made. It is a valid condition at the time of the VAT claim. It has been in force since the building was completed and it has been complied with

31. It is not possible to read the sentences in note13 to find that, provided there is
35 use of the building throughout the year, a grantee is not caught by a restriction on living there.

32. The appeal therefore fails on this ground alone.

33. For completeness we went on to consider Note 18. We find that the wording of this note quite clearly refers to ‘no more than a single facade or where a corner site, a double facade.....’. We agree with the interpretation put on this by HMRC – ie that this means one wall facing the front or at most two walls, both facing the front, because they are joined at the corner on a corner site.

34. In this case we find that parts of the existing walls, however small, of both the south and north gable remained. These walls are at opposite ends of the building and in no way can be said to be a double facade

35. We find that the wording of note 18 cannot be interpreted to mean that if parts of walls remain, they are not taken into account if their total area is less than that which would be taken up by one complete wall. Adding the proportions of more than one wall to equate to less than one wall is not in the spirit or intent of the legislation.

36. On balance we find that, even if the residency planning restriction had not been in place, this appeal would have failed because the building works are the conversion of a previous building and not the construction of a building. The work does not therefore fall to be zero rated. It can however be rated at 5% because the work does come within schedule 7A. The work involved the conversion of a barn into a residential dwelling and schedule 7A does not contain a ‘note’ to restrict the group to those where residence can be throughout the year.

Decision.

37. The appeal fails and the Value Added Notice of Assessment, dated 24 March 2011 is upheld.

38. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this 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 referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**BARBARA KING
TRIBUNAL JUDGE**

RELEASE DATE: 10 June 2013