



TC04124

Appeal number: TC/2013/08113

ZERO RATING - Construction – Construction of a building intended for use for a relevant charitable purpose – building described as a new pavilion – whether use as a village hall or similarly in providing social or recreational facilities for a local community – In Part - whether available to the whole community to an extent of non sporting, social or recreational use – Yes - whether limited to members of the community who participate in sport and therefore constitute a special interest group - No - Schedule 8, Group 5, Item (2), and Notes (6), (10) and (11), VATA 1994. Appeal allowed in part.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

THE NEW DEER COMMUNITY ASSOCIATION Appellant

- and -

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

**TRIBUNAL JUDGE RUTHVEN GEMMELL,WS
 MR PETER R SHEPPARD, FCIS, FCIB, CTA**

**Sitting in public at George House, 126 George Street, Edinburgh on 17 July and
8 October 2014**

Charles Rumbles for the Appellant

Ann Sinclair, Officer of HMRC, for the Respondents

DECISION

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1. This considers an appeal dated 19 November 2013 by New Deer Community Association (“NDC”) against a decision by the Commissioners for HM Revenue and Customs (“HMRC”) on 24 October 2013 to confirm their decision to refuse VAT zero rating on the construction of a new pavilion, car park and All Weather pitch, in terms of Group 5, Schedule 8 of the VAT Act (“VATA”) 1994.

2. The Tribunal had before them a bundle of documents including witness statements from Mrs Helen Lancaster Young (“HY”) of NDC, and Shelagh Kirk (“SK”), Officer of HMRC, both of whom also gave evidence and were credible witnesses.

15 **Legislation**

Schedule 8

Group 5 – Construction of Buildings, etc.

20 Item (2) The supply in the course of the construction of –
(a) a building designed as a dwelling or number of dwellings or intended for use solely for a relevant residential purpose or a relevant charitable purpose; or
(b) any civil engineering work necessary for the development of a permanent park for residential caravans,

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of any services related to the construction other than the services of an architect, surveyor or any person acting as a consultant or in a supervisory capacity.

30 Note (6) Use for a relevant charitable purpose means use by a charity in either or both the following ways, namely -
(a) otherwise than in the course or furtherance of a business;
(b) as a village hall or similarly in providing social or recreational facilities for a local community.

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Note (10) Where—
(a) part of a building that is constructed is designed as a dwelling or number of dwellings or is intended for use solely for a relevant residential purpose or relevant charitable purpose (and part is not); or
(b) part of a building that is converted is designed as a dwelling or number of dwellings or is used solely for a relevant residential purpose (and part is not) -

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then in the case of -

45 (i) a grant or other supply relating only to the part so designed or intended for that use (or its site) shall be treated as relating to a building so designed or intended for such use;

- (ii) a grant or other supply relating only to the part neither so designed nor intended for such use (or its site) shall not be so treated; and
- (iii) any other grant or other supply relating to, or to any part of, the building (or its site), an apportionment shall be made to determine the extent to which it is to be so treated.

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Note (11) Where, a service falling within the description in items 2 or 3 is supplied in part in relation to the construction or conversion of a building and in part for other purposes, an apportionment may be made to determine the extent to which the supply is to be treated as falling within items 2 or 3.

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The Facts

3. NDC is a charitable, not for profit, community association, whose primary purpose is the advancement of community development, which is governed by a trust deed.

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4. HY explained in her evidence that she was a New Deer Community councillor and represented that council on the NDC. NDC comprises of a Committee of Management and a number of sub committees, one of which is the All Weather Facility subcommittee, of which HY is chairperson.

5. The NDC maintain and manage the New Deer Village Hall and Pleasure Park.

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6. It was explained that the village hall is a Victorian style of building which is used for activities such as badminton, yoga, zumba, highland dancing and other activities. The pleasure park consists of a field on which there was formerly a small hut providing changing facilities.

7. It was decided by NDC that there were limitations on the Victorian hall in terms of access for the disabled and its general layout and that the changing hut was unsatisfactory and the pitch itself was often unusable because of the weather. The consequence of this was that a proposal was put forward to obtain funding for the construction of a “new pavilion” with phase 2, which has yet to be completed, being an All Weather surface and car park.

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8. At the time of the first hearing, the construction of the pavilion was virtually complete.

9. On 27 October 2008, William Lippe Architects Limited, on behalf of the NDC and New Deer Football Club, made an application for planning consent for a “proposed new All Weather sports pitch, changing facilities and car park” on the existing “recreational ground”.

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10. The area of the site was 0.5512 of a hectare and it was explained that the existing changing rooms, measuring 65 square metres, would be replaced by a new building with a gross floor space of 295 square metres. In addition, the existing number of car parking spaces at 27 would be increased by 19 to a total of 46. Provision would also be made for parking 12 bicycles and three vehicles for the disabled.

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11. On 20 February 2009, Aberdeenshire Council gave permission to carry out the following development:-

“Full planning permission for the formation of an All Weather sports pitch, floodlighting, building providing changing facilities and store and car park at New Deer Community Park, 4 Dyce Road, New Deer, Turriff.”

5 12. This was granted to NDC and New Deer Football Club and the permission was for a period of five years.

13. It was explained that New Deer Football Club was a constituted member of NDC, being one of 27. It was further explained that the reason the application had been made jointly in the name of NDC and in the name of the Football Club may have been because the architect was involved with the Football Club and the All Weather Surface subcommittee.

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14. The five year period was extended in November 2013.

15. The total cost of the project was estimated at £536,865.67. Part of the works were subject to VAT at the rate of 20% but the works on the pavilion, originally budgeted at £229,557.52, but which subsequently cost approximately £238,000, were assumed to pay VAT at a zero rate.

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16. In late 2012, a detailed project business plan entitled “New Deer All Weather Sports Facility – Five a Side All Weather Pitch/Changing Rooms/Committee Room/Car Park” was issued. The project’s name was “Fit for All”.

17. This document explained that there were approximately 616 residents within the New Deer Community with a surrounding encatchment of 10,000 people.

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18. The New Deer Football Club had 40 members.

19. The document explained that in 2003, NDC carried out an extensive community consultation which resulted in the provision of an All Weather sports surface coming top in the list of priorities.

25 20. HY was the project coordinator.

21. The document said “the football club require changing facilities to comply with 21st century expectations and legislation” and referred to the changing rooms and the All Weather surface, set out the targets for the projects which in the first year included attracting local and national sports programmes; developing football training for the ages 12 to 16 and establishing a league in central Buchan for them providing an after school club; developing netball at both children and adult level; providing taster sessions for children to identify what other sports are of interest; provide recreational football for over 40 year olds and establishing a football league for them in central Buchan.

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22. The business analysis concluded “our competitive edge being the rural location within a village that is already a community service centre, an up to the minute surface, changing facilities to present day competition standards, a committee room with kitchen facilities and serving hatch, affordable price and the scope and variation of sports programmes that can be run from this facility will match and complement that of other facilities within Aberdeenshire”.

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23. A floor plan of the building was submitted to the Tribunal which showed four changing rooms, all of which had adjoining shower areas. In addition, there were two smaller “referee rooms”, each with a shower, an entrance and foyer, which also provided access to two WCs and one disabled WC, and a meeting and kitchen room measuring approximately 13 square metres which might seat six to eight persons at a table. In addition, there were two adjacent storage areas/garages, with no access from the interior of the building for holding sports equipment and machinery and there was a large room containing a water tank.
24. The village hall comprises of a small committee room suitable for 12 people measuring 16.45 square metres, a large committee room measuring 54.99 square metres with adjoining kitchen facilities which is used for coffee mornings, meetings and clubs; a small hall of 51 square metres with an adjoining kitchen and accessible WCs and a large hall, 127.68 square metres, with an adjoining kitchen and accessible WCs. The hall also has a stair lift from the ground floor to the upper floor.
25. The new facility, in terms of the planning application, details a structure of 295 square metres of which the entrance and foyer represents 22% of the total footprint and measures approximately 64.9 square metres. The meeting room comprises of 12.92 square metres, or 4.4% of the total footprint, and is smaller than the small committee room deemed for 12 people in the village hall.
26. The entrance and foyer would be used as access and egress to the changing rooms and had doors from two WC’s opening into it, as well as the main entrance door.
27. The changing rooms were all equipped with a type of seating around three sides of the perimeter of each room, above which were coat hooks.
28. Photographs of the largely completed facility were also submitted to the Tribunal.
29. HY explained that the nearest All Weather facility was nine miles away and that she managed the use of the pavilion, holding the keys and taking the payments which for the committee room/kitchen amounted to £10. All payments were made to the All Weather Facility account and not to NDC. The task of “cleaning and maintaining the new facility” was delegated to the New Deer Football Club
30. HY said that the use of building had been varied, including eight birthday parties and that no activity was ruled out. There had been play groups and meetings of the British Legion.
31. It was explained that normally the use of the building would be allocated to one body or group of individuals so that a play group, for instance, using the entrance foyer would not have football players coming and going to use the changing rooms at the same time.
32. Once finance had been obtained for the construction of the building, HY took professional advice in relation to the VAT treatment of a new building and, accordingly, wrote to HMRC. It was necessary for NDC to be able to issue a contractors’ certificate in order to obtain the zero rating for the new build.
33. Mr Rumbles, trading as CKR VAT Consultancy Limited, accordingly wrote to HMRC on 12 June 2013 stating amongst other things “New Deer intends to use the

new pavilion and car park as a village hall etc. for a minimum of ten years following completion”.

5 34. His letter drew attention to the VAT zero rating legislation which requires that the building must be used solely for a relevant charitable purpose but noting that he understood that HMRC would accept up to 5% business use of the building, measured in any reasonable way.

10 35. His letter continued “there is no formal definition of village hall. Village hall is a generic term given to communal buildings (sic) situated in a small community and controlled by an elected committee. The new pavilion and car park at New Deer will provide a facility for the whole community to enable various groups to carry out a range of local activities. The word ‘similarly’ in the legislation is assumed to mean of the same nature as a village hall and ‘local community’ as a general alternative for ‘village’ and as such has a fairly narrow geographical range. Sports pavilions fall within the scope of the VAT relief provided they are used similarly to a village hall”.

15 36. SK replied to the secretary of NDC on 4 July 2013 stating that she had “reviewed the planning application and noted that permission was granted to replace existing changing facilities”. She continued “The proposal details the work as the formation of an All Weather sports pitch, floodlighting, building providing changing facilities, store and car park. From the planning drawings it is also evident that the lion’s share of the development relates to changing facilities with a small area set aside as a meeting room. The planning application details the size of the structure at 295m², gross floor space with the meeting room measuring 13m²”.

25 37. The letter continued “Our policy line regarding village halls continues to follow its published guidance and this explains that a community run sports pavilion can be similar to a village hall if it used for a range of activities in addition to sports, for example, play groups, parties, bridge clubs, coffee mornings etc. In order to qualify, however, no part of the building can be dedicated to a non social/non recreational activity. In our opinion we would see the changing rooms as being non recreational”.

30 38. The letter continued “a further stumbling block relates to the fact that a village hall or similar must be available for use by all sectors of the community for a wide variety of social and recreational activities”.

39. The request for zero rating was turned down.

35 40. On 1 August 2013, HY wrote to SK replying to a number of detailed points and saying “at present the number of groups/organisations requesting to access this facility are 30, 19 for dedicated sport and 11 for recreational activities. Groups wishing to access this facility for recreation includes New Deer Play Group, Brownies, Guides, Boys Brigades, Young Farmers, and Central Buchan Lifelong Learning and Leisure and Cornerstone a Housing Complex within the village for adult males with profound learning difficulties. New Deer School may use this facility free during the school day with any school sports team having free use until 7pm on week nights”.

41. The letter enclosed four of the nine letters of support to reiterate that the facility would be fully utilised by all sections of the central Buchan community. These included the New Deer Community Council and Aberdeenshire Council.

42. On 7 August 2013, CKR VAT Consultancy Limited wrote to SK stating they wished to appeal the decision to refuse VAT zero rating. This reiterated the list of groups “wishing to solely use the pavilion for social and recreational activities” and stated that “the changing rooms are designed to be multi-functional” and “one of the changing rooms will be used for indoor games, such as table tennis, and another changing room will be used as a treatment room. A further changing room will be used for village meetings, especially when the committee room is already booked”.

43. On 19 August 2013, SK replied to HY taking account of Mr Rumbles’ letter of 7 August 2013 saying that she had taken on board the further information but felt this did little to alter the position. It stated “In my view the project presented here can be summarised as a sports facility with some availability for other community use but in a very limited way and not as a village hall or similar”.

44. The letter continued “the core income will be derived from dedicated sports bookings”.

45. The letter continued “as per our guidance to be similar to a village hall there must be a wide variety of activities carried on in the building, the majority of which are for social and/or recreational purposes. Furthermore, any part of the building which cannot be used for a variety of social or recreational activities cannot be seen as being used as a village hall”.

46. It continued “I am further swayed by drawing number 3739/04 on the local authority planning portal which illustrates that the committee room has a kitchen area and an outward facing serving hatch adjacent to the sports pitches..... In summary it is my opinion that the new development is primarily aimed at the sporting section of the community, not the community as a whole, and we don’t see this type of arrangement as village hall use”.

47. A review was requested and Rose McKenna, an Appeals and Review Officer of HMRC, replied on 24 October 2013. The review upheld the previous decision to refuse zero rating and stated “I note that as part of your claim you have provided from various organisations letters of support in relation to the New Deer Community project. Having looked at these documents, most of the information contained within them refers to the benefits through sports that New Deer Community will gain. There appears to be no reference to any wider community use that does not involve sports, such as play groups, quiz nights or clubs for senior citizens.....It would appear from the information supplied that the target population that the facilities are aimed at are those within New Deer Community who are interested in sports”.

48. It continued “HMRC’s interpretation of Note 6(b) (of VATA Schedule 8, Group 5) is that for a facility to be considered as similar to a village hall there is a requirement that the facilities provided within the ‘all weather sports pitch and changing facilities’ meet the needs of the whole community and not just those of a specific group. No part of the building can be dedicated to a non social/non recreational activity. As the majority of the construction is used for changing purposes it is HMRC’s view that these facilities do not meet the criteria – used for social or recreational purposes”.

49. On 16 December 2013, The Right Honourable Alex Salmond MSP for Aberdeenshire East wrote on behalf of NDC, care of HY, to HMRC stating “I would

be grateful if you would investigate my constituent's specific concerns and outline HMRC's reasonings for this charitable organisation to be refused a VAT relief. The project is an extremely important one for my constituents in the surrounding community who are doing their very best to raise the requisite funds for construction.
5 I hope you can look at their application now in the most favourable of terms. I look forward to your response, the contents of which I will share with my constituents".

50. Andrew Edwards, Head of Charities, Specialised Personal Tax, Room G66, 100 Parliament Street, London, part of HMRC, replied on 21 January 2014, stating "VAT is designed to be a broad-based tax on goods and services and relief from the tax has
10 always been strictly limited". He continued "a sports pavilion can be used for a relevant charitable purpose when it is used in a way which is similar to that of a village hall. An important characteristic of a village hall is that the building must be available for use by all sectors of the community for a wide range of activities which includes some sports but should also include other community interests. There is also
15 a high degree of local community involvement in the building's operation and activities. It would appear that the sports pavilion that is being constructed by the New Deer Community Association is largely made up of changing, storage and car parking facilities alongside an all weather sports pitch".

51. He continued "in addition the documentation submitted in relation to the new sports pavilion states that The Football Club will be responsible for the facility which suggests that one particular interest group has more involvement in the running of the pavilion than the other members of the community. The application of VAT is governed by European agreements that have been signed by successive Governments. The zero rates are derogations from the normal European Union rules and represent
20 benefits not enjoyed by charities in other Member States. The agreements with our European partners allow us to keep our existing zero rate reliefs, but do not permit us to extend them or introduce new ones. It is therefore, not possible to widen the scope of the current relief and allow zero rating on all buildings works".

52. Mr Salmond replied on 12 February 2014 stating that "Ms Young believes that the large foyer within the facility can and will be used for various community groups as well as hired out for social functions such as HMRC's suggested birthday parties". He also advised that HY was a promoter of the North East Arts Touring which promotes theatre involvement throughout the district. "My constituent informs me that the foyer can hold at least 30 people and has public toilets connected to it for
35 these specific purposes". Mr Salmond stated, "I would be grateful if you could look again at their application now in the most favourable of terms".

53. Mr Edwards replied on 10 March 2014 stating that "the construction of the foyer area can only be zero rated for VAT if it is used solely as a village hall. That seems unlikely given the foyer will also be used as an entrance/thoroughfare for the remainder of the building. The rest of the building will be standard rated for VAT whether or not the foyer area qualifies for zero rating". Reference was made to Notice 708 (May 2014 version).

54. Mr Salmond wrote again on 28 April 2014 and Mr Edwards replied on 21 May 2014 suggesting that NDC put their case to an independent Tribunal.

55. HY confirmed that the surveys that had been carried out only asked what sports the local community wished to carry out but that a second questionnaire identified 19 in favour of sport and 11 in favour of recreation.

56. HY stated that the changing rooms were practical for use as a snooker room or for any other purposes other than changing.

57. SK gave evidence that in receiving an application to grant zero rating she had looked at the charity's website, the Aberdeen Council's planning website and, consequently, the application for planning permission, had obtained details of New Deer's public hall which SK noted seemed to have village hall type accommodation and facilities, press comment on the proposed construction in the local newspaper The Press and Journal, and the Scottish Charity Register.

58. SK confirmed her belief that the facilities were only aimed at the sports section of the local community and mostly football although netball was also included.

59. SK confirmed that, having looked at all this information, she wrote for a second time on 19 August 2013 stating her belief that the building was not capable of meeting the social or recreational needs of the whole community.

60. SK thought that the rooms were inappropriate to play table tennis as they were too small and would not provide a pleasant environment for such a recreation. In her letter of 4 July 2013 SK referred to use by all sectors of the community for a wide range of social *and* recreational activities. The legislation refers to social *or* recreational activities (emphasis added).

61. In SK's view, the sports pavilion was not similar to a village hall, and referred to the published guidance HMRC Notice 708, May 2014 version, "Buildings and Construction" and, in particular, the statement at paragraph 14.7.4:- "Village Hall" falls within the category if the following characteristics are present:

- There is a high degree of local community involvement in the building's operation and activities and
- There is a wide variety of activities carried on in the building, the majority of which are for social and/or recreational purposes (including sporting)..... Any part of the building which cannot be used for a variety of social or recreational activities cannot be seen as being used as a village hall.

The paragraph explains buildings that are not typically seen as being similar to village halls include:

- Community amateur sports clubs.

It further explains buildings that are seen as being similar to village halls (when the characteristics noted above are present) include:

- Sports pavilions
- Community sports centres

62. SK explained that she expected to see use of the building for purposes such as quiz nights, Christmas parties and bridge nights.

5 63. SK confirmed that HMRC's judgement was based on the projected use of a building given that zero rating needed to be intimated to contractors prior to construction and that it would be possible for HMRC to enquire as to the actual use of a building once it had been constructed with or without zero rating for VAT.

64. SK confirmed that there were penalties for submitting a zero rate claim after construction so, accordingly, the consent and certificates are provided before construction.

10 65. SK confirmed that the conditions of the zero rating are that the premises must be maintained during a period of ten years after construction and that if the building had not been put to the proper use HMRC could identify this and levy penalties.

15 66. Accordingly, SK confirmed that there was, in effect, a one off opportunity to have the issue of zero rating granted at the outset of a building project and that HMRC had ten years in which to check that it was being used correctly for the purposes as set out.

67. SK denied that she had ignored the representations that the building would be used for purposes other than sport and that she had looked at what had been said and the building could not meet the conditions.

20 68. Evidence was given that the times permitted for the football league would take place from 0900 to 2200 seven days a week.

25 69. SK said the wording in the planning application and her sight of the floor plan showed that the building was not a normal village hall and that all the other activities mentioned would take place in an environment where it was unpleasant/unfeasible to carry out those activities and that there would be safety concerns because of shower facilities, especially for young children and that the rooms were small.

SK accepted that she had no experience of village halls in rural communities.

NDC's Submissions

70. NDC tabled a written submission comprising of 103 paragraphs.

30 71. NDC say that VAT zero rates have to be applied for clearly defined social reasons and for the benefit of the final consumer and narrowly but not so narrowly that HMRC would deny the direct effect of their application in any particular case.

72. In citing *EC v UK Case 416/85*, they say they are included within the definition of the final consumer; that NDC is a charity which is not in dispute and provides social or recreational activities from the new pavilion/facility.

35 73. They say the only matter in dispute is whether the new pavilion/facility operates in a way which provides social or recreational facilities to a local community, similarly, to that supplied by a village hall.

74. They say the pavilion was completed in May 2014 and has been used by the British Legion, the football club and the bowling club and that the All Weather pitch will be constructed when funds are available.
- 5 75. NDC say that the changing rooms were constructed with each having sufficient space to allow alternative uses and that the questionnaires were not just about football.
- 10 76. They say the architect, acting on their behalf, gave titles to the planning application and planning consent without consideration to the local community's overall objectives for the use of the new pavilion/facility and that the questionnaire was issued by NDC and the New Deer Football Club to community groups after planning consent was granted. This, they say, was solely for the purpose of sustainability and to provide operational use statistics for potential funders.
- 15 77. NDC say that titles are not determinative of use and what is important is the ability of the local community to use the facility between 0900 and 2200, seven days a week.
- 20 78. NDC say that the football club's prominent involvement was because of their expertise in All Weather pitch surfaces and tendering generally although the All Weather subcommittee included people from a diverse range of backgrounds.
- 25 79. They say the overriding motivation of the project was to provide a facility for the children of the village of New Deer and that the nearest equivalent facility was at Mintlaw, some 9.5 miles away.
- 30 80. They say they were driving at what the community wanted which was a multipurpose pavilion with an All Weather multipurpose pitch aimed mainly at sports with the target audience interested in sports and other recreational pursuits. Tables for table tennis and snooker/pool were stored at HY's home and, at the hearing in October, were still there.
- 35 81. NDC say that describing the multipurpose pitch as a five-a-side football pitch in the project business plan was simply to provide readers with a better understanding of the dimensions of the All Weather pitch.
- 40 82. NDC say that games played within the new pavilion would not always be based on constructive play and the pavilion and the multipurpose pitch were capable of use for school fetes, theatrical performances, musical events, concerts etc., as well as much improved changing facilities for performers.
83. As regards management, NDC say that HY maintains a booking register and provides receipts when requested. Bookings are on a first come, first served basis and that the New Deer Football Club's only responsibility was to clean and maintain the new pavilion.
84. NDC say that SK was mistaken in stating that the new building was not used "similar" to a village hall and that the use of the term "social and recreational" was wrong.
85. NDC say that the legislation refers to the adverb "similarly" in relation to a village hall and that the use is to be social or recreational.

86. NDC say that SK's view was driven by the planning application and consent, the content of the community website and the project business plan.

5 87. NDC say SK is incorrect in refusing to accept that the building was designed and constructed as capable of the multifunctional use which they claim is the intention and use of the facility.

88. NDC say that they are disadvantaged by having to apply for a zero rate certificate without being able to prove use whereas HMRC have many years in which they can ascertain what use there has been for a relevant purpose.

10 89. NDC say that SK is incorrect in her view that the non sporting use of the changing rooms, referee's room and entrance/foyer was impractical and that the serving hatch was for serving football players. They say that SK arrived at her view unilaterally and could offer no alternative use of the hatch other than rather simply claiming its primary function was to serve football.

15 90. They say that the pavilion's day to day use is determined by the NDC and not by the football club.

20 91. NDC say there is no special interest group that dominates the booking or use of the New Deer pavilion, that NDC is responsible for the operation and management of the new pavilion/facility; that NDC have delegated the task of cleaning and maintaining the facility to the football club and that the football club is a member of the NDC.

25 92. NDC say that if they believed that the sport of football would dominant the use of the new facility, why would so many general interest groups have given up so much of their time, effort and financial donations to support the project and why would the All Weather pitch, not yet constructed, be marked or lined out permanently for the use by football, netball, basketball and hockey, if it was intended solely for the purpose of playing football? NDC say that the local authority would not have committed £200,000 and Sports Scotland would not have given the grant of £80,000, if it were to be dedicated solely to the sport of football.

30 93. NDC say that the football club is solely concerned with the maintenance of the property because "they have the skills to consider competitive tendering for the contract of an All Weather pitch and they are more adept in determining the best surface for sport and have the skills in pavilion upkeep but do not operate the facility".

35 94. NDC say that the trustees of the NDC have no association or connection with the New Deer Football Club.

95. They say they charge very modest rates for the use of the facilities and that there are no paid staff and no commercial facilities within the pavilion which is used by the community for social and recreational purposes as the community see "fit for all".

40 96. NDC say they have already provided the evidence submitted to the Tribunal in earlier correspondence and, if the appeal is to be allowed, they request that the Tribunal issue a direction on the Respondents pursuant to Rule 10(1)(b) of the

Tribunal Rules (SI 2009/273) and that the Respondents pay the Appellants' expenses in preparation for attendance at and consequent upon the hearing.

5 97. NDC made reference to HMRC's Notice 708. Whereas an earlier version was considered, when SK and the review officer dealt with the case, the Tribunal's attention was drawn to the August 2014 version. This Notice sets out the guidance that HMRC give in relation to how they define the terms of Note 6(b).

98. The following terms were drawn to the Tribunal's attention.

10 99. "The term 'similar' refers to buildings run by communities that are not villages but who are organised in a similar way to a village hall committee. It does not include buildings that offer a range of activities associated with village halls but who are not organised on these lines.

15 100. In order to be similar to a village hall, a charity would have trustees who are drawn from representatives of local groups who intend to use the hall. The trustees, therefore, would be made up of individuals, for say, the Women's' Institute, the Bridge Club, the Amateur Dramatic Society etc.

101. The building would be hired out to the local community for a modest fee by a range of clubs and groups and also for wedding receptions, birthday parties, play groups and other leisure interests.

20 102. Whilst the size and level of provision and the facilities will be decided by the local community we would at the very least expect the principal features of a village hall to be a large multipurpose hall where members of different households can meet to undertake shared activities.

103. The emphasis for a village hall should be on promoting the facilities for the benefit of the whole community rather than for the benefit of one particular group.

25 104. An important characteristic is that the building must be available for use by all sectors of the community. It must, therefore, be capable of meeting the social and recreational needs of the local community at large and not be predominantly confined to a special interest group. It should be arranged on a first come, first served basis and no single group should have priority over all the others. On the other hand, a building design for a particular sporting activity, for example, a cricket pavilion or
30 football clubhouse, and ancillary facilities is not seen as being similar to a village hall. Whilst these types of building are often made available to the wider community, this would require to fit in around the sports club's usage. In essence, it would be the sports club who would determine how the building was to be used and not the wider
35 community."

HMRC's Submissions

40 105. HMRC tabled a written submission comprising of 40 paragraphs. HMRC wished every success with the project and stated that phase 2 relates to the building of an All Weather sports surface which, when construction commences, will be liable to VAT at the standard rate.

106. HMRC say that phase 1 of the project has been completed and consists of the construction of a building which provides improved/upgraded changing facilities,

5 serving the existing full sized grass football pitches and will serve the proposed All Weather surface (when constructed).

107. HMRC say that the construction of the building does not qualify for relief and should be standard rated and that it is important to look beyond the terms used to describe the building and instead to ascertain the function or use of the building, including what the intention and primary purpose was prior to the commencement of the works.

108. HMRC say that the household questionnaire circulated in 2003 gave local residents the opportunity to register their views and leisure and environmental issues made up over 50% of the total feedback. Top of the list was the provision of an All Weather sports surface, and in addition the football club required changing facilities to comply with 21st century expectations and legislation.

109. HMRC say that the All Weather facility committee, a subcommittee of NDC, was formed in 2005 and a further questionnaire was circulated in 2007 to establish how often or at what times any clubs or organisations would access the facility.

110. Only 16 clubs responded to this additional research which was “to assist with projected income for the year”.

111. HMRC say that NDC and the New Deer Football Club jointly applied for planning permission for a proposed new All Weather sports pitch, changing facilities and car park and that the planning permission was for the formation of “an All Weather sports pitch, flood lighting, building providing changing facilities and store and a car park”.

112. HMRC say that the primary intention, purpose and driving force of the construction of the building was to replace the outdated, sub-standard changing facilities for New Deer Football Club; that it is important to look beyond the terms used to describe the building and instead ascertain the envisaged function or use of the building post-planning approval.

113. Planning permission was approved on 19 February 2009 and, between October 2010 and February 2011, some 20 months after planning permission was approved, NDC repeated the 2007 questionnaire exercise which asked recipients which activities their club/organisation would be interested in and limited the options to football, hockey, basketball, tennis and other. In response 30 groups/organisations replied, of which 19 are described as dedicated for sport and 11 as recreational activities. Of the 19 dedicated sport/organisations, 17 were football clubs, five of which were school clubs. Of the 11 recreational clubs/organisations, comprising of Community Learning, North East Referees, Guides/Brownies/Boy’s Brigade and a pre-school club, HMRC state that none of them could influence the design of the building as planning permission had already been approved in February 2009.

114. By contrast the need of football and football clubs was at the fore during the design and planning stage. HMRC say HY’s evidence states that the architect was asked to build a foyer as large as possible to accommodate the parents of football playing children.

115. HMRC say that the description of the project changed over the course of the intervention by HMRC to promote the idea that it is more than simply an upgrading of changing facilities. Initially described as a “pavilion” in the letter of 12 June 2013, Mr Rumbles later described this in the grounds of appeal as “a new multi function pavilion” and a “new multipurpose pavilion.”

116. HMRC say that once their letter (to refuse zero rating was issued on 4 July 2013) the room descriptions and uses changed to promote the contention the rooms could be used for a wide variety of activities, none of which were mentioned in the original business plan and appear for the first time in HY’s letter of 1 August 2013; the committee room is “multipurpose”; the foyer is a “dedicated social area”; two changing rooms would now be used for indoor games, for example, table tennis and snooker; another changing room would be used for “meetings” when the committee room was booked.

117. HMRC say that NDC are responsible for the New Deer Public Hall located in the village which NDC claim is not user friendly for children under five years and is not a venue teenagers would use. NDC say that the three committee rooms are often oversubscribed while the only physical recreation taking place is badminton, zumba and children’s highland dancing.

118. HMRC say that the entrance and foyer of the new facility which NDC say will be used as a social area is similar in size to the large committee room in the village hall and submits that both are restricted in their application and, in any event, were primarily designed to accommodate the parents of children who are watching football rather than as they were subsequently described. HMRC also say there is no internal storage area in the foyer (other than the use of a cupboard containing a tank) with the principal storage area accessed externally and designed to accommodate external pitch items and equipment.

119. HMRC say that changing rooms contain shower facilities and, given their size and dimensions, are not conducive as venues for meetings/playing table tennis, snooker or, indeed, practical to be used for anything other than changing facilities associated with sporting activities.

120. HMRC say there is no evidence that teenagers are likely to use the new building situated in the park. HMRC say that the existing public hall/village hall demonstrates its versatility. It can be used for badminton, zumba and children’s highland dancing but none of these activities can be undertaken at the new building.

121. HMRC say that the pavilion itself is not used for sporting activities at all, as stated in Mr Rumble’s letter dated 7 August 2013, which says “sporting activities are conducted on the All Weather pitch”.

122. HMRC say that the new building will be available free of charge to the New Deer Primary School during the school day and that the school football team and netball team will have free access until 7pm.

123. As five of the 17 football clubs are school clubs, HMRC say that this places a restriction on use to the remainder of the local community to the extent the building cannot be used if it interferes with the timetable for use by schools.

124. HMRC say that the NDC plan says the football club “will run and maintain the facility for the community. It will emulate the public hall and operate as not for profit”.

5 125. HMRC say that zero rating is an exception to the normal application of VAT and that it should be narrowly constructed.

126. HMRC say the new building is one at a sports ground that provides changing facilities and is confined to a special interest group, the team sport-playing part of the community and, in particular, the football playing part of the community.

10 127. HMRC say that there are restrictions in place which mean that the building is not available at all times to the wider community and the current village hall provides numerous opportunities for both social and recreational activities, none of which would be served by the building at the subject of this appeal.

15 128. HMRC say that a building designed for a particular sporting activity, for example a swimming pool and ancillary facilities, is not similar to a village hall. A building used similarly to a village hall must be capable of meeting the social and recreational needs of the community and not simply confined to a special interest group.

The Cases

20 129. During the hearing, NDC and HMRC made representations on the relevance of the cases listed in this Judgement. These cases cover multiple aspects of Section 30 of VATA 1994, Schedule 8, Group 5, Item (2) and Note (6), such as whether the taxpayer was a charity; whether the local community was the final consumer; whether use was solely for relevant charitable purposes; whether the construction was used for the local community and whether the use was as a village hall or similarly in
25 providing social or recreational facilities for the local community.

30 130. In *Bennachie Leisure Centre Association* (Vat Tribunal decision No. 14276), the chairman, in the penultimate paragraph of his decision, stated “we do not consider ourselves as bound or guided by any previous decision. We regard the question as being one which it is appropriate to decide in the circumstances of each particular case”.

35 131. In *Ledbury Amateur Dramatic Society* (VAT Tribunal decision No. 16845, the chairman commenced her conclusions with the words “whilst the decision in the *Jubilee Hall* case is binding on this tribunal, and whilst other cases decided in the tribunal are helpful, the issue in this case is primarily one of fact. Do the attributes of
this building come within the description of ‘village hall or similarly’?” The reference to *Jubilee Hall* is to the Court of Appeal decision in the joined cases of *Jubilee Hall Recreation Centre Ltd v Customs and Excise Commissioners*; and *Customs and Excise Commissioners v St Dunstan’s Educational Foundation* [1999] STC 381.

40 132. Following the approach in those cases and *Sport in Desford* (VAT Tribunal decision No. 18914), in order to decide the issue, it was necessary for this Tribunal to consider the various cases in order to consider the facts of those cases and to consider whether the facts were similar or dissimilar to the facts in the present appeal.

133. The cases up to the hearing of *Sport in Desford* were summarised by the Tribunal chairman in that case as follows –

5 84. In the *Jubilee Hall Recreation Centre Limited* case, *Jubilee Hall* was a charity which ran a sports and fitness centre in Covent Garden, London. It included a state-of-the-art gym, a hall, café, studios, changing rooms, sauna, showers and sunbeds. Numerous classes, such as yoga, aerobics and acrobatics were run. Treatments such as osteopathy, massage, shiatsu, treatment of sports injuries and reflexology were available. The centre sold a very large range of health products and a range of clothing. The centre was run on a commercial basis by full time paid staff and directors. It was held that the use of the centre was not similar to the use of a village hall. The Court of Appeal held that the purpose of the exemption was to extend relief to cases where the local community was the final consumer in respect of the supply of services, in the sense that the local community is the user of the services (through a body of trustees or a management committee acting on its behalf). The Court of Appeal upheld the decision of the original tribunal in that case (and overturned that of Lightman J. in the High Court). The tribunal had held that whereas the relief was available for village halls which provided some economic activity, particularly that in which the community participated directly, the relief did not extend to something run predominantly as a commercial venture.

25 85. Sir John Vinelott on p389 of the Decision concluded "subparagraph (b) is intended to cover economic activities which are an ordinary incident of the use of a building by a local community for social, including recreational, instances. The village hall is the model or paradigm of that case". He further concluded on p389 "I feel considerable doubt whether the persons for whom the facilities are said to be primarily intended, namely the community of Covent Garden and its neighbourhood can aptly be described as a local community. The neighbourhood, if taken by the centre, is including W1, SW1, WC1 and EC4 ... The charity counts amongst the local community students attending places of education as distinct and disparate as the St Martin's School of Art, Kings College London, the London School of Economics and the Inns of Court School of Law. I doubt whether an area as wide as this can be treated as a "locality" within the contemplation of Note 6(b)."

35 86. In the associated case of *St Dunstan's Educational Foundation*, the Court of Appeal considered the case of the Foundation which had built a sports hall, incorporating an existing swimming pool. It was to be used principally by a local fee paying school. It was also to be hired out to organised groups recommended by the local authority. The Court of Appeal found against the Foundation on the grounds that one could not treat pupils at the fee paying school as part of the local community. Sir John Vinelott concluded at p394 "the sports centre was constructed primarily for use as one of the facilities of a fee paying school. Use for community purposes, at the direction of the Council, was secondary. Insofar as the pupils at the school benefited from that facility, they did so, not as members of the local community, but as pupils on whose behalf fees were paid to the school. The sports centre could not therefore be said to have been intended for use solely for the purpose of 'providing social or recreational facilities for a local community'."

- 5 87. The case of *Ormiston Charitable Trust* concerned a sports centre built by the Ormiston Charitable Trust to provide sports and out-of-school activities for children and their families. The *Ormiston Charitable Trust* was the operational arm of the Ormiston Trust, which described itself as East Anglia's own children and families' charity. It had a network of facilities for families in East Anglia offering support through family centres, prison visitor centres, and an out-of-school community project which was the centre in question. The Appellant failed because the centre was not owned, organised and administered by the community. It was run by the Trust which carried out projects across several counties, therefore the requirement that the use must be similar to the use of a village hall was not satisfied. The tribunal also suggested that the requirement that the facilities must be provided for a local community might not be satisfied, as the aims of the Trust seemed to extend to catering for children from a large number of surrounding towns and villages.
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- 15 88. The tribunal rejected the submission of the Commissioners that it was necessary for the building to carry on the same sorts of activities as would a village hall. It also rejected the submission of the Commissioners that the building should physically resemble a village hall. The chairman concluded "a mix of social and recreational activities of the kind commonly associated with a village hall is not essential and the relief extends to buildings, like the cricket pavilions and changing rooms mentioned in the Commissioners' leaflet, providing recreational facilities rather than social facilities".
- 20
- 25 89. In the *Bennachie Leisure Centre* case, the appeal concerned a leisure centre. It consisted of a main central area for badminton. In addition, there were changing rooms, a crèche and club room, an office, a kitchen, a tea room, craft shop, thrift shop, fitness room and equipment store. The kitchen, tea room and thrift shop was to be operated by another local charity with overlapping membership and any surplus ploughed back into the community. It was intended that staff would be employed and fitness equipment acquired and supervised. The various parishes from which the members were drawn were expected to be within a six mile radius. The appeal succeeded. It was held that the building was intended solely for use for both social and recreational facilities. It was also held that the community that would use it was a "local community". On the question of whether the use was similar to the use of a village hall, the tribunal held that it was a question of fact. The chairman suggested that the tribunal in the *Ormiston* case had been wrong in requiring the building to be owned by the community when the exemption clearly contemplated ownership by a charity. The chairman in the *Bennachie* case concluded "since, however, the explicit purpose of the building, its management committee and the association which is to run it is to provide facilities, social and recreational, for the stated wide, local membership, we have no hesitation in finding on the facts of this case that the appeal succeeds and that the building is entitled to zero-rating".
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- 45 90. The chairman stated "... what qualifies as a local community in an urban setting may be very different from what would qualify as such in a rural setting. What is the appropriate provision of facilities for that community again may differ on the facts of each case".

5 91. *The South Molton Swimming Pool Trustees* case concerned the construction of a swimming pool. The pool building originally contained, as well as the pool, changing rooms, a first-aid room, and showers. A sauna was later added. At the entrance was a reception area and cafeteria. Sports clothes and sports goods were sold. In fact, the trustees derived 20 per cent of their income from the sale of sports clothes and sports goods. There were three full-time employees, a manager, deputy manager and assistant manager. There was one part-time employee, a swimming teacher. 30 volunteers acted as life guards and looked after the reception area. The Appellant did not succeed. First it was held that it was not used in a manner equivalent to a village hall. This was mainly because the activities taking place in the pool building were not organised by the community. They were all run by the Trustees. The purpose of the pool was the provision of activities by the Trustees and not letting to groups in the community for their own purposes as one might expect with a village hall. Further, the pool was a well organised commercial operation. The scale of supplies of sports clothes, sports goods and refreshments was not similar to the use of a village hall. Secondly, the pool was not provided for a local community. The community using the pool extended to those living 23 miles a way. That was not such a local community as would use the facilities of a village hall or something similar to a village hall. The tribunal recorded that it accepted two points made by the Trustees. First, the legislation only required the provision of social or recreational facilities. There did not have to be both. Secondly, it was irrelevant that the pool did not look like a village hall.

25 92. The *Ledbury Amateur Dramatics Society* case related to the construction of a new theatre. The chairman concluded that there was no requirement that the building and the activities should be identical to the building and the activities of a village hall. The chairman found that the Trustees did not come within the normal meaning of the final consumer, however, the supplies had by virtue of an agreement, to be for the benefit of the local community. The Trustees were not acting with a view to making a profit, they were acting in order to provide a benefit to the community. The chairman concluded "whilst the Trustees are not representing the interests of everyone in the local community, nonetheless, anyone in the local community was able to be a Trustee, just as anyone in a village might apply to be on the village hall committee. Mr Graham, on behalf of the Appellant quite properly accepted that there was a difference between the way in which the building was operated and the way in which a village hall would be operated, nonetheless he was able to point to a very large number of areas in which there was not just a similarity, but a close similarity. The tribunal does not consider that those areas where there are differences are fatal to this appeal. I accept the submission on behalf of the Appellant that the building in the present case and the way it is run is much closer to a village hall operation than in any of the cited cases where the court or tribunal has found against zero-rating, and accept the basis on which he distinguished those cases. In all the circumstances, this appeal is allowed.

134. The reference in paragraph 133 to the *Ormiston Charitable Trust* case is to *Ormiston Charitable Trust* (VAT Tribunal decision No. 13187). The reference to the *South Molton Swimming Pool Trustees* case is to *The South Molton Swimming Pool Trustees* (VAT Tribunal decision No. 16495).

135. *Sport in Desford* allowed zero rating VAT relief and the Tribunal found that “sporting activities fall within the definition of social or recreational activities” and went on to say that “a high degree of sporting usage did not make the use dissimilar to that of a village hall”.

5 136. The clubhouse building in *Sport in Desford* comprised a clubhouse comprising a fitness room, squash court, two kitchens, a clubroom, a function room, a bar, a changing room, showers, store and a dance studio. The dance studio and clubrooms
10 are also used for other community based recreational activities, including an old time dance club for senior citizens, a line dancing group, an old folks club, meetings of local political groups, bonfire night parties, jazz nights and quiz nights. The club also held dog shows and a village show.

137. In this case, the area available for non sports or dance activities amounted to less than 25% of the total area of the club.

15 138. There was an existing village hall in Desford which provided a single kitchen and room. It provided “very limited facilities and is used by table tennis players, for craft fairs and, possibly, by the Women’s Institute and, possibly, mothers and babies groups”.

20 139. In the *Jeanfield Swifts Football Club* (VAT Tribunal decision No. 20689) case, the appeal was allowed in respect of a new pavilion. This Tribunal had some difficulty in establishing the reason for the decision in relation to whether the construction was a “village hall or similar”, other than that the Tribunal chairman believed that the location in a city did not detract from the proposition that it could be similar to a village hall and his surprise that the matter had ever got as far as it had.

25 140. The Tribunal was also referred to the *Co-work Camphill Ltd* (VAT tribunal decision No. 17636) case which considered whether a Community Hall was a village Hall. The case was decided on its particular facts and this Tribunal derived little assistance from it.

Decision

141. The Tribunal considered that four tests were appropriate.

- 30 1) Were the facilities provided for the local community?
- 2) Was the facility owned, organised and administered by the local community,
- 3) Were social or recreational facilities provided or reasonably capable of being provided, and
- 35 4) Was the use similar to the use of a village hall?

142. The Tribunal considered that the facilities were provided by NDC, which was a charity and that the local community were the final consumers. The facilities provided for the local community were mainly sporting activities but, nonetheless, social or recreational facilities.

143. The Tribunal considered that the local community test was met as it did believe that any facility would meet a test of being available for the whole community. It was, on the evidence, to be used by school children, teenagers and adults and a wide variety of organisations other than football clubs expressed interest in using the facility. HMRC's Notices 708, both May 2014, and August 2014, accept that "sports pavilions" can be seen "as similar to village halls" as long as the characteristics (specified in the Notice) are present.

144. The facility was owned by NDC and administered by HY on behalf of NDC.

145. In evidence, it was established HY kept the bookings on a first come, first served basis which the Tribunal accepted might mean a school could not use the facility during the day if another booking had been made even although the intent was to allow schools preferred use during school days. The Tribunal considered this to be logical at least on week days and during school terms when many others of the local community would be at work.

146. The football club were then delegated to clean and maintain the facility which the Tribunal considered was indicative of the more realistic use and mirrored what was reasonably capable in terms of use of such a facility. It was the football club, not the hockey club, not anyone using it for a birthday party, or anyone playing pool, who was responsible for cleaning and maintaining the facility.

147. Accordingly, this test was only met in part and indicated why use was not similar to use as a village hall where either each user would be responsible for cleaning and where maintenance would be met by the local community as a whole or more usually through a local community association.

148. In relation to whether social or recreational facilities were provided, or reasonably capable of being provided given the requirement to specify future rather than actual use at the time of requesting zero rating, the Tribunal also took account whether use was similar to a village hall.

149. There was no doubt that sporting facilities were more than reasonably capable of being supported by the facility although the Tribunal chairman in Bennachie Leisure indicated that if the building was in that case "to service the adjacent tennis court, it would be difficult to see how it would be afforded an exemption".

150. The Tribunal consider that this interpretation was too narrow, particularly in light of other First Tribunal cases which had been unchallenged by HMRC or taxpayers, and considered that other social or recreational uses would be ancillary. Undoubtedly, four people could play cards, seated at the table in the kitchen/committee room, if they choose to do, and they could meet there in limited numbers but the Tribunal did not consider it was conducive or reasonably practical that the changing rooms could be used for the purposes NDC described for the reasons put forward by HMRC.

151. There was no evidence put to the Tribunal at the October hearing that pool/billiards or table tennis had been played in those rooms which had been completed some four to five months before and HY was able to provide little detail on what use the building had been put to by Brownies and Guides who were still meeting

in the local school but who might use this building in conjunction with an all weather sports pitch.

5 152. In *Jubilee Hall*, being the only Court of Appeal authority, Lord Justice Vinelott, indicated that “the words village hall or similarly must mean something more limited than simply the words benefitting the local community, as otherwise all meaning would be removed from the words”.

10 153. In *Ormiston*, the Tribunal stated that “the use of the adverb similarly as here is both limiting or qualifying the scope of the provision and indicating that there is a model against which that whatever it is that is sought to bring within the provision is to be examined”. The Tribunal continued “It is not enough that by using the building the charity provides (say) recreational facilities and these are for the benefit of the community: something more is required unless the word similarly is to be deprived of all content”.

15 154. In reviewing the cases where the appeal was successful, the Tribunal noted that the buildings, other than *Jeanfield Swifts* where no description was given, were clearly capable of multiple use even where they bore little resemblance to a traditional village hall, whereas in the present case the Tribunal had difficulty in accepting that multiple use was practical or feasible.

20 155. The building in the *Bennachie* case was reasonably substantial and the fact that it bore little resemblance to a traditional highland village hall was deemed to be irrelevant.

25 156. In the *Ledbury Amateur Dramatics* case, this concerned an area, the front area of which was designed to be suitable for as many uses as possible. These uses included rehearsals, meetings, coffee mornings, receptions, sales of work, a small performing space, a foyer and a variety of other rooms. Stacking chairs and simple square tables were stored.

30 157. The chairman stated “a wide range of activities is carried on in the building in the present case although its primary purpose is for arts use or even used as a theatre, the building is designed so that it can be designed for many other purposes including inter alia dances and dinners and it is so used. The swimming pool in the South Molton has no such flexibility”. “There is no requirement that the building activities therein should be identical to the buildings and activities of a village hall. Nor is ‘similarly’ simply a term thrown in so that the buildings carrying on similar activities to a village hall; but, nonetheless, sited in a town, should be encompassed by the provision. However, there is clearly a requirement that either the nature of the building itself or the nature of the activities conducting in the building should bear some similarity to the building and to the activities carried on in the village hall”.

40 158. The Tribunal considered that the previous decisions in relation to the words village hall or similarly in providing social or recreational facilities for a local community could be distinguished on the facts and considered that the use of the building was essential and a matter of fact to be determined on the evidence.

159. The issue was what use was or will be and here the Tribunal looked at what use could reasonably be carried out within the facility, given its design and construction,

that would take it into the description of use as a village hall, or similarly, in providing sporting or recreational activities for the local community.

5 160. As was made clear during the hearing by NDC, an application for zero rating has to be made prior to the completion of the construction of the building with the consequence that it is the proposed use of the building that needs to be considered. NDC say this is one of the defects in the legislation as NDC have to prove the proposed uses before the building is actually used whereas HMRC can retrospectively review any zero rating to see whether it has been put to the proposed uses. NDC, understandably, state that this may conflict with their ability to obtain funding where
10 grants may be awarded on restricted grounds which they cannot ignore even although those particular grounds may not be fully determinative of the final use of a building.

15 161. Although the cases correctly state that the use should not be connected to an architectural test, it cannot be ignored in its entirety, as clearly how a building is designed dictates to a large extent its use and what uses are reasonably practicable in light of that design.

20 162. In this particular case, the building was quite clearly built as a replacement sports pavilion, primarily to replace the changing room facilities but also to provide a useful store for sporting equipment which is why the storage area has only external access, with referee rooms with their own showers and sufficient changing rooms so that these would be available for two sets of teams and for male and female participants. The small committee room situated in the kitchen with the outdoor hatch could have multiple use but so too could any room.

25 163. Other than a small committee room which could seat, possibly up to eight people, the other larger open space was the entrance and foyer which, in the original specification, it was said was designed to allow parents to watch their children playing football. The Tribunal could not accept that the entrance and foyer could be used as a space similar to a village hall. It has three doors opening on to it, two from WCs, and is also a passage way and access to the changing rooms and showers and referees' rooms. The changing rooms themselves have open but not closed shower areas and
30 the building itself has clearly very limited internal storage.

164. Consequently, the Tribunal did not accept that the facility was used or could be used in a way that was similar to the use of a village hall as it did not believe the changing rooms were, as HMRC put it, conducive to being put to other uses, especially with open shower units within them.

35 165. No evidence was given as to where tables and chairs or equipment could be held for other types of meetings and although the hall had been completed in May 2014, in October 2014, it was stated that HY still stored the pool table and table tennis table at her home.

40 166. The fact that there was a reasonably substantial village hall already in existence was also significant. In *Sport in Desford*, where that appeal was successful in relation to a large clubhouse, including a dance studio, the existing village hall only comprised of a single room and kitchen. To a large extent, the exact opposite prevailed at New Deer where there was a traditional village hall with a different type or types of room that would normally be expected to be present.

167. The Tribunal were persuaded by HMRC's argument that the new facility was designed as changing rooms, a storage area and showers with all the necessary facilities to support the proposed phase 2 all weather centre and, on the evidence before the Tribunal, it appeared to fulfil that role particularly well.

5 168. The Tribunal were of the view that when the issue of zero rating VAT relief was looked at more closely by NDC, there was a change in the emphasis of the proposed use.

169. The Tribunal took the view that, as stated in the *Ormiston* case, that the inclusion of the words village hall must have some purpose and it would be extending the definition of "as a village hall or "similarly" to an unacceptable length to suggest that any room could be used for social or recreational activities in such a way. To use the words of Lord Justice Vinelott, "to do so, all meaning would be removed from the words". The Tribunal agreed with the terms of HMRC's revised Notice that to meet the legislation test a principal feature would be a large multipurpose hall where members of different households could meet to undertake shared activities. The NDC facility had no such hall or space capable of use as such. Such a hall did exist at New Deer and was within the existing village hall.

170. The Tribunal considered the statement in the letter by Mr Edwards, Head of Charities at HMRC to Mr Salmond (paragraph 53 of this Judgement) where he suggested that part of the building might qualify to be zero rated but that the remainder would be standard rated.

171. Similarly, HMRC Notice 708, May 2004 version, states "any part of the building which cannot be used for a variety of social or recreational activities cannot be seen as being used as village hall" (paragraph 61 of this Judgement).

25 172. Item (2) of Group 5 of Schedule 8 should be read together with Notes 10(b)(iii) and (11).

173. The Tribunal consider that only the meeting room/kitchen was capable for use by the whole community for social or recreational facilities, such use being similar to a village hall.

30 174. Accordingly relief is granted to the area represented by that room/kitchen which represents 4.4% or 12.92 square metres of a total of 295 square metres. The remainder of the building costs should, accordingly, be taxed at the standard rate. The appeal is allowed in part.

35 175. The Tribunal in allowing the appeal in part considers NDC's claim for an order for expenses in terms of Rule 10(1)(b) of the Tribunal Rules (S1 273/2009) on the grounds that HMRC have acted unreasonably in bringing and conducting the proceedings,. The Tribunal do not accept that HMRC acted unreasonably and, accordingly, no order is made.

40 176. 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.

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**RUTHVEN GEMMELL
TRIBUNAL JUDGE**

Release Date: 18 November 2014

10 Amended pursuant to Rule 37 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 on 10 December 2014.