



TC05591

Appeal number: TC/2013/06499

VALUE ADDED TAX - Denied reclaim under the DIY Builders and Converters Scheme - Conversion of a barn into residential accommodation and a workshop / 'Live-Work Unit' - Whether 'designed as a dwelling?' - Schedule 8 Group 5 Note (2) VAT Act 1994 - No - Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MR ANTHONY TREANOR AND MRS PHILIPPA TREANOR Appellants

- and -

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

**TRIBUNAL: JUDGE CHRISTOPHER MCNALL
 MRS GAY WEBB**

Sitting in public at Leeds Tribunal Centre, 4th Floor, City Exchange, 11 Albion Street, Leeds LS1 5ES on 21 November 2016

Having heard Mrs Philippa Treanor on behalf of both Appellants and Mr Sellars, an Officer of HMRC, on behalf of the Respondents:

1. The Tribunal has decided that this Appeal should be dismissed, for the reasons which are set out below.

2. On 22 February 2013 the Appellants made a claim, under section 35 of the *VAT Act 1994* and the *VAT DIY Builders and Converters Scheme* ('the Scheme') for £25,534.50. That claim related to VAT which they had paid when converting a barn at their property in Long Marston in Yorkshire into a 4 bedroom residential property and workshop.

3. On 15 March 2013 HMRC disallowed their claim on the basis that the whole conversion was not '*designed as a dwelling*' for VAT purposes. HMRC relies on Schedule 8 Group 5 Note (2) of the VAT Act 1994 which defines '*designed as a dwelling*'. This Note forms part of the primary legislation: see section 35(4) of the VAT Act.

4. Schedule 8 Group 5 Note (2) reads as follows:

"A building is designed as a dwelling where in relation to each dwelling the following conditions are satisfied:

- (a) the dwelling consists of self-contained living accommodation;*
- (b) there is no provision for direct internal access from the dwelling to any other dwelling or part of a dwelling;*
- (c) the separate use, or disposal of the dwelling is not prohibited by the terms of any covenant, statutory planning consent or similar provision; and*
- (d) statutory planning consent has been granted in respect of that dwelling and its construction or conversion has been carried out in accordance with that consent."*

5. The Appellants requested a statutory review. On 20 August 2013 that review upheld the original decision. The review identified the conversion as a 'live-work unit' - that is, a property which combines, within a single unit, (i) a dwelling and (ii) commercial working space, as a requirement of planning permission. The review treated the workshop as commercial space in relation to which, as commercial space, there was no entitlement to any refund under the Scheme, and it treated the dwelling as 'not designed as a dwelling for VAT purposes'.

6. The Notice of Appeal was made on 14 September 2013.

7. Having considered the documents in the hearing bundle, and the photographs shown to us at the hearing, and having heard evidence from both Mr and Mrs Treanor, we make the following findings of fact.

8. On 24 August 2007 the Appellants obtained planning permission from Harrogate Borough Council to convert a barn at the back of the main farmhouse - Marston Wyse - where they were then living '*to form 1 dwelling with 1 workshop unit (use class B1, B2 and B8) and detached garage*'.

9. They used an architect and in early 2007 they also used a planning consultant. A planning application made in 2005 (for two dwellings only) was withdrawn. The plans were amended in early 2007 to include a workshop. That was done so as to improve the chances of gaining planning permission, as explained by the planning consultant in a letter to the local planning authority dated 12 January 2007 (and appearing at page 120 of the appeal bundle).

10. The amended plans, including a workshop, were approved.

11. The conversion as built contains a 2-storey 4-bedroom residential structure.

12. It also contains a workshop, which has two stories. It has a room downstairs, with a small toilet containing a sink, and stairs which lead upstairs, where there are

storage cupboards under the eaves, leaving a narrow gap between - perhaps big enough for a single or 3/4 size bed. There is no kitchen in the workshop and no cooking facilities besides a kettle. It gets its heat from the dwelling's central heating system. There is internal access between the dwelling and the workshop. The workshop is presently used as an office, housing a computer. Mrs Treanor goes in there for some peace and quiet to work, and the dog sleeps there at night.

13. The planning permission was not granted unconditionally. It was made subject to several conditions ('**Planning Conditions**') amongst which were the following:

"(8) The dwelling hereby approved shall only be occupied by a person or persons who owns or is employed in the operation of the adjoining workshop business, or a resident dependant of such a person [...]

(9) The dwelling hereby approved shall not be occupied until such time as the adjoining workshop use has been brought into use, and thereafter the workshop/storage areas shall not be incorporated into the living accommodation of the dwelling and shall remain available for the stated use."

14. The reason for Planning Condition (9) was given as follows:

"The residential development of the site is unacceptable in isolation as it would result in the loss of a rural employment site contrary to policy E2 of the adopted Harrogate District Local Plan.": Emphasis added

15. The Appellants did not appeal either of those Planning Conditions.

16. They went ahead and converted the barn. The work was done between June 2009 and August 2012 although it was substantially completed in November 2011. The conversion is known as 'Horseshoe House'. The Appellants have now moved out of Marston Wyse Farmhouse and into Horseshoe House. Marston Wyse has been sold.

17. All four statutory conditions in Note (2) - (a),(b),(c), and (d) - must be satisfied. Statutory condition (c) is the bone of contention. If it is not met, then the conversion does not fall within Note (2) and therefore is not 'designed as a dwelling' for the purposes of the VAT legislation and therefore the Appellants' VAT reclaim cannot lawfully be allowed.

18. In our view, Planning Conditions (8) and (9) are expressed clearly. Read separately, and read together, they do indeed prohibit "the separate use or disposal of the dwelling". In practical and legal terms, the occupation and use of the dwelling on the one hand and the workshop on the other are tied together by Planning Conditions (8) and (9). As such, the Planning Conditions fall foul of Note 2(c).

19. That conclusion inevitably means that the statutory conditions in Note (2) are not all met. Hence, the conversion was not 'designed as a dwelling' for the purposes of the VAT legislation, and the VAT reclaim under the DIY Builders and Converters Scheme cannot be allowed.

20. We are supported in our conclusion by the decision of the Upper Tribunal (Barling J) in *Richard Burton v HMRC [2016] UKUT 0020 (TCC)*. At the request of HMRC, the present appeal was stayed behind the hearing of that appeal. The decision in *Burton* was handed down in January 2016 and afterwards the present Appellants indicated that they wished to pursue their appeal. The Appellants said on 9 March 2016 that they had been informed that similar types of appeal are to go, or may have gone, to higher appeal, but the present Tribunal was not referred to any. Our own researches suggest that *Burton* does not seem to have been appealed onwards to the Court of Appeal.

21. *Burton* is a decision on the meaning and effect of Note 2(c). The planning condition in that case was that "*the occupation of the dwelling shall be limited to a person solely or mainly employed or last employed in ... the Fishery...*". Allowing HMRC's appeal, Barling J found that a use which is the breach of the terms of a planning consent would be prohibited in the sense meant by Note 2(c): see Paragraph 40 of his Decision. We consider that the same reasoning applies in this appeal to Conditions (8) and (9). Separate occupation of the dwelling and workshop would be a breach of the planning consent.

22. We have a certain sympathy with the Appellants, who, having obtained planning permission, subject to planning conditions, built in accordance with it, but apparently in ignorance that it would not be possible for them to reclaim the VAT element on the whole project. They said, and we accept, that they would probably not have built the conversion at all if they had known they would not be able to reclaim the VAT.

23. They were doubtless in a difficult position. On the one hand, without the workshop, they may not have received planning permission from Harrogate to convert the barn at all. On the other hand, with the workshop, they were likelier to get planning permission, but would be unable to reclaim the VAT on any part of the conversion, even if they had not realised this.

24. Despite our sympathy, this Tribunal has to apply the law as it stands. We have no discretionary power so as to allow a VAT reclaim in circumstances where, even if not allowed by law, we think that it is fair or otherwise merited. We are not allowed to take into account the fact that the area of the workshop is small, especially in comparison with the conversion as a whole. Nor do we have any power to reduce the amount of VAT reclaimed with reference to the relative proportions of the workshop/dwelling.

25. This document contains a summary of the findings of fact and reasons for the decision. A party wishing to appeal against this decision must apply within 28 days of the date of release of this decision to the Tribunal for full written findings and reasons. When these have been prepared, the Tribunal will send them to the parties and may publish them on its website and either party will have 56 days in which to appeal. 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.

**DR CHRISTOPHER MCNALL
TRIBUNAL JUDGE**

RELEASE DATE: 6 JANUARY 2017

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