[2016] UKFTT 440 (TC)

TC05193

Appeal number: TC/2015/04891

VAT – Purchase of commercial property with intention to convert into residential dwelling house for sale or use as offices – subsequently converted into multi-occupancy units – Whether "dwelling" – Yes – Whether "self-contained living accommodation" – Yes – Appeal allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

CAPITAL FOCUS LIMITED **Appellant**

- and -

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

TRIBUNAL: JUDGE JOHN BROOKS
JOHN COLES

Sitting in public at the Royal Courts of Justice, Strand, London on 14 June 2016

Tim Brown, Counsel instructed by Dave Brown VAT Consultancy, for the Appellant

Anharul Qureshi of HM Revenue and Customs, for the Respondents

DECISION

1. In August 2014 Capital Focus Limited (the "Company") purchased a commercial property, Tintern House in Banbury, Oxfordshire, with the intention of converting it to residential accommodation. The Company registered for VAT as an intending trader with effect from 26 June 2014, the date of its incorporation. In its first VAT return, for the period ended 31 August 2014 (08/14), it reclaimed input tax of £45,000 charged on the supply of Tintern House by the vendor.

2. Following receipt of the repayment claim an officer of HM Revenue and Customs ("HMRC") visited the Company on 29 October 2014 to verify the 08/14 VAT return. After providing the Officer with a copy of the invoice from the vendor on 5 November 2014 and explaining, in emails dated 20 November and 1 December 2014 that it intended to develop Tintern House and sell it as a single residential unit HMRC allowed the £45,000 input tax claim on the basis that it would be supply of a non-residential building converted to residential use and therefore zero-rated under Item 1(b), Group 5 of schedule 8 to the Value Added Tax Act 1994 ("VATA").

3. The Company submitted £nil returns for 09/14, 10/14 and 11/14 but claimed a repayment of £1,087.02 in its 12/14 VAT return. This prompted further enquiries by HMRC who were told that Tintern House was to be sold as a single residential house with multiple occupancy and some shared facilities.

4. Mr Rupert Wallace, the Company's director whose oral evidence was not challenged, described how when it was sold with vacant possession Tintern House had been converted from a commercial building (with an estate agent on the ground floor and office space on two floors above) into a residential property with ten bedrooms. Although none of the rooms had wash basins four were en-suite and there were two bathrooms for the six remaining occupants. The property was centrally heated by a single boiler and heating and other utility costs were to be included in an all-inclusive sum paid by each occupant. There was a communal kitchen for the use of all residents although there was nothing to prevent them from cooking in their individual rooms. The property had a front and rear entrance/exit and each room could be locked with its own key.

5. On 22 April 2015 HMRC wrote to the Company stating that, because it had been converted for multiple occupancy, the sale of Tintern House was not a zero-rated but an exempt supply and any input tax incurred that was directly attributable to it was not recoverable. Consequently on 27 June 2015 an assessment was issued by HMRC in the sum of £45,000, in respect of its 12/14 accounting period, to recover the input tax claimed by the Company on the acquisition of Tintern House. This assessment was upheld on 15 July 2015 following a statutory review and on 14 August 2015 the Company appealed to the Tribunal.

6. HMRC's letter of 22 April 2015 also stated that as the Company had no other taxable income for VAT purposes it would be de-registered for VAT. By letter dated 31 December 2014 the Company was notified that its VAT registration was cancelled with effect from 31 December 2014.

7. The Company also appeals against this decision which, it is accepted, will depend on the outcome of its appeal against the assessment. As such, we heard no argument in relation to this issue which, therefore, we have not specifically addressed.

Law

8. Under s 30(2) VATA:

> A supply of goods or services is zero-rated by virtue of this subsection if the goods or services are of a description for the time being specified in Schedule 8 or the supply is of a description for the time being so specified.

Schedule 8, Item 1(b) of Group 5 of provides:

> The first grant by a person—
>
> 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,
>
> of a major interest in, or in any part of, the building, dwelling or its site.

9. Insofar as it applies to the present case Note 2 to Group 5 states:

> A building is designed as a dwelling or a number of dwellings 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) separate use, or disposal of the dwelling is not prohibited by the term 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.

It was common ground that this appeal was only concerned with condition (a), ie whether the dwelling consists of self-contained accommodation.

10. The above conditions (in Note 2 to Group 5 of schedule 8 VATA) are identical to the conditions contained in schedule 7A (charge at a reduced rate) Note 4 to Group 6 VATA defining a "single household dwelling" and "multiple occupancy dwelling for the purposes of that Group in schedule 7A VATA.

11. In *Uratemp Ventures Limited v. Collins (Ap)* [2002] 1 AC 301 when considering s 1 of the Housing Act 1988 the House of Lords observed that "dwelling" is not a "term of art" but an ordinary or familiar word in the English language which connotes a place where one lives and makes one's home.

12. Adopting such an approach The VAT and Duties Tribunal (Dr Nuala Brice and Mr Silbert) in *Agudas Israel Housing Association v Customs and Excise Commissioners* [2004] UKVAT V18798 held that eight residential units adapted for use by people with Alzheimer's disease, dementia or similar illnesses were dwellings consisting of self-contained living accommodation.

13. HMRC's guidance as to what, in their view, constitutes "self-contained living accommodation" has been published at Note 2 of HMRC's VAT Manual (VCONST 14120). It states:

> A dwelling consists of self-contained living accommodation when the basic elements of living (sleeping, washing, preparation of food, and so on) are located together within a defined area and are not shared by more than one household or tenant.
>
> A 'bed-sit' wouldn't qualify as self-contained living accommodation because some of the elements of living are shared with other 'bed-sits', whereas a studio flat where all the elements of living are contained within the flat would be self-contained living accommodation.
>
> In *Oldrings Development Kingsclere Limited* (VTD 17769), the Tribunal held that a new studio room did consist of self-contained living accommodation. It contained certain facilities such as a WC with hand basin in a separate room, a kitchen sink and sufficient electrical points for cooking appliances, its own separate central heating and hot water system but it didn't have a shower unit or bath installed.
>
> In *SA Whiteley* (VTD 11292), the Tribunal held that the use of the singular of 'a building' in Note 2 meant that the basic elements of living had to be contained within one building and not spread around several buildings.
>
> In *Agudas Israel Housing Association Ltd* (VTD 18798), the Tribunal held that a bedsitting room with en suite shower room (one of eight), constructed as an enlargement to an existing care home, was self-contained living accommodation.

Discussion and Conclusion

14. It is not disputed that when it was acquired by the Company, Tintern House was a commercial, non-residential building and that it was subsequently converted for residential use. It is also accepted that the units created in the property could be dwellings in that they were places where people could live (*Uratemp*). It is therefore necessary to consider whether these dwellings are self-contained living accommodation.

15. Mr Tim Brown, who appears for the Company, contends that the units are self-contained living accommodation as they each have their own lock on the door, people can live in them independently and four of the ten have en-suite facilities. Alternatively, he argues that Tintern House is, itself, a dwelling that consists of self-contained living accommodation pointing out that note 4, Group 6 of schedule 7A

(which has identical conditions to Note 2 of schedule 8) includes a dwelling designed for occupation by persons not forming a single household.

16. Mr Anharul Qureshi, for HMRC, essentially relies on HMRC's guidance as set out above in submitting that the units are not self-contained living accommodation and that Tintern House is not a dwelling because of its multiple occupancy. He contends that the reference in schedule 7A to a multiple occupancy dwelling is for the purposes of that schedule only and is not relevant to this appeal.

17. It is apparent from the Tribunal decisions to which HMRC's guidance refers that for living accommodation to be self-contained it would be expected to support the basic elements of living such as sleeping, washing, preparation of food, etc. While this may be true of the four units with en-suite facilities as none of the units contain wash basins this may not be the case with the reaming six notwithstanding that, as Mr Wallace explained, there was nothing to prevent a resident cooking in his or her own unit.

18. However, it is not necessary for us to reach a conclusion in relation to the individual units as Tintern House itself consists of self-contained accommodation which clearly contains the basic elements of living. The issue, therefore, is whether a property with multiple occupancy can be a dwelling within the zero-rating provisions of Item 1(b) Group 8 of schedule 8 VATA.

19. Although schedule 8 VATA does not, like schedule 7A VATA, specifically refer to multiple occupancy dwellings it does not specifically exclude them either. Given that the zero-rating provision of Item 1(b) Group 8 is an exception to the general rule that the grant of any interest in or right over land is exempt (see schedule 9 VATA) it is clear from the decision of the European Court of Justice in *Blasi v Finanzamt München I* [1998] STC 336 at [18] that it does not fall to be construed strictly whereas the exemption from VAT does (see eg *Skatteverket v PFC Clinic AB* [2013] STC 1253 at [23]).

20. In *Amicus Group Limited v Customs and Excise Commissioners* (VTD 17693) the Tribunal (Dr Avery Jones and Sunil Das) accepted the submission of counsel for Commissioners that the purpose of the legislation is to zero-rate the creation of new home where none existed before. Therefore, applying a purposive construction to schedule 8 VATA we find that a property with multiple occupancy where people live can be a dwelling within the zero-rating provisions.

21. Accordingly the Company's appeal succeeds.

Appeal rights

22. 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.

JOHN BROOKS
TRIBUNAL JUDGE

RELEASE DATE: 21 June 2016