



TC06692

Appeal number: TC/2017/4607

VAT – Zero-rating – Group 5 sch 8 VATA 1994 - Construction – Works to church – whether alteration, enlargement or extension of existing building – whether annexe – whether capable of functioning independently

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ROMAN CATHOLIC DIOCESE OF WESTMINSTER Appellant

-and-

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

TRIBUNAL: Judge Peter Kempster

Sitting in public at Taylor House, London on 16 August 2018

Mr Christopher Fanning MCABE (Diocesan Surveyor) for the Appellant

Ms Rhiannon Lewis (HMRC Solicitor's Office) for the Respondents

DECISION

1. By a formal decision dated 20 January 2017 (“**the Disputed Decision**”) the Respondents (“**HMRC**”) ruled that certain works undertaken at St Joseph’s church, Stevenage (“**the Church**”) did not qualify for zero-rating for VAT purposes. That decision was upheld on formal internal review on 16 May 2017. The Appellant (“**the Diocese**”) appeals against the Disputed Decision.

Facts

2. The Church was originally constructed in the 1950s. The Diocese is the freeholder of the Church. In the 1970s the Church was divided internally to provide space for a hall, as well as separate space for worship.

3. Following a decision to amalgamate several local churches, in 2016 the Church was remodelled so as to (i) add an upper storey to the Church; (ii) reinstate to worship the space previously used as a hall; (iii) reinstate the original main entrance to the Church; and (iv) construct an extra space at the side of the Church (“**the Hall**”) for use as a meeting room and hall. The appearance of the works was designed to fit in with the existing Church. The certificate of practical completion (issued on 20 December 2016) stated the date of practical completion as 25 November 2016.

4. The Hall occupies a site at the corner of the Church. To accommodate the Hall parts of two walls of the Church (and the accompanying roof) were demolished; that left the internal space open and this was infilled with a new internal wall (which then formed the wall between the Hall and the main church building). The Hall occupies around 120 square metres, around 40 square meters of which overlaps the site of the demolished part. The Hall comprises a meeting room, a kitchen, and toilets (including disabled facilities). The main entrance to the Hall is direct from outside (not through the main church building); access from the main church building is possible through lockable double doors. The central heating thermostat for the Hall is located in the Hall; the Hall is served by a boiler separate from the boiler serving the main church building; as part of the works the Hall boiler was installed by the contractor adjacent to the other boiler in the Sacristy store (in the main church building); that location was unsuitable and (in January 2018) it was replaced by a boiler located in the Hall’s kitchen.

Law

5. Section 30(2) VAT Act 1994 provides that a supply of goods or services is zero-rated if the goods or services are of a description specified in sch 8. Group 5 sch 8 VATA 1994 provides (so far as relevant):

“**Group 5—Construction of buildings, etc**

Item No

...

2 The supply in the course of the construction of—

(a) a building ... intended for use solely for ... a relevant charitable purpose; ...

5 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.

...

10 **4** The supply of building materials to a person to whom the supplier is supplying services within item 2 or 3 of this Group which include the incorporation of the materials into the building (or its site) in question.

NOTES

...

(6) Use for a relevant charitable purpose means use by a charity in either or both the following ways, namely—

15 (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.

...

20 (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.

25 (12) Where all or part of a building is intended for use solely for ... a relevant charitable purpose—

(a) a supply relating to the building (or any part of it) shall not be taken for the purposes of items 2 and 4 as relating to a building intended for such use unless it is made to a person who intends to use the building (or part) for such a purpose; and

30 (b) a ... supply relating to the building (or any part of it) shall not be taken as relating to a building intended for such use unless before it is made the person to whom it is made has given to the person making it a certificate in such form as may be specified in a notice published by the Commissioners stating that the grant or other supply (or a specified part of it) so
35 relates.

(16) For the purpose of this Group, the construction of a building does not include—

- (a) the conversion, reconstruction or alteration of an existing building; or
- (b) any enlargement of, or extension to, an existing building except to the extent the enlargement or extension creates an additional dwelling or dwellings; or
- (c) subject to Note (17) below, the construction of an annexe to an existing building.

(17) Note 16(c) above shall not apply where the whole or a part of an annexe is intended for use solely for a relevant charitable purpose and

- (a) the annexe is capable of functioning independently from the existing building; and
- (b) the only access or where there is more than one means of access, the main access to:
 - (i) the annexe is not via the existing building; and
 - (ii) the existing building is not via the annexe.

(18) A building only ceases to be an existing building when:

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

...”

Appellant’s case

- 6. Mr Fanning submitted as follows for the Appellant.
- 7. The Disputed Decision concerned only the costs of the Hall; the Diocese fully accepted that the costs incurred on the main church building did not qualify for zero-rating. In relation to the Hall, the Diocese had followed closely the advice given by HMRC in Notice 708 (Buildings and Construction), and had concluded that the Hall was an annexe capable of functioning independently. That entitled the cost of the works of the Hall to be zero-rated. Notice 708 stated:

“3.2.6 What is an ‘annexe’?”

An annexe can be either a structure attached to an existing building or a structure detached from it. A detached structure is treated for VAT purposes as a separate building. The comments in this section only apply to attached structures.

There is no legal definition of ‘annexe’. In order to be considered an annexe, a structure must be attached to an existing building but not in such a way so as to be considered an enlargement or extension of that building.

5 An enlargement or extension would involve making the building bigger so as to provide extra space for the activities already carried out in the existing building. Examples of an enlargement or extension are a classroom or a sports hall added to an existing school building or an additional function room (or kitchen or toilet block) added to an existing village hall.

10 On the other hand, an annexe would provide extra space for activities distinct from but associated with the activities carried out in the existing building. The annexe and the existing building would form two separate parts of a single building that operate independently of each other.

15 Examples of an annexe are a day hospice added to an existing residential hospice, a self-contained suite of rooms added to an existing village hall, a church hall added to an existing church or a nursery added to a school building.

...

20 **3.2.8 When is an annexe capable of functioning independently?**

For zero-rating to apply the whole annexe must be capable of functioning independently from the existing building, even if only part of it is intended to be used solely for a relevant charitable purpose.

25 An annexe is capable of functioning independently when the activities in the annexe can be carried on without reliance on the existing building. You can ignore the existence of building services (electricity and water supplies) that are shared with the existing building.”

8. The Hall had a use distinct from the worship carried on in the main church building; thus it was not an enlargement or extension of the existing building. Instead, the Hall provided “extra space for activities distinct from but associated with the activities carried out in the existing building” and thus was an annexe under HMRC’s own guidance. The Notice even gave the specific example of “a church hall added to an existing church”.

9. The Hall had been designed and constructed so that it could be used independently of the main church building. The Hall had toilets and a kitchen; the heating thermostat and boiler controls for the Hall were separate from those for the main church building; indeed, the Hall had a separate boiler that was repositioned from the main building to the Hall in January 2018. Parishioners holding a meeting in the Hall had no need to access the main church building. The use of the church as a devotional place of worship was necessarily different from the social activities in the Hall; there were often separate events in the two locations, for example a baptism ceremony in the church, at the same time as a whist drive in the Hall.

10. Although this did not seem to be in dispute, the Hall and the main church building each had their own separate main entrances. Access between the two areas was possible through a set of double doors, but those doors were normally kept closed.

5 11. The site occupied by the Hall was mostly ground not previously built on; the part that had previously been occupied had seen the old walls entirely demolished, and a new wall constructed between the Hall and the main building. The Hall was, therefore, a new construction. The Diocese considered the picture may have been clouded by the fact that the works to the main building were undertaken at the same time as the Hall; had the Hall been constructed as a stand-alone project then it was felt
10 HMRC would not have challenged the zero-rating.

Respondents' case

12. Ms Lewis submitted as follows for the Respondents.

13. HMRC considered that the Hall constituted an alteration, enlargement or
15 extension of the existing building, and thus excluded from zero-rating by Note 16. The existing building had not been demolished completely, as required by Note 18. Within the existing building, an area had previously been allocated for use as a hall; that same use was now being carried on in the enlarged Hall. As stated in the VAT Tribunal case of *Colchester Sixth Form College* (LON/98/1341), deciding whether the
20 works constitute an enlargement, extension or annexe to an existing building is a two stage purpose; it requires an examination and comparison of the building before the works were carried out and the building as it will be after the works are completed, having regard to similarities and differences in appearance, the layout and how the building or buildings are equipped to function. The existing building was a church
25 and a hall; after the works were completed it was still a church and a hall. The appearance of the Hall was similar to the existing building. The functions both before and after were identical: worship in the church, and meetings and social events in the Hall (or previously the hall area). The main building was converted and enlarged within the existing space and a new Hall was constructed using the demolished areas
30 of the existing building and surrounding land. The Hall was integrated into the existing building. Viewed objectively, the work done amounted to alteration and enlargement of the existing building.

14. HMRC did not consider the Hall was an annexe, but in the alternative, the Hall was not a qualifying annexe within Note 17. HMRC accepted that the Hall was used
35 for a relevant charitable purpose, and that it had a separate main entrance. However, the Hall was not capable of functioning independently from the existing building. In *Chelmsford Sixth Form College* it was held that the new building could not function independently as it shared a heating system, and the boiler was in the main building although each building was thermostatically controlled separately. Here, the Hall
40 boiler had been located in the main church building at practical completion of the works (in November 2016), and was moved to the Hall only later, in January 2018.

15. In response to a question from the Tribunal, HMRC did not consider that the fact of a single construction contract for all the works coloured the identification of the part relating to the Hall, and accepted that the contract costs could be split between the works which the Diocese accepted were standard-rated and those
5 contended (but disputed) to be zero-rated.

Consideration and Conclusions

The Group 5 sch 8 provisions

16. By Item 2 the legislation grants zero-rating for the supply in the course of the construction of a building intended for use solely for a relevant charitable purpose, of
10 any services related to the construction other than the services of an architect, surveyor, consultant or supervisor. Item 4 extends the zero-rating to building materials (defined by Note 22) supplied by the supplier of Item 2 services which include incorporation of the materials into the building. Note 6 defines “relevant charitable purpose” and it is common ground that the Diocese satisfies that test in
15 relation to the Church. Note 12 requires the customer to certify the supply relates to such purpose, and the Diocese issued such a certificate.

17. Notes 16 & 17 adopt a restrictive definition of what construction can qualify for zero rating. “Construction of a building” does **not** include:

- The conversion of an existing building
- 20 • The reconstruction of an existing building
- The alteration of an existing building
- Any enlargement of an existing building
- Any extension to an existing building
- The construction of an annexe to an existing building **except** where:
25
 - the whole or part of the annexe is intended for use solely for relevant charitable purposes, and
 - the annexe is capable of functioning independently from the existing building, and
 - 30 ○ the only or main access to the annexe is not via the existing building (and vice versa).

18. Note 18 provides that a building only ceases to be an “existing building” when (a) demolished completely to ground level; or (b) the part remaining above ground level consists of no more than a single façade (or double façade on a corner site) the retention of which is a condition or requirement of statutory planning consent or
35 similar permission.

The approach

19. The approach to be followed in cases such as this one is set out in High Court authorities, and I adopt the explanation provided by the Upper Tribunal in *Colchester*

[2014] STC 2078 (for clarity, although similar in name this is a different case from *Colchester Sixth Form College* cited above):

5 “[12] The leading authorities on the meaning of annexe for the purposes
of Group 5 of Sch 8 to the VATA are two decisions of the High Court
which both relate to the same appellant and supplies. Mr and Mrs
Cantrell operated a nursing home which consisted of two units, in
separate buildings, accommodating patients with different needs.
10 Having obtained planning consent, Mr and Mrs Cantrell demolished an
existing building at their nursing home and built a new one to house
elderly severely mentally infirm patients. The new building was
completely self-contained. It abutted an extension ('the New Barn') to
the other unit's building at one corner; a fire door, which was for
15 emergency use only, connected the two units. HMRC considered that
the construction of the new building was standard rated as the
enlargement of or an extension or annexe to an existing building. Mr
and Mrs Cantrell appealed to the VAT and Duties Tribunal which held
that the new structure was an enlargement and might also be an annexe.
Mr and Mrs Cantrell appealed to the High Court.

20 [13] In *Cantrell (t/a Foxearth Lodge Nursing Home) v Customs and
Excise Comrs* [2000] STC 100 ('*Cantrell No 1*'), Lightman J held that
the tribunal had made a material mistake of fact and had taken into
account extraneous and irrelevant considerations. He remitted the
matter for a rehearing. In his judgment, Lightman J observed, at para 4
25 of the judgment, that the question was one of fact, not law, to be
determined by applying a two-stage test as follows:

30 'The two-stage test for determining whether the works carried
out constituted an enlargement, extension or annexe to an
existing building is well established. It requires an examination
and comparison of the building as it was or (if more than one)
the buildings as they were before the works were carried out
and the building or buildings as they will be after the works are
completed; and the question then to be asked is whether the
completed works amount to the enlargement of or the extension
35 or the construction of an annexe to the original building ... I
must however add a few words regarding how the question is to
be approached and answered ... First the question is to be
asked as at the date of the supply. It is necessary to examine the
pre-existing building or buildings and the building or buildings
40 in course of construction when the supply is made. What is in
the course of construction at the date of supply is in any
ordinary case (save for example in case of a dramatic change in
the plans) the building subsequently constructed. Secondly the
answer must be given after an objective examination of the
physical characters of the building or buildings at the two
45 points in time, having regard (inter alia) to similarities and
differences in appearance, the layout and how the building or
buildings are equipped to function. The terms of planning
permissions, the motives behind undertaking the works and the
intended or subsequent actual use are irrelevant, save possibly

existing building, or the construction of an annexe to the original building. In deciding whether the construction is an annexe, I may (per *Cantrell No 2*) make wider enquiry than just the physical appearance and functionality, to determine if the construction is an adjunct or accessory or supplementary structure.

5 24. On that final point from *Cantrell No 2*, although it is true that before the
remodelling a space within the building was used as a hall, the whole point of the
remodelling was to enlarge the worship space to fill the whole of the existing building
(to accommodate the additional worshippers from the amalgamated local churches).
The Hall was added as a supplementary structure to accommodate the non-devotional
10 activities separately from the worship areas.

25. Taking all these matters together I conclude that, within the terms of Lightman
J's test, the Hall is not an alteration, extension or enlargement of the existing building.
It is instead an adjunct and supplementary structure to the existing building, and thus
constitutes an annexe to the existing building

15 26. Having concluded that the Hall is an annexe, it only qualifies for zero-rating if
it meets the tests in Note 17. The only part of Note 17 that is in contention is, whether
the annexe is capable of functioning separately from the existing Church.

27. The Hall has its own external entrance; its own toilets; its own kitchen and
refreshments facility; persons attending social functions in the Hall have no need to
20 access the main church building, and the double doors that provide such access are
usually closed (and certainly closed if there is a religious service or devotion in
progress in the main church building). At the hearing we spent some considerable
time on the central heating arrangements for the Hall, because I was aware that the
VAT Tribunal in *Colchester Sixth Form College* considered that matter was relevant.
25 Having reread that case (where the point was obiter, and which in any event is not
binding on this Tribunal) and reflected on the circumstances of the current appeal, I
agree that the point is relevant but do not consider it is a dominant issue (and I believe
the VAT Tribunal did not suggest it should be dominant). The Hall has always had a
boiler separate from the boiler serving the main church building (with separate
30 controls), and the thermostat for the Hall heating has always been situated in the Hall.
After practical completion of the works a decision was taken to move the Hall boiler
to the Hall itself, and it was cheaper to have new kit installed in the Hall kitchen, with
the work performed by a contractor different from the main works contractor. Taking
the position as at practical completion, I am satisfied that the fact that users of the
35 Hall could control the temperature in the Hall from the Hall (ie without accessing the
main church building) is sufficient to constitute a heating system that functions
separately from the main church building. Taking all these matters together I
conclude that the Hall is an annexe that is capable of functioning separately from the
existing Church. Therefore the tests in Note 17 are satisfied.

40 28. For the above reasons, costs incurred by the Diocese on the works to the Hall
within Items 2 & 4 Group 5 sch 8 are correctly zero-rated.

Decision

29. The appeal is ALLOWED.

30. 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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Peter Kempster
TRIBUNAL JUDGE

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RELEASE DATE: 29 August 2018