TC03757

Appeal number: TC/2013/02802

VAT – Reduced Rate – Whether "qualifying conversion" – Whether one or two dwellings – Whether single building – Items 1 and 2 Group 6 and Note 3(1)(a) Schedule 7A Value Added Tax Act 1994 – Appeal allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

DANIEL NABARRO **Appellant**

- and -

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

TRIBUNAL: JUDGE JOHN BROOKS
MR HENRY RUSSELL OBE

Sitting in public at 45 Bedford Square, London WC1 on 4 April 2014

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

Rita Pavely, Officer, of HM Revenue and Customs, for the Respondents

DECISION

Background

1. During 2012 construction work was undertaken by Charlie Laing Limited for Mr Daniel Nabarro.

2. This involved the demolition of a self-contained "granny flat" at 21A Priory Close, London N20 (the "Flat") and, in its place, the addition of a two storeys to 21 Priory Close (the "House"). Although there had been no means of direct internal access from the House to the Flat they were connected by the wall of a garage which had been attached to the House but was also demolished as part of the construction work.

3. The Flat and House had also been linked by an open area covered by a corrugated plastic roof on timber joists which, like the wall referred to above, was attached to both buildings. Before its demolition, the utilities for the Flat were routed from and billed to the House. However, each was treated separately for council tax purposes and allocated different bands by the London Borough of Barnet, the House in "Band G" and Flat "Band A".

4. Additionally, there was no restriction or condition in the earlier planning permission placed on the separate use or disposal of the Flat.

5. The "Pre-Application Advice Note" presented to a Barnet Council proposed:

> … the possibility of adding a two-storey extension to the rear of the building, linked to the [House] by way of a two-storey 'link' which would be predominantly glazed providing a transition between the existing dwelling involving removing modern additions and unsympathetic alterations and reinstating original features such as the leaded light windows
>
> The proposals would involve the removal of the existing single-storey side/rear extension and the return of the side extension to a garage which is currently in use as a habitable room. The existing conservatories to the rear would also be removed to make way for the proposals.

The reference to a "garage currently in use a habitable room" does not refer to the garage which linked the Flat and House but another room within the House that had previously been a garage before its conversion.

6. The "Executive Summary" of the application explained that "detailed planning permission is sought" for the "alteration and extension of the existing dwellinghouse at 21 Priory Close [the House]. It is proposed to refurbish the existing single family dwellinghouse and extend it with a two-story extension." The "Detailed Description" of the proposal referred to it being:

> … best considered in two elements, the refurbishment of the Application Property [the House] and the construction of a two-storey rear extension.

7. On 10 December 2010, as the proposed extension was "considered to be an acceptable addition to the property that would preserve the character and appearance of this part of the Conservation Area" and the "associated refurbishment to the original building would enhance the character and appearance of this part of the Conservation Area", Barnet Council granted permission under the Town and Country Planning Act 1990 for:

> Two story rear extension with a link to the existing house including restoration works to existing dwelling
>
> At:- 21 Priory Close, London N20

8. However, this permission was subject to various conditions including the following:

> …
>
> 8. The use of the extension hereby permitted shall at all times be ancillary to and occupied in conjunction with the main building and shall not at any time be occupied as a separated unit.
>
> Reason: To ensure that the development does not prejudice the character of the locality and the amenities of occupiers of adjoining residential properties.
>
> …
>
> 14. Before the development hereby permitted commences details outlining the timetable for the proposed works including the retrofitting of the existing building shall be submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the details as approved.
>
> Reason: To ensure that the restoration works are completed in accordance with the planning approval in the interests of preserving and enhancing the character and appearance of the Conservation Area

9. Having taken advice, Mr Nabarro informed Charlie Laing Limited that its services were subject to VAT at the reduced rate of 5%, not the 20% standard rate, as items 1 and 2 of Group 6 Schedule 7A of the Value Added Tax Act 1994 ("VATA") applied.

10. Charlie Laing Limited therefore charged VAT by at 5% on completion of the work. Following the submission of its VAT return for the accounting period ended 30 November 2012, Charlie Laing Limited was subject to a verification visit by HMRC on 19 December 2012. The Officer who made the visit concluded that the work that had been undertaken was an extension to an existing building and, as such, should have been standard rated. She wrote to Charlie Laing Limited accordingly on 12 December 2012.

11. In a letter, dated 15 January 2013, HMRC advised Charlie Laing Limited that an assessment was to be issued in respect of the output tax due in respect of the work undertaken for Mr Nabarro. The decision and assessment were upheld following a

review and Charlie Laing Limited were notified of this by HMRC in a letter dated 25 March 2013.

12. On 17 March 2013 Mr Nabarro, as the recipient of the services of Charlie Laing Limited, appealed to the Tribunal.

Legislation

13. Section 29A VATA provides that VAT charged on any "*supply that is of a description for the time being in schedule 7A … shall be charged at the rate of 5%*".

14. Group 6 Schedule 7A VAT Act 1994 provides:

> ***Residential conversions***
>
> Item No.
>
> 1. The supply, in the course of a qualifying conversion, of qualifying services related to the conversion.
>
> 2. The supply of building materials if—
>
> (a) the materials are supplied by a person who, in the course of a qualifying conversion, is supplying qualifying services related to the conversion, and
>
> (b) those services include the incorporation of the materials in the building concerned or its immediate site.
>
> NOTES:
>
> ***Supplies only partly within item 1***
>
> 1(1) Sub-paragraph (2) applies where a supply of services is only in part a supply to which item 1 applies.
>
> (2) The supply, to the extent that it is one to which item 1 applies, is to be taken to be a supply to which item 1 applies.
>
> (3) An apportionment may be made to determine that extent.
>
> ***Meaning of "qualifying conversion"***
>
> 2(1) A "qualifying conversion" means—
>
> (a) a changed number of dwellings conversion (see paragraph 3);
>
> (b) a house in multiple occupation conversion (see paragraph 5); or
>
> (c) a special residential conversion (see paragraph 7).
>
> (2) Sub-paragraph (1) is subject to paragraphs 9 and 10.
>
> ***Meaning of "changed number of dwellings conversion"***
>
> 3(1) A "changed number of dwellings conversion" is—
>
> (a) a conversion of premises consisting of a building where the conditions specified in this paragraph are satisfied, or
>
> (b) a conversion of premises consisting of a part of a building where those conditions are satisfied.

(2) The first condition is that after the conversion the premises being converted contain a number of single household dwellings that is—

(a) different from the number (if any) that the premises contain before the conversion, and

(b) greater than, or equal to, one.

(3) The second condition is that there is no part of the premises being converted that is a part that after the conversion contains the same number of single household dwellings (whether zero, one or two or more) as before the conversion.

Meaning of "single household dwelling" and "multiple occupancy dwelling"

4(1) For the purposes of this Group "single household dwelling" means a dwelling—

(a) that is designed for occupation by a single household, and

(b) in relation to which the conditions set out in sub-paragraph (3) are satisfied.

(2) For the purposes of this Group "multiple occupancy dwelling" means a dwelling—

(a) that is designed for occupation by persons not forming a single household, …

[(aa) that is not to any extent used for a relevant residential purpose, and]

(b) in relation to which the conditions set out in sub-paragraph (3) are satisfied.

(3) The conditions are—

(a) that the dwelling consists of self-contained living accommodation,

(b) that there is no provision for direct internal access from the dwelling to any other dwelling or part of a dwelling,

(c) that the separate use of the dwelling is not prohibited by the terms of any covenant, statutory planning consent or similar provision, and

(d) that the separate disposal of the dwelling is not prohibited by any such terms.

(4) For the purposes of this paragraph, a dwelling "is designed" for occupation of a particular kind if it is so designed—

(a) as a result of having been originally constructed for occupation of that kind and not having been subsequently adapted for occupation of any other kind, or

(b) as a result of adaptation.

Discussion and Conclusion

15. The issue to be determined in this appeal is whether the construction work undertaken by Charlie Laing Limited for Mr Nabarro amounted to a "qualifying conversion" within Note 2 to Group 6 of schedule 7A VATA.

16. This, in turn, depends upon whether, before the work commenced, the House and Flat were separate dwellings contained in one building, or were one dwelling comprised of two buildings. Clearly if there were a single dwelling before and after the construction work it could not have been a "changed number of dwellings conversion" within Note 3(2). Similarly if there had been two buildings before the conversion it could not have been "the conversion of premises consisting of a building within Note 3(1)(a).

17. Mr Timothy Brown, who appeared for Mr Nabarro, contends that the House and Flat constituted two separate dwellings in one building and therefore there was a "qualifying conversion". However, Mrs Rita Pavely, for HMRC, submits that although there were two buildings there had been one dwelling and this does not fall within the reduced rate provisions.

18. Taking the issue of "dwellings" first, we note, as Mr Brown rightly submits there is no definition of "dwelling" in VATA.

19. Although some guidance may be found in the decision of the House of Lords in *Uratemp Ventures Limited v Collins* [2001] UKHL 43, which considered whether cooking facilities were necessary for there to be a dwelling, as Dr Avery-Jones, the Chairman of the VAT and Duties Tribunal (the predecessor of this Tribunal) said in *Amicus Group Limited v Customs and Excise Commissioners* (VTD 17,693), at [13]:

> "Such considerations are far removed from VAT on construction of a building where the distinction being made is between dwellings and other buildings, rather than between separate and other dwellings. … As the Lord Chancellor said in *Uratemp* "'Dwelling' is not a term of art, but a familiar word in the English language, which in my judgment in this context connotes a place where one lives, regarding and treating it as home." In that case a long-term resident of a hotel who had a room with shower and basin but no cooking facilities other than his own toasted sandwich maker, pizza warmer, kettle and warming plate, was held to have the assured tenancy of a dwelling, on the ordinary meaning of "dwelling"."

20. Applying such a meaning of dwelling to the present case, notwithstanding the lack of references to the Flat in the planning application and grant of permission, we consider that the House and Flat were separate dwellings. Not only did each have its own postal address but each had been allocated different council tax bands and treated separately for council tax purposes by Barnet Council which under s 1 of the Local Government Finance Act 1992 is required to levy and collect council tax "in respect of dwellings". We do not consider the provision of utilities via the House the be decisive in this regard and reject the suggestion, advanced by Mrs Pavely, that any inference can be drawn from condition 8 to the planning approval (see paragraph 8,

above) that as the new extension to the House is to "remain ancillary" to it, the same should be applied to the Flat which should also be regarded as ancillary to the House and not a dwelling in its own right.

21. We therefore find that there were two dwellings before the conversion and one after it had been completed.

22. Turning to the issue of whether there were one or two buildings, Mr Brown contends that Barnet Council clearly considered that the House and Flat constituted a single building. He points out that there is no reference within the planning documents to the Flat as a separate building and submits that had it been, under s 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 its demolition would have required the consent of the appropriate authority which in this case was neither sought nor required. Mr Brown also relies on the physical connections between the House and Flat that existed before its demolition.

23. Mrs Pavely contends that there were two buildings before the construction work commenced and for there to be a "qualifying conversion" there needs to be a change in the number of dwellings for there to be "a two to one conversion". As such, both buildings must remain in "existence" after the conversion has been completed. In the present case she argues that although there were two buildings one of these, the Flat, was demolished leaving only building, the House, to be converted but, as it was then extended, no new dwelling was created. She also relies on the omission of any reference to the Flat within the planning process.

24. In our judgment it is necessary to consider the position before the construction works commenced and compare this with the position after completion looking at the work undertaken as a whole. It would, in our view, be incorrect to find that as the Flat was demolished to make way for the extension to the House as part of the conversion process that, during that period, there was only one building and one dwelling to which the new elements were added.

25. Before the construction work was undertaken, as we have already noted (in paragraphs 2 and 3, above) the Flat and House were connected by a garage wall and an open area covered by a corrugated plastic roof on timber joists. Also before its demolition, the utilities for the Flat were routed from and billed to the House. Given their nature, we do not consider that the physical links between them were sufficient on their own for the Flat and House to be regarded as one building.

26. However, it does appear from the planning documents, that Barnet Council regarded it as such during the planning process. Also, although we understand that in practice it is "more honoured in the breach", we note that an application under s 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to the Council for its consent to the demolition of the Flat was not required or made as would have been the case if the Flat was a separate building.

27. Having regard to all the circumstances, we find, on balance, that although the House and Flat were separate dwellings they were within the same single building. It

therefore follows that the conditions of Note 3 Group 6 of schedule 7A VATA are satisfied and that the work undertaken by Charlie Laing Limited for Mr Nabarro was a "qualifying conversion" within the meaning of Note 2, for which VAT was correctly charged at 5%.

28. Accordingly Mr Nabarro's appeal succeeds.

Right to Apply for Permission to Appeal

29. 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: 9 May 2014