TC04230

Appeal number: TC/2014/02610

VAT – DIY construction of bungalow – planning for extension to existing building- appeal dismissed.

FIRST-TIER TRIBUNAL
TAX CHAMBER

JAMES RADCLIFFE **Appellant**

- and -

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

TRIBUNAL: JUDGE DAVID S PORTER
MR ALBAN HOLDEN

Sitting in public at Alexandra House, Manchester on 4 December 2014

Mr Gordon Smith, an Architect, for the Appellant

Mrs Lisa Fletcher, a Presenting Officer, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents.

DECISION

1. Mr James Radcliffe (Mr Radcliffe) appealed against the Respondents' (HMRC) refusal contained in a letter dated 28 March 2014 refusing a refund of VAT paid on the construction of his new bungalow. The existing bungalow had been demolished in sections, ultimately leaving only an interior wall for which planning permission had been obtained. The new bungalow had been constructed around the remains of old bungalow which had been retained during building works to house the machinery and materials. HMRC stated that as the planning permission was only for an extension to the original building, the legislation did not apply and they refused the claim.

2. Mrs Lisa Fletcher (Mrs Fletcher, a Presenting Officer, appeared for HMRC and produced a bundle of documents. Mr Gordon Smith the architect who had designed the bungalow, appeared for Mr Radcliffe and had produced the drawings within the bundle.

The Law

3**.** (A) Section 35 states:

> 35(1) Where-
>
> (a) a person caries out works to which this section applies
>
> (b) his carrying out of the works is lawful and otherwise than in the course or furtherance of any business, and
>
> (c) VAT is chargeable on the supply, acquisition or importation of any goods used by him for the purposes of the works
>
> The Commissioners shall, on a claim made in that behalf, refund to that person the amount of VAT so chargeable
>
> (1A) the works to which the section applies are –
>
> (a) the construction of a building designed as a dwelling or number of dwellings
>
> (b) …..
>
> (c) …….

(B) Section 35 is designed to place do-it –yourself builders in the same position as commercial builders so that they can recover the VAT they incur in paying for the building work. There are some limitations on the extent to which VAT can be recovered, which effect both commercial and non-commercial

builders, but they do not arise ijn this case. The section incorporates (and gives statutory effect to) the notes to Group 5 of schedule 8 of the Act. Those notes impose a number of conditions, which are to be satisfied if VAT is to be recovered.

(C) Part 11 The Groups [Group 5 – construction of buildings etc)

NOTES.

Item No

….4. (2) 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) the separate use, or disposal of the dwelling is not prohibited by the term of any covenant, statutory planning permission 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.

(D) Subsection (1A) restricts the relief to certain works. The restriction is to "the construction of building designed as a dwelling".

Note (16) to Group 5 of schedule 8 provides:

> "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, any existing building except to the extent the enlargement or extension creates an additional dwelling or dwellings".

And by note (18)

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

- Demolished completely to ground level: or

- The part remaining above ground level consist of no more than a single façade or where a corner site, a double façade, the retention of which is a condition or requirement of statutory planning consent or similar permission".

The Cases

4. We were referred to the case of *Alec A Bugg* 15000-15499/15123 VAT decisions archive.

The Facts

5. Mr Smith explained to us that he had advised Mr Radcliffe that it was unlikely that he would obtain planning permission to demolish the existing bungalow and build a new one. He explained that the view of the planners had changed since 2008 and such an application would not present a problem these days. As a result, he advised that an application ought to be made for the erection of various extensions and alterations and erection of a detached garage.

6. He was confident that he could make subsequent applications for amendments to the plans which would, under the guise of the erection of various extensions, result in a new bungalow being constructed, which is what happened. The front gable was built and the old bungalow demolished as the new building was erected. Mr Radcliffe confirmed that part of the old building had been retained, so that material and tools could be stored on site during the development. Planning Permission no 07/0171/FUL dated 21 January 2008 was granted for the "Erection of various extensions and alterations and erection of a detached garage".

7. The inner cavity wall for the bedroom and lounge on the porch side of the bungalow had been retained. The outer skin had been rebuilt in stone to allow lintels to be placed at the roof level. Apart from that inner cavity wall, for which planning permission had been obtained, there was a completely new building on the site. Mr Smith produced photographs of the bungalows before and after the building work and there is no doubt that a new bungalow has been constructed on the site of the old footings.

The submissions.

8. Mrs Fletcher submitted that the VAT legislation did not assist Mr Radcliffe. It was clear from the documentation that there was a pre-existing property on which extensive extension works were carried out. As a result, the works carried out in respect of the property did not satisfy the relevant criteria of the DIY scheme and the claim should be rejected. She referred us to the case of *Alec A Bugg* in which a policeman had constructed a house around the original building, as in this case. The

Chairman Mr P Lawson decided that as there had been no demolition of the roof and chimney stacks there had been a reconstruction. There was a close affinity between what that appellant had started with and what he finished with. Note 16 to Group 5 of Schedule 8 provides that the construction of a building does not include the conversion, reconstruction or alteration of an existing building. Nor will the enlargement of an existing building assist if an additional dwelling is not created. In the circumstances the appeal should be dismissed.

9. Mr Smith accepted that the wording of the Planning Permission, of necessity had to relate to extension work. The fact of the matter, however, was that a new bungalow had been constructed. The original bungalow had been demolished, apart from the inner cavity wall, for which planning permission had been granted. In substance, therefore there was a new bungalow as demonstrated by the photograph. It would be unfortunate if Mr Radcliffe could not obtain the VAT relief merely because of the wording of the statute. In the circumstances the appeal should be allowed. He suggested that it might be possible to go back to the planners and ask them to upgrade the application.

The decision

10. We have considered the law and the evidence and we have decided to dismiss the appeal. Mr Smith was completely frank with us and confirmed that the only way that Mr Radcliffe could have achieved a new bungalow was by applying for an extension to the old building. Judge Porter pointed out that the construction of the new bungalow was not allowed under the terms of the planning permission. He considered that if a sale was to be affected within the immediate future a purchaser would be properly concerned that the bungalow had been built without planning permission. Judge Porter accepted that if nothing was done by the Planning Authority in the next several years it might well be that it would not be able to object to the construction of the bungalow. For the present, however unlikely it might be, the Planning Authority could apply for a demolition order for the bungalow to be demolished.

11. The VAT legislation is clear. Any construction of a new dwelling must be with the appropriate planning permission. The fact that a new bungalow has been built and which, but for the planning application, would have been compliant is unfortunate, but there is no doubt that Mr Radcliffe does not have planning permission to build a new bungalow. This is not a minutiae in the legislation which this Tribunal can ignore. Nor would it help if Mr Radcliffe was able to persuade the Local Planning authority to upgrade the application, because the actual building work was carried out under the original permission. An upgrading of the permission would only be affective from that date, but might be prudent in view of the potential problems with regard to a subsequent sale. The facts fall within Note 16 to Group 5 of schedule 8. We therefore dismiss the appeal.

12. 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.

DAVID S PORTER
TRIBUNAL JUDGE

RELEASE DATE: 14 January 2015