[2016] UKFTT 11 (TC)

TC04818

Appeal number: TC/2013/09288

AGGREGATES LEVY – Extraction of aggregate – Not subjected to any process involving being mixed with any substance or material – Again becoming part of land – Whether at the site from which it was won – Yes – Appeal allowed – Northumbrian Water Ltd v HMRC applied

FIRST-TIER TRIBUNAL
TAX CHAMBER

HANSON QUARRY PRODUCTS EUROPE LIMITED **Appellant**

- and -

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

TRIBUNAL: JUDGE JOHN BROOKS
WILLIAM HAARER

Sitting in public at the Royal Courts of Justice, London on 1 and 2 December 2015

Rupert Baldry QC and Thomas Chacko, instructed by DAC Beachcroft LLP, for the Appellant

Lisa Busch instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. Hanson Quarry Products Europe Limited ("HQPE") appeals against a decision of HM Revenue and Customs ("HMRC"), dated 22 May 2013 and upheld on 5 November 2013 following a review, that the extraction of material from the northern part of a limestone quarry at Chipping Sodbury, South Gloucestershire (the "Quarry"), owned by HQPE, for use in creating a platform above ground water level in what was the southern, part of the Quarry, referred to by the parties as the "Restoration Area" which had been sold to a developer by HQPE before the creation of the platform, gives rise to a charge to aggregates levy.

2. In broad terms a charge to aggregates levy arises when aggregate is subjected to commercial exploitation by its removal from the site from which it was won in the course or furtherance of a business. However, a charge will not arise if the aggregate again becomes part of the land at the site from which it was won provided it has not been subjected to any process involving it being mixed with any other substance or material (apart from water). It is common ground that the material extracted from the Quarry and used for the creation of the platform in the Restoration Area is aggregate.

3. The primary area of contention between the parties in this case is whether the Restoration Area and the remainder of the Quarry is (as HQPE contends) a single site or (as HMRC contend) two separate and distinct sites. Further issues concern the entitlement of HMRC to redefine the boundaries of a site and the nature of the jurisdiction of the Tribunal, whether supervisory or appellate.

4. HQPE was represented by Mr Rupert Baldry QC leading Mr Thomas Chacko. Ms Lisa Busch appeared for HMRC. We were much assisted by the written submissions and clear oral arguments on both sides.

Evidence and Facts

5. We heard from Mr Michael Daynes, who had recently retired as a director of HQPE working in its Land and Mineral Resources Department where he was responsible for property management including the acquisition of property, town and country planning, geological services, geotechnical matters, quarry development design, landscape and restoration within Hanson UK, servicing its aggregates (land won and marine), asphalt, concrete, cement and building products businesses. His evidence was not challenged by HMRC.

6. In addition we were provided with a bundle of documents containing, inter alia, correspondence between the parties, planning permissions, plans and photographs of the Quarry and Restoration Area before, during and after the creation of the platform.

7. The underlying facts, which were not disputed, are conveniently and helpfully set out in a letter, dated 9 August 2012, from the senior tax manager of Hanson to HMRC explaining the nature of the proposed project and requesting a ruling as to the extent, if any, that aggregates levy would be due.

8. Although it is of some length we consider it appropriate to quote from the letter almost in its entirety:

> Dear [HM Inspector of Taxes],
>
> **Hanson Quarry Products Europe – Ref …**
> **Aggregates Levy Request for a ruling**
>
> …
>
> **Background to the quarry**
>
> The quarry is a limestone quarry owned and operated by Hanson Quarry Products Europe Limited ("HQPE"). This quarry has been in sole operation by HQPE and its fellow group companies since 1929 and comprises of a series of interlinked extraction and operational areas.
>
> The quarry includes a large area which is below the surrounding ground levels due to the extraction of minerals from this section of the site ("the worked area"). It is now proposed to restore the ground level of the southern section of this worked area ("the restoration area") by relocating materials ("the restoration materials") from within the quarry complex.
>
> A plan and aerial photographs of the quarry site are enclosed and annotated to show the extraction and operation areas, stock fields, the proposed restoration area and the restoration materials.
>
> From a review of the plan you will see that a public highway (Peg Hill/Love Lane) crosses the site. Processed aggregate is taken from the northern side of the highway to the stockfields on the southern side via an established and daily used traffic light controlled crossing point over the highway.
>
> The current extraction area works limestone from beneath the groundwater table and is continuously dewatered to maintain dry working conditions. The water is pumped from the extraction area to the processing plant and then to the worked area. The suspended material is settled into lagoons within the worked area and the resulting clean water is pumped to the River Frome to the south. The worked area therefore contains drainage pipelines, lagoons pumps and associated electrics which are connected to the processing (and ultimately the extraction) areas.
>
> The worked area which is not subject to the proposed restoration works will continue to be used for settlement lagoons and dewatering for the (current and proposed future) extraction areas throughout the remaining life of the quarry.
>
> Prior to the commencement of the restoration works an access ramp will be installed at the northern end of the worked area to provide access for the future maintenance of the drainage pipelines, lagoons, pumps and associated electrics located within the worked area. The ramp will also facilitate the movement of the restoration materials from their current location in the northern section of the site, via the ramp, to the restoration area.

Background to a change in ownership of the restoration area

On the 13 July 2005, HQPE entered into a 10 year option with a third party ("the Developer"), which if exercised, gives the Developer the right to acquire the restoration area together with adjoining land south of the worked areas. The option has not been exercised and it is now proposed to agree a direct sale with the Developer on more certain terms than those proposed in the option.

If the sale takes place, HQPE will continue to be the legal owner and operator of the remaining worked area (including the ramp) and all other parts of the quarry. As detailed above, the remaining worked area will continue to be an integral part of the quarry.

In 2011, the Developer obtained panning permission to build approximately 150 residential units on the restoration area and a supermarket on the adjoining land to the south. The planning permission includes permission for restoring the restoration area to a level that is above ground water levels that are expected to be reached once the quarry extraction activities are eventually completed (which is not anticipated in the foreseeable future).

The proposal is to use the restoration materials (approximately 789,000 tonnes) to complete the restoration works. The benefits of doing so include a more sustainable use of resources via lower transport emissions and a significant reduction in HGV traffic using public highways.

HQPE may grant a licence to the Developer to allow a third party contractor (engaged by the Developer) to haul the restoration materials to the restoration area; to form the ramp and complete the restoration works. It is proposed that HQPE will charge the Developer for the actual costs of any drilling and blasting required to extract the restoration materials and that no charge will be made for the restoration material itself. The Developer will bear the transport, processing, extraction and restoration costs.

Clarification required

The point requiring clarification relates to whether aggregates levy is due on any of the restoration materials. We would therefore welcome HMRC's view on the aggregates levy liability in respect of both the proposed restoration works and the formation of the ramp.

Further information relating to the proposed restoration works, the restoration methods and the formation of the ramp are set out below:

1. Proposed restoration works

The restoration will involve layering the unmixed dry restoration materials to restore the restoration area and will include drainage channels. No additional materials or substances will be used and apart from the crushing (via a mobile crushing unit) and screening of some of the restoration materials no further processing of the materials will be undertaken.

The restoration materials

In 2012, HQPE submitted an application for planning permission to work the restoration materials solely for the purposes of completing the restoration works. The planning permission has not been determined.

The restoration materials will be removed and extracted from the northern section of the site and will be used to form the ramp and to complete the restoration works. The restoration material consists of two distinct elements: the first relates to materials which currently sit above ground level ("the screen bank") and the second to unworked minerals in the underlying land ("unworked minerals"). Each is considered in turn below.

The screen bank

The screen bank was constructed in the 1970s prior to the introduction of aggregates levy and is covered with a dense grass sward and patches of established tree planting. The unworked minerals sit below the screen bank.

A number of trial pits have been dug to investigate the composition of the screen bank and these have confirmed that the material is 95% non-granular ie it is made up of a clayey cohesive material which in commercial terms is not of sufficient quality for sale. The exact make up of the screen bank will not be known until it is excavated but, in broad terms, it consists of clay overburden (approximately 175,000 tonnes) and granular material (approximately 105,000 tonnes).

The clay overburden deposited within the screen bank arose from removing the surface of the worked areas of the quarry to expose the minerals beneath. It is likely that the clay was deposited on the land in an irregular pattern and at a later date the granular materials were deposited on top of the clay overburden. Finally, the screen bank was reshaped into its current formation. It is therefore likely that there will be no clear divide between the clay and granular materials.

9. The letter then explains that the granular materials consist of materials generated during the course of production which were not commercially suitable for resale, spoil arising from the formation of a tunnel linking the current extraction areas to the processing plant, Karstic Muck and Spar - calcite material running in veins through the limestone. Also, in his evidence, Mr Daynes explained that material is regularly moved around different parts of the Quarry to maintain the viability of various extraction points and that such movement of materials is common practice in quarrying. It continues:

The unworked Minerals

If planning permission to work the minerals is granted, it is proposed that these will be worked (including some drilling and blasting) by HQPE and that a third party contractor engaged by the developer will haul the minerals to the restoration area.

10. After setting out the proposed use and estimated weight of the restoration materials the letter continues:

2. Formation of the Ramp

> The ramp will be located in the area marked on the enclosed plan and will form a graded ramp descending from the existing crossing point on the public highway to the existing haul road near the base of the worked area. The haul road runs along the length of the worked area and ends within the restoration area.
>
> This ramp will be formed by using the unmixed dry restoration materials (detailed above) and a small amount of granular fill which is currently located within the worked area. No other substances or materials will be used in the formation of the ramp.
>
> **Conclusion**
>
> There is a commercial need for certainty and we therefore await your view on the aggregates levy liability, if any, in respect of the proposed ramp and restoration works.
>
> Please let me know if you require any further information, otherwise I look forward to hearing from you in due course.

11. On 3 September 2012 HMRC replied to Hanson's letter of 9 August 2012 stating, inter alia:

> … In regard to the packet of land sold to developers in the south part of the quarry, unworked materials won in the north part of the quarry will be supplied to uplift the area to ground level. The HQPE letter of the 9 August 2012 states that the material supplied by HQPE to the developers will only incur the cost of extraction and will not be charged at the market value or would include any Aggregates Levy. All transport, processing, 'extraction' and restoration costs would be borne by the developer. The area sold to the developer prior to any restoration would not then form part of the originating site and the use of unworked material to uplift the levels would add value to the parcel of land. Any material removed from the originating site would be seen as furtherance of the business and therefore a taxable supply. Please refer to FA 2001, S. 19(1)(a-c), 19(3)(a) …

12. The letter also stated that the HMRC were of the view that because of the nature of the material to be used for the construction of the ramp this too would be subject to aggregates levy. HQPE replied, on 31 October 2012, explaining that it considered the Quarry and Restoration Area to be a single site and, after setting out the applicable legislation contained in the Finance Act 2001 ("FA 2001") and referring to the decision of the Tribunal in *Hochtief v HMRC* [2009] UKFTT 321 (TC) ("*Hochtief*"), contended that it should not be liable to a charge to aggregates levy.

13. On 27 November 2012 HQPE was granted planning permission by South Gloucestershire Council for use of aggregates for the construction of the development platform at the Restoration Area and for the construction of a haul road ramp to enable internal access at "Hanson Quarry Products Chipping Sodbury Quarry Barnhill Road Chipping Sodbury Bristol South Gloucestershire".

14. This planning permission was subject to various conditions of which condition 13 provided:

> There shall be no importation or exportation of materials beyond the boundaries of the Southfields and Barnhill quarry areas and the crossing point identified, in connection with the development hereby approved.
>
> Reason
> In the interests of local amenity and in accordance with Policy 22 of the South Gloucestershire Minerals and Waste Local Plan (Adopted) May 2002.

15. The summary of reasons for granting planning permission stated:

> The proposed development has been tested against the following policies of the Development Plan and, in the opinion of the Local Planning Authority is not in conflict with the following policies or adopted Supplementary Planning Guidance when read in conjunction with the planning conditions.
>
> The proposals will enable and facilitate the prompt commencement of the major housing/retail scheme approved under planning reference PK10/ [the planning permission obtained by the Developer referred to in HQPE's letter to HMRC, see paragraph 8, above]. The proposal will allow for an immediate and localised source of material for the construction of the development platform, being able to provide material from one internal source that can provide the variety, quality and quantity of materials required. This will negate the requirement to attempt to source a wide range of materials from various locations as they arise over a much wider radius and over a longer period. Vehicle movements will be significantly reduced and vehicle movements along the public highway, apart from the crossing point, will also be avoided. It is considered that as operations will be contained within an existing operational quarry that amenity impacts can be satisfactorily contained. On balance it is not considered that any perceived landscape impacts would be significant or material such as outweigh any presumptions in favour of development. It is considered that the proposals can be implemented in an environmentally acceptable manner. …

16. However, the approach of HQPE and the Developer to the proposal had been affected by the recession (which had commenced in 2008 and was continuing to have an effect in 2012) and it was clear to HQPE that, due to changes in the property market, the sale would be unlikely to proceed on the basis of the 2007 option. In particular the Developer, which had prospective partners for the supermarket and residential schemes, had concerns over its ability to source sufficient fill material in the general market to be able to deliver the project in time. Therefore, the terms of the 2007 option were renegotiated.

17. On 20 December 2012 the Developer having exercised the option completed the purchase of the Restoration Area. Under the terms agreed HQPE arranged to make available specified materials for the Developer to extract from the working area of the Quarry to the North of the Restoration Area for the construction of the platform. It was also agreed, for its own health and safety reasons and to meet the requirements of the Health and Safety Executive, that HQPE would undertake the drilling and blasting of the rock albeit at the Developers expense with the Developer also being responsible

for the processing and transportation of the materials with HQPE agreeing to maintain the pumped down water levels in the Quarry which was to be drained into the River Frome through the Restoration Land.

18. The Developer subsequently entered into an agreement, in December 2012, under which it sold land in the Restoration Area to a builder (the "Builder") for residential development. However, as the original design was not capable of full implementation within the footprint of the land acquired by the Developer and to avoid a potential dispute HQPE agreed, for a token consideration, to transfer a small additional area of land direct to the Builder. This sale was completed on 16 June 2014.

19. On 22 May 2013 HMRC wrote to HQPE referring to HQPE's letter of 31 October 2012 (see paragraph 12, above). Although the first part of HMRC's letter dealt with the ramp, maintaining that aggregates levy was applicable on its formation, the letter went on to consider the Restoration Area stating:

> … Further to the above, your letter also quotes FA 2001 s 20(1)(d) to prove that the materials that will be used to uplift the restoration area ready for construction will be 'returned to the site from which the aggregate was won' as you say, this area is part of the originating site. Hochtief is again quoted (paras 51 to 70, in particular 66 & 69), to determine the meaning of site and where the material was won. In the Hochtief case it was judged that the quarry was part of the site as it later formed the footprint of the reservoir when filled with water. You confirm in your letter that the won material is to be used in raising the levels of the restoration area prior to development, in other words, exploited, but HQPE do not accept that the material was 'commercially exploited' for aggregates levy to be applied (Hochtief paras 68 & 69).
>
> The Hochtief case provided some guidelines as to what constituted a site and where materials have been exploited and returned to the land at the site from which it was won. Using Hochtief as the example and the same paragraphs that you quote (51 to 70), it is not the size of the site but where the 'construction site', in the Hochtief example, the dam and reservoir constituted 10 percent of the total site but was where the bulk of the work took place.
>
> You intimate that were the material to be used to uplift the area to make the levels acceptable for development, prior to the sale of the land then the material would be extracted and becoming, without mixing, part of the land where it was originally won. This action would in HQPE's opinion make the material not liable to Aggregates Levy. In that scenario HMRC would accept that overall the area would be seen as one site prior to the sale of part of the site to the developer and that any material deposited on the south of the site would be seen as again becoming part of the land from which it was most recently won.
>
> HMRC take the view that as part of the land to be developed has now been sold to the new owners, the developers, the use of material to uplift the ground levels will be **post** sale. The condition of the sale of the land included that materials would be extracted from the working

> area in the north of the site, still owned and worked by Hanson and deposited in the restoration area, the developer would pay as part of the sale contract the costs of (a) extraction (b) processing (c) transport and (d) restoration, it is seen as a supply to a third party in the course of the furtherance of the business and that the material had been commercially exploited, see conditions in FA s 19 Commercial Exploitation, esp. 19(1)(a) (b) & 19(3)(a).
>
> The Commissioners of HMRC have exercised their right to set new site boundaries for the Chipping Sodbury quarry under FA 2001 section 24(6) & 24(7). The Commissioners have the right to exercise their powers to reset the boundaries of a site in line with s 24(6) as a registered site. These new boundaries appear to the Commissioners as the best way to 'secure that avoidance of levy is not facilitated by the registration of any part of any premises that is not used or operated as mentioned in subsection 24(6)'. I have attached an updated plan of the site clearly showing the adjusted boundary lines for the quarry. With reference to the Hochtief Tribunal para 64, the Tribunal reminded HMRC that the Commissioners can set new boundaries that exclude any area that is not used in the process of winning of aggregate or used in the manner described within s 24(6). The sale of this parcel of land to the developers has altered the total area and reduced the actual working area of the site used by HQPE for the winning of aggregates.

20. On 11 July 2013 South Gloucestershire Council granted planning permission to the Developer for the extension and alteration of the platform in the Restoration Area.

21. On 12 July 2013 Mr Phil Hayes, an officer of HMRC, visited the Restoration Area and Quarry. He was subsequently provided with further information by HQPE following which, in a letter dated 20 August 2013, HMRC withdrew the decision that the materials used in the construction of the ramp would be liable to aggregates levy. However, the letter confirmed HMRC's decision that a charge to aggregates levy did arise in relation to supply of aggregates for the creation of the platform in the Restoration Area.

22. HQPE, in a letter dated 30 September 2013, requested a review of this decision and also the decision to set new site boundaries. HMRC, having undertaken the review, wrote to HQPE on 5 November 2013 stating that as both decisions were "legally correct" they should "be maintained".

23. The letter explained:

> After consideration of the facts HMRC have concluded that the material exploited by HQPE to be used to restore land for development would be supplied post sale and as a result is supply of aggregate to a third party, making the aggregate exploited liable to the levy.

With regard to the boundaries the letter stated:

> HMRC have taken the decision to set new boundaries for the site given the sale of the parcel of land for development and I find this decision is in line with the responsibility of HMRC to define the

> boundaries of sites to secure the revenue by ensuring that the site encompasses all areas of exploitation and excludes those areas not concerned with exploitation (section 24(7)).

24. HQPE notified its appeal to the Tribunal against the decision of HMRC on 3 December 2012.

25. The construction of the platform in the Restoration Area, with a five metre difference between its south and north end, was completed in autumn 2014. This slope is clearly apparent in a photograph, exhibited by Mr Daynes, "on final completion and testing" of the platform in the Restoration Area taken on 29 October 2014. Although one end of the platform is level with the supermarket development the rock face of what was the Quarry is clearly visible. In addition drainage from the Quarry into the Rive Frome continues to be through the Restoration Area.

Issues

26. Three issues arise from of these facts. First, whether the Restoration Area and the remainder of the Quarry are a single site for the purposes of the aggregates levy (the "Site Issue"); secondly whether HMRC are entitled to redefine the boundaries of a site so as to create a charge to aggregates levy (the "Section 24 Issue"); and thirdly whether the jurisdiction of the Tribunal is supervisory or appellate (the "Jurisdiction Issue").

27. We consider each in turn.

The Site Issue

Law

28. Aggregates levy, which was introduced by Part 2 of FA 2001, is charged, under s 16(2) of that Act, whenever a quantity of "taxable aggregate" is subjected to "commercial exploitation" in the United Kingdom.

29. "Aggregate" is defined by s 17(1) FA 2001 as:

> … any rock, gravel or sand, together with whatever substances are for the time being incorporated in the rock, gravel or sand or naturally occur mixed with it.

As we have noted (at paragraph 2, above) it is accepted in the present case that the material extracted from the Quarry and used for the construction of the platform in the Restoration Area is aggregate.

30. Section 17(2) FA 2001 provides, subject to a number of exceptions (none of which are applicable in the present case), that "taxable aggregate" is any aggregate "which it is subjected to commercial exploitation".

31. "Commercial exploitation" is defined by s 19 FA 2001 which, insofar as it applies to the present case, provides:

19 Commercial exploitation

(1) For the purposes of this Part a quantity of aggregate is subjected to exploitation if, and only if -

(a) it is removed from a site falling within subsection (2) below;

(b) it becomes subject to an agreement to supply it to any person;

(c) it is used for construction purposes; or

(d) it is mixed, otherwise than in permitted circumstances, with any material or substance other than water.

…

(2) The sites which, in relation to any quantity of aggregate, fall within this subsection are –

(a) the originating site of the aggregate;

(b) any site which is not the originating site of the aggregate but is registered under the name of a person under whose name that originating site is also registered;

(c) any site not falling within paragraph (a) or (b) above to which the quantity of aggregate had been removed for the purpose of having an exempt process applied to it on that site but at which no such process has been applied to it.

(3) For the purposes of this Part the exploitation to which a quantity of aggregate is subjected shall be taken to be commercial exploitation if, and only if –

(a) it is subjected to exploitation in the course or furtherance of a business carried on by the person, or one of the persons, responsible for subjecting it to exploitation;

(b) the exploitation to which it is subjected does not consist in its removal from one registered site to another in a case where both sites are registered under the name of the same person;

(c) the exploitation to which it is subjected does not consist in or require its removal to a registered site for the purpose of having an exempt process applied to it on that site;

(d) the exploitation to which it is subjected does not consist in or require its removal to any premises for the purpose of having china clay or ball clay extracted or otherwise separated from it on that site; and…

(e) the exploitation to which it is subjected is not such that, as a result and without its being subjected to any process involving its being mixed with any other

> substance or material (apart from water), it again becomes part of the land at the site from which it was won.

32. Section 48(1) FA 2001 provides that "originating site" shall be construed in accordance with s 20 FA 2001. This provides that references in FA 2001 to the "originating site", in relation to any aggregate are (for the purposes of the present case) references to "the site from which the aggregate was won".

33. The meaning of "site" was considered by First-tier Tribunal ("FTT") in *Hochtief* and the FTT and Upper Tribunal in *Northumbrian Water Limited v HMRC* [2015] STC 1458 ("*Northumbrian Water*").

34. *Hochtief* concerned the construction of a hydroelectric power station. The project involved the creation of a reservoir on land owned by several landowners and the construction of a dam using rock quarried, crushed, graded and removed from a quarry which, although in the footprint of the reservoir basin and now covered in water, was at its nearest point approximately 100m from where the dam was built. HMRC contended that section 19(3)(e) FA 2001 could not be satisfied as there were two sites, the quarry and the dam, and the relevant "site" for the purposes of s 19 FA 2001 was the exact place from which the aggregate was extracted. The Appellant's view was that the site was the construction site and that the rock was simply moved from one part of the site to another.

35. Having referred to the decision of Rimer J (as he then was) in *Commissioners of Customs and Excise v East Midlands Aggregates Ltd* [2004] EWHC 856 (Ch) the FTT continued:

> "61. Rimer J at paragraph 23 of his judgment suggested that the test could be applied by asking ten people lined up to identify a site. The Tribunal was persuaded that such people would not consider the footprint of the dam as one site and the footprint of the quarry as another.
>
> 62. The Tribunal considered the distance of the quarry from the dam but found that this in itself (because it was only an average of five hundred metres) was no more persuasive than if it had been two kilometres as long as all were within the, sensible workable meaning of the word, "site".
>
> 63. Lastly, in consideration of the definition of "site", the Tribunal took account of the scale of the project which was a major civil engineering project and within this the size of the area that was required for the dam and reservoir.

36. In *Northumbrian Water* gravel was extracted from a borrow pit next to a reservoir which was used to raise the level of Abberton Reservoir south of Colchester in order to increase its storage capacity. The FTT in its decision (reported at [2014] SFTD 316) applied a "sensible working meaning" to the concept of "site" and held (at [195]-[196]) that an ordinary person looking at the works would conclude that it was all one site.

37. Rose J, who dismissed HMRC's appeal to the Upper Tribunal noted (at [14] of her decision) that Northumbrian Water owned the freehold to all the land covered by the reservoir and borrow pit and that the FTT had stated that the raising of the main dam, the construction of the col dams and the causeway and the extraction from the borrow pit were all part of a single construction project. She went on (at [23]) to list, with approval, the following factors considered by the FTT in applying s 19(3)(e) FA 2001 to the facts of the case:

> (a) the distance, scale and size of the project: they held that these factors did not suggest that the locations constitute one site but, given this was a large scale civil engineering project, these factors were also 'not… inconsistent with them being on one site';
>
> (b) the site boundaries in the planning application: these were not determinative but were something that the Tribunal ought to take into account. Looking at the plans, and in particular at Condition 105, this factor was supportive of the extraction of the gravel and the raising of the reservoir being viewed as part and parcel of the same project. However this factor did not assist the Tribunal a great deal in applying section 19(3)(e) and so was not something they placed any significant weight on;
>
> (c) the site boundaries in the construction contract and the fencing on the ground. The Tribunal considered that while the construction site is not necessarily determinative of what is the site for section 19(3)(e), it is a significant factor to take into account because that is the primary form of exploitation to which the relief in that section is directed. The extent of the construction site was a matter of fact and impression, not necessarily co-extensive with the bounded area. They concluded that the pits and the reservoir formed one construction site;
>
> (d) NWL's rights to the whole site. The fact that NWL owned both the pits and the reservoir enabled it to create the temporary haulage road for the transport of the gravel, thereby breaching any 'buffer area' created by agricultural land in between the Rye Borrow Pit and the reservoir.

38. At [35] of her decision Rose J observed that the "tenor" of the decision in *Customs and Excise Commissioners v East Midlands Aggregates Ltd* [2004] EWHC 856 (Ch):

> "… emphasises that the identification of the 'site' in these provisions is a multi-factorial test in which one weighs a number of factors without relying on any one factor as being conclusive."

Discussion and Conclusion on Site Issue

39. Ms Busch contends that as the aggregate was removed from its originating site and subjected to commercial exploitation, within the meaning of s 19 FA 2001, in the course or furtherance of a business it is properly chargeable to aggregates levy. However, Mr Baldry disagrees. He contends that the aggregate was not subjected to exploitation as it was not removed but remained within its originating site. Additionally, he submits that despite the condition in s 19(3)(a) FA 2001 being

satisfied, because of the effect of the condition in s 19(3)(e) the aggregate cannot have been subjected to commercial exploitation.

40. It is not disputed that that the material used for the construction of the platform in the Restoration Area is aggregate or that the aggregate, which has not been subjected to any process involving it being mixed with any other substance or material, has again become part of the land.

41. Therefore, as is apparent from the position of the parties, the central issue in the present case turns principally on the meaning of "site" for the purposes of s 19 FA 2001 in the light of *Hochtief* and *Northumbrian Water*.

42. From these decisions it would appear that "site" should be given a "sensible working meaning" and identified by the application of a multi-factorial test in which no single factor is to be relied upon as being conclusive. Although the reference by Rimer J to identification by "ten people lined up" could, as Ms Busch identified, raise issues as to their qualities or attributes and their observation point, we agree with the approach of the FTT in *Northumbrian Water* that the test ought not be taken too literally.

43. As Rose J said in the Upper Tribunal in that case at [21]:

> "The Tribunal also wisely declined to be drawn into questions about where the ten hypothetical people should be standing or what qualities and attributes they should be assumed to have. They held that the reference to 'ten people' was simply a convenient way of considering what an ordinary person would understand by the word 'site' and should not be applied over-literally".

44. Given the potential difficulties of an "ordinary person" approach Ms Busch invited us to adopt a purposive approach to the meaning of "site" in s 19 FA 2001 and referred us to the following observation of Moses J (as he then was) in ***R (on the application of British Aggregates Associates and Others) v HM Treasury*** [2002] EWHC 926 (Admin) at [108]:

> "The purpose of the levy, as described by Government witnesses (particularly Mr Knight in his second statement at paragraphs 6-9, and Mr Maxwell) is to see that the costs of aggregate reflect not just market costs but the cost to the environment. This is what they describe, in an expression calculated to make the mouth water of even the most jaded judge, as "internalising the externalities". This it seeks to achieve by taxing virgin aggregate (an expression used in the Budget Statement of 2000 but not in the statute) and thereby shifting demand to the use of alternative materials such as industrial waste. This is designed to promote the efficient use of virgin aggregate and reduction of piles of waste material which may otherwise be used as landfill. The exemptions increase the incentives to use waste material, which is not subject to the levy, as aggregate."

This may be summarised as "the polluter pays".

45. However, the argument advanced by Ms Busch in *Northumbrian Water* that the FTT was led into error by a misunderstanding of purpose of legislation which HMRC contended (relying on the comments of Moses J in *British Aggregates*) had nothing to do with minimising the transport of aggregate was rejected by Rose J in the Upper Tribunal.

46. At [39] of *Northumbrian Water* she said:

> "I agree with HMRC to the extent that it is difficult to see how the exception in section 19(3)(e) can be squared with the primary environmental objective pursued by the levy. One would have thought that the situation where the operator of a construction site is comparing the benefits of using virgin aggregate won on site with the benefits of transporting recycled aggregate from elsewhere is precisely the situation where imposing the levy would ensure that the environmental disadvantages of using virgin aggregate are taken into account in deciding which option is more cost effective. However, although minimising transport is not the primary goal of the levy, I consider that the policy basis for section 19(3)(e) must be to avoid discouraging use of aggregate which is immediately to hand when construction works are being carried out. That follows from a rejection of the submission that the primary aim of section 19(3)(e) is to encourage the return to the land of aggregate that has been removed but is not, in the event, needed. I do not accept that the references to the policy behind section 19(3)(e) led the Tribunal into an error of law in their interpretation of the statutory provisions"

47. It is also clear from the decision of the Upper Tribunal in *Northumbrian Water* that we should consider the state of the site as at the date of the works rather than on their completion.

48. As Rose J said, at [36]:

> "I do not accept HMRC's argument that the Tribunal was wrong to look at the state of the construction site as at the date of the building works (when a temporary haulage road had been created to transport the aggregate to the reservoir) rather than when the work had been completed (when that track would be removed and the land between the Pit and the reservoir returned to agricultural use). There is nothing in the wording of the section to direct attention exclusively to the position once the construction works have finished. I accept Mr Baldry QC's submission that it is important for a builder to know at the time it makes use of the aggregate whether the exploitation of the aggregate will be 'commercial' or not and hence whether he is under an obligation to register for the levy under section 24 or not. The definition of 'taxable activity' in section 24(3) indicates that a person will know at the time he is carrying on a particular activity whether it amounts to subjecting the aggregate to commercial exploitation or not and whether he is responsible for it or not. This does not fit comfortably with an interpretation which requires the person to predict on the basis of the initial building plans whether there is going to be a sufficient nexus between the quarry and the reservoir once the project

> is completed many months afterwards for the exploitation to fall outside the definition of commercial exploitation."

49. Therefore, in order to determine the "site" in the present case we consider the following various factors as they existed at the time the aggregate was won and used for the construction of the platform in the Restoration Area:

(1) Ownership of the Quarry and Restoration Area;

(2) Planning consents;

(3) The location of Restoration Area within the original boundary of the Quarry;

(4) The use of land;

(5) Contiguous physical connection between Restoration Area and remainder of the Quarry;

(6) The continuing drainage of the Quarry through the Restoration Area

(7) The view of ordinary person; and

(8) The adoption of a sensible working meaning of the site.

50. Although HMRC, in their letter of 22 May 2013 to HQPE, state that the Restoration Area and remainder of the Quarry "would be seen as one site prior to the sale of part of the site to the developer" and appear to accept if it had all remained in HQPE's ownership the liability to aggregates levy and indeed this dispute would not have arisen, Miss Busch does not contend that the separate ownership of the Quarry and Restoration area are determinative but "highly relevant" factors and argues that following its sale the Restoration Area ceased to be part of the Quarry and therefore was no longer part of the site.

51. We agree that the ownership of the land, while relevant, cannot be determinative of whether there was a single site at the time the aggregate was won as, quite clearly, a site can have more than one owner as was the case in *Hochtief*. However, we do not consider the approach advocated by Ms Busch, with its conflation of quarry and site, to be appropriate. Section 19 FA 2001 refers to a "site" and even if the land sold to the Developer on which the platform was constructed ceased to be part of the quarry it does not, in our view, necessarily follow that is also no longer part of the site.

52. Although in both *Hochtief* and *Northumbrian Water* the site, for the purposes of s 19 FA 2001, extended beyond the boundaries of the quarry where the aggregate was won that is not the position in the present case. As is clear from the reasons for granting planning permission for the construction of the platform at the Restoration Area (see paragraphs 9 and 10 above) it was considered that amenity impacts could be satisfactorily contained as "operations will be contained within an existing operational quarry". This is also clear from the photograph exhibited by Mr Daynes to which we refer above (at paragraph 20) in which what was the rock face of Quarry is clearly visible because of the five metre drop between the north and south of the platform.

53. Given the regular movement of material from one part of a quarry to another, the contiguous physical connection of the Restoration Area to the remainder of the Quarry and the fact that drainage from the Quarry still passes through it we consider that Romer J's "ten people lined up" would identify a single site which included the Restoration Area rather than regard the Quarry and Restoration Area as two distinct and separate sites. Indeed, we consider, having regard to the various factors that for the site to be given any sensible working meaning it must include and not exclude the Restoration Area.

54. Accordingly, as it is accepted that the aggregate used for the construction of the platform in the Restoration Area again became part of the land without being subject to any process involving it being mixed with any substance or material other than water, the aggregate cannot have been subjected to commercial exploitation as defined by s 19(3) FA 2001 and, as such, is not "taxable aggregate". Therefore, no liability to a charge to aggregates levy under s 16(2) FA 2001 arises and the appeal by HQPE must succeed.

55. Having found that there was no commercial exploitation it is not strictly necessary to consider either the Section 24 Issue or the Jurisdiction Issue to determine this appeal. As Rose J said in *Northumbrian Water*, at [48]:

> "… If, as the Tribunal found, there is no commercial exploitation taking place at all here, then the question as to where the boundary lines should be drawn on the register does not arise – there is nothing to register."

However, as both were fully argued before us and in case of any further appeal, we have set out below our conclusions in relation to this issue.

Section 24 Issue

Law

56. Section 24 FA 2001 provides:

> (1) It shall be the duty of the Commissioners to establish and maintain a register of persons who are required to be registered for the purposes of aggregates levy.
>
> (2) A person is required to be registered for the purposes of aggregates levy if he—
>
> (a) carries out taxable activities, and
>
> (b) is not exempted from registration by regulations under subsection (4) below.
>
> (3) For the purposes of subsection (2) above a person carries out a taxable activity if a quantity of aggregate is subjected to commercial exploitation in the United Kingdom in circumstances in which he is responsible for its being so subjected.

(4) The Commissioners may by regulations provide for persons carrying out taxable activities to be, to such extent and subject to such conditions or restrictions as may be prescribed, either—

(a) exempt from the requirement of registration; or

(b) exempt from such obligations or liabilities imposed by or under this Part on persons required to be registered for the purposes of aggregates levy as may be prescribed.

(5) The Commissioners shall keep such information in the register as they consider it appropriate so to keep for the purposes of the care and management of aggregates levy.

(6) In particular, where it appears to the Commissioners that any person is operating or using any premises, or intends to operate or use any premises—

(a) for winning any aggregate,

(b) …

(c) for applying an exempt process to any aggregate,

(ca) for mixing, otherwise than in permitted circumstances (within the meaning given by section 19(7)), any aggregate with any material or substance other than water

(d) for storing any aggregate, or

(e) for the first landing in the United Kingdom of aggregate won from the seabed of any area of sea in the United Kingdom or United Kingdom waters,

they may, if they think fit, register those premises, in any entry relating to that person and under his name, as a registered site.

(7) Where any premises are registered in accordance with subsection (6) above as a registered site, the particulars included in the register shall set out as the boundaries of the site such boundaries as appear to the Commissioners best to secure that avoidance of levy is not facilitated by the registration of any part of any premises that is not used or operated as mentioned in subsection (6) above.

(8) Where any entry in the register at any time specifies that any premises registered under a person's name as a registered site are to be taken to be the originating site of—

(a) …

(b) any aggregate resulting from the carrying out of any exempt process there, or

(c) any aggregate won or landed there,

any question for the purposes of this Part as to the boundaries at that time of the originating site of any such aggregate shall be conclusively determined in accordance with that entry.

(9) Schedule 4 to this Act (provisions with respect to registration for the purposes of aggregates levy) shall have effect.

(10) …

Discussion and Conclusion on Section 24 Issue

57. Ms Busch contends that s 24 FA 2001 confers a discretion on HMRC. In particular under s 24(5) FA 2001 HMRC are given power to keep such information in the register "as they consider appropriate" for the purpose of "the care and management of aggregates levy" and under s 24(6) FA 2001 "may, if they think fit" register premises used for winning aggregate. Under s 24(7) FA 2001 HMRC are given the power to set out the boundaries of a site as appears to them "best to secure that avoidance of the levy is not facilitated by the registration of any part of any premises" not used for the winning of aggregate. This, Ms Busch contends, gives HMRC the power to redefine the boundaries in the present case as the Restoration Area, although previously part of the premises registered to HQPE is no longer used for winning aggregate and had the boundaries not been withdrawn payment of aggregates levy would have been avoided.

58. However, while Mr Baldry accepts that s 24 FA 2001 give HMRC an administrative power to determine who is required to be registered and the location of an "originating site" for the purposes of s 19(1)(a) and s 19(2)(a) FA 2001 in accordance with their "care and management" duties of the aggregates levy, he contends that it does not give them authority to redefine, by the exercise of a discretion, the boundaries of a site to create a liability a charge to aggregates levy where one would have not otherwise existed. To do so he say would be contrary to the principle outlined by Lord Wilberforce in *Vestey v IRC (Nos 1 and 2)* [1980] STC 10, where he said, at 18:

> "Taxes are imposed on subjects by Parliament. A citizen cannot be taxed unless he is designated in clear terms by a taxing Act as a taxpayer, and the amount of his liability is clearly defined.
>
> A proposition that whether a subject is to be taxed or not, or that, if he is, the amount of his liability is to be decided (even though within a limit) by an administrative body, represents a radical departure from constitutional principle. It may be that the Revenue could persuade Parliament to enact such a proposition in such terms that the courts would have to give effect to it; but unless it has done so, the courts, acting on constitutional principles, not only should not, but cannot validate it."

59. Moreover, Mr Baldry contends that even if s 24(6) FA 2001 did give HMRC power to create a liability they can only do so to secure that avoidance is not facilitated and in the present case there is no avoidance as it is described by Lord Nolan in *IRC v Willoughby* [1997] 1 WLR 1071 where he distinguished it from tax mitigation (at 1079) as follows:

> "The hall mark of tax avoidance is that the taxpayer reduces his liability to tax without incurring the economic consequences that Parliament intended to be suffered by any taxpayer qualifying for such reduction in his tax liability. The hall mark of tax mitigation, on the other hand, is that the taxpayer takes advantage of a fiscally attractive

> option afforded to him by the tax legislation, and genuinely suffers the economic consequences that Parliament intended to be suffered by those taking advantage of the option. …"

60. Although Ms Busch did not specifically address the issue raised by *Vestey* we agree with Mr Baldry that unlike s 24(4) FA 2001, under which HMRC are given specific power by Parliament to make regulations in relation to registration for aggregates levy, s 24(7) FA 2001 sets out administrative duties of HMRC in relation to a "registered site" and as it is not written in such sufficient clear terms does not, in our judgment, enable HMRC to impose a charge to aggregates duty simply by the redefinition of the boundaries of an existing site.

61. As is clear from *Hochtief* and *Northumbrian Water* the identification of the boundaries of a site for the purposes of s 19 FA 2001 is a matter of the application of a multi-factorial test by the Tribunal and not an administrative decision to be taken by HMRC. It therefore follows that we do not consider that HMRC are entitled to redefine the site boundaries so as to create a charge to aggregates levy that would not otherwise have existed

Jurisdiction Issue

Law

62. Insofar as they are applicable to the present case, ss 40 and 42 FA 2001 provide:

> **40 Appeals**
>
> (1) Subject to section 41, an appeal shall lie to an appeal tribunal from any person who is or will be affected by any decision of HMRC with respect to any of the following matters—
>
> (a) whether or not a person is charged in any case with an amount of aggregates levy;
>
> (b) the amount of aggregates levy charged in any case and the time when the charge is to be taken as having arisen;
>
> (c) the registration of any person or premises for the purposes of aggregates levy or the cancellation of any registration;
>
> (d) the person liable to pay the aggregates levy charged in any case, the amount of a person's liability to aggregates levy and the time by which he is required to pay an amount of that levy;
>
> (e) the imposition of a requirement on any person to give security, or further security, under section 26 above and the amount and manner of providing any security required under that section;
>
> (f) whether or not liability to a penalty or to interest on any amount arises in any person's case under any provision made by or under this Part, and the amount of any such liability;

(g) any matter the decision as to which is appealable under this section in accordance with paragraph 8(6) or (7) of Schedule 6 to this Act;

(h) the extent of any person's entitlement to any tax credit or to a repayment in respect of a tax credit and the extent of any liability of the Commissioners under this Part to pay interest on any amount;

(i) whether or not any person is required to have a tax representative by virtue of any regulations under section 33 above;

(j) the giving, withdrawal or variation, for the purposes of any such regulations, of any approval or direction with respect to the person who is to act as another's tax representative;

(k) whether a body corporate is to be treated, or is to cease to be treated, as a member of a group, the times at which a body corporate is to be so treated and the body corporate which is, in relation to any time, to be the representative member for a group;

(l) any matter not falling within the preceding paragraphs the decision with respect to which is contained in

(i) an assessment under paragraphs 2 or 3 of Schedule 5 in respect of an accounting period in relation to which any return required to be made by virtue of regulations under section 25 has been made; or

(ii) an assessment under any provision of Schedule 5 other than paragraphs 2 or 3.

(2)–(9) …

(10) This section has effect subject to paragraph 8(5) of Schedule 6 to this Act.

42 Determinations on appeal

(1) Where, on an appeal under section 40 above—

(a) it is found that an assessment of the appellant is an assessment for an amount that is less than it ought to have been, and

(b) the tribunal give a direction specifying the correct amount,

the assessment shall have effect as an assessment of the amount specified in the direction and (without prejudice to any power under this Part to reduce the amount of interest payable on the amount of an assessment) as if it were an assessment notified to the appellant in that amount at the same time as the original assessment.

(2) On an appeal under section 40 above, the powers of the appeal tribunal in relation to any decision of the Commissioners shall include a power, where the tribunal allow an appeal on the ground that the Commissioners could not reasonably have arrived at the decision, either—

(a) to direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct; or

(b) to require the Commissioners to conduct, in accordance with the directions of the tribunal, a review or a further review of the original decision as appropriate.

63. In *Banbury Visionplus v HMRC* [2006] STC 1568 Etherton J (as he then was) said in relation to the jurisdiction of the Tribunal, albeit in relation to VAT:

"39. The issue whether the jurisdiction of the Tribunal was "full" or "limited" in respect of the appeals was addressed in paragraphs 90 to 100 of the Decision. It is an issue on which different conclusions have been reached in different VAT tribunal decisions. In *Merchant Navy Officers Pension Fund Trustees Ltd v The Commissioners of Customs and Excise* (1996) (tribunal decision 14262) paras 6-10 and 26, *Cliff College Outreach v The Commissioners of Customs and Excise* (2001) (tribunal decision 17301) paras 34 and 35, *University of Exeter v The Commissioners of Customs and Excise* (2003) (tribunal decision 18117) at paras 35-38, and *Optika Ltd v The Commissioners of Customs and Excise* (2003) (tribunal decision 18627) at paras 131-135, the tribunal determined or proceeded by agreement on the basis that it had a full appellate jurisdiction. On the other hand, in *J.G. Whitelaw v The Commissioners of Customs and Excise* (1989) (EDN/89/28), *BMW (GB) Ltd v The Commissioners of Customs and Excise* (1997) (tribunal decision 14823) and *Aspinall's Club Ltd v The Commissioners of Customs and Excise* (2002) (tribunal decision 17797) the tribunal concluded that its jurisdiction was limited.

40. The Tribunal in the present case concluded that its jurisdiction was limited on the basis of the reasoning in *BMW (GB) Ltd*, which, the Tribunal considered, followed the principles established by the Court of Appeal in *John Dee Ltd v Customs and Excise Commissioners* (1995) STC 941. The Chair of the Tribunal in the present case, Dr Brice, was also the Chair in *BMW (GB) Ltd*.

41. …

42. The Tribunal, having concluded that the effect of Regulation 102 is to confer a discretion on the Commissioners both to approve or direct a special method and to approve or direct its termination, and having noted that the statutory condition for the exercise of the discretionary power is "for securing a fair and reasonable attribution of input tax" within the meaning of s.26(3) of the 1994 Act, concluded that the jurisdiction of the Tribunal was limited to determining whether the discretionary power in Regulation 102 was properly, that is to say reasonably, exercised having regard to the statutory condition in s.26(3). The Tribunal concluded that, accordingly, it should consider whether the Commissioners acted in a way in which no reasonable panel of Commissioners could have acted, or whether they took into account some irrelevant matter, or disregarded something to which they should have given weight, or whether they erred in law. The Tribunal, consistently with a limited jurisdiction, held that it should

limit itself to considering facts and matters known when the Commissioners' decision was made, and that it could not exercise a fresh discretion. The Tribunal's reasoning was set out in paragraphs 96 and 97 of the Decision as follows:

> "96. Applying those principles to the facts of the present appeal we first look to see if a right of appeal is given by statute. It was agreed that the jurisdiction of the Tribunal in this appeal derived from s.83(e) of the 1994 Act which provides that an appeal shall lie to the Tribunal with respect to "the proportion of input tax allowable under section 26". Next we look at the statutory provisions which apply to the specific decision being appealed. These are found in regulation 102 which provides that the Respondents "may" approve or direct the use of a special method which has to be used until the Respondents approve or direct the termination of its use. In our view the effect of regulation 102 is to confer a discretion on the Respondents both to approve or direct a special method and to approve or direct the termination of its use. We next look for the statutory condition for the exercise of the discretionary power and, in this appeal, that statutory condition is "for securing a fair and reasonable attribution of input tax" within the meaning of section 26(3).
>
> 97. In our view it follows that the jurisdiction of the tribunal is limited to determining whether the discretionary power in regulation 102 was properly exercised having regard to the statutory condition in section 26(3). We should, therefore, consider whether the Respondents acted in a way which no reasonable panel of commissioners could have acted, or whether they took into account some irrelevant matter, or disregarded something to which they should have given weight, or whether they erred in law. We should limit ourselves to considering facts and matters which were known when the disputed decision was made. And we cannot exercise a fresh discretion. It would be otherwise if there were to be an appeal against a decision relating to the operation of the standard method; there section 83(e) gives the right of appeal but the statutory provisions would be found in regulation 101 where the Respondents do not have a discretion. In such an appeal the Tribunal would have a full jurisdiction."

43. In my judgment, the jurisdiction of the Tribunal on the appeals by the Appellants was not a limited jurisdiction.

44. No such limitation is apparent from the wording of s.83(e) of the 1994 Act, which confers a perfectly general appellate jurisdiction. Any limitation must, therefore, be found by examination of the nature of the decision from which the appeals were brought and the legislative context in which that decision was made.

> 45. What was in issue before the Tribunal in the present case was the decision of the Commissioners that the Partial Exemption Special Methods should be replaced by the standard method. It is common ground that Regulation 102(3) confers on the Commissioners a discretion to terminate the use of a special method. It is also common ground, and I hold, that the discretion must be exercised so as to achieve the statutory objective in s.26(3) of the 1994 Act, that is to say to secure a fair and reasonable attribution of input tax to taxable supplies. The issue whether a decision of the Commissioners achieves the s.26(3) objective is, on the face of it, perfectly susceptible to a full appellate review."

Discussion and Conclusion on Jurisdiction Issues

64. Ms Busch contends that as HMRC's powers under s 24 FA 2001 are discretionary in nature it must follow that the jurisdiction of the Tribunal is supervisory under s 42(2) FA 2001 and the question for the Tribunal is whether HMRC acted reasonably in reaching their conclusion. However, Mr Baldry submits that, as in *Banbury Visionplus*, the legislation in the present case gives HMRC an apparent discretion but that the question to be determined, the identification of the site for the purposes of s 19 FA 2001 is one the Tribunal is eminently suited to decide as it did in *Hochtief* and *Northumbrian Water*.

65. We accept Mr Baldry's submission and consider that the principles derived from *Banbury Visionplus* should be applied in the present case. Accordingly we conclude that the jurisdiction of the Tribunal is not limited by s 40 FA 2001 which confers a perfectly general appellate jurisdiction on it notwithstanding that HMRC are given an apparent discretion by s 24 FA 2001 in relation to their administrative powers.

Decision

66. For the above reasons the appeal is allowed.

Right to Apply for Permission to Appeal

67. 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: 13 January 2016