



**TC07766**

*VAT – DIY House Builders Scheme (s35 VATA) – Construction of a houseboat – Whether houseboat amounts to the “construction of a building designed as a dwelling....” (Note (2) to Group 5 of Schedule 8 VATA) – Appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2019/05019**

**BETWEEN**

**EDWARD BURRELL**

**Appellant**

**-and-**

**THE COMMISSIONERS FOR  
HER MAJESTY’S REVENUE AND CUSTOMS**

**Respondents**

**TRIBUNAL: JUDGE NATSAI MANYARARA  
MRS JANE SHILLAKER**

**Sitting in public at Taylor House, 88 Rosebery Avenue, London, EC1R 4QU on 17 February 2020**

**We heard the Appellant in person and Ms Olivia Donovan, Litigator of HM Revenue and Customs’ Solicitor’s Office, for the Respondents.**

## DECISION

### Introduction

1. The Appellant, Mr Edward Burrell, is appealing against HMRC's decision to refuse his claim for a VAT refund in the sum of £4,140.70. The Appellant's claim was made under the Do-It-Yourself ('DIY') Housebuilders' Scheme (hereinafter referred to as the 'DIY Refund Scheme'). That scheme operates in accordance with section 35 of the Value Added Tax Act 1994 ('VATA') and Regulation 201 of the Value Added Tax Regulations 1995 (SI 1995/2518) ('the VAT Regulations'). The claim was made in respect of the construction of a houseboat.

### Background facts

2. The background facts are undisputed by the parties, save that the parties differ in view as to the conclusions we should reach as a result of those facts.

3. On 30 May 1990, the Appellant obtained planning permission from Spelthorne Borough Council. The planning permission described the permitted development as the incorporation of land as a residential mooring at The Boathouse, Lower Hampton Road, Sunbury. The works then carried out by the Appellant involved constructing the houseboat on land by creating a steel structure on rails. A concrete foundation was then laid onto the steel structure for stability and a crane was then used to lift the structure before placing it on water, where it remains. The Appellant has provided photographs depicting the construction. The Appellant then submitted a claim for a VAT refund on 4 March 2019.

4. By a decision dated 6 June 2019, HMRC refused the claim. The reasons for the decision were that a newly constructed dwelling would only qualify for a VAT refund under the DIY Refund Scheme if it is a building designed as a dwelling, for VAT purposes. The conclusion reached was that eligibility for a DIY refund had not been satisfied as the Appellant had not constructed a building.

5. The Appellant requested a review of the decision to refuse his claim. In his request for a review, the Appellant highlighted that he had obtained planning permission and that when the work was completed, he discovered that a Building Completion Certificate would be required to complete the application. In a review conclusion letter dated 10 July 2019, the decision to refuse the claim was upheld. The review conclusion highlighted that the planning permission obtained by the Appellant was not planning permission to either "construct a building designed as a dwelling" or, to "convert a non-residential building into a building designed as a dwelling". The conclusion was that the work must result in a building, in order for there to be eligibility for a VAT refund.

6. By a letter dated 20 July 2019, the Appellant indicated that he wished to submit an appeal to the Tribunal. The Appellant has now appealed to this Tribunal.

## Respondent's Case

7. HMRC's case can be summarised as follows:

- (1) The construction of a houseboat is not considered to amount to the construction of a building, as defined by section 35(1A) (a) VATA.
- (2) It is clear that, within section 35(1A) VATA, the VAT Refund Scheme is for the construction of 'buildings' designed as a dwelling or a number of dwellings.
- (3) HMRC's case is supported by the case of *Dr Parkinson v The Commissioners of Customs and Excise* 17257 [2001] Lexis Citation 764, which concerned the VAT treatment of the conversion of a "Thames lighter" into a houseboat.

## Appellant's Case

8. The Appellant's case can be summarised as follows:

- (1) The question in this appeal is whether his home is a houseboat or a building.
- (2) The refusal of his claim was due to a lack of understanding by the planning inspector.
- (3) His home was clearly designed as a dwelling. It has not been suggested that it was designed, is being used, or could be used for any other purpose. Section 35(1A) VATA applies to his case because he was constructing a building designed as a dwelling, which was only to be used for a relevant residential purpose. He was not carrying out a residential conversion and section 35(1C) and 35(1D) do not apply.
- (4) He meets the requirements of Note 2, Group 5 of Schedule 8 VATA because the construction was designed as a dwelling. It consists of self-contained living accommodation, with no provision for direct internal access from the dwelling to any other dwelling, or part of a dwelling. The use of the structure is not prohibited in any way and planning consent has been granted.
- (5) He does not come within Note 16, Group 5 of Schedule 8 because the works did not include the conversion, reconstruction or alteration of an existing building, or the enlargement of or extension to an existing building, or the construction of an annexe.
- (6) His home was never a vessel. At no stage could it have been used as a vessel. It has always looked like a dwelling. His home started life on land and could have remained there as a dwelling, had the Council permitted it. Appearances are important. Relevant case law has oversimplified the position. Too much emphasis is placed on whether a structure floats.
- (7) His home meets the definition of a building. It is built. It is a structure. It is fixed to the adjoining land. It is built for occupation. It meets all of the required characteristics to be a building. His home does not have to fit into the examples given in case law because they are only examples. There was no definition of a "houseboat" in the *Dr Parkinson* case.

## Appeal hearing

9. The appeal proceeded on the basis of submissions only, without any live evidence. The submissions made can be summarised as follows:

10. The Appellant's submissions can be summarised as follows:

(1) His construction is not the conversion of a barge, as the case was in the *Dr Parkinson* case.

(2) The foundations of the construction were built on land. The steel structure was built on rails. Concrete was then laid on the steel structure for stability. He paid for a crane to lift the structure and swing it out. It was easy to ship the structure into water when it was completed. It is a home with a concrete foundation base. In a flood zone, the home would float.

(3) It is a building designed as a dwelling. It is not fixed to the ground but is fixed to the river.

(4) Planning permission was for a residential mooring in water.

11. Ms Donovan made the following submissions (in summary):

(1) The construction of a houseboat does not fall within section 35(1A) (a) VATA. The operative word is 'building'.

(2) Schedule 8, note 4 reinforces the word 'building'.

(3) The *Dr Parkinson* case further sets out what is eligible in terms of a building.

(4) The planning consent granted relates to the creation of a mooring. The email from the planning officer states that no permanent structures or building on the land are permitted.

(5) The structure is a houseboat and it does not comply with the statutory requirements.

12. At the conclusion of the appeal hearing, we reserved our decision, which we now give with reasons.

## Applicable law

### **“35 Refund of VAT to persons constructing certain buildings**

(1) Where-

(a) a person carries out works to which this section applies.

- (b) his carrying out of the works is lawful and otherwise 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 this section applies are –

- (a) the construction of a building designed as a dwelling or a number of dwellings;
- (b) the construction of a building for use solely for a relevant residential purpose or relevant charitable purpose; and
- (c) a residential conversion...

.....

[My emphasis both above and below]

(4)The notes to Group 5 of Schedule 8 shall apply for construing this section as they apply for construing that Group.....

13. Note 2, Group 5, Schedule 8 VATA provides that:

(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 terms of any covenant, statutory planning consent or similar provision; and
- (d) statutory planning consent has been granted in respect of that dwelling and its construction or conversion has been carried out in accordance with that consent.

.....

## Findings of Fact and Reasons for Decision

14. This is the Appellant's appeal against HMRC's decision to refuse his claim for a VAT refund. The Appellant's claim was made under the DIY Refund Scheme. The principle underlying the DIY Refund Scheme is that self-builders under the scheme should not be disadvantaged as against VAT registered residential property developers, who are able to recover input tax and dispose of properties zero-rated.

15. This decision is a matter of statutory construction. If the Appellant is within the terms of the statutory provisions, the Appellant is entitled to zero-rating. If the Appellant is not, then the supplies for the work must be standard-rated. To be successful in his appeal, the Appellant therefore needs to bring himself within the terms of section 35 (IA) (a) VATA, and the accompanying notes. The question of statutory construction was argued by the parties. We have derived considerable benefit from hearing the submissions and are grateful to both parties in this regard. Having heard the submissions, and having regard to the applicable statutory provisions, we make the following findings of fact and give our reasons for the decision.

16. On 30 May 1990, the Appellant obtained planning permission from Spelthorne Borough Council to incorporate land as a residential mooring at The Boathouse, Lower Hampton Road, Sunbury. The planning permission contained the following condition:

*"1. The development hereby permitted shall be begun before the expiration of five years from the date of this permission.*

*2. That only one vessel shall be moored at the enlarged site at any time."*

17. The reasons for the conditions were as follows:

### "REASONS FOR THE IMPOSITION OF CONDITIONS

*1. This condition is required by Section 41 of the Town and Country Planning Act, 1971.*

*2. (i) To safeguard Green Belt policy.*

*(ii) To safeguard the visual amenity of the locality."*

18. The Appellant then commenced the work required to complete his houseboat. Following completion of the work, the Appellant submitted his claim for a VAT refund. The claim was refused on the basis that the Appellant did not come within the provisions of section 35 (1A) VATA (and the accompanying notes). This was because the Appellant had not constructed a building designed as a dwelling or a number of dwellings, as required by section 35 (1A) (a) VATA. This position formed the basis of the submissions made by Ms Donovan, on behalf of HMRC. The Appellant argues that he constructed a dwelling and that he is therefore entitled

to benefit from the DIY Refund Scheme. We do not find that there is any merit in the Appellant's arguments when the terms of the legislation and the supporting documentation are considered. We give our reasons for so finding.

19. Firstly, in relation to the requirement to construct a "building designed as a dwelling or a number of dwellings", we are satisfied that the operative word in section 35 (1A) (a) VATA is the word 'building'. Furthermore, the notes to Group 5 of Schedule 8 VATA apply for construing section 35 VATA. The main provision applicable in this appeal is Note 2, which expressly refers to a 'building' designed as a dwelling. We find, therefore, that the definition of a building is the starting point and that a building requires a degree of permanence.

20. In relation to the definition of the word 'building', it is trite law that the meaning of an ordinary word in the English language is not a question of law. If the context shows that a word is used in an unusual sense, the court will determine in other words what the usual sense is. It is for the tribunal which decides the case to consider, not as law but as fact, whether in all the circumstances the words of the statute do or do not, as a matter of ordinary usage of the English language, cover or apply to the facts which have been proved: *Brutus v Cozens* [1973] AC 854.

21. Whilst the facts of the *Dr Parkinson* case are different from the facts in the appeal before us, the tribunal in the *Dr Parkinson* case applied the legislation and held that a houseboat was not a building. There, the appellant had converted a disused Thames lighter into a houseboat. The tribunal held that the shorter Oxford Dictionary defines a building as:

*"a thing which is built; a structure, an edifice, a permanent fixed thing built for occupation, as a house, school, factory, stable, church, etc...."*

22. The tribunal went on to say that:

*"The New Oxford Dictionary of English definition of "building" contains the words 'A structure with roof and walls such as a house, school or factory. To call the houseboat a "house" would, we think, be misleading."*

23. We agree with these definitions. We have also considered the statement propounded by Lord Hoffman in the case of *Moyna v Secretary of State for Work and pensions* [2003] UKHL 44, at [23]. There, he stated the following:

*"Many words or phrases are linguistically irreducible in the sense that any attempt to elucidate a sentence by replacing them with synonyms will change rather than explain its meaning."*

24. We are satisfied that a houseboat is not a building, in the usual sense of the word.

25. Secondly, having considered the terms of the planning permission, we find that the terms of the planning permission granted cannot be interpreted to be planning permission to construct a building or to convert a non-residential building into a building. In further amplification of this finding, we consider that the email dated 27 January 2016 from Spelthorne Council to the Appellant, which is in the following express terms:

*“I refer to the attached letter regarding a residential boat at the above address.....*

*I can confirm that on the understanding that the proposed works are temporary and involve the construction of a boat that on completion will be located on the water, planning permission is not required.*

*This is on the understanding that the new houseboat when completed will be placed onto the water and the existing houseboat removed.....*

*No permanent structures or **buildings** placed on the land are permitted.”*

[My emphasis both above and below]

26. We find that there is express reference to the “*construction of a boat*” in the email dated 27 January 2016 and not the construction of a building designed as a dwelling or a number of dwellings. We further find that the planning permission expressly states that “*No permanent structures or buildings placed on the land are permitted*”.

27. Thirdly, whilst we accept that the Appellant’s construction was designed for habitation, the issue is not whether the construction was designed for habitation by the Appellant but whether it was a building designed as a dwelling or a number of dwellings, as required by the legislation. The Appellant in the appeal before us accepts that he constructed a houseboat. Indeed, by a letter dated June 2019, the Appellant stated the following:

*“When our home was finished I discovered that a Building Completion Certificate would be required to complete the application. This only applies to homes built in the traditional way. It is not possible to get it for a boat which doesn’t have or need Planning Permission. Catch 22 – not possible to resolve.” [sic]*

28. By his own written evidence therefore, the Appellant distinguishes his houseboat from residential structures. We are fortified in our view that the Appellant was constructing a houseboat and not a building designed as a dwelling having considered the Post-Construction Inspection Report prepared by Stefan Fritz, Marine Surveyor of AC Surveying. The report states, *inter alia*, the following:



***“Limitations of the inspection***

- *Vessel* was surveyed ashore but no access to the bottom was given. Access to the bottom plate was gained from the inside.
- Domestic systems were seen working.

**1. General Description of the Vessel**

**2. Introduction**

2.1 A purpose built static houseboat with steel hull and timber superstructure.

2.2 For stability purposes the vessel has been ballasted with 6.5 tons mass poured concrete.

2.3 The vessel was build [sic] ashore on a slip way and is now awaiting launch”

29. We find that use of the words “*vessel*” and “*launch*” do not sit well with the definition of a permanent structure such as a building.

30. Lastly, whilst the Appellant may have constructed a dwelling (namely a houseboat) and whilst the letter dated 20 June 2019 from the Planning Enforcement Officer at Spelthorne Council confirms that, for planning purposes, the construction of the houseboat is classified as a residential dwelling, we find that in order to benefit from the DIY Refund Scheme, the Appellant must construct a ‘building’ designed as a dwelling or number of dwellings.

**Conclusion**

31. We have considered the terms of section 35 (1A) (a) VATA and Note 2, Group 5 of Schedule 8 VATA. Accordingly, we hold that the Appellant does not come within the terms of the legislation. The appeal is therefore dismissed.

**RIGHT TO APPLY FOR PERMISSION TO APPEAL**

32. 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.

**JUDGE NATSAI MANYARARA  
TRIBUNAL JUDGE**

**RELEASE DATE: 2 JULY 2020**