

DECISION NUMBER: 17363

ZERO-RATING – Construction of buildings – VAT Act 1994, Group 8, Sch 5, Item 2, Notes 4, 5, 6, 16 and 18 – Appeal dismissed.

LONDON TRIBUNAL CENTRE

CO-WORK CAMPHILL LTD

Appellant

-and-

THE COMMISSIONERS OF CUSTOMS AND EXCISE

Respondents

Tribunal: Peter H Lawson (Chairman)
Lynneth Salisbury

Sitting in public in London on 4 June 2001 and 28 February 2002

R M Lewis, Accountant, for the Appellant

Hugh McKay, Counsel, for the Respondents

DECISION

1. This is an appeal by Co-Work Camphill Ltd which carries on business at Glasallt Fawr, Llangadog, Carmarthenshire, against an assessment to VAT originally made on 11 November 1999 in the sum of £91,159 plus £16,858 interest, a total of £108,017.00; following a reconsideration, the assessment was reduced on 14 March 2000 to £64,351 plus £9,441.38 interest, a total of £73,792.38.
2. The assessment, as amended, relates to the six prescribed accounting periods ended December 1998. The assessment relates wholly to the alleged under-declaration of VAT by the Appellant in relation to supplies made in the course of building works. The question is whether these supplies were correctly zero-rated by the Appellant or should have been standard rated.
3. The Appellant company is a construction company, registered for VAT in 1977 and is wholly owned by a registered charity, Camphill Communities, which is also VAT registered. The Appellant's supplies are made exclusively to Camphill Communities.
4. Camphill Communities, which is a company limited by guarantee, provides exempt business education and training activities to physically and mentally handicapped young adults. It obtains funding from donations and from the Social Services.
5. The assessment was a consequence of a visit by Ms Julie Young, a senior officer based at the Commissioners' Swansea office, on 3 August 1999.
6. The appeal concerns a single building referred to, for convenience, as "the Community Hall". Prior to Ms Young's visit there had been an earlier visit by Mrs Cheryl Wade in February 1997 who had ruled, in a letter dated 20 March 1997, that building work on the Community Hall should be standard rated.
7. Following a request by the Appellant, a reconsideration was conducted by Mr T A Triggs, a Senior Officer based at Swansea, who upheld both the 1997 ruling and the assessment.

Following the lodgement of this appeal on 16 December 1999, a 9-page letter was written to the Appellant's accountants by Mr Kevin Ham, a Senior Officer based at Cardiff, seeking clarification of the issues, copies of documents and answers to nearly 30 questions relating to the occupation and use of the Community Hall.

8. On 9 June 2000 Mr Ham visited Mr Thomas Koeller at Coleg Elidyr and the following are extracts from his written report:
"Co-Work Camphill is a construction company. They work only for Coleg Elidyr. They are connected bodies. The registration of Co-Work

Camphill was in 1977. It was registered for VAT to enable the recovery of tax on goods and services incurred in construction.

Coleg Elidyr provides exempt education and training. The funding is through donations and funding from Social Services. It is a registered charity. Since the funding is on a per child basis, rather than by a block grant, the charity provides exempt business education. Input tax recovery for the college is less than 5%.

The college has three sites, at Rhandirmwyn, which has about 50 students; at Glasallt Fawr, which has 17 students aged between 19 and 25; and two houses in Llangadog.

The teachers do not receive pay and they do not have contracts. In return for their services they are provided with accommodation, food and clothing."

9. Mr Ham goes on to describe various buildings, as follows:–

"The School. This is the school for the children of the tutors in the college. They do take children from the community for a fee, but the fee is requested, not demanded. If the fee is not paid the pupils remain in the school. The school is registered with the local authority but since the school uses the Steiner method, they receive no education authority funding". Mr Ham was satisfied that this building was for a charitable, non-business use and also that it was a new building and, therefore, qualified for zero-rating.

The Dairy. This was agreed to be liable to standard rating.

The Office. This is an area in the roof space of the farmyard building. A "newbuild" but integrated into a building with business use and, accordingly, is standard rated.

Rhan House – comprises relevant residential student halls. He agreed that this building qualified for zero-rating. Work on the farmyard is standard rated. There is no residential use. The farm building is used to make taxable supplies.

Water Tank. This is civil engineering work done at the insistence of the Fire Service to provide 3 inch fire hydrants. This is standard rated.

New House. This is for the construction of a new students hall of residence. Planning permission has been given. This was zero-rated.

Workshop at Rhandirmwyn. This is a new building with no residential implications. If a relevant chargeable purpose can be established then it qualifies for zero-rating, but no certificate had been issued at the date of Mr Ham's report.

10. Mr Ham went on to describe the Community Hall. This is, he wrote, a building at the Glasallt Fawr site, originally a stone built barn and the barn was incorporated into the fabric of the Hall. The barn occupies

about one quarter of the footprint of the new building. This area is marked on the plan as a mobile stage area and reception. There are five distinct parts of the building, as follows:

- (a) Construction of the lobby and WCs adjoining the reception area.
- (b) Work on the reception area and mobile stage area. New floor, construction of a half-height storage area over the reception and stage area.

These two areas together could function independently of the rest of the building.

- (c) The other rooms. These could function independently of the other two areas. They have their own entrance and this is all new work.
 - (d) The roof. The entire roof and supports are new.
 - (e) The boiler room serves the entire building.
11. The building would be used by the students and staff of Coleg Elidyr for social meetings and there will be no charge made. Mr Koeller said it would not be used in connection with teaching functions. Mr Ham considered that the building was not a village hall "or similar".
 12. The following are answers given by Mr Koeller to questions asked by Mr Ham. No one person would control the bookings for the Community Hall. There will be a Community diary. Bookings would be on a first come basis. Conflicts would be resolved amicably. The college has a Tuesday Forum where decisions about the college are discussed and agreed. This would resolve disputes.
 13. Single rooms would be available.
 14. The college would be the body renting out the building or facilities. They would be let to students and staff of the college. There would be no charge except that users would be expected to leave the Hall clean and tidy. Membership of the owning organisation would not be required in order to use the building. The Hall would be available outside the college, but it would not be advertised. No charge would be made. If the event would improve the social skills of the residents, then the organisers would be encouraged to accept students free as part of the class.
 15. There is no reception area.
 16. No admission charges would be made.
 17. There is no licensed bar, but there is a kitchen. No catering staff are employed. There are no staff exclusively allocated to the Community Hall.
 18. The Community Hall would be mainly available to students at Glasallt Fawr and Llangadog. It is not expected to be used by other outside bodies. Thus, the users would be 99% students and teachers and 1%

external people. The students would be "off site" and at home for 11 weeks of the year. During this time the use would be by the teachers and other employees. The population catered for would be "the campus" at Glasallt Fawr and Llangadog.

19. Mr Ham concluded that the Community Hall did not qualify as a relevant charitable building or village hall within Note 6 of Group 5.
20. All the buildings referred to are at Glasallt Fawr. The first four buildings, namely the workshops, the farmhouse, cowshed, and barn, were on the site in 1990 when the planning permission for the Community Hall was first considered. Planning applications were made, as follows:
 - (a) For a residential block known as Nodafa loan
 - (b) Another residential hall called Nodafa Barcud, the Community Hall and a bungalow.
21. The permission for the last four items were issued in 1987 (Nodafa loan) and in 1991 for the other three items. Construction work started respectively in 1987, September 1991, April 1996, and Spring 1992. The first was completed in 1990, the second in September 1996, and the fourth in Spring 1993. As already mentioned, the Community Hall has not been completed.
22. Oral evidence was given before us on 4 June 2001 by Mrs Young, who is a Senior Officer, on behalf of the Commissioners and subsequently on 28 February 2002, by Mr Thomas Bruno Koeller, who established the community in 1973 and has been connected with it ever since, on behalf of the Appellant. Evidence was also given by Mr Bjarte Haugen who was a Director of the Appellant company when the works in question in this appeal were undertaken.
23. Certain other issues have been settled between the Commissioners and the Appellant and, as mentioned above, the sole issue remaining before us was whether work done on the building now called the "Community Hall" was properly zero-rated or whether it should be standard rated.
24. The building originally comprised a farm building and, in particular, it included a barn. The work commenced in April 1996. The complex of numerous buildings comprising the Community is situated up a track about 3 miles from Llangadog which leads off the A4069 road to Llandovery. We were provided with an aerial photograph of the various buildings comprising the Community. The building intended to be the Community Hall included the barn which has been enlarged (as mentioned by Mr Ham). We were provided with a photograph of the building as it now is and also drawings showing the intended interior layout. The intended use of the Community Hall is as a hall, library and cafe for students and other local residents. We were also provided with copy correspondence with the Planning Services Department of the

Carmarthenshire County Council in November and December 2000 which shows that the Area Development Control Officer accepted that the intended reception and mobile stage area of the Community Hall building was a conversion of the original farm building.

25. We accept, as Mr Koeller said in a separate statement, that the (still incomplete) building of the Community Centre at Glasallt Fawr was part of the long-term development of the facility at the various sites for the benefit of students. It was only as and when funding became available that progress could be made towards the completion of individual projects which were part of the long-term development plan. The general plan in respect of Glasallt Fawr was prepared by ADAS Design Services in 1999.
26. Although the planning authority accepted that the construction of the Community Hall was "newbuild" this is not the criterion for zero-rating.
27. Mr Koeller produced copy correspondence, dating from 1998, concerning a "design and build" contract with Camphill Contracts (Milton Keynes) where confirmation was obtained from the Commissioners that work would be zero-rated.
28. However, there was a crucial difference in the facts in the present case which means that the Milton Keynes contract cannot be regarded as a precedent.
29. Mr Koeller explained the set-up and structure of the Camphill Community. There are 25 Communities in the UK. Some of them are schools for pupils aged between 6 and 16, and others go on to age 19. There are four training colleges. The remainder are communities for adults with learning difficulties. They all operate in a similar way, financially and otherwise. Coleg Elidyr, which is the Community which we are concerned with here, operates financially under the umbrella of Education Funding Councils who decide on the fees payable.
30. On the planning side, the local authority do not want any business activity. This means that Coleg Elidyr could not, for example, charge for entry to a concert in the Community Hall. The buildings cannot be used for any commercial enterprise whatsoever. This means that none of the buildings can be hired out for profit. They are, however, occasionally used by the local community, but not by outside organisations for outside purposes.
31. Mr Koeller gave a description of the various buildings in the complex and the uses to which they are put, but these details are in fact recorded above in our summary of Mr Ham's note.
32. At this point, therefore, we set out the relevant provisions of Group 5 of Sch 8 of the VAT Act 1994 and thereafter we shall refer to the various relevant decisions of the Tribunal and of the High Court.
33. "Group 5 – Construction of buildings etc.

Item No.

1. The first grant by a person –
 - (a) constructing a building –
 - (i) designed as a dwelling or number of dwellings; or
 - (ii) intended for use solely for a relevant residential or a relevant charitable purpose;
 - (b) ...
of a major interest in, or in any part of, the building, dwelling or its site.

2. The supply in the course of the construction of –
 - (a) building designed as a dwelling or number of dwellings or intended for use solely for a relevant residential purpose or a relevant charitable purpose;
 - (b) ...
of any services related to the construction other than the services of an architect, surveyor or any person acting as a consultant in a supervisory capacity.

Notes

- (1) "Grant" includes an assignment or surrender;
...
- (4) Use for a relevant residential purpose means use as
 - (a) a home or other institution providing residential accommodation for children
...
- (5) Where a number of buildings are –
constructed at the same time and on the same site; and are intended to be used together as a unit solely for a relevant residential purpose; then each of those buildings, to the extent that they would not be so regarded but for this Note, are to be treated as intended for use solely for a relevant residential purpose.
6. Use for a relevant charitable purpose means use by a charity in either or both the following ways, namely –
 - (a) otherwise than in the course or furtherance of a business;
 - (b) as a village hall or similarly in providing social or recreational facilities for a local community.
16. For the purpose of this Group, the construction of a building does not include –

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

17. Note 16(c) above shall not apply where an annexe is intended for use solely for a relevant charitable purpose and –

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

18. A building only ceases to be an existing building when:

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

34. The following is a list of High Court and Tribunal Decisions referred to in argument and which we shall refer to ourselves by the name of the Appellant (or the Respondent where the Appellants were the Commissioners):

Cantrell and Another [2000] STC 100

Yarburgh Children's Trust [2002] STC 207

St Mary's RC High School [1996] STC 1091

Denman College [1998] BVC 2259

Colchester Sixth Form College – Decision No 16252

Jubilee Hall Recreation Centre Ltd [1999] STC 381

Bryan Thomas Macnamara – Decision No 16039

35. For the Appellant, Mr Lewis contended that the construction of the Community Hall fell within Item 2 of Group 5 as being a supply in the course of the construction of

"(a) a building designed as a dwelling or number of dwellings intended for use solely for a relevant residential purpose or a relevant charitable purpose"

on the basis that Note 4(b) defines "use for a relevant residential purpose" as including "(b) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disablement, past or present dependence on alcohol or drugs, or past or present mental disorder..."

36. He relied also on Note 5.
37. There are several reasons why we cannot accept this submission, as outlined below.
38. We revert to the review by Mr Triggs, by letter dated 26 November 1999 of the advice given by Mrs Wade, following her visit on 24 February 1997.
39. In her visit report, Mrs Wade said:

"Current projects ... are the building of a house and a Community Centre ... for Coleg Elidyr. Planning permission for both was granted for extensions to existing buildings; the house of an old farmhouse, and a Community Centre of a barn. However, since planning permission was granted changes have been made to the original plans which involve substantially more demolition than originally intended. They could therefore be seen as works of new construction rather than renovation and extensions. Mr Koeller will contact the local council and ask if they will agree to the planning permission being amended to show either or both sites as new constructions. If so, then the liability of the house may be zero-rated under certificate from Coleg Elidyr as a new, qualifying residential building. If planning permission is not changed, then the supply will be standard rated as Coleg Elidyr will not be able to supply a certificate. However, the liability of the Community Centre will be standard rated as it will relate to the College's exempt business activities and hence does not qualify for zero-rating under non-business activities of a charity."
40. Mr Triggs said that it was clear, from his reading of Mrs Wade's report, that she did advise Mr Koeller that the liability of the house was standard rated, but that zero-rating would be applicable if the planning permission were amended. It is also clear that the Appellant was advised that the liability of the Community Centre was standard rated irrespective of whether the planning permission was amended or not.
41. Mr Triggs went on to consider whether the ruling given by Mrs Wade and the assessment made by Mrs Young were correct.
42. Mr Triggs wrote as follows:

"The supply consisted of the building of a house and a Community Centre, plus other buildings."

Lack of an amended planning permission for the house prevents the house being treated as zero-rated, and the supply is correctly standard rated."

43. The Community Centre had been built for a charity to be used as a hall, library and cafe for students and residents alike.
44. Mr Triggs then goes on to consider whether the supply would be with reference to a "relevant charitable purpose". This is defined by Note 6 as "use otherwise than in the course or furtherance of a business".
45. It is clear from the facts set out above that the Appellant company is conducting a business even though it may be non-profit making and owned by a charity.
46. Mr Lewis, for the Appellant, relied on Note 4(b) of Group 5 to argue that all the buildings used by the Community at Coleg Elidyr are to be treated as parts of "a home or other institution providing residential accommodation for persons in need of personal care by reason of old age, disablement, past or present dependence on alcohol or drugs, or past or present mental disorder". Also Note 5, he argued, brings into the scope of the zero-rating relief buildings other than those in which people live. Therefore, the Community Hall is eligible for zero-rating. There was no time gap between the completion of the residence known as Noddfa Barcud and the commencement of the construction works at the Community Hall. The construction of both buildings was part of the long-term development plan, established in 1990, of Coleg Elidyr. As soon as it is completed, he said, the Community Hall will be used as a centre for a range of social activities by everyone who lives at Coleg Elidyr.
47. From the construction plans of the Community Hall it is clear that the former barn was only a small part of what became the new Community Hall building. It was accepted as a "newbuild" by the planning authorities. Therefore, Mr Lewis argued, in the same way as the Commissioners had been willing to allow zero-rating by certificate for residential dwellings, having regard to the long-term plans, Note 5 and the overlapping zero-rated construction under certificate of Noddfa Barcud, they should accept that the totality of services in the construction of the Community Hall were entitled to relief by way of zero-rating.
48. Alternatively, Mr Lewis contended that the building work at the Community Centre fell within Item 2 of Group 5 as
"the supply in the course of the construction of:
(a) a building intended for use "solely for a relevant charitable purpose"
that last phrase being defined by Note 6 as use

"by a charity in either or both of the following ways:

- (a) otherwise than in the course or furtherance of a business
- (b) as a village hall or similarly in providing social or recreational facilities for a local community".

49. The Camphill Community aspires to create an improved life in a community environment and the Community Hall will provide everyone at Coleg Elidyr with a facility for inter-relation in a social climate. It should be sufficient, however, Mr Lewis said, that Coleg Elidyr is a charity within a local community.
50. Mr Lewis referred also to Gwernpwll and the Rhandirmwyn agricultural workshop and storage units. Although Mr Lewis did not pursue this point, his object was to show that this was another building which was part of the facilities provided as a whole by the Camphill Communities.
51. The Community Hall, Mr Lewis said, came within Note 4 because it was used, or will be used, (para (a)) for a relevant residential purpose, namely as part of a home or other institution providing residential accommodation for children and was also (or was intended to be) (para (g)) an institution which is the sole or main residence of at least 90% of its residents. We observe, however, that we heard no sufficient factual evidence on the question of residence qualifications.
52. He also relied on Note 5 on the basis that a number of buildings were constructed at the same time and on the same site and were intended to be used together as a unit solely for a relevant residential purpose. In this context he referred to *Denman College* (Decision No. 15513) where the issue was whether short-term student accommodation designed for courses which lasted between 3 and 6 days, during which students lived in study bedrooms without cooking facilities, amounted to "residential accommodation for students" and thereby entitled the work of construction of the buildings to be zero-rated.
53. Denman College was owned by the Denman Trust, a charity affiliated to the National Federation of Women's Institutes of England and Wales, Jersey and the Isle of Man, the object of which was "the provision and maintenance of a college ... residential or otherwise for the education of members of Women's Institutes ...". Throughout the year, Denman College ran a series of tutored courses lasting between 3 and 6 days, which were intended to improve the knowledge and skills of members of the Institute. People came from all parts of the country and accommodation was provided in two separate accommodation blocks constructed during 1997. Each block consisted of eight study bedrooms and each study bedroom had a single bed, desk, an armchair, and a bathroom. Although there was the means of making a hot drink in each room, there were no other cooking facilities in either building and meals were taken in the College dining room. The Commissioners ruled that

the construction works on the two buildings were not zero-rated, but the Tribunal allowed the appeal. It held that the accommodation blocks, which admittedly contained no kitchen or catering facilities, were nonetheless "residential accommodation". The Tribunal did not consider that Note 5 led to a different conclusion. Note 5 made it clear that a number of separate buildings could be used residentially. An example might be an accommodation block and separate dining hall or garage. However, because it only applies to the extent that such buildings would not otherwise be so regarded, Note 5 also recognised that buildings forming part of a unit may, in any event, be regarded as residential buildings. While a dining hall or a garage, looked at in isolation, might not be said to be used as living or residential accommodation, the buildings in dispute in the Denman College case would be so described. If buildings such as the two blocks concerned in that case were not intended to be zero-rated, the Note would have made that explicitly clear as it did in the case of Note 2 for dwellings, which must consist of "self-contained living accommodation" if they are to qualify.

54. Therefore, Mr Lewis submitted, despite the fact that the Community Hall, if built alone, might not qualify for zero-rating, it would meet the criteria because it would serve the local community, that community being the Camphill Communities, which consist of staff and students based at its three sites, Glasallt Fawr, Rhandirmwyn, which is eight miles from the intended Hall, and two houses in Llangadog, two miles from the Hall.
55. Mr Lewis referred to the headnote in the *Cantrell* case. There was a two stage test involving an objective examination of the physical characteristics of the building at two points in time, having regard, inter alia, to similarities and differences in appearance, layout and equipment. Here there was a barn at the outset. When the work started there was no more than a shell and the barn had ceased to exist as such. A completely new building was being constructed and this was how the planning authority regarded it. The barn, although virtually invisible, would be subsumed in a new building, namely, the Community Hall. It was not a conversion or a reconstruction. The existing building had not been altered. Nor was it an enlargement. Therefore, the building work would fall within Note 4 or Note 5 and would not fall within Notes 16(a) or 16(b). However, we note that the retention of the barn within the new structure does not comply with Note 18(a) or (b) which means that the Community Hall cannot be regarded as a new building.
56. Mr Lewis also referred to the *McNamara* decision (No. 16039) and, in particular, paragraph 13 where the Tribunal referred to the scheme of the 1995 code relating to the construction of buildings as follows: "the scheme of the 1995 code is to exclude from the expression "construction of a building" a series of building works. Note 16 deals with these in descending order of their degree of integration with the existing

building. Conversions, reconstructions and the alterations of existing buildings, the most closely integrated, are excluded. Enlargements of existing buildings are then excluded, the "enlargement" connoting structural work producing an overall increase in size or capacity. The word "extension" in relation to an existing building refers, we think, to building work which provides an additional section or wing to that existing building; the degree of integration is one stage less than with enlargements. Then come "annexes" which, as a matter of principle, are also excluded. The term annex connotes something that is adjoined but either not integrated with the existing building or of tenuous integration. Annexes intended for use solely for relevant charitable purposes are reinstated into the zero-rated class by Note 17 only if they are capable of functioning independently from the existing building and if both the main access to the annex is not via the existing building and the main access to the existing building is not via the annex. Otherwise all annexes are excluded from zero-rating."

57. Mr Lewis claimed that the building when completed would fall within Note 6(b) not as a village hall but "similarly in providing social or recreational facilities for a local community", the local community being Coleg Elidyr and any other local residents who might realistically be regarded as part of the local community. The Community Centre would be run by the Management Committee of the College. There would be a higher degree of control than might be expected in a village hall, but its functions would be similar to those of a village hall.
58. However, in the *Yarburgh Children's Trust* case, Patten J in the Chancery Division held that in order for Note 6(b) to apply it was not enough to show that the building in question was intended to be used for an activity which could conceivably take place in a village hall and was available to members of the local community. It had to be shown, he held, that the building was, or fulfilled, the role of a village hall or other building designed for public use in the provision of social or recreational facilities for the local community. The provision of social and recreational facilities to a section of the public did not make the building a village hall or something similar. For Note 6(b) to apply the building had to be a village hall or its equivalent and provide social and recreational facilities for the local community at large.
59. For the purposes of Note 6(a) Mr Lewis was keen to establish that the activities of the Camphill Communities are not a business. Historically, as Mr Koeller said, they were not set up to make a profit, nor are they run on commercial principles. There is some income which is non-fee related, for example from the farming activities. The project was not set up to make a profit, he submitted. It is not a commercial activity.
60. Mr MacKay, for the Commissioners, said that the principal difficulty faced by the Appellants is the barn. The Community Hall needs to fall in Group 5 in order to qualify for zero-rating.

61. Note 16 of Group 5 provides that the construction of a building does not include (a) the conversion, reconstruction or alteration of an existing building, or (b) any enlargement of, extension to an existing building except to the extent that the enlargement or extension creates an additional dwelling or dwellings. Note 18 provides that a building only ceases to be an existing building when demolished completely to ground level or the part remaining above ground level consists of no more than a single facade. Therefore, the Community Hall includes an existing building and the work done, or to be done, on its conversion or alteration or enlargement, or extension, does not qualify for zero-rating under Note 16.
62. This case was not similar, Mr MacKay said, to that in *Colchester Sixth Form College* (Decision No. 16252) or *Macnamara* which respectively concerned the question whether certain new buildings were an annexe and the degree of integration with pre-existing buildings. By contrast, the Community Hall in this case is a homogeneous building.
63. Mr MacKay also referred to *St Mary's School* [1996] STC 1091 where the appeal concerned the construction of playgrounds 13 years after the school had opened and the Commissioners held that they were merely an extension to the original school building and did not qualify for zero-rating under Item 2 of Group 8. It was held by Jowitt J in that case that not only did the services have to be connected with the construction of the building in that they had facilitated its construction or produced, in their finished result, one whole with the building, there had also to be a temporal connection between the construction of the building and the provision of the other services. Where those services were not provided contemporaneously with the construction of the building it was necessary to consider both the reasons for, and the length of, the delay before deciding whether or not the temporal connection had been established. In that case, the interval between the completion of the building works on the school and the construction of the playgrounds was far too long to establish the necessary temporal link.
64. In the present case, Glasallt Fawr was purchased in 1984 and the work on the Community Hall was not started until April 1996.
65. As to Note 6(a), was the intended use of the Community Hall for a charitable purpose "otherwise than in the course of furtherance of a business"? The Community as a whole owned two blocks of land of 150 acres (as described by Mr Koeller), there were three residential units and 45 staff in one of them and 18 staff in another. The turnover of the Communities amounted to £1 Am per year. It was, Mr MacKay said, therefore a substantial business in every way except for the lack of the profit motive, but that is not fatal to there being a business. The real point is that the provision of education is an economic activity or business, the business being education. Education is identified in both the UK and EC legislation as exempt from VAT.

66. In the *Yarburgh* case, the Court held that in order for Note 6(b) to apply it was not enough to show that the building in question was intended to be used for an activity which could conceivably take place in a village hall and was available to members of the local community. The provision of social and recreational facilities to a section of the public did not make the building a village hall or something similar. For Note 6(b) to apply the building had to be a village hall or its equivalent and provide social or recreational facilities for the local community at large. The building used in that case by the playgroup was not generally available and did not provide social and recreational facilities for the local community at large.
67. In reply, Mr Lewis said that he found it difficult to see why the change in the planning permission could alter the zero-rating entitlement. The area of disagreement, as he saw it, was the meaning of "relevant residential purpose". In the *St Mary's High School* case, a period of 13 years was held to be too long to establish the necessary temporal link, but an ongoing project should be seen as continuous, being dependent on the availability of funds. The construction in the case of the Community Hall was on the same site at the same time. Even if it was not just one project but successive projects, the works were contemporaneous.
68. We intend no disrespect to Mr Lewis in saying that we have found none of his arguments persuasive. The Community Hall is not a village hall because it does not meet the criteria laid down in Note 6(b) and it is unlikely to do so when completed. Secondly, the Community Hall, when completed, will be used in the course of the Communities' business of education. Thirdly, the building of the Community Hall comprises the conversion, reconstruction or alteration of an existing building which is excluded from zero-rating by Note 16(a).
69. Fourthly, it is possible that the Community Centre could have been one of a number of buildings constructed at the same time and at the same site if "the same site" could be regarded as the whole campus of buildings owned by the Camphill Communities and all the residential buildings were intended to be used together solely for a private residential purpose, but it does not fall within Item 2(a) because it is excluded by Note 16(a) and (b).
70. Furthermore, we do not accept that the buildings referred to by Mr Lewis, widely scattered as they are, could be regarded as on "the same site".
71. The appeal is dismissed and there will be no order as to costs.