

DECISION NUMBER: 17613

Provision of short term accommodation in hostels largely for homeless and rough sleepers – whether exempt supplies of welfare services or standard rated supplies of accommodation – Item 1(d) and Note 9 of Schedule 9 Part II Group 1 – the provision in an hotel, inn, boarding house or similar establishment of sleeping accommodation and "similar establishment" considered – also Item 9 and Notes 6 and 7 of Group 7 Schedule 9 Part II "the supply, otherwise than for profit, by a charity or public body of welfare services and of goods supplied in connection therewith" – found to be a standard rated supply of accommodation – appeal allowed

LONDON TRIBUNAL CENTRE

LOOK AHEAD HOUSING AND CARE LIMITED

Appellant

-and-

THE COMMISSIONERS OF CUSTOMS AND EXCISE

Respondents

Tribunal MISS JANE PLUMPTRE (Chairman)
 MR RANBUIR SURI

Sitting in public in London on 21 and 22 February 2002

Mr Mark Smith, counsel, instructed by Pricewaterhousecoopers, for the Appellant

Mr Hugh McKay, instructed by the Solicitors' Office of HM Customs & Excise, for the Respondents

DECISION

1. This is an appeal by Look Ahead Housing and Care Limited (hereinafter "Look Ahead") against an assessment dated 1/10/1999 in the total agreed sum of £384,806 plus interest.
2. The sole issue for us to determine is whether or not Look Ahead is making a taxable supply of accommodation, as Look Ahead contends, or an exempt supply of welfare services, as the Respondents contend.
3. Look Ahead was founded in November 1973 and is an Industrial & Provident Society. It is a registered charity. It has had various changes of name culminating in its present name in 1998 when "and Care" was added to its title because potential care purchasers were put off from buying care services since their name implied that care services were not provided.
4. The aim of the organization in 1973 was to provide temporary affordable accommodation in London for local people or those who had moved to the city and had work or were in training. It also offered accommodation to the unemployed and job seekers.
5. Since 1990 Look Ahead has had three distinct operational areas of activity, direct access hostels, supported housing and care homes. It is common ground that the supported housing and care homes are both exempt supplies of welfare services. Thus we are concerned solely with determining whether the provision of accommodation in the 4 direct access hostels for the homeless constitutes a taxable supply of accommodation or are exempt supplies of welfare services.
6. Look Ahead's main operational activity has always been the provision of housing for those in need of affordable accommodation. Ms Stark, the Chief Executive of Look Ahead gave sworn evidence before us that the type of person staying in Look Ahead's hostels began to change in the 1980s and more so in the 1990s. Those in low paid employment no longer wished to live in hostels with fixed hours for permitting visitors, where meals were served at fixed times and where there were no facilities for self catering. The hostels have been operational since 1976 and in the early days typical users were junior civil servants, manual workers or shop assistants. The profile has now changed and virtually all of those who stay at Look Ahead's hostels to-day and in the period with which we are concerned 1996–1999 are unemployed and homeless.
7. The evidence of Ms Stark on this point was supplemented by that of Mr Jeremy Gray, head of the Rough Sleeper services, who had been deputy manager and manager of the Victoria hostel. His evidence was that Look Ahead had always sought to provide short-term accommodation in its hostels. Its policy is one of open access. His evidence was that when he joined Look Ahead in 1994 there were rough sleepers and those with either drug or alcohol dependency but this type of user had gradually increased from 1994 with a sharp increase of such users from 2000 to the present. He estimated that in

1994 they accounted for approximately 10% but by 2000 had grown to approximately 60%. Snapshots of their profile of users were taken each year on 31 March with available figures for 1996–2000 set out at page 151 as follows:

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	Aldgate	Victoria Hostel	Bayswater	PBH Hostel
31/3/96	10%	15%	5%	10%
31/3/97	15%	20%	10%	15%
31/3/98	28.5%	32%	19%	27.7%
31/3/99	31%	45%	13%	50%
31/3/00	49%	65%	53%	61%

The figures for 1996 and 1997 are Mr Gray's best estimate of the snapshots for those years since the records are no longer available.

8. It is against this background of the changed profile of hostel users that Customs wrote to Look Ahead on 30 September 1999 at page 49. This letter reads in part:–

"There was agreement that the letting out of housing and the income arising from the care in the community contracts with the local authorities are exempt supplies. Income from the four hostels has been treated as supplies of accommodation in a similar establishment with a reduced rate of VAT being applied to residents staying for longer than 28 days.

Following my discussion with Christine Storr, Director Housing & Care, it has emerged that the hostels provide considerably more than basic living accommodation with meals.

The hostels operate an open door policy although most residents are referred by other charities/agencies dealing with homeless/rough sleepers. Although there are some residents who are in low paid employment, the annual residents' profile snapshot indicates that they are a negligible proportion of the residents.

The hostels do not function merely to provide accommodation. They are part of a co-ordinated strategy to rehabilitate rough sleepers into a more settled pattern of living. Through the association's keyworkers assistance is given to residents to help them identify and deal with the

issues affecting them. An important part of this process is developing financial responsibility by getting the residents to claim the appropriate benefits/allowances at the proper times so as to be able to meet the financial liabilities arising from living in fixed accommodation and re-acustoming the residents to living within a more normal social environment. A computer is available for residents to prepare their CVs as an introduction to current technology and facilitating their future use of job centres/local libraries etc.

Keyworkers and other specialists will also help residents with their particular difficulties, be that mental health issues or managing their drinking and substance abuse habits. In one hostel a community arts project is also available as part of the programme to assist with re-integration into society".

9. The letter continues to set out further reasons for Customs' view that Look Ahead was now providing a supply of welfare services in its four hostels and thus exempt under item 9, Group 7 Schedule 9 Value Added Tax Act 1994 ("VATA 1994") stating "It is equally apparent that the type of welfare assistance provided by the association is constantly developing in response to changing trends among the residents, with new initiatives being initially funded out of existing grants and other income until a need/response can be demonstrated and specific funding sought."

10. The letter then reads "Since the hostels constitute the principal source of taxable income on the VAT returns and these should be properly exempt from VAT, I have therefore raised assessments to cancel out the input tax and output tax attributable to this activity." This resulted in the assessment finally totaling £384,806 plus interest and is the decision the subject of this appeal.

11. There is interesting if historic correspondence from 1977 in the documents at pages 23–5 which makes it plain that Look Ahead at this time did not wish to be registered for VAT for its supplies of hostel accommodation for single workers. The Treasury's response was that rooms in hotels, inns, boarding houses and similar establishments was a taxable supply and the fact that it might be provided by a charity on a non profit making basis did not take the supply out of the scope of this provision.

12. We mention that for many months Pricewaterhousecoopers made a claim for misdirection but this issue was not pursued on this appeal.

13. The Appellant's submission was that Look Ahead made taxable supplies of accommodation. We heard evidence from Ms Victoria Stark, the chief executive and Mr Jeremy Gray. Whilst both agreed that the profile of the residents had changed, their evidence was that Look Ahead did not provide care or welfare services to the residents. Look Ahead's staff were not qualified to do so.

14. Mr Gray at paragraph 4 of his witness statement at page 152–3 described the role of a supported Housing Officer or keyworker. When a

potential resident arrives at the hostel he/she is seen by a keyworker to ensure that the individual can meet the requirements for accommodation. In part this constitutes a sketchy assessment of sociability since those with alcohol dependence or low level mental ill health are not always immediately identifiable as Ms Stark explained. As Mr Gray said at paragraph 10 of his statement a guest may be denied entry to a hostel if for example the keyworker feels that the individual is unable to look after himself within the hostel or has excessive care and support needs.

15. One of the keyworker's main tasks is to ensure that the resident came pay for his accommodation and assistance is given in obtaining housing benefit and social security benefits. This help is given to ensure that Look Ahead gets paid rather than to assist the residents since Look Ahead's hostels are run on a commercial basis. Bad debt is one of its major problems as Ms Stark told us, and as the annual accounts demonstrate.

16. As Mr Gray stated at paragraph 8 of his statement at page 153 the keyworkers are required to make regular checks of the building and to conduct fire checks and to test the fire alarms. They also walk around the hostel to act as a visible presence to ensure residents are content and that there is no trouble and to ensure that nonresidents are not using the facilities without payment.

17. Mr Gray explained that each resident has an initial meeting with a keyworker and is given the opportunity of monthly meetings if wanted. His evidence at paragraph 27 on page 158 was that 20–25% of residents have no contact with keyworkers after admission at present although 50% did so in 1996 and 30–35% in 1999.

18. If a resident asks for medical help or counselling then Look Ahead staff refer them to suitable outside agencies. Ms Stark was adamant that Look Ahead staff had no proper training to provides this themselves and that it was dangerous for unqualified staff to attempt this.

19. We note that at night there were only 2–3 staff on duty in each hostel. Further as there is a permanent staff presence no staff live in the hostels. We were told by Mr Gray that the ratio of residents to staff is approximately 1 – 16 during the day. These figures to our minds are not indicative of care and welfare services being provided.

20. We have considered the terms of the Job Description Page 109, Person Specification for a Supported Housing Officer/Keyworker Page 107 and the Licence Agreements & Arrears Procedures page 99 and 28 day Licence Agreement page 113 with care, since Customs placed considerable reliance on them. We note that there is no mention of care or welfare services in the Licence Agreements. The Arrears procedure pages 99–106 is detailed and to our minds reflect the concern that Look Ahead rightly has about securing payment for the accommodation it provides.

21. Although Mr McKay placed reliance upon the terms of the Licence at page 32 of the Customs' documents which reads "the Licensee no longer, in the

opinion of the Association, requires the service provided at the premises", on page 31 "the continued presence of the licensee on the premises would seriously prejudice the viability of the project" and on page 26 "Aims of the Project" we do not consider that these three phrases in an Agreement running to 7 pages point to a provision of welfare services.

22. The specification for a keyworker at page 107 does not specify any qualifications but requires experience of working whether paid or voluntary with people who are disadvantaged or vulnerable. The Job Description requires a keyworker under paragraph 2c "To liaise closely with medical, social worker and other relevant support agencies." No qualifications are stipulated and thus we are satisfied that the staff at Look Ahead are not qualified to provide care, treatment or instruction and thus a supply of welfare services.

23. Mr McKay sought to suggest that instructions were provided by the staff on the computers at some of the hostels. As Ms Stark explained it was simply a bonus if the staff were able to use a computer, they were not required to do so and it was not part of the job specification. They might at times give a resident some assistance but were not required to do so. We do not consider that any such assistance as might be given can be elevated to "instruction" within Note 6 of Item 9 of Group 7.

24. We do not consider and so find, that there is anything in the terms of these documents to support Customs' contention that the keyworkers and thus Look Ahead are providing a supply of welfare services.

25. We now turn to the relevant legislation. Group 1 of Schedule 9 makes the grant of any interest in, or right over land, or any licence to occupy land an exempt supply. We note in passing that the Respondents did not seek to argue that Look Ahead was providing an exempt supply on this ground. An exception to this exemption in relation to the provision of sleeping accommodation is set out in Item 1(d) and Note 9 as follows:

"(d) the provision in an hotel, inn, boarding house or similar establishment of sleeping accommodation or of accommodation in rooms which are provided in conjunction with sleeping accommodation or for the purpose of a supply of catering."

The meaning of "similar establishment" although not defined is to some extent clarified by Note 9 which provides:

'similar establishment' includes premises in which there is provided furnished sleeping accommodation, whether with or without the provision of board or facilities for the preparation of food, which are used by or held out as being suitable for use by visitors or travellers."

26. We agree with Ms Stark that the hostels do not equate to hotels, inns or boarding houses but find that the hostels fall within "similar establishment" since they provide furnished sleeping accommodation with a supply of catering. Further the residents are transient or floating and can properly be

described as "visitors" as submitted by Mr Smith at paragraph 14 of his submissions.

27. The provisions concerning a supply of health or welfare services – an exempt supply are to be found in Group 7 of Schedule 9 – Item 9 and Notes 6 and 7 being the relevant provisions. Item 9 makes a supply of welfare services by a charity or public body exempt "The supply, otherwise than for profit, by a charity or public body of welfare services and of goods supplied in connection therewith". The meaning of "welfare services" is clarified in Notes 6 and 7.

"(6) In item 9 "welfare services" means services which are directly connected with –

(a) the provision of care, treatment or instruction designed to promote the physical or mental welfare of elderly, sick, distressed or disabled persons;

...

(7) item 9 does not include the supply of accommodation or catering except where it is ancillary to the provision of care, treatment or instruction."

28. Despite Mr McKay's cross examination of Look Ahead's witnesses in relation to these terms and his submission that "distressed" was simply an old fashioned term that accurately described Look Ahead's residents and the homeless, we are not persuaded that Look Ahead was providing care, treatment or instruction to the temporary residents in its four hostels. Mr McKay placed reliance on the term "distressed" since it was clear from the evidence of Ms Stark and Mr Gray that in general the residents were not elderly. They were certainly not sick because there were no medical facilities available and we were told in evidence that staff did not assist or monitor the taking of any medication residents might be on. As Ms Stark said given that the shared facilities were often on different floors from the rooms and only one hostel had a lift, disabled persons could not manage to live in any of the hostels. Whilst "distressed" might be a term that could be applied to many of Look Ahead's residents, we are not satisfied that Look Ahead was providing care, treatment or instruction. Moreover we are satisfied that what Look Ahead principally provided was accommodation. This was its core activity and thus could not be described as ancillary even were we to have found that some care, treatment or instruction was provided. We agree with Mr Smith's submission that item 9 was a decisive provision in support of the Appellant's case.

29. In reaching our decision we considered the Tribunal case of *Dinero Limited t/a Fairway Lodge* No 18148. In this case Customs argued that the supplies of accommodation at adjoining residential units for those with mental health problems were standard rated supplies i.e. the opposite submission adopted in this appeal. In this case the appellant defined its services as support and supervision. They only accepted as residents those with mental health problems and many of them were in receipt of disability living allowance. It is

clear from paragraph 24–7 of the decision that the facts are quite distinguishing from this appeal. For example "the manager and his team of four support workers provided for the residents frequent attention during the day in connection with their bodily functions or continual supervision throughout the day in order to avoid substantial danger to them or others." Further the appellant's "support workers ensure that the residents keep up their medication regime, accept responsibility where applicable, attend group therapy and join in the activities of Fairway Lodge. Also "on a regular basis specialists attend at Fairway Lodge including medical and psychiatric consultants, social workers from the local authority, probation officers, solicitors, district nurses, dentists, opticians and therapists. In addition a general practitioner from a local practice attends on a weekly basis mainly to make sure that the correct level of medication is available to residents".

30. From these brief extracts it is readily apparent that the facts of the *Dinaro* case are substantially different and it is little surprise that they succeeded in arguing they provided exempt supplies of welfare services.

31. We also considered *The Lord Mayor and Citizens of Westminster* case (1989) VATTR 71. The appellant city council managed a hostel for homeless single men. Those eligible for the hostel were single, homeless men from off the street, including the chronic alcoholic, grossly mentally disordered, the elderly and/or chronic sick and those rendered homeless because of personal problems. The services provided were regarded as part of the social welfare services of the Council and included rehabilitation where possible.

32. The issue for the Tribunal in this case was whether the hostel was a similar establishment to an hotel, inn or boarding house. The Tribunal readily accepted it did not possess the characteristics of a hotel inn or boarding house.

33. The decision at page 80B reads: –

"So one must then go on to consider whether Bruce House (the hostel) has some of the characteristics possessed by hotels, inns and boarding houses and this we think is more difficult. The characteristics for which one is looking must be, we consider, the characteristics which distinguish these three types of establishment all of which provide accommodation, from other establishments which also provide accommodation. One such characteristic is to be found in the purpose for which the accommodation is provided. Thus a school or a prison provides accommodation, but we would not regard either as a similar establishment to an hotel or inn or boarding house because the accommodation they provide is provided for a purpose subsidiary to the main purpose of the establishment. An hotel, inn or boarding house on the other hand provides accommodation as its main purpose."

34. The Tribunal went on to say that hotels, inns etc usually provided food as did the hostel and that they provided accommodation for people who were away from home for varying periods or who for the time being had no home.

35. Mr McKay also referred us to another Tribunal decision *Acorn Management Services Limited* No 17338. In this case the appellant made supplies of accommodation usually to university students from the USA and occasionally tourists. It is difficult to discover the ratio of the Tribunal's decision running as it does to 49 pages but given that it concerned accommodation for students outside the universities they were attending we have not found it of assistance to our deliberations in this appeal.

36. Mr McKay sought to persuade us that Look Ahead was bridging the gap between a homeless person living in the hostel and thereafter in a one bedroomed flat and that the provision of accommodation was ancillary to the overall aims of the Association which was to get the homeless off the streets and integrated into society. We agree that this objective was to some extent reflected in the Statement of the Association's Aims and Objectives set out in its annual report and accounts at page 139 which reads "The Association's aim is to provide a range of housing and support in hostels, shared flats and self-contained flats for single people on low incomes and in housing need." We observe that this aim and objective is not limited to the hostel accommodation with which we are concerned but covers all three types of accommodation provided by Look Ahead. We note and find that the residents paid for accommodation and not for support or welfare services and find that the provisions of accommodation was not ancillary but the core provision to any other service that might be provided on an ad hoc and one off basis to individual residents.

37. In reaching our conclusion we are comforted by the submission made by Mr McKay that this appeal is largely a matter of impression as seems to be the case in the other Tribunal decisions brought to our attention.

38. As a matter of impression and having taken into account all the evidence we have heard and the documents we have read, we are satisfied that Look Ahead is providing taxable supplies of accommodation. In reaching this decision we took into account the fact that the residents of the 4 hostels were paying for accommodation, not for welfare or support services. We also noted that Look Ahead did not receive referrals from Local Authorities to take residents into these hostels. Accordingly the appellant's appeal succeeds.

39. Customs did not seek their costs in the event they succeeded but the appellant did seek an order. We therefore order that the Respondents pay the reasonable costs of the appellant to be taxed if not agreed.