

DECISION NUMBER 17891

*ZERO-RATING – VAT Act 1994 Sch 8 Group 12 – supplies to, or for
the benefit of, handicapped persons.*

LONDON TRIBUNAL CENTRE

VASSALL CENTRE TRUST

Appellant

-and-

THE COMMISSIONERS OF CUSTOMS AND EXCISE

Respondents

Tribunal: Peter H Lawson (Chairman)
M M Silbert

Sitting in public in Bristol on 4 and 5 September 2002

Dave Memery AIT, VAT Consultant, for the Appellant

Hugh McKay, Counsel, for the Respondents

DECISION

1. This is an appeal by the Vassall Centre Trust which is a company limited by guarantee and a registered charity. Its objectives (which we take from the Information Brief for the Vassall Centre Development Project) are "to create a Centre for Bristol that provides fully accessible accommodation for the wide range of voluntary organisations that offer services for disabled people so that they can be run with disabled people playing a full, equal and independent part, and to ensure that this accommodation remains financially viable, affordable and gives long-term security of tenure."
2. The Vassall Centre is a single storey building of 43,000 square feet on a flat site with extensive parking. It was bought in 1998 from the Government for £350,000 by the Bristol Council for Disabled Adults ("BCDA"), a long established local charity. That charity transferred all its assets and the freehold of the property to the Vassall Centre Trust which was set up specifically to run and refurbish the Centre. The BCDA then went into liquidation. Some of the trustees of the BCDA are directors of the Vassall Centre Trust. The refurbishment is planned to proceed in four consecutive, self-contained phases at a total cost of £3 million. Phase 1 has been completed and Phase 2 was started in September 2001.
3. Evidence was given before us by Mr Stuart Orme, the Chair of the charity and by Dr Sue McMullen, the Vice-chair of the Vassall Centre Trust.
4. Dr McMullen gave us a most interesting account of the types of problem faced by people with impairments of different kinds. For example, people who use crutches find slopes virtually impossible to go up or down. Similarly, they cannot negotiate steps without handrails.
5. There are three key aspects of the Vassall Centre. The first is that services to the disabled should be offered by people who understand it best, i.e. other disabled people.
6. Secondly, all disabled people should be able to run their own organisations. In the past these organisations were set up by non-disabled people. The philosophy used at the Vassall Centre is that the disabled should run their own organisation, as staff, volunteers, trustees or committee members.
7. The key to progress is the way of viewing disability, the "social model" rather than the "medical model".
8. The word "impairment" is used now in preference to "handicapped". Impairment includes such aspects of life as balance, co-ordination, hand

grip, strength, vision, hearing, consciousness, epilepsy, memory and intellect, and each form of impairment involves different issues.

9. Anyone who has an impairment needs different, often specially designed, items such as gates, cooking utensils, the means of opening and closing doors, and switching lights on and off. The Vassall Centre is a large building and its layout could not be better for its intended uses. There are 12 spurs off the main corridor and each could be used as a self-contained unit. This means that different sorts of help are available for a single visit (the building was originally constructed as an overflow for Frenchay Hospital and was the artificial limb and appliance centre). Thousands of disabled people come to the building each year and its Conference Centre is unique.
10. Between April 2001 and March 2002, Mr Memery, the Appellant's VAT adviser, had correspondence with the Commissioners' Cardiff Office, their Solicitors office in London and their Bristol office on questions relating to the VAT status of various aspects of the building. The disputed decision was contained in a letter from the Cardiff office of the Commissioners dated 30 May 2001: the appeal was lodged by notice dated 2 June 2001, and the grounds of appeal were that "certain services and goods considered eligible for zero-rating under items 4 and 6 of Group 12, Schedule 8 of the VAT Act 1994 are indeed so eligible".
11. Mr Stuart James Orme, the present Chairman of the Vassall Centre Trust, is also disabled and, like Dr McMullen, uses a wheelchair for mobility. He was formerly the owner of a substantial commercial property company for 28 years, specialising in the refurbishment of existing properties for use in multiple occupation.
12. Mr Orme referred to a plan of the building showing the internal space divided into 12 lettable units, of which, at the time of the Hearing, 4 were vacant and the remaining 8 were let to tenants. Over 75% of the total site area is under the control of the Appellant Trust; the 4 vacant units represent 34% of the total internal space. Therefore, the majority of the site is under the control of the Appellant and the majority of items in dispute are also under the Appellant's control. Mr McCubbin, for the Commissioners, had visited the site and agreed various points.
13. Mr Orme referred to a number of the items in dispute, which were later also referred to by Mr Tempest. We shall incorporate both sets of comments in our review of the disputed matters.
14. The Trust controls the Conference Centre, which is incorporated in the building, and the Centre is available to disabled people generally. Indeed, the whole Centre, including the Conference Centre, Mr Orme said, is "offered", which we take to mean "available", to the public.

15. In cross-examination, Mr McKay referred to the Appellant's business plan dated 7 February 2001 for running the Centre during and post-refurbishment where the Appellant referred to a Service Charge as follows:

"In addition to the rent, we also levy a Service Charge which is designed to cover all the running expenses on a non-profit basis over a period of time. There is, therefore, some scope to vary the amount from year to year. It will cover all normal running costs of the building such as gas, water, repairs and maintenance and property management costs".

It then sets out the estimated costs for three periods, the first reflecting the current position. i.e. with half the building let to tenants under licences. the second following the first phase of refurbishment which brings the Conference and Meeting Rooms spur into use, and the third following the completion of the refurbishment when the building is fully let to tenants on long-term leases.

16. In relation to the rent and Service Charge. Mr McKay asked what the Trust's share was, to which Mr Orme's reply was "the shortfall", and secondly asked Mr Orme to confirm, which he did, that nothing in the building was used exclusively by any individual or organisation.
17. After that brief introduction, we turn to the VAT problems which have arisen from the work done so far on the Centre. They all relate to the question of the availability of zero-rating under Group 12 of Schedule 8 of the VAT Act 1994. Originally, there were 20 items in dispute but by the time of the hearing of the Appeal they had been reduced to 13. These were commented on by the third witness, Mr Leslie Tempest, an Access Consultant working for the Access Design Partnership.
18. We propose to deal with each disputed item in turn:
 - (a) The front gate. Originally there was a manually operated five bar gate. That has been replaced by two gates, one for vehicles and the other for pedestrians. The control levels had to be altered and visual and audible warnings were installed on the main gate for the benefit of the blind and the deaf. Mr Tempest said that the brief was that both gates must be usable independently, so the position of the controls was vital. There were proximity detectors and the more automation included the better for ease of use.

To qualify for zero-rating, the front gate must fall within Item 9 of Schedule 8 which is: "The supply to a charity of a service described in Item 8 for the purpose of facilitating a handicapped person's entry to, or movement within, any building". The service referred to in Item 8 is of "constructing ramps or widening

doorways or passages". The new front gate of the Vassall Centre did not involve constructing ramps or widening doorways or passages and accordingly this item is not entitled to zero-rating.

- (b) Specially adapted and colour coded tapping rails which have been installed on all footpaths for use by the blind or partially sighted.

Item 2 of Group 12 is the "supply to a handicapped person for domestic or his personal use or to a charity for making available to handicapped persons by sale or otherwise, for domestic or their personal use, of a number of items, none of which mention tapping rails but of which paragraph (g) is "equipment and appliances not included in paragraphs (a) to (l) above designed solely for use by a handicapped person". Specially adapted and colour coded tapping rails have been installed, Mr Tempest said, on all footpaths for use by the blind or partially sighted. Colour contrasts help the partially blind and this includes colour contrast in paving. The Commissioners said that there was no VAT relief available under Item 2(g) for tapping rails because they are not made available for the personal use of a disabled person. On this point we disagree since the singular includes the plural. Also we consider that they are available for personal use since sighted people do not need to use them.

Further, (g) is, in our view, capable of applying to tapping rails but there might be some doubt whether tapping rails are "equipment" or "appliances". In our view, they are "equipment" and can, therefore, properly be zero-rated.

- (c) The columns built to support the main canopy at the entrance to the building, which have been adapted at their bases to assist the blind. The adaptation consists of raised cobble, colour contrasted, to warn the blind and partially sighted of the columns. The Commissioners' view was that the columns do not fall within Item 4 of Group 12 which is "the supply to a charity of services of adapting goods to suit the condition of a handicapped person to whom the goods are made available by sale or otherwise by the charity". The columns cannot be described as "goods" and we agree, therefore, that they do not qualify for zero-rating.
- (d) The adaptation of the surface of the paving leading to the main entrance doors to assist the blind and partially sighted. the adaptation consisting of colouring the area red. The adaptation. Mr Tempest said, is not only the colour red but also a slightly different surface material. The two objectives are linked, i.e. they are indicating the safest route towards the entrance doors. We

agree that the colouring of the surface of the paving cannot fall within Item 4 since it is not "goods".

- (e) Carpeting, which has been altered and adapted throughout the building to assist the blind. The carpets are coloured aubergine but have been adapted by having a light coloured strip (10–12" wide) along both edges until the doorway or access point is arrived at. This is to assist the partially sighted in moving about the building. The edges have different colours to identify different areas in the building. 95% of blind people have some residual vision. The darker areas are movement areas. The doorways must be kept clear. Colour contrast in the interior of the building is very important to make it safe for the blind to move around the building. However, we cannot see that the carpeting falls within any of the paragraphs of Item 2 and, specifically not paragraph (g) which is "equipment and appliances not included in paragraphs (a) to (f) designed solely for use by handicapped persons". This was not disputed.
- (f) The stage, which is new. Beading and colour contrasts have been added to prevent people falling off. We agree that zero-rating is not available for this.
- (g) The installation of radiators which have been specially designed and adapted for use by the handicapped and disabled. They have low surface temperatures. The Commissioners ruled that Item 12, which is "the supply to a charity of a service of extending or adapting a washroom or lavatory for use by handicapped persons in a building, or any part of a building used principally by a charity for charitable purposes where such provision or adaptation is necessary to facilitate the use of the washroom or lavatory by handicapped persons" applies where they are installed as stated above but that zero-rating does not apply for special radiators installed elsewhere in the building. We agree.
- (h) The food preparation area. Adaptations and alterations have been made to provide:
 - (i) Automatic height adjustable work surfaces for the assistance of wheelchair users:
 - (ii) Height adjustable sinks for use by wheelchair users.
 - (iii) Height adjustable taps and electric switches for use by wheelchair users:
 - (iv) Elongated tap controls for use by wheelchair users:

- (v) Height adjustable hot water boiler for use by wheelchair users.

All these items were disputed, the Commissioners taking the view that zero-rating was not available for these adaptations and alterations because they are not made available for the personal use of a disabled person. Mr Tempest said that the relevant British Standard requires that, if dual services are not possible, both normal and height adjustable services must be provided. This applies not only to work surfaces and sinks, taps and electric switches, tap controls and the hot water boiler, and obviously they must all be safe.

- (i) Item 2 of Group 12 provides that there is zero-rating for the supply to a handicapped person for domestic or his personal use, or to a charity for making available to handicapped persons for sale or otherwise, for their domestic or their personal use, of a number of items which include such things as electrically or mechanically adjustable beds designed for invalids, commode chairs, commode stools, devices incorporating a bidet jet and warm air drier, and frames or other devices for sitting over or rising from a sanitary appliance but does not include adaptations and alterations to a food preparation area. Although paragraph (g) zero-rates equipment and appliances not included in the preceding paragraphs (a) and (b) it is clear that such equipment and appliances and work surfaces, sinks, taps and electric switches, tap controls and the hot water boiler are not designed solely for use by a handicapped person. Therefore, those items do not qualify for zero-rating.
- (j) Electric switches which have had to be altered to paddle switches positioned to allow operation by wheelchair users. These switches need to be at the correct height which is 750–1000 mm above floor level. They are in fact 800–900 mm above floor level. We agree with the Commissioners that these paddle switches do not qualify for zero-rating because, clearly, they are available for use by people who are not disabled.
- (k) The installation of glass vision panels on the doors on the Conference Spur. These panels are required to allow people operating the doors to be aware if wheelchairs are approaching from the other side of the door and obviously they are an aid for wheelchair users. However, the Commissioners disallowed zero-rating for these panels on the doors leading to the Conference Spur as they are not made available for the personal use of a disabled person. We agree that such panels clearly are not, as

required by Note 2(g), for the purpose of zero-rating, designed solely for use by handicapped persons.

- (l) The signage, which has been altered by colour contrasting to assist the partially sighted and by putting notices in Braille (as appropriate) to assist the blind. These signs are at the front entrance gates, in directional arrows, on the main notice board, the toilet doors and the designated uses of rooms. The Commissioners' view is that zero-rating is available for alterations to the signage on toilet and washroom doors and under Item 12 of Group 12 if part of the adaptation is for use by disabled people. There was, in their view, no zero-rating for alterations to signage elsewhere in the building. We agree.
 - (m) Item 12 zero-rates the supply to a charity of the service of providing, extending or adapting a washroom or lavatory for use by handicapped persons in a building, or any part of a building, used principally by a charity for charitable purposes where such provision, extension or adaptation is necessary to facilitate the use of the washroom or lavatory by handicapped persons. In our view, the Commissioners have applied those provisions correctly and zero-rating is not available except as stated.
 - (n) Lastly, the parking area has been altered by the installation of thermo-plastic identification notices to allow disabled persons to park safely. The Commissioners ruled that zero-rating is not available for the installation of thermo-plastic identification notices in the parking area as they are not made available for the personal use of a disabled person. Clearly, as Mr Tempest pointed out, the allocation of an area outside the main entrance hall for disabled people is very important. The car parking area is hatched to show the space for getting in and out of vehicles. However, there is no item in Group 12 which covers the supply of the installation of thermo-plastic identification notices and accordingly, we have to agree that zero-rating is not available.
19. In argument, Mr Memery referred to the Tribunal Decision in *Joulesave Ernes Ltd* (No 17115) which concerned certain radiator safety cabinets and pipe covers designed to solve the problem of the hazard of burns to the elderly, young and infirm from hot water radiators and electric heaters, whether storage or convection. The Tribunal in that case concluded that the supplies of the cabinets should be zero-rated pursuant to Item 2(g) of Group 12 and the pipe covers also should be zero-rated as being accessories designed to go with the cabinets pursuant to Item 2(h).

20. Mr McKay pointed out, and we accept, that we are concerned with the logic of the VAT Act and not the logic of the common man. The question is simply whether the circumstances come within the legislation or not, and nothing else. We are not concerned with the quality of the use of the items. As to Item 2 of Group 12 we are concerned with the supply to a handicapped person for domestic or personal use of the items listed in paragraphs (a) to (1) of Item 2. The *Joulesave* case was concerned with design alone and it tells us nothing useful about the present case.
21. Item 4 is concerned with services of adapting goods to suit the condition of a handicapped person to whom the goods are to be made available. Radiators, for example, were not made available by the Vassall Centre Trust. The requirement for "making available" is not satisfied in the present case, Mr McKay said, in reference to any of the items which require "personal use".
22. This point was also confirmed in the Decision in *Arthritis Care* (Decision No. 13974) where the Tribunal held that the construction of a fire escape at the New Mayfair Hotel in Blackpool, which provided accommodation to arthritis sufferers and their carers, was not zero-rated. The Tribunal held that a fire escape in that case did not constitute equipment or appliances "made available to a handicapped person for domestic or personal use" and was not similar to the chair lifts and hoists mentioned in the paragraphs (d) and (e) of Item 2. Even if it were, it was not designed solely for use by handicapped persons. The fire escape was designed for use by persons who, for whatever reason, could not use the stairs. That was not the same thing as being handicapped, which involves chronic disability. Buildings are not made into goods for VAT purposes by paragraph 4 of Schedule 4.
23. We echo the conclusion of the late Paul de Voil in the *Arthritis Care* case that it gives us no pleasure to state that the appeal fails in respect of all but one of the items in dispute. The Vassall Centre is a unique building whose interior and exterior design may become in many respects a model of the facilities which can be provided for disabled people. Group 12 of Schedule 8 already contains 20 items, but it needs constantly to be kept up to date.
24. There will be no direction as to costs.