

B E T W E E N:

**DINARO LIMITED
T/A FAIRWAY LODGE**

Appellant

- and -

THE COMMISSIONERS OF CUSTOMS AND EXCISE

Respondents

**Tribunal: Mr R P Huggins FCI Arb. (Chairman)
Mrs H Cornwell-Kelly
Mr C R Shaw FCA**

Mr David Walker, Group Asset Manager for the Appellant

Mr Hugh McKay of Counsel, for the Respondents

Sitting in public in London on 7 and 8 December 2000

Decision: 16 March 2001

DECISION

The appeal

1. These are appeals by Dinaro Limited ("The Appellant") against an amended assessment of VAT in the sum of £33,307 plus interest of £3,549.71 and a resultant assessment of misdeclaration penalty totalling £2,652.90 whereby the Commissioners maintained their ruling that the supplies of accommodation at the adjoining residential units operated by the Appellant known collectively as Fairway Lodge, 408 Stanstead Road, Catford, London SE6 ("Fairway Lodge") are taxable at the standard rate. The reasons are those given in the letter from HM Customs & Excise ("Customs") dated 28 June 1999.

The issue and the legislation

2. The sole issue between the parties is whether the supply made by the Appellant at Fairway Lodge comes within the provisions for exemption for VAT contained in Group 1 relating to Land or in Group 7 relating to Health and Welfare of Schedule 9 of the Value Added Tax Act 1994 ("the 1994

Act”).

3. Supplies relating to land are covered by tile exemption from tax created by Item No.1 of Group 1, as being:-

“The grant of any interest in or right over land or of any license to occupy land, or, in relation to land in Scotland, any personal right to call for or be granted any such interest of right”.

An exception from that exemption is provided by the terms of Item 1(d), which follows on the words “other than” appearing in the exempting provision, in the following terms:-

“(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;”

That excepting provision is further defined by Note 9 to Group 1 which reads as follows:-

“(9) “Similar establishment” includes premises in which there is provided 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 travelers”

The defining provisions of Note (9) are not limitative in that they merely state that the term “similar establishment” includes certain premises. Note (9) does not otherwise define the terms of Item 1(b).

4. The provisions regarding exemption of Health and Welfare are those in Group 7 of the same Schedule 9 which, in so far as it relates to the particular circumstances of this appeal, reads as follows:-

“4 The provision of care or medical or surgical treatment and, in connection with it, the supply of any goods, in any hospital or other institution approved, licensed, registered or exempted from registration by any Minister or other authority pursuant to a provision of a public general Act of Parliament ... not being a provision which is capable of being brought into effect at different times in relation to different local authority areas.”

5. The Commissioners, in calculating the assessment referred to in paragraph 1 hereof relied upon the provisions of paragraph 9 of Schedule 6 of the 1994 Act which reads as follows:-

“9 - (1) This paragraph applies where a supply of services consists in the provision of accommodation falling within paragraph (a) of Item 1 of Group I in Schedule 9 and -

- (a) that provision is made to an individual for a period exceeding 4 weeks; and;
- (b) throughout that period the accommodation is provided for the use of the

individual either alone or together with one or more other persons who occupy the accommodation with him otherwise than at their own expense (whether incurred directly or indirectly).

- (2) Where this paragraph applies -
- (a) (a) the value of so much of the supply as is in excess of 4 weeks shall be taken to be reduced to such part thereof as is attributable to facilities other than the right to occupy the accommodation; and
 - (b) (b) that part shall be taken to be not less than 20 per cent.”

6. The exemption from tax referred to in paragraph 4 above derives from European legislation and in particular Article 13A1 of the EC Sixth Directive. This provision reads, for its relevant part, as follows:-

“A1 Without prejudice to the other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any possible evasion, avoidance or abuse;

- (a) ...
- (b) hospital and medical care and closely related activities undertaken by bodies governed by public law, or under social conditions comparable to those applicable to bodies governed by public law, by hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature;
- (c), (d), (e) and (f) do not apply
- (g) The supply of services and of goods closely linked to welfare and social security work, including those supplied by old people’s homes, by bodies governed by public law or by other organisations recognised as charitable by the Member State concerned;”

Paragraph 2(a) of Article 13A provides that Member States may make the granting to bodies other than those governed by public law of each exemption provided for in 1(b), and (g) (amongst others) subject to one or more conditions. However, the United Kingdom has not expanded the scope of the exemptions to bring into force the extension available under paragraph 2(a).

The evidence

7. Mr David Walker who is the Group Asset Manager of the Appellant with overall responsibility for the running of Fairway Lodge represented the Appellant and was also its only witness. He also produced, at the hearing, a response to the Respondent's statement of case and the London Borough of Lewisham’s directory of mental health services.
8. The oral evidence was given on behalf of the Respondents by Mr David Bond, an Officer of Customs at the South Bank London Local VAT Office. He raised the original assessment and the amended assessment the subject of the main appeal.

9. An agreed bundle of documents was produced.

The facts

10. From the evidence we find the following facts:
11. The Appellant is a wholly owned subsidiary of Excel Care plc which is a family owned management company. Dinaro Limited has the responsibility of running Fairway Lodge which is owned by the group company.
12. Fairway Lodge is a hostel building formed from five adjacent three storeyed Terrace houses in Catford in the London Borough of Lewisham. It provides 42 bedrooms, 7 bathrooms, 1 shower room and 7 separate WCs. In addition there is a communal catering standard kitchen, dining room, laundry room, two sitting/TV lounges, one smoking room and two offices.
13. The building is regarded by the local authority as a building in multiple occupation under The Housing Act 1985 as amended.
14. Since 1980 Fairway Lodge has evolved in supplying accommodation and services to vulnerable adults who for various reasons have required accommodation and support services. The Appellant has maintained a “working in partnership” relationship with the local authority and, over the last ten years, the nature of those using the building has changed to reflect the needs of the vulnerable residents of the London Borough of Lewisham. These changes were unofficially supported by Lewisham since, like other local authorities under Central Government pressures, it ceased to be direct providers and actively encouraged the development of the private sector through Housing Associations and commercial and voluntary organisations to bridge the gaps in services.
15. In April 1993 through the implementation of the Community Care Act 1990 a major change occurred in the method of payment for the provision of accommodation registered under the Registered Homes Act 1984. Previously, Central Government had provided a flat-rate funding route which was dispensed through means tested state benefit. This ceased and it was replaced by a cash-limited budget allocated through a community care assessment to local residents in need of services. The changes aimed to provide more services locally for vulnerable residents and to find alternative provision for patients moving back to the community from the increasing closure programme of long-stay psychiatric hospitals. The 1993 changes produced a range of new styles of provision for vulnerable clients in both residential and non-residential situations. The ring-fenced funding provided by Central Government was not sufficient to meet the costs for the provisions needed. Providers had to become even more innovative in their funding methods. Housing benefits was a major area in which additional funding could be found.
16. Fairway Lodge had been used in the early 1990s to provide bed and breakfast accommodation for homeless people paid for through the local authority. In or about 1993, Fairway Lodge recognised that individuals with enduring mental health difficulties of a relatively moderate nature were

finding it increasingly difficult to sustain tenancies in any of the available mainstream accommodation.

17. It therefore worked towards supporting these individuals in meeting their accommodation related needs whilst not providing a service that would require registration under the Registered Homes Act 1984. The Appellant clearly defined the services supplied as support and supervision to meet accommodation related needs and not the strict criteria required under the 1984 Act which would then require funding from a virtually empty community care budget.
18. This concept was popular with the local authority at Lewisham and also the local hospitals since with the advancing effectiveness of psychotropic medication, it was only necessary for clients in mental health crisis to be hospitalised to stabilise the more florid presentations of their illness. With the support and supervision through outside sources, these persons could then be discharged early to release desperately needed beds for new patients.
19. Therefore, Fairway Lodge proceeded by taking the responsibility for accessing funding from the local authority who provided a continual stream of clients with needs to be catered for by Fairway Lodge.
20. The VAT assessment appealed against relates to periods from 1 July 1996 to 31 March 1999. At that time, the manager of Fairway Lodge was a Mr J J Henderson who was the ex-manager of a Nursing Home and he was in the post for seven years until November 2000. The Appellant's team at the building consists of 4 support workers, 3 cleaners, a cook, a maintenance man and 3 security staff. Currently the manager is supported by an assistant manager and a part-time ex-community psychiatric nurse. Administration is run centrally for payroll and the Appellant company employs a full-time administrator to complete all the necessary benefit forms for funding.
21. In 1999 the fees for each resident totalled £280 per week and are now £307. At the time of the hearing, Fairway Lodge received housing benefit ranging from £150 per week to £250 per week depending on each client's needs and status. The remainder of the fees was made up from client's mean tested state benefits and non-means tested disability benefits. Each client was allocated £25 per week for personal expenses to spend as they wished but there was supervision and budgetary advice to prevent excessive spending on luxury items.
22. Residents are referred to the Appellant by the local authority's Social Services departments. There is a waiting list and Fairway Lodge is a popular building. Residents stay for periods up to 18 months generally but there are some persons who have been staying indefinitely. There are no formal contracts with the local authority Social Service departments and the Appellants reserve the right to refuse to accept referrals. It also insists in the removal of residents who become disruptive as a result of not taking prescribed medicines or complying with supervision requests by the Appellant's staff members.

23. The Appellant's staff assist those staying at Fairway Lodge in claiming the various benefits they are entitled to. These benefits are collected by the Appellant, on their behalf, and the Appellant's charges are then deducted. The method employed by the Appellant is to bill each resident within the first 28 days of their stay for the amount of benefit the Appellant has received on behalf of each resident less that resident's pocket money. VAT at the standard rate is then charged on the billed amount. After the 28th day the Appellant re-issues a bill for each resident providing a breakdown specifically identifying a fixed amount of £25 per week for food, drink and services. It is only on this £25 per week that the Appellant charges VAT. The amount charged to each resident includes the provision of three meals a day.
24. Virtually all the residents are in receipt of varying rates of the care component of Disability Living Allowance and the majority are in receipt of middle rate which currently amounts to £35.80 per week. During the period of the assessment the subject of the claim, 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. There were similar tests applicable at night for those residents who required attention or watching over at that time.
25. The Appellant has formal rules that the residents are required to adhere to.
26. Mr Henderson, when he was the manager, drew up a "Philosophy of Fairway Lodge" Setting out seven criteria which he believed enabled the function of Fairway Lodge to be fulfilled. In addition to providing supervision and frequent attention to warrant awards of Disability Living Allowance, 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 in Fairway Lodge.
27. 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. The practitioner does not usually have a clinical role to play.
28. Fairway Lodge is listed in the Lewisham Directory of Mental Health Services.
29. In 1993 whilst the Appellant was considering plans to develop Fairway Lodge, Officers from Customs and Excise inspected Fairway Lodge to determine its status for VAT. At that time, senior management of Dinero Limited were told that if Fairway Lodge was registered under the Registered Homes Act 1984, it would become exempt from VAT. A decision was made not to apply for registration because of the limitations that such registration imposed and because the funding situation was not certain. In a letter dated 19 January 1994 Mr S Ross, a Customs and Excise Officer instructed the

Appellant to follow the rules for long-stay residents “as set out in public notice 70413193”. On 23 November 1998 Mr Bond, another Customs and Excise Officer, visited the Appellant's premises and became aware that the Appellant had changed its policy and was operating a “half-way house” for the mentally ill men. He informed the Appellant’s Managing Director that, having given careful consideration to the information available, he had come to the view that Fairway Lodge still fell within the hotel or similar establishment category.

Cited cases

30. The parties referred the tribunal to three Authorities and we set out below the guidance we have been able to derive from each of them.

The Lord Mayor and Citizens of the City of Westminster v. Commissioners of Customs and Excise [1989] VATTR 71 (3367) concerned a hostel called Bruce House providing accommodation to homeless men. There was a degree of control, provision of services, pastoral care together with the fact that the establishment was not run as a profit-making institution. In its provision of accommodation and food, Bruce House had significant characteristics shared by hostels, inns and boarding houses and its differences were not so great as to prevent its being a “similar establishment”.

The tribunal commented in the decision:

“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 a hotel or inn or boarding house because the accommodation they provide is provided for a purpose subsidiary to the main purpose of the establishment. A hotel, inn or boarding house on the other hand provides accommodation as its main purpose. The accommodation provided by Bruce House is likewise provided as its main purpose - it is not provided for a subsidiary purpose such as housing people while they are being educated or detained in the building.

Likewise hotels, inns and boarding houses commonly provide food for those resorting to them. So does Bruce House, though in a fairly minimal way. A further characteristic of a hotel, inn or boarding house is that its accommodation is usually provided for people who are for varying periods away from their home, or who, for the time being have no home. Are there any characteristics that Bruce House lacks that which an hotel, inn or boarding house possesses and which are fundamental to the nature of a hotel, inn or boarding house with the result of the lack of them in Bruce House so distinguishes it as to make one say that Bruce House is not similar?

... hotels, inns and boarding houses are normally run with a view to making a profit but Bruce House has never been so run.

We ask ourselves whether these differences are such that we should regard

Bruce House as an establishment that is so different as to be different in kind, or are they differences which are little more than differences of degree so that it would be right to say that Bruce House though not the same as a hotel, inn or Boarding house is nevertheless, similar. This must be largely a matter of impression but we have come to the conclusion that the differences are not so great as to make us say that Bruce House is not similar to a hotel, inn or boarding house”.

31. *International Student House v. Commissioners of Customs and Excise* LON/95/3142 (14420)

A registered charity provided accommodation in four buildings in London, for overseas students. The Commissioners issued a ruling that the charity was required to account for VAT on the fees which it received, on the basis that the buildings were a “similar establishment” to a boarding house so that the fees were excluded from exemption by Schedule 9, Group 1, Item 1(d) of the 1994 Act. The Tribunal allowed the charity’s appeal, holding that the buildings were at a “similar establishment” to a boarding house and accordingly the fees were not excluded from exemption. The tribunal observed that the “predominant characteristic” of a hotel, inn or boarding house was “the offer of use of accommodation for gain”. The charity was offering accommodation as part of its purpose of helping overseas students and improving international relations.

32. *J & M Gregg v. Commissioners of Customs and Excise*, CJEC case, C-216/97 [1999] STC 935.

A married couple operated a nursing home in partnership, with a number of employees. The Commissioners issued a ruling that they were not entitled to register for VAT on the ground that all their supplies were exempt from VAT under Schedule 9, Group 7, Item 4 of the 1994 Act. The couple appealed, contending that they should not be treated as exempt since the exemption should be construed in accordance with Article 13A1(b) and (g) of the EC Sixth Directive, which confirmed such an exemption to “bodies governed by public law”. The tribunal directed that the case should be referred to the Court of Justice of the European Communities (CJEC) for a ruling on whether a two-person partnership was excluded from exemption under Article 13A1(b) and (g) of the Directive. The CJEC held that Article 13A1 should be “interpreted as meaning that the terms “other duly recognised establishments of a similar nature” and “other organisations recognised as charitable by the Member State concerned” ... do not exclude from that exemption natural persons running a business”. Accordingly the Commissioners were justified in treating the couple’s supplies as exempt and declining to register them.

Conclusions

33. As so often occurs, this case turns entirely on its own facts. Bearing in mind the principles provided by the three authorities, we set out below the Appellant’s three contentions which appear under the heading “Disputed Areas” in the Appellant’s response to the Respondents’ statement of case. We

give our conclusions following each contention.

34. Fairway Lodge believes it should be exempt from VAT under Schedule 9, Group 7, Item 4 of the 1994 Act and would rely on H M Customs and Excise Business Briefing 1/97 and the *Gregg* case. Fairway Lodge believes it can show that it should be regarded as an institution approved by Act of Parliament or that it operates under social conditions comparable to bodies governed by public law.
35. There is no doubt that Fairway Lodge provides care for its residents but that care has to be provided “in any hospital or any institution approved, licensed, registered or exempted from registration by any Minister or other Authority pursuant to a provision of a public general Act of Parliament ...” If the establishment had been registered under the Registered Homes Act then that would be another matter. However, lack of being registered or exempted from registration by a Secretary of State or other Authority is mandatory and the *Gregg* case does not assist the Appellant because the nursing home in that case was a residential care home registered under the relevant Northern Ireland legislation.
36. Fairway Lodge believes it should be exempt under EC Sixth Directive Article 13A1(b) and would rely on the *Gregg* case. Fairway Lodge believes that there is a clear intention to avoid direct taxation impacting on businesses supplying social and welfare services.
37. This European provision is very similar to that laid down by Schedule 9, Group 7, Item 4 of the 1994 Act and the same conclusion applies. In order to come within (b) the body supplying hospital and medical care and closely related activities has to be governed by public law or under social conditions comparable to those applicable to bodies governed by public law by hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature. Fairway Lodge does not come within these categories. It provides supervisory care and not medical care. For that reason, it cannot rely upon this provision.
38. Mention was made at the tribunal by Mr Walker on behalf of the Appellant that the tribunal should also consider whether the activities at Fairway Lodge came within sub-paragraphs(g) and (h) of the same Article 13A1. The tribunal takes the view that in both instances, the bodies have to be either governed by public law or recognised as, charitable by the Member State concerned. Fairway Lodge is not governed by public law and is not a charitable body.
39. Fairway Lodge does not accept that it is either an hotel, inn or boarding house or similar establishment neither does it accept that the services are used by or held out as being suitable for use by visitors or travellers and would rely on *The Lord Mayor and Citizens of the City of Westminster* and *International Student House* decisions for such reasoning. Fairway Lodge would show that it is substantially different in character to be incapable of being described as similar to an hotel, inn or boarding house.
40. It is necessary in order to reach a decision that the tribunal examines the

definitions contained in the test of Item 1(d) of Group 1 of Schedule 9 of the 1994 Act and note 9 to see how the situation of Fairway Lodge is to be classified. As in the appeal of *International Student House* it appears to be common ground between the parties of this appeal that the terms “an hotel, inn, boarding house” have a specific though wide sense and that, as the Tribunal in the decision of *The Lord Mayor and Citizens of Westminster* appeal of a school or a prison providing accommodation but these would not be regarded as either a similar establishment as a hotel, inn or boarding house because the accommodation therein is provided subsidiary to the main purpose of the establishment. The same argument can be used for a registered nursing home. On the other hand an hotel, inn or boarding house provides accommodation as its main purpose.

41. It appears to the tribunal that a further characteristic must be added namely that an hotel, inn or boarding house is concerned with the business of providing accommodation. Since Fairway Lodge provides long-term care and supervision for its residents amongst other factors, the tribunal concludes that on the facts before it, Fairway Lodge is not an hotel, inn or boarding house.
42. The next question to be answered is whether what Fairway lodge provides is within the extension of the category “an hotel, inn or boarding house” created by the words “similar establishment”. The tribunal notes that what is excluded from the exemption is not just an hotel, inn or boarding house but there is the added qualification of sleeping accommodation whether with or without the provision of board or facilities for the preparation of food. There is no doubt that Fairway Lodge provides sleeping accommodation but the issue is whether such sleeping accommodation is provided “in a similar establishment”. The conclusion that can be reached that if it is not a similar establishment, it matters not whether it provides sleeping accommodation or not.
43. The Tribunal adopts the same reasoning as did the tribunal in the appeal of *The Lord Mayor and Citizens of Westminster* for the conclusion that it is not the provision of sleeping accommodation which necessarily makes an establishment “similar”. While a “similar establishment” includes premises in which there is provided furnished sleeping accommodation in accordance with the terms of Note 9, the provision of sleeping accommodation alone would not make a dissimilar establishment similar.
44. Note 9 defines “similar establishment” as including “premises in which there is provided furnished sleeping accommodation ... which are used by or held out as being suitable use of visitors or travelers”. In the normal use of the English language, a visitor is a person who visits a place or person whereas a traveller is one who travels from one place to another. Both these categories of persons require to be able to use sleeping accommodation. Those premises which provide furnished sleeping accommodation and which are used or held out as being suitable for use by such person are included in the definition of “similar establishment”. The question arises as to whether the residents of Fairway Lodge are travellers or visitors or neither.
45. Evidence was given by Mr Walker that the average stay for persons using

Fairway Lodge is three to eighteen months and a minority have become permanent residents. There must be a moment when a person who resides in a place which is initially not his home ceases to be a visitor to that place. The tribunal is of the opinion that none of the residents of Fairway Lodge are travellers. On the balance of probabilities bearing in mind that most of them stay for lengthy periods receiving constant supervision and frequent attention they cannot be visitors because a visitor is, in the normal use of the English language, a person who visits a place or person. These residents cannot fall into these categories.

46. Therefore in order to reach its decision, the tribunal has to ask whether Fairway Lodge comes within the definition of “similar establishment” within Item 1(d). Mr McKay admitted in his closing submission that Fairway Lodge does provide care but he argues it was subsidiary to provision of accommodation. He pointed out that the Appellant was in business to make a profit and like Bruce House, in *The Lord Mayor and Citizens of Westminster* appeal Fairway Lodge was merely a “hostel” and there was no prospect of rehabilitation.

47. We have come to the conclusion that the differences are sufficient as to make Fairway Lodge not similar to an hotel, inn, boarding house.

48. We find there are three main elements in establishing the dissimilarity as follows:

First the selectivity exercised over the choice of residents

The establishment will only accept those persons who have mental problems coming mainly from psychiatric institutions upon their release to the outside world. There was no evidence before the tribunal that any other type of person during the period the subject of the assessment, was a resident at Fairway Lodge. There are hotels, inns and boarding houses which cater for specific types of persons but they will accept other visitors.

49. **Secondly, the high degree of care and supervision for all the inhabitants.**

The tribunal has found as a fact that most of the residents are in receipt of middle rate care component of Disability Living Allowance. Section 72 of the Social Security Contributions Benefits Act 1992 sets out the qualifications for entitlement to this care component. The relevant subsections of Section 72 are as follows:

- “(1)(b) he is so severely disabled physically or mentally that, by day, he requires from another person -
 - (i) frequent attention throughout the day in connections with his bodily functions; or
 - (ii) continual supervision throughout the day in order to avoid substantial danger to himself or others; or
- (c) he is so severely disabled physically or mentally that, at night -

- (i) (i) he requires from another person prolonged or repeated attention in connection with his bodily functions; or
- (ii) (ii) in order to avoid substantial danger to himself or others he requires another person to be awake for a prolonged period or at frequent intervals for the purpose of watching over him.”

50. In order to qualify for middle rate care component, it is essential that a person receives supervision and/or watching over, and/or attention from another person because of their disability. This is provided at Fairway Lodge by the four support workers and, at the time of the periods covered by the assessment under appeal, Mr J J Henderson. There was produced to the tribunal several letters of support for the Appellant. A leading example is a letter from Marie Reardon, Centre Manager of the South London and Maudsley NHS Trust Mental Health Advice Centre, part of Lewisham Social Services. She stated in her letter to Mr Henderson dated 2 October 2000 “the team here at MHAC have been impressed by the level of care extended to our clients residing with you at Fairway Lodge over the last few years”. This indicates that the “constant 24 hour support” referred to in paragraph 5 of the Philosophy of Fairway Lodge is not an exaggeration.

51. **Thirdly, the emphasis of a family concept for all those who are residents**

Paragraph 4 of the Philosophy of Fairway Lodge sums up this important feature in the work at that establishment. It reads as follows:-

“It is also our role to promote and nurture the concept of the ‘FAIRWAY FAMILY’ in such a manner that all of our residents can enjoy the warmth, trust, protection and sense of belonging that a ‘family’ alone can engender. In so doing we hope to build and develop the mental health and strength that is so much needed by all in a stressful world, This is really supported group therapy”.

52. Assessing as did the tribunal in the appeal of *The Lord Mayor and Citizens of Westminster*, the purpose for which accommodation in Fairway Lodge was and is provided, the tribunal finds that the predominant purpose of Fairway Lodge was not the provision of accommodation but the fulfillment of its objectives accommodation being subsidiary to its primary purpose of helping in the rehabilitation of people with mental problems and supporting and supervising the residents to aid their improvement and individual wellbeing.

Summary

53. Hotels, inns or boarding houses or similar establishments provide accommodation for anyone who is acceptable to the management and is able to pay the required charge. These establishments may provide additional facilities such as food, bars, lounges and security at the discretion of the owners.

Fairway Lodge, because of the source of the resident's income, provides food and also had to provide supervision and security: but, it only accepted

residents nominated by the local Authority's Social Services Department.

It therefore follows that Fairway Lodge was not an hotel, inn or boarding house or similar establishment. It is an exception and it will be rare for similar establishments to exist.

Decision

54. The tribunal decides that the Appellant trading as Fairway Lodge does not provide in an hotel, inn or 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.
55. The appeals against the assessment and the misdeclaration penalty are therefore allowed.
56. The Appellant is awarded a sum of £750 towards its costs in the appeal.