

## **Exemption applies to pitches if planning restrictions not enforced: Tallington Lakes Ltd (19972)**

### **Summary:**

The Tribunal has decided that caravan pitches can be exempt where the evidence is that occupation and planning restrictions are not enforced, and where the caravans are not held out as holiday accommodation.

### **Background:**

The issue in this case was whether pitch fees charged to static caravan owners for the right to site their caravans at the Appellant's caravan site were subject to VAT at the standard rate or exempt under Item 1 of Group 1, Schedule 9 of the VAT Act 1994. This exempts the grant of any interest in or right over land other than the provision of seasonal pitches for caravans, and for grant of facilities at caravan parks to persons to whom such pitches are provided.

Under the licence granted to occupiers' of the site, occupation was not allowed during the month of February. The relevant planning permissions granted by the local council also prevented occupation of some parts of the site in February. The Appellant provided evidence that the clauses were not enforced and that licensees occupied the pitches for residential purposes throughout the year and for long periods. There was evidence that the local council was aware that the pitches were occupied as main residences and did not enforce the planning restrictions. The Appellant also relied on Notice 701/20 in which HMRC allows exemption of caravans where used as principal private residences, even if they cannot be occupied throughout the year. HMRC's argument was that, based on the licences and planning permissions, the pitches were 'seasonal'<sup>1</sup> and the site was a holiday site. There was no clear waiver of the licence conditions. In its view therefore, no exemption applied.

### **Judgment:**

The Tribunal decided that the issue was whether the existence of restrictions in the licence and planning permissions, which it decided could not have been enforced (because the local authority would not have been within the time limits to enforce them) was sufficient to make the supplies taxable. It decided that despite the existence of the restrictions, the effect of their non-enforcement meant that it could not be said that occupation throughout the year was prevented, and therefore allowed the appeal. *Colaingrove* [2004] STC 712 was distinguished on the basis that here the Appellant allowed the use of the caravans as principal private residences, and that in that case the High Court was considering a case where the occupation restriction was enforced.

The judgment of the Tribunal was made on the facts of this particular case. The Tribunal made particular reference to the fact that HMRC's Notice 701/20 does not represent HMRC's actual policy. Whilst it would not be surprising if HMRC was to appeal, any caravan site operators where similar facts apply, should review their treatment of fees in the light of this decision.