

**Zero-rating applied to retirement dwellings built in the grounds of a care home  
JFB & FR Sharples (20775)**

**Summary**

HMRC's attempted to deny zero-rating to cottages constructed for sheltered housing in the grounds of a care home. HMRC sought to argue that the cottages did not qualify for the relief because the planning consent required that the freehold of the cottages should not be sold, assigned or disposed of separately from that of the main care home. The Tribunal disagreed, holding on the facts that, as neither separate use nor separate disposal of the dwelling was prohibited, the cottages were "designed as a dwelling" and the supply of their construction was properly zero-rated. This was on the basis that disposal, as envisaged by the zero-rating legislation, included the disposal of occupancy or the right to occupy (and was not restricted to disposal of any specific legal interest, e.g. the freehold) and the Appellant in this case was entitled to grant a right of occupancy.

*It should be noted that the Tribunal decided that the conditions for zero-rating are met only if both separate use and separate disposal are allowed. With HMRC seeming to be active in this area, builders and developers of residential buildings should always seek professional VAT advice to ensure that they obtain the maximum benefit of the available VAT reliefs.*

**Background**

The Appellants own a care home. They commissioned the construction of retirement dwellings in the grounds of this care home and contended that the construction of the dwellings and the first grant of a major interest in the dwellings satisfied the zero-rating conditions of Group 5, Schedule 8 VAT Act 1994:

- "1. The first grant by a person ... constructing a building designed as a dwelling ... of a major interest in, or in any part of, the ... dwelling or its site.
2. The supply in the course of construction of ... a building designed as a dwelling ... of any services related to the construction. ...
4. The supply of building materials to a person to whom the supplier is supplying services within Item 2 ... which include the incorporation of the materials into the building (or its site) in question."

Note (2) to Group 5 provides that:

"(2) A building is designed as a dwelling or a number of dwellings where in relation to each dwelling the following conditions are satisfied:-

- (a) the dwelling consists of self contained living accommodation;
- (b) there is no provision for direct internal access from the dwelling to any other dwelling or part of a dwelling;
- (c) the separate use, or disposal of the dwelling is not prohibited by the term of any covenant, statutory planning consent or similar provision; and
- (d) statutory planning consent has been granted in respect of that dwelling and its construction or conversion has been carried out in accordance with that consent."

HMRC sought to argue that condition (c) of Note 2 to Group 5 was not satisfied because the Appellants had entered into a covenant with the planning authority that the dwellings would not be disposed of separately from the care home.

The Appellants sought to argue that condition (c) was satisfied because there was no prohibition on the separate use of the building, and condition (c) was expressed in the alternative "separate use, or disposal" (emphasis added), so even if separate disposal was prevented, the separate use was not prohibited and the condition was satisfied.

Alternatively, the Appellant sought to argue that the covenant not to dispose of the freehold separately was not a prohibition on the disposal of the cottages because the separate disposal of long leases was not prohibited and, in any event, the covenant was subject to an exception which would which permit transfer

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of the freehold between the Appellants and the trustee of the Appellants' private pension fund. 'Prohibition' meant forbidding or banning absolutely, not simply restricting, and therefore disposal of the freehold was not 'prohibited'.

### **Held**

The Tribunal held that the condition in Note (2)(c) was not satisfied if either separate use of the dwelling was prohibited or separate disposal of the dwelling was prohibited (para 45); however, separate use of the dwellings was not prohibited in this case, only restricted to use by people aged over 55; and separate disposal of the dwellings was not prohibited - the Appellants were free to dispose of a long leasehold interest, and there was nothing in the legislation to suggest that 'disposal' referred only to freehold disposal.

Consequently, the condition in Note (2)(c) was satisfied, the buildings were designed as dwellings and the supply of construction fell within Item 2 of Group 5.

### **Comment**

This decision will be of interest to businesses which are planning similar developments within the curtilage of an existing care home. HMRC's policy concerning such developments was published in Revenue & Customs Brief 66/07. The Tribunal in this case appears to have supported HMRC's view that a prohibition of either separate use or separate disposal would have jeopardised zero-rating, albeit it found that no such prohibition existed.

Developers of residential buildings should always seek professional VAT advice to ensure that they obtain the maximum benefit of the available VAT reliefs.