



Neutral Citation: [2023] UKFTT 88 (TC)

Case Number: TC08716

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2019/09499

VAT – DIY Builders Scheme – whether planning permission for a dwelling – no – appeal dismissed

Heard on: 11 November 2022
Judgment date: 26 January 2023

Before

**TRIBUNAL JUDGE ANNE FAIRPO
PATRICIA GORDON**

Between

DANIEL DUNNE

Appellant

and

**THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS
Respondents**

Representation:

For the Appellant: Mr C Doherty, accountant

For the Respondents: Ms S Jones, litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

1. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

Introduction

2. This is an appeal against HMRC's refusal of a claim for a refund of VAT under legislation known as the DIY Builders Scheme, s35 VAT Act 1994. The amount claimed was £6,075.79.

Background

3. The claim was made in respect of works undertaken at a residential property in Belfast owned by Mr Dunne at the time.

4. In April 2016, Mr Dunne submitted a planning application for a "two storey side extension (retrospective) and single storey rear extension" to the residential property in question. The side extension is not relevant to this appeal; the claim was made only in respect of the works undertaken at the rear of the property.

5. The application was granted in August 2016.

6. In July 2019, a Building Control Completion Certificate was issued which described the relevant works as "construction of a single storey extension to the rear" of the property.

7. In September 2019, Mr Dunne submitted a VAT431NM claim form to HMRC, received by them on 1 October 2019.

8. HMRC wrote to Mr Dunne on 11 October 2019, rejecting the claim on the basis that the works were not considered to for a new dwelling for VAT purposes.

9. Following a review of that decision, Mr Dunne appealed to this Tribunal on December 2019.

Relevant law

10. s35 VAT 1994 ("Refund of VAT to persons constructing certain buildings") states, as relevant:

(1)Where—

(a) a person carries out works to which this section applies,

(b) his carrying out of the works is lawful and otherwise than in the course or furtherance of any business, and

(c) VAT is chargeable on the supply. or importation of any goods used by him for the purposes of the works,

the Commissioners shall, on a claim made in that behalf, refund to that person the amount of VAT so chargeable.

(1A) The works to which this section applies are—

(a) the construction of a building designed as a dwelling or number of dwellings;

(b) the construction of a building for use solely for a relevant residential purpose or relevant charitable purpose; and

(c) a residential conversion.

...

(1D) For the purposes of this section works constitute a residential conversion to the extent that they consist in the conversion of a non-residential building, or a non-residential part of a building, into—

- (a) a building designed as a dwelling or a number of dwellings;
- (b) a building intended for use solely for a relevant residential purpose; or
- (c) anything which would fall within paragraph (a) or (b) above if different parts of a building were treated as separate buildings.

...

(4) The notes to Group 5 of Schedule 8 shall apply for construing this section as they apply for construing that Group.

11. The notes to Group 5 of Schedule 8 state, as relevant:

(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.

...

(16) For the purpose of this Group, the construction of a building does not include—

- (a) the conversion, reconstruction or alteration of an existing building; or
- (b) any enlargement of, or extension to, an existing building except to the extent the enlargement or extension creates an additional dwelling or dwellings; or
- (c) subject to Note (17) below, the construction of an annexe to an existing building.

(17) Note 16(c) above shall not apply where the whole or a part of an annexe is intended for use solely for a relevant charitable purpose ...

Evidence and submissions

Planning documents

12. As noted above, the application for planning permission refers, as relevant, to the proposed construction of a “single storey rear extension”.

13. The site visit report (in respect of a site visit on 13 May 2016) undertaken by the local authority planning department refers to “a proposal to extend or alter a residential property”. It

further states that “the proposal is for a single storey rear extension [which] is an appropriate scale in relation to the existing building and is in keeping with the style of the property”.

14. The planning permission approval is for (as relevant) a “single storey rear extension”. The “Full Plan Completion Certificate” describes the works as “Construction of a single storey extension to the rear”.

15. The plans show the “rear extension” as a square building connected to the existing residential property by a corridor.

Local authority planning post-completion correspondence

16. Following enquiries made by Mr Dunne at the time of HMRC’s refusal in October 2019, the local authority planning department wrote to him by email as follows:

“This extension is stand-alone in that it is not connected to your dwelling although it is under the same occupancy as it is not separately street numbered. To gain access to your main dwelling you need to leave this unit into the outside air and then access your main dwelling area ... this is technically an extension of the floor area of your dwelling with its own kitchen, sitting area, bedrooms, bathroom and utility room but is not attached to your main house ... the initial plans for this did indicate that this was to be attached to your dwelling but this changed early on in the build”.

Mr Dunne’s evidence and submissions

17. Mr Dunne’s evidence was, in summary, that although the initial plan had been for the rear extension to be attached to the existing property, the plans were changed so that it became a standalone detached building, unconnected to the existing property. The VAT431NB form describes the building as a detached bungalow. He considered that this created a separate dwelling.

18. He explained that formal planning permission for the change was not sought because of time constraints. He planned to occupy the building with his wife. Mr Dunne’s wife was terminally ill at the time of construction and died six months after completion. The building was created in order to make sure that his wife could stay at home rather than go into a hospice. Resubmitting the application would have taken two more years which she did not have, so he discussed the changes informally with the local authority building control, who agreed that he did not need to build the corridor connecting the building to the existing property. The fact that they had issued the planning certificate was, he contended, evidence that the building was compliant with the planning department requirements and so should be regarded as being planning permission for a dwelling.

19. Mr Dunne’s daughter and her family had acquired the main property from him following completion of the works, and he and his wife moved into the bungalow. He now lived in the bungalow with one of his grandchildren and pays ground rent for a ‘granny flat’.

20. The bungalow has a separate postal address to the main building. Mr Dunne thought that the bungalow “probably” could be sold separately to the main building. He accepted that there was no separate driveway or access for the bungalow, that it shared a driveway and access with the existing building.

HMRC submissions

21. HMRC contended that, even without the corridor, the planning permission was for an extension of the existing building and not for a separate dwelling. An extension is specifically precluded from being the construction of a building by note 16 of the notes to Group 5 of Schedule 8 VAT Act 1994, which apply to claims under s35 VAT Act 1994. The construction

was not in accordance with the planning consent given by the local authority and so the claim could not be accepted.

22. HMRC submitted that, further, the building could not be disposed of separately to the existing building and that the separate postal address did not create a separate dwelling.

Discussion

23. The following facts are not in dispute:

(1) the construction works created a single storey building with a kitchen, bathroom, two bedrooms and one reception room;

(2) the building is in the back garden of the existing property and is surrounded by that garden. The building is approximately half of the width of the garden and is directly behind the existing property, with the bulk of the garden on the far side of the building away from the existing property. The building and the existing property share the garden;

(3) access to the building is via the driveway to the existing property and side gate for the existing property. There is no private or otherwise separate access to the building;

(4) the initial planning permission was for an extension to the existing building.

24. We find that there was an informal amendment to the planning permission to remove the proposed connecting corridor between the existing property and the building, as the October 2019 correspondence from the local authority refers to the change being made without any indication that it was not agreed.

25. However, for a claim to succeed under s35 VAT Act 1994, it is not sufficient that a standalone building is created; the planning permission must be for a dwelling and we find that this planning permission, as informally amended, is for the extension of an existing dwelling and not for the creation of a new dwelling.

26. This is because we consider that it is also clear from the October 2019 correspondence with the council that the removal of the connecting corridor was not considered to create a separate dwelling for planning purposes. The approval was for an extension and this post-completion local authority correspondence continues to refer throughout to the works, as amended, as an extension to the main property, specifically as “an extension ... not attached to your main house”.

27. The correspondence does not contemplate, let alone confirm, that approval was given for a new dwelling. The agreed informal amendment, to remove the connecting corridor from the plans, cannot be interpreted to imply a grant of permission for a dwelling. An extension of a dwelling is specifically excluded from qualifying for a claim under s35 VAT Act 1994.

28. The statutory requirements for a claim under this scheme include the requirement that planning permission has been granted in respect of a dwelling and that the construction is in accordance with that planning consent. As we have found that planning permission (and its informal amendment) was granted for an extension and not a dwelling, it follows that this appeal cannot succeed.

Conclusion

29. The appeal is dismissed.

Right to apply for permission to appeal

30. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The

application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**ANNE FAIRPO
TRIBUNAL JUDGE**

Release date: 26 JANUARY 2023