



**TC07904**

*VAT – construction of new boathouse for charitable sea rowing club – zero rating – whether building intended solely for use otherwise than in the course or furtherance of a business – held no – whether building intended solely for use as a village hall or similarly in providing social or recreational facilities for a local community – held no – whether reasonable excuse for issue of zero-rating certificate – held yes – appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2016/03627**

**BETWEEN**

**SWANAGE SEA ROWING CLUB**

**Appellant**

**-and-**

**THE COMMISSIONERS FOR  
HER MAJESTY'S REVENUE AND CUSTOMS**

**Respondents**

**TRIBUNAL: JUDGE KEVIN POOLE  
WILLIAM HAARER**

**Sitting in public at Yeovil Magistrates' Court on 23-26 September 2019 with subsequent written submissions**

**The Rt Hon. The Viscount Dilhorne, counsel, for the Appellant**

**Howard Watkinson, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents**

## DECISION

### INTRODUCTION

1. This appeal relates to a penalty imposed by HMRC in respect of what they assert to have been the wrongful delivery by the Appellant (“SSRC”<sup>1</sup>) of a certificate enabling the construction of its new boathouse to be zero-rated for VAT.
2. There were essentially three questions for decision by the Tribunal, as follows:
  - (1) whether, at the time of its construction, the boathouse was intended for use solely by SSRC otherwise than in the course or furtherance of a business,
  - (2) whether, at the time of its construction, the boathouse was intended for use solely by SSRC as a village hall or similarly in providing social or recreational facilities for a local community, and
  - (3) whether, if the answer to both the preceding questions was “no”, SSRC had a reasonable excuse for issuing the zero-rating certificate.
3. Clearly, if the answer to either the first or second question is “yes”, then the appeal succeeds, without the third question needing to be considered.

### THE FACTS

#### Introduction

4. We received written witness statements from:
  - (1) Gillian Jennings (Trustee and former Secretary of the SSRC);
  - (2) Lynne Bramwell (former Treasurer of the SSRC);
  - (3) George Wallace (former Chairman of the SSRC);
  - (4) Paul Meacham (Trustee of the SSRC);
  - (5) Adam Clarke (Chairman of the Swanage Fish Festival);
  - (6) Martin Steeden (Chairman of the SSRC);
  - (7) Stephen Butler (Treasurer of the SSRC);
  - (8) Martin Ayres (Town Clerk of Swanage Town Council);
  - (9) Dee Barron (former Secretary of the SSRC);
  - (10) Paul Davies of HMRC;
  - (11) Paul McKeown of HMRC; and
  - (12) John Breckell of HMRC.
5. We heard supplemental oral testimony from Lynne Bramwell, George Wallace, Stephen Butler and Dee Barron (on behalf of SSRC) and from all three HMRC officers (officer Breckell by video link). We found all the witnesses to be reliable and credible. We also received a bundle of documents.
6. We find the following facts.

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<sup>1</sup> “SSRC” includes in this decision, where the context permits, both the original unincorporated association of that name (which was the body in existence at the time when most of the events relevant to this appeal took place) and its successor Charitable Incorporated Organisation which was established by a constitution dated 10 January 2014 and appears to have come into legal existence upon registration by the Charities Commission shortly afterwards, obviously some time after the events at the heart of the present appeal occurred.

## **Background**

7. SSRC was started in 2001. As its name implies, it is a club based in Swanage on the Dorset coast which is devoted to rowing on the sea, mostly in Cornish Pilot Gig boats weighing around half a tonne which are, for obvious reasons, larger and more robust than the boats used for competitive and recreational rowing on inland waters. Its membership has a wide age range (from 11 to 75 or more) and they participate in both competitive and social rowing, with its obvious benefits for health, wellbeing and community involvement. Initially it had no permanent base, storing its boat and equipment in a polytunnel loaned by a local business, which was evidently not secure and afforded no changing or toilet facilities. It was founded as an unincorporated association, and adopted a charitable constitution in January 2003, following which it was formally registered as a charity in March 2003 whilst still remaining, in legal form, an unincorporated association.

8. As set out in its constitution adopted on 17 January 2003, the objects of SSRC were stated to be:

“the promotion of community participation in healthy recreation for the benefit of the inhabitants of Swanage by the provision of facilities for sea rowing”.<sup>2</sup>

### **Steps towards establishing a permanent base**

9. It was the club’s aspiration from the outset to obtain a permanent base to operate from. As its membership grew, it was decided the time had come to move forward with its ambition to establish a permanent base, particularly as the land where its equipment was stored was the subject of an application for planning permission and in any event would not be able to cope with its plans at that stage to add further vessels to its fleet.

### ***The Boathouse Committee***

10. An informal “boathouse committee” was formed to progress the project, comprising:

(1) Mr George Wallace (Chairman of SSRC until May 2010), who had undertaken preliminary research and consultation following his appointment as Chairman in May 2007,

(2) Ms Dee Barron (Secretary of SSRC from 2005 to 2010), who took responsibility for co-ordinating fundraising efforts, having carried out a similar role successfully a year or two earlier when funding had been obtained for a youth training project involving boat-making skills,

(3) Ms Lynne Bramwell (a retired Maths teacher), the treasurer of SSRC from 2010 to 2015, who therefore had a financial control role,

(4) Mr Brian Taylor (an experienced building project manager in a major construction company and member of the Royal Institution of Chartered Surveyors) who took on responsibility for the technical/construction supervision side, and

(5) Mr Martin Steeden, the Chairman of SSRC from May 2010 to date (an RNLI lifeboatman of 40 years’ service) who took on what was described as a “client liaison” role (though the precise duties of this role were not made clear).

11. Ms Gill Jennings, who described herself as the “Minutes Secretary” of SSRC from 2009 to 2015 (when she became Secretary) also appears to have had some involvement with this informal committee, though the precise scope of her role was not made clear to us.

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<sup>2</sup> When SSRC adopted a new constitution on 11 January 2014 in the process of reconstituting itself as a Charitable Incorporated Organisation, its objects were restated in the same terms in that constitution.

### *Obtaining a site*

12. After much research and discussion, a proposed site, owned by the Swanage Town Council, was identified very close to the shoreline in Swanage. A decision was made to proceed if possible, to secure the site and build a new boathouse on it.

13. In April 2010 the Town Council agreed in principle to grant a 125 year lease of the site to SSRC at a peppercorn rent “to promote and increase the social well-being of local residents” and SSRC commissioned architects to produce detailed drawings for consideration with the local planning authority. The site lay within the Swanage Conservation Area and was on the boundary of the Jurassic Coast World Heritage site, hence the scheme for development required the boathouse to be largely excavated into sloping ground and finished very sympathetically (for example with a grass-covered roof blending into the landscape and natural stone walls), greatly adding to the cost. SSRC and the town council made a joint application for planning permission on 16 June 2010.

14. In the Introduction to the “Design and Access Statement” included with the planning application (a document dated 14 June 2010 and prepared by Morgan Carey, Architects for SSRC), the proposed building was described as a “replacement boat storage facility”. In the body of the document, there were a number of further relevant comments:

(1) “The site is ideally located for the provision of boat storage facilities due to its proximity with the quay and slipways.... Level access to the building is a principal requirement both for boat manoeuvring and the provision of access for all” (under the heading “Design Principles”).

(2) “The adopted layout gives the best practical solution in terms of boat storage manoeuvring etc” (under the heading “Design Solution”).

(3) “Over the past two years SSRC has been working with Swanage Town Council (STC) to find a permanent site for the club to construct a boathouse to store its gigs and equipment. The site needs to be close to the water and provides direct access for launching gigs by hand” (under the heading “Planning” in the Appendix).

(4) There was also a section about the history of the SSRC and its “Quest for new boat storage facility”, which focused entirely on facilitation and extension of SSRC’s sea rowing activities.

15. Mr Wallace cast doubt on whether this document was actually the final form of Design and Access Statement, but no other version was produced to us and we find it was.

16. Outline planning permission was granted, following an overwhelmingly positive public consultation exercise, on 10 August 2010. The “Description of Development” stated in the document of grant was: “Erect boathouse and storage facilities; form new access.” The planning permission also contained the following condition:

The building hereby permitted shall be used only for the storage of boats and related activities in connection with Swanage Sea Rowing Club.

17. In the planning officer’s comments on the planning application, the following text appeared:

**Development Proposed:** To erect a boat house for storage facilities for the Swanage Rowing Club. It is noted that the application description refers to “club house”. It is clear from the drawings submitted that the building will be used as a boat house with storage and toilets. For clarity it has been agreed with the agent that the description should be amended to “boat house”.

18. The lease of the boathouse from Swanage Town Council to SSRC was eventually granted some two and a half years later, on 11 February 2013, and was expressed to be for a term of 125 years from that date. It contained the following covenant on the part of SSRC:

To use the Property only for the storing of gigs, rowing equipment and any other non-commercial activities associated with the running of a sea rowing club or similar organisation and consistent with Section 19 of the Local Government (Miscellaneous Provisions) Act 1976.

19. The lease also provided that if SSRC “is closed and any and all rowing activities are ceased for a period in excess of twelve (12) months then the Lease will be terminated, the Tenant will enter into a Deed of Surrender with the Landlord and the reversion will merge with the freehold title.”

### ***Fundraising***

20. Fundraising started in earnest once planning permission for construction of the boathouse had been granted in August 2010. Ms Barron took a leading role in the fundraising campaign, including the completion of a “Boathouse Appeal Document” for presentation to potential funders; a draft of that document had already been prepared by others, her task was to “make it look pretty and focus on the community aspects of the document that was intended to go to funders”. This document included the statement that “VAT advice has been sought and the club has assumed the project will be zero rated as it will be used solely for the purpose of the Club.” Ms Barron was unable to assist as to the origin of that statement or what lay behind it as she had simply cut and pasted it from the earlier document prepared by someone else. She had assumed it had been approved and verified before she had seen it, because of the history and the background of the others involved on the committee.

21. Commitments were obtained, largely from grant-making charities wishing to support SSRC’s local charitable activities. Progress appears to have been slow initially but a turning point was reached when, during the late summer or autumn of 2012, SSRC were invited to make a presentation to a local funding agency (also described as a “local action group”) known as “Chalk and Cheese”, through which public funding under RDPE (the Rural Development Programme for England, apparently part of the European Agricultural Fund for Rural Development) could be accessed.

22. SSRC’s detailed application for this funding was dated (and, we infer, submitted) on 28 October 2012. The presentation was scheduled to take place on 22 November 2012, and it was made clear that one of the requirements of the agency was for a formal statement to be given as part of the presentation confirming that the scheme would qualify for zero-rating for VAT purposes.

### ***Steps taken to establish VAT status of the project***

23. Mr Thomas decided to approach the tax department within his employer for help on this point. A number of emails passed to and fro involving him, his employer’s tax department and Ms Barron and Ms Jennings (the current Secretary of SSRC, who described herself as the “Hon Sec” of the club at the time, whom Mr Thomas had asked to help). Copies of these emails were not included in our bundle of documents, due to a misplaced wish not to involve Mr Thomas’s employer in these proceedings. We are satisfied however that no definitive tax advice was provided, but around 14 or 15 November 2012 a link to HMRC’s VAT Notice 708 “Buildings and Construction” was sent by the tax department, which was forwarded to Ms Jennings and Ms Barron.

24. Notice 708 was read by Ms Barron in her capacity as a member of the boathouse committee (in charge of the “fundraising” role) and by Ms Jennings. They discussed it over

the telephone. Ms Barron works for a marine insurance broker, having worked in the insurance industry for over 33 years, but has no tax or accounting background though she is currently a member of the Chartered Institute of Insurance and studying for a Diploma from that Institute. We were not made aware of Ms Jennings' occupation or qualifications, beyond an account of her general charitable and voluntary work.

25. Relevant parts of Notice 708 (the 2011 edition in force at the time) are set out in Part 1 of the Appendix to this Decision.

26. Ms Barron formed the view, having read Notice 708, that relief should be available, on the basis that SSRC was not carrying on a business – although she was aware from reading the Notice that the simple fact of being a charity was not determinative of this point, and she was also aware that SSRC charged membership fees, she thought the references in the Notice to membership fees was directed at the situation of a private club. She was not certain on the point, however, and conscious of her lack of specialist expertise she felt a call should be made to HMRC for confirmation. Ms Jennings agreed and she asked Ms Bramwell, in her capacity as treasurer of SSRC at the time, to telephone HMRC's helpline for confirmation of the position. This request was endorsed by a meeting of the full SSRC committee on Sunday 18 November 2012.

27. Ms Bramwell made the call on the morning of Monday 19 November 2012. It was a short conversation, probably no more than 5 minutes or so, after several false starts as she tried to find the correct number (she made 6 calls in all, totalling 24 minutes and 48 seconds). Of the two possible reasons for zero-rating, Ms Bramwell had, like Ms Barron and Ms Jennings, read Notice 708 and formed the view that the relevant issue was whether the boathouse was to be used "otherwise than in the course or furtherance of a business" (rather than on the basis that it would be used "as a village hall or similarly...").

28. There is significant dispute about the content of the telephone conversation. Ms Bramwell's evidence in her witness statement was that she:

"... explained the situation whereby, we were a charity run by volunteers giving of their free time and we relied upon donations and membership to maintain the gigs and various equipment. We were in the process of obtaining a large donation for the construction of a new building to move out of the polytunnel, which was no longer fit for purpose and needed confirmation that we would be zero-rated.

The HMRC helpline officer directed me to VAT Notice 708 and in particular to the page where the form is, that must be completed showing zero-rating status. He said that we should be fine for zero rating as long as no sales invoices were raised. At this point, I was happy to complete a zero-rating on the build as I felt that this was the required response. During the conversation, I thought the Helpline Officer knew the situation and I accepted his response without further questions.

29. In her email to Ms Jennings and Ms Barron late in the evening of Monday 19 November 2012, Ms Bramwell said this:

Have downloaded the certificate which I will complete tomorrow. I think it should be sufficient. Spoke to VAT person this morning and he confirms we should be zero-rated as long as we don't bill or charge anyone to use our facilities. Donations are fine.

30. During cross-examination, Ms Bramwell confirmed that she had informed the helpline officer she spoke to that SSRC covered its costs by charging subscriptions to its members and also some small charges for rowing (at another point, an amount of £1 per session was

mentioned), but they had no intention of using the boathouse to generate income – the most they might do would be to ask for potential third party users to make a voluntary donation, hence the reference to donations in her email. She also confirmed that the reference in her email to “facilities” referred to the building itself; as they were concerned with the construction of a new building, that was what she had in mind as the “facilities” under consideration.

31. HMRC’s views as to the content of this telephone call were different, though not based upon any direct evidence as to that content, only on evidence as to the standard procedures that ought to have been followed by its officers at the time. There was no recording of the call available nor had the officer who had taken it been identified. HMRC said that despite repeated requests from 9 March 2015, they were not provided with the date and time of the call or the number which had been called (without which they could not trace any recording) until 27 October 2017, by which time any recording had been destroyed. We do not consider it worthwhile exploring the detail of this dispute because it does nothing to cast light on the actual content of the telephone call itself, and we do not infer from the detailed sequence of events that SSRC were deliberately withholding the details in the hope that the recording would not be found. As early as 3 September 2015, the precise date and a two-hour time span for the telephone call were provided to HMRC. Ms Bramwell’s telephone bill did not include the exact number, only a global total for the month of calls to “0845/0870” numbers, and we understand that the actual number called was only eventually obtained after extensive telephone enquiries through an offshore call centre for her telephone service provider.

32. We heard evidence from officer McKeown on the training given to officers working within the Charities VAT team in 2012 (the team that dealt with the call from Ms Bramwell). Officer McKeown himself had started with HMRC in January 2012 and initially had worked in the Charities Gift Aid team with responsibility for investigating and confirming repayments. In May 2012 he moved to the Charities VAT team, where he subsequently remained until 2015 when he became part of the newly formed Charities Helpline team. At the time of Ms Bramwell’s call in November 2012, he was one of the officers responsible for taking calls to the helpline and, when appropriate, collating the appropriate information and arranging call-backs to be completed by experienced Technical Officers. He became a VAT Charities Technical Officer himself in February 2017 and from May of that year he took on a role of training the officers who actually took the calls on the Charities and Disabled VAT helpline.

33. In November 2012, there were approximately 6 officers in the Charities VAT team in Bootle (of which he was one) answering calls to the number called by Ms Bramwell. Officer McKeown gave details of the training that he “understood” those officers would have received, following “discussions of a general nature with the officers working on the helpline at that time as well as regarding the training material in place at that time”. He did not say he had experienced that training himself, though in answering questions about the content of his witness statement, he did refer to his own personal experience of some of the situations concerned. Essentially, he believed officers were trained to enable them to guide callers to the appropriate Public Notice rather than give any definitive answers over the telephone; if pressed, he believed they would have been trained to request submission of a written enquiry from the telephone caller. They would have had the ability to escalate a difficult call to a more senior Technical Officer. In this case, the relevant officer was said to have opined that “in my opinion it qualifies” after a call of approximately five minutes; when asked for his comment on such a reaction, officer McKeown said that the question whether the caller had provided the accurate facts was another matter. He would certainly not have approved of an unqualified answer being given.

34. Whilst we found this interesting, it did not persuade us that the standard procedure which officer McKeown had outlined would invariably have been followed in every case, including the present one.

35. Officer Breckell gave uncontentious evidence (by video link) about the decommissioning of HMRC's historical MITTEL system which, up to 2015, was used to record all calls to the Charities VAT Helpline. It was replaced in that year by a different system called KCOM, but due to budget constraints no recordings were transferred over to the new system and the old recordings are no longer available.

36. He confirmed that under the current system, a Helpline Officer taking a call would routinely provide the caller with a reference number, no matter the length or complexity of the call. This reference number is generated when the officer makes a manual log on a system called CCEL. Where a call is received from a VAT registered trader, the call is linked to that trader's record; otherwise the caller is asked to provide a postcode and the call is linked to that postcode. In 2012, however, this would only have been done if the caller requested it (unless the call was escalated to a Technical Officer), but the caller would not have been made aware of the need to do so. Officer Breckell had himself worked in the Charities VAT Team as a Technical Manager from January 2016 to May 2018 and based on his experience he expressed the view that no ruling on liability in a matter such as this would be given by telephone.

37. Of course, neither officer McKeown nor officer Breckell were able to give evidence as to the actual content of the telephone conversation with Ms Bramwell. We were effectively being asked to find that, on a balance of probabilities, the training and instructions understood to have been given at the time were specifically followed during the conversation with Ms Bramwell. It was implied that by delaying in providing the precise telephone number she had called when she spoke to the helpline officer, Ms Bramwell's account of the conversation should be regarded with suspicion because she had, by that delay, effectively prevented HMRC from tracking down the recording that would have been made of it, so depriving them of the opportunity to put forward potentially conflicting evidence.

38. In the circumstances, having found Ms Bramwell to be a completely reliable witness on this point, and noting that the most officer McKeown or officer Breckell could do was to describe the procedure that they believed ought to have been followed during the call, we reject any such suggestion and accept Ms Bramwell's version of events during the call. We therefore find that she spoke to a Charities VAT Helpline officer, gave him a short (but fair and adequate) summary of SSRC's activities and proposals (including, in particular, telling him that SSRC covered its costs by members' subscriptions and small rowing fees, was proposing to build a new boathouse which would be offered for use by other community groups and individuals locally free of charge but subject to possible voluntary donations) and she sought confirmation that a zero-rating certificate could be issued on the basis that SSRC was not intending to carry on a business. We are satisfied that the officer gave her a verbal assurance that, as long as SSRC did not require payment for the use of the boathouse (and at most requested voluntary donations), its intended use of the boathouse would qualify it for zero-rating. We are also satisfied that he did not give any indication that a verbal confirmation of this nature might not be sufficient for SSRC's purposes, nor did he tell her about the system under which HMRC would, if requested, make a record of the advice given.

### ***Subsequent events***

39. Late that evening (19 November 2012), Ms Bramwell emailed Ms Jennings and Ms Barron. She confirmed she "[s]poke to VAT person this morning and he confirms we should



be zero-rated as long as we don't bill or charge anyone to use our facilities. Donations are fine." This was reported back to the SSRC trustees at their next meeting in December.

40. SSRC's application for grant funding through Chalk and Cheese worked its way through the system and on 14 January 2013 Dorset County Council wrote to confirm that the application had been successful. A grant of £135,377 was offered, subject to the lease with Swanage Town Council being signed by 31 January 2013 and the project being completed by 30 September 2013. This injected some urgency, although it appears there was some elasticity in these deadlines.

41. SSRC entered into the lease with Swanage Town Council on 11 February 2013 (as mentioned above) and appointed a contractor, Greendale Construction Limited, to start work. The zero rating certificate was signed by Ms Jennings and dated 18 June 2013. The boathouse was handed over to SSRC in December 2013.

### **Intended use of the building**

42. The legislation states that zero rating is applicable to "the supply in the course of construction of a building intended solely for a relevant charitable purpose of any services of any services related to the construction". On the face of it, this might be regarded as requiring a continuous assessment, throughout the period of construction, of the intended future use of the building, with the taxable status of any particular supply depending on the future use of the building intended at the time of that supply. Fortunately in the present case there was nothing to indicate that SSRC's intentions as to the future use of the building changed at any point from the date when it made its presentation to Chalk & Cheese up to the date when construction finished, so we do not need to explore that potential complication. We therefore make the following assessment of SSRC's intentions as to the future use of the building, as they developed over the period up to its actual construction.

43. We are satisfied that when SSRC was first considering the new building, its thinking was very much in terms of a new boathouse, intended largely (if not exclusively) for the club's own use in developing its own rowing (and rowing-related fitness) activities in the local community, particularly with a view to increasing the participation of juniors. The physical design, within the planning constraints imposed because of its location, was very much focused around the provision of an enclosed space sufficient to store up to four gigs and associated oars and other paraphernalia, along with toilet and changing facilities and an outdoor apron area where gigs could be manoeuvred or stored outside on their trailers if necessary. The ceiling was comparatively low (from the photographs provided, we would estimate no higher than approximately eight feet). There was no bar or dedicated social area – the available space would not have allowed it in any event.

44. In SSRC's application to the de Moulham Trust (a local charitable trust in Swanage) for grant funding which was made in late 2011, the details of the "project facilities or service to be provided and how they will benefit the community" were stated as follows:

A boathouse for the storage of gigs and equipment. This will replace our existing 'temporary' polytunnel that has been in use for the past 10 years. A new boathouse will also allow us to provide changing, shower and toilet facilities. These are essential if we are to increase the number of rowing sessions available to members and non-members alike and to expand our youth section.

45. This application was successful and on 19 January 2012 the trust wrote to SSRC "to officially notify you that it was agreed to grant the sum of £50,000 towards the new boathouse for the Club."

46. We consider there was a significant change of emphasis when the possibility of funding through the “Chalk and Cheese” initiative arose. It was made clear to SSRC that it was a requirement of accessing this funding that the project should deliver not just “more of the same”, but “new activity” and a “shared facility” – effectively requiring the building to be offered for some use to the wider community. This requirement was fully taken on board and led to SSRC emphasising in its grant application its intention to provide new activity to the wider local community – mainly by way of an extension of its rowing activities but also by providing “a base for other groups to use who currently have no premises”. It was said that SSRC would like to “share our new facility with other groups (e.g. the Purbeck Runners – app 150 members).” This was followed up at the presentation to Chalk and Cheese, in which specific reference was made to “new activity” plans for the future:

- to collaborate with other groups in the community
- to work closer with schools and youth organisations to provide a ‘full’ rowing experience (to include land and sea)
- to enrich people’s knowledge of the sea (seamanship courses, safety, tides)
- to teach boat building, maintenance and repair skills.

47. In the course of correspondence with HMRC in March 2015, SSRC provided details of the uses to which the boathouse was actually put during 2014:

- Operate SSRC including holding regular Open Rowing sessions for non members, in 2014 430 visitors to the town used the boathouse facilities
- Provide a ‘Learn to Row’ course for the University of the Third Age
- Host a weekend of rowing for the French rowing club AVCP with a view to building a (separate) twinning association between them and Swanage
- Hold taster rowing sessions for Wareham Youth Club
- Provide premises for Swanage Carnival Committee to provide a range of indoor rowing competitions for Swanage Carnival Week
- Provide premises for Swanage RNLI to provide a gig racing competition during Lifeboat Week
- Hold a wedding reception
- Provide a dance space for Morris dancers during the annual Swanage Folk Festival
- Provide rehearsal space for a music group – ‘The Swanage Ukeladies’.

No fees or charges were made for the use of the building and its facilities.

48. At the same time, it was noted that the following activities were planned for 2015 – 2016, again without charge:

- Forecourt space for stallholders of the Swanage Fish Festival in June 2015 and use of the facilities in the boathouse for stallholders and members of the public.
- Rowing taster sessions for members of the public attending the Fish Festival (provided at no charge to participants)

- a wedding reception in the September
- a Christening reception in May
- Swanage Carnival events
- Swanage Lifeboat event
- Boat maintenance and seamanship courses for users of the sea and members of the public (provided by club volunteers at no cost to the charity or participants)
- Jurassic Coast Schools Junior Rowing (all land and sea-based training provided free of charge)
- Exhibition space for Purbeck Arts Weeks.

49. In early June 2015, further detail was provided of the intended use of the boathouse by the Swanage Fish Festival over the weekend 5 to 7 June 2015:

...to host music, a Purbeck Art exhibition and a stone-sculpting demonstration. The Swanage Ukuladies will also be playing at the boathouse over the weekend. Our facilities for the disabled will be available to members of the public during this event.... All proceeds from the Festival will be shared between the RNLI, the Fishermen's Mission and the Swanage Pier Trust.

At the same time, the following further plans for 2015 were identified:

- On 29<sup>th</sup> August we will be holding a boat and clothes jumble sale – open to the public
- On 20<sup>th</sup> September we will be volunteering helpers for the Purbeck Marathon and have offered our building as a registration station and facilities for the disabled lavatory for participants/spectators. All proceeds from this event will go to local charities.
- Our Chairman is currently liaising with the leader of the junior section of the Purbeck Running Group re them using the building as a secure base from which to operate, the Purbeck Runners have no base of their own and currently arrange to meet 'on the streets'. Again, no charge will be made to this or any group sharing our facility.

50. There were photographs of other similar activities embracing the local community in the documents bundle, for example the use of the boathouse to host a 1,000,000m indoor rowing challenge for both members and non-members in July 2014 to raise money for the Swanage Carnival, who would then distribute it to local charities; a barn dance; a first aid course and a "Respect the Sea" RNLI day.

51. Ms Barron also gave evidence (which we accept) that she was instrumental in sharing the use of the boathouse facilities not only with the Swanage Fish Festival (of which she was a committee member) but also the "Jurassic Sea Kayakers" and the "Swanage Area Dementia Friendly Group".

52. There was however no evidence before us of external users having equal priority with SSRC, or of any occasion when SSRC's intended use of the boathouse for its primary purpose was in any way impeded as a result of the facilities being offered to external users. We are satisfied that SSRC's intention, at least since the involvement of Chalk and Cheese caused it to widen the scope of its intended use of the boathouse, was to allow (indeed, encourage) other groups to use the boathouse whenever such use would not materially

interfere with SSRC's own use of it for its own main purposes (and the extensive use of the facilities over the weekend for the Swanage Fish Festival in June 2015 clearly shows that even for a whole weekend close to midsummer, this encouragement was real and not merely notional). The premises are clearly perfectly suitable for many such other uses, and the temporary removal of the gigs and other rowing paraphernalia to facilitate those uses would not have been a particularly time-consuming or difficult task.

53. As to the management and control of the use of the boathouse, this would clearly have been under the authority of the Executive Committee (or, from January 2014, the trustees – see below). The point was made to us that this body, who would have made the final decision on any potential clash between SSRC and some external user, did include a lot of members with other roles in the community, which we accept (for example, since 2010 the chairman was Martin Steeden, a local RNLI lifeboatman, and numerous other local voluntary or charitable roles were referred to as being filled by members of the Executive Committee or trustees). We accept that in running the boathouse, the Executive Committee/trustees would have been primarily concerned with their duties to SSRC, but it is equally clear that they were very aware of (and fully intended to meet) the commitment they had given to Chalk and Cheese to make the premises available for wider use by the community.

### **SSRC's constitution, finances and activities**

#### ***Constitutional matters***

54. SSRC's objects under its 17 January 2003 constitution ("the 2003 Constitution") are set out at [8] above. The 2003 Constitution also contained various powers, including:

power to raise funds and to invite and receive contributions provided that in raising funds the Executive Committee shall not undertake any substantial permanent trading activities and shall conform to any relevant requirements of the law.

55. Section B of the 2003 Constitution provided as follows:

#### **Administration**

subject to the matters set out below the Charity and its property shall be administered and managed in accordance with this Constitution by the members of the Executive Committee, constituted by clause G of this Constitution ("the Executive Committee").

56. Section E of the 2003 Constitution provided as follows:

#### **Membership.**

(1) Membership of the Charity shall be open to:

(i) individuals who are interested in furthering the work of the Charity and who have paid any annual subscription laid down from time to time by the Executive Committee, and

(ii) any body corporate or unincorporated association which is interested in furthering the Charity's work and has paid any annual subscription (any such body being called in this constitution a "member organisation").

(2) Every member shall have one vote.

...

57. The 2003 Constitution conferred no specific rights on members to use any of the facilities of SSRC. Constitutionally, such matters were delegated to the Executive Committee.

58. The 2003 Constitution was replaced as part of the process of converting SSRC into a Charitable Incorporated Organisation. Its new constitution (“the 2014 Constitution”) was adopted on 10 January 2014, obviously shortly after the completion of the new boathouse. SSRC’s objects remained the same. In place of an Executive Committee, SSRC now had a body of “charity trustees”, who were to “manage the affairs of [SSRC] and may for that purpose exercise all the powers of [SSRC]”. Membership of SSRC was expressed to be “open to anyone aged 16 years and over who is interested in furthering its purposes and who, by applying for membership, has indicated his, her or its agreement to become a member...” The charity trustees were in charge of admitting new members. Clause 9(5) of the 2014 Constitution said this:

**Membership fees**

The CIO requires members to pay an annual subscription as laid down from time to time by the charity trustees. The charity trustees may decide upon a different annual subscription for junior members, members in full-time education, pensioners, and the unemployed to the annual subscription payable by members.

59. Again, the 2014 Constitution conferred no specific rights on members to use any of the facilities of SSRC. They were simply entitled to attend and participate in general meetings of the members, at which (amongst other things) the members could appoint and remove charity trustees from office. Again, decisions about the use of SSRC’s facilities and payment for such use was delegated to the trustees.

***The finances of SSRC and their connection to its activities – Subscriptions, fees etc***

60. The SSRC accounts for the year ended 31 March 2012 showed the receipt of membership subscriptions of £3,578.50 and £4,430 by way of “fees and charges”. Ms Bramwell explained that of this £4,430, £3,702 was derived from “rowing fees (a fee of £1 for a member to row)”.

61. The accounts for the year ended 31 March 2013 (which appear to have been prepared on a rather more formal basis) showed a receipt of membership subscriptions of £4,314 and £4,695 by way of “fees and charges” (of which Ms Bramwell explained £3,599 was attributable to rowing fees).

62. We could not make sense of the remainder of the constituent parts of the “fees and charges” figures for the two years (which were not explained to us), but as they are comparatively small we disregard them for present purposes.

63. The accounts for the year ended 31 March 2014 (prepared even more formally) showed a receipt of membership subscriptions of £4,379. An analysis of those accounts provided by SSRC’s current treasurer Steven Butler stated they showed a further receipt of £3,464 for rowing fees (though the derivation of that figure from the accounts themselves was not clear to us). A separate “profit & loss statement” for the year to 31 March 2014 which was also contained in our papers contained a “rowing fees” income item of £3,337.82 and an income item of £409.71 in respect of “Ergo Rowing Machines”.

64. In subsequent years, separate “rowing fees” income disappeared. It was explained to us that a decision had been taken to abandon the charging of separate rowing fees (which were awkward to collect) from 1 April 2014 and cover that shortfall by increasing the subscriptions significantly (the subscription income shown for 2014-2015, for example, increased to £11,115). The standard subscription went up from £55 per year to £120 per year, but it was explained to the members with the 2014 membership renewal notice that:

**This subscription fee is inclusive of rowing fees and ergo fees.**

As of 1<sup>st</sup> April 2014 you will not need to pay rowing fees or ergo fees every time you attend a session (and you can row or use the ergos as often as you wish without any additional charge). Towing fees (if you take part in any regattas) are not included and there will continue to be an honesty box for refreshments in the boathouse.

Last year, adult membership was £55 and we paid rowing fees and/or ergo fees at each session. We hope that this year's membership fee will not only prove to be extremely good value for money, but will also be much easier to administer as we no longer have to worry about collecting rowing fees at the end of each session.

65. Mr Wallace sought to persuade us that the "rowing fees" were voluntary donations. Whilst we accept that decisions might have been taken from time to time on a "case-by-case" basis to allow people to row or use the ergos free of charge because of their particular financial circumstances, we find this was an occasional exception to the general requirement to "pay to row". Similarly, whilst we accept that non-members would from time to time be permitted to row or use the ergos, we find that was again an occasional exception to a general requirement to be a member as a precondition of taking part in either activity.

66. In short, whilst neither constitution of SSRC contained an express entitlement for members to take part in its rowing activities, both contained provisions effectively delegating the management of SSRC's activities to its Executive Committee/charity trustees and we find that as a general rule they required what could be called "regular rowers" to be (up to 31 March 2014) paid up members and pay rowing fees and (thereafter) to be paid up members.

67. Because SSRC was going through such a major project until late 2013, the 2014-15 accounts give a slightly clearer picture of its finances in normal times. These showed subscription income of £11,115 (which, it will be remembered, included amounts which would have been received as "rowing fees" in earlier years), donations of £1,840 and proceeds from other fundraising of £6,250. Payments during the year totalled £25,266, but after deducting £9,161 described as "Boathouse Building" (an item unique to that year), receipts more than balanced out payments. Obviously recurring items included "equipment maintenance" (£2,779), "boathouse maintenance and supplies" (£702), "boathouse occupancy (water and electricity)" (£511) and "insurance" (£2,867). It can be seen therefore how the trustees' objective of covering the normal running costs through the subscription income was roughly achieved. We accept Ms Barron's evidence that SSRC's insurance was arranged and paid for by it so as to cover not only its own use of the boathouse but also any that of any other individual or small community group.

#### **THE LAW**

68. It is common ground that zero-rating would properly apply in the present case if it falls within Item 2 of Group 5 in Schedule 8 to the Value Added Tax Act 1994 ("VATA"), as explained by Note 6 to that Group. The relevant provisions are set out in Part 2 of the Appendix to this decision. There were two issues before us on this legislation:

- (1) whether the boathouse was intended for use solely "otherwise than in the course or furtherance of a business"; and
- (2) whether the boathouse was intended for use solely "as a village hall or similarly in providing social or recreational facilities for a local community".

69. If SSRC was able to demonstrate that either of these requirements was satisfied, it was entitled to win its appeal.

70. Even if it failed on both counts, SSRC would still be entitled to win the appeal if it satisfied the Tribunal that there was a “reasonable excuse for... having given” the zero rating certificate.

71. We summarise the arguments put forward on these three points by the parties in the following section.

## ARGUMENTS

### **Otherwise than in the course or furtherance of a business**

72. The Viscount Dilhorne, in summary, argued as follows.

73. It could not be said that the deeming provision in s 94 VATA applied in this case. There was, he submitted, no provision by SSRC of the facilities or advantages available to its members in exchange for any subscription or other consideration. This was because there was no direct link between the payments made by members and the use of SSRC’s rowing facilities or ergos. The subscription payments entitled members to nothing more than their membership rights in connection with the running of SSRC. Neither those payments nor the rowing fees could be said to have a direct link to the members’ use of SSRC’s facilities because their payment conferred no greater rights than any member of the general public and in any event the rowing fees were essentially voluntary.

74. Turning to the wider question of whether SSRC was, on general principles, using the boathouse “in the course or furtherance of a business”, he submitted that SSRC’s activities could not properly be regarded as a business at all. Here, he referred to the “badges of trade” tests which he said were predicated by the Inner House of the Court of Session in *Morrison’s Academy Boarding Houses Association v C & E Commissioners* [1978] STC1 and later applied by the High Court in *C & E Commissioners v Lord Fisher* [1981] STC 238 and followed by the High Court in *C & E Commissioners v Apple & Pear Development Council* [1984] STC 296. Based on an assessment of the present case in the light of the six badges of trade, he submitted there was insufficient to characterise SSRC’s activities as a business.

75. Mr Watkinson argued, in summary, as follows.

76. The zero rating provisions in issue in this case are to be construed strictly, but not restrictively (*HMRC v Jacobs* [2005] EWCA Civ 930 and *Expert Witness Institute v Commissioners for Customs & Excise* [2002] STC 42 (CA)).

77. The judgment of the Court of Appeal in *Longridge on the Thames v HMRC* [2016] EWCA Civ 930 was the leading case in confirming the scope of and test for the carrying on of business activities within the meaning of Note 6(a). “Business” in that context had the same meaning as “economic activity” as considered in the CJEU jurisprudence. As a general rule, as confirmed in *EC v Finland* [2009] C-246/08, ECR I – 10605, an activity would be an “economic activity” (and therefore a “business”) where it is “permanent and is carried out in return for remuneration which is received by the person carrying out the activity”. There might be an exception if it could be established that there was no “direct link” between the service provided and the payment received, but that was not the case here. Charitable motives are irrelevant to the question of whether an entity is carrying on a business for these purposes. No profit motive is required. The “*Fisher*” criteria may have some role to play in making an assessment of the existence of “economic activity” but could not displace the “direct link” approach required by the CJEU jurisprudence. Where the amount of a charge for an activity is more than nominal and is directly related to the costs of the activity being provided, the “direct link” test will be satisfied. In conducting and seriously pursuing activities on a regular basis, having prudent financial management and operating on a substantial scale in a market where similar services were supplied on a commercial scale, SSRC was clearly carrying on

an “economic activity”, and this was the case irrespective of the fact that most of its activities were carried out by volunteers seeking to further its charitable objects.

78. Any suggestion that the membership subscriptions were “donations”, rather than payment for the ability to enjoy SSRC’s facilities was not supported by the evidence. There was a “direct link” between the enjoyment of those facilities and both the subscriptions and the separate “rowing fees” and (after the boathouse was completed and ergos were installed in it) “ergo fees”. There was also evidence of payments being made for rowing courses, sale of clothing and refreshments. The fact that SSRC’s constitution did not explicitly set out the scope of what a member received in exchange for their subscriptions was neither here nor there, given the evidence as to the actual position.

79. It was quite clear from the evidence as a whole that SSRC’s activities were permanent, run in earnest, financially prudent and run at some scale with a view to at least matching income to expenses.

80. In the alternative, the activities of SSRC clearly met the criteria set out in s 94(2)(a) VATA. It could not reasonably be argued that facilities or advantages (in the form of the entitlement to participate in SSRC’s rowing activities) were not being provided in exchange for the members’ subscriptions and the other fees paid by them.

### **Village hall or similar building**

81. In addition to the arguments which were put forward at the hearing on this point, we considered it appropriate to allow the parties to submit further representations in writing after the hearing following the release of the judgment of the Upper Tribunal in *Eynsham Cricket Club v HMRC*, which was expected imminently. That judgment was released on 1 October 2019 under reference [2019] UKUT 0286 (TCC).

82. The Viscount Dilhorne argued, in outline, as follows.

83. He structured his argument around the two key requirements which HMRC set out in their Notice 708 as being the necessary characteristics of “village halls and similar buildings”, namely:

- (1) that there is a high degree of local community involvement in the building’s operation and activities; and
- (2) that there is a wide variety of activities carried on in the building, the majority of which are for social and/or recreational purposes (including sporting).

84. As to the first of these characteristics, apart from the extensive involvement (both of the officers of the SSRC and of the local community) in the initial proposal for the boathouse and the enthusiastic public support for it, he referred to the variety of social and recreational activities for which the boathouse had been used. These activities had involved a far wider cross-section of the local community than simply the members of SSRC. He argued that the Executive Committee of SSRC involved such a wide range of individuals involved in numerous other local organisations and activities that this characteristic was clearly present in this case.

85. As to the second of these characteristics, quite apart from the rowing activities of SSRC itself, he pointed to the evidence as to the other social and recreational purposes to which the boathouse had been put.

86. The fact that the boathouse was quite clearly designed with SSRC’s intended primary use of it in mind did not affect things. The evidence showed (and here he referred to *Sport in Desford v HMRC* (2005) VATD 18914) that the supply of the services in constructing the



building was clearly to the community rather than to SSRC carrying on some commercial operation.

87. He also submitted that SSRC's case was extremely similar to *Eynsham*, save that it involved a boathouse rather than a cricket pavilion, and the same analysis ought to apply here.

88. Mr Watkinson argued, in outline, as follows. The Tribunal is engaged in a multifactorial assessment to establish whether the statutory criterion is satisfied. The facts in each case will always be unique, but some touchstones emerge from the case law.

89. Referring to *Ormiston Charitable Trust v CCE* [1994] VATD 13187, whilst he accepted that the concept of "use as a village hall or similar" was an elastic one, it could only stretch so far, and in a case where the physical design of the building itself was as specialised as here, it was just too big a step to regard it as capable of being used in that way.

90. The boathouse was not used (or intended for use) solely for a relevant charitable purpose; at best, it was intended for use for dual purposes, the first and foremost being the use by SSRC as its boathouse and base. This he called the "twin purposes argument".

91. Feeding into this argument, he also submitted that the various uses of the boathouse for SSRC's purposes should be characterised as use by the members in their capacity as paying SSRC members and not as members of the local community; such use could not be said to be "use as a village hall or similarly" and the amount of such use in this case was far in excess of any applicable *de minimis* margin. This he called the "capacity argument".

92. Mr Watkinson accepted that the authorities did not support the existence of a "stark twin purpose test" but submitted that the application of both his "twin purposes argument" and his "capacity argument" were really just matters of fact to be decided in the light of all the circumstances of the case.

### **Reasonable excuse**

93. After reciting the principles set out in *Perrin v HMRC* [2018] UKUT 156 (TC) from [70] onwards, Mr Watkinson submitted that a reasonable excuse could not arise in this case unless SSRC had accurately set out its operations to HMRC and was materially misled based on what it had said to HMRC. He urged that the matter be judged by reference to the criteria set out in *R v IRC, ex parte MFK Underwriting Agencies Ltd* [1999] 1 WLR 1545, namely:

- (1) the taxpayer should have put all his cards on the table by giving full details of the specific transaction on which he seeks HMRC's ruling;
- (2) the taxpayer must make plain that a considered ruling is sought;
- (3) the taxpayer should indicate the UC intends to make of any ruling given; and
- (4) the ruling relied on must be clear, unambiguous and devoid of relevant qualification.

94. Here, he submitted that none of these criteria were satisfied. He submitted that the "cursory nature" of Ms Bramwell's five minute phone call to HMRC in November 2012 was self-evident. The nature of her enquiry, as best it could be reconstructed, was an assertion that SSRC was a charity, was building a new building, would levy no charges for use of its "facilities" (when it was known that SSRC did in fact charge for the use of its facilities, by way of member subscriptions and rowing fees) and a request for confirmation that the construction could be zero rated. It was inherently unlikely that the helpline officer would have given any form of binding advice in a five minute phone call. Objectively, SSRC had not behaved as a reasonable taxpayer in its position would have behaved. In the absence of

seeking professional advice, it should have provided a full explanation of the project and its own activities so that a considered answer could be given and this was simply not possible in a five minute conversation of the type described.

95. Mr Watkinson also made similar points by reference to *Corkteck Ltd v HMRC* [2009] EWHC 785 (Admin), arguing that whilst this was not a “legitimate expectation” case, a similar approach should be adopted.

96. Finally, he argued that when considering whether SSRC had a reasonable excuse for issuing the certificate, the Tribunal should attribute to it both Ms Bramwell’s and Ms Barron’s state of knowledge, particularly as to the fact that SSRC members paid subscriptions and rowing fees to use its boats.

97. The Viscount Dilhorne argued, in outline, that Ms Bramwell’s evidence as to what actually took place during the telephone call should be preferred to HMRC’s evidence of what should have taken place. Ms Bramwell had telephoned an HMRC “helpline” in order to obtain help in relation to a matter which she believed she understood but knew to be complicated. She had provided a summary of SSRC’s activities and of the proposed boathouse and its intended use. She was not informed that a more detailed discussion was required, more information should be furnished, or a written submission should be made. Nor was she informed that no written record of the conversation would be made unless she requested it. She had sought confirmation and been given it, from the department held out by HMRC as the centre of expertise and help on the matter in question. In the circumstances, there could hardly be a more reasonable excuse for having issued the certificate, if such issue subsequently turned out to be incorrect as a matter of law.

## **DISCUSSION AND CONCLUSION**

### **Was the boathouse intended for use solely for a relevant charitable purpose?**

#### ***Introduction***

98. Both the “business” and “village hall” issues are addressed under this overall heading, but some preliminary comment is called for before addressing the two issues separately.

99. One thing that emerges very clearly from the authorities is that the question of whether one or other of the two limbs of the statutory test is satisfied is very much a question of fact based on an evaluation of all the circumstances of the particular case. Various attempts have been made in the cases to identify specific circumstances or features which will definitively place a particular case on one side of the line or the other, but the clear message that emerges from the authorities is that none of those circumstances or features provide a “bright line” in law, though they may provide indicators which are more less persuasive one way or the other when making the overall evaluation.

100. In addition, when seeking to apply both limbs of the statutory test, it is helpful to have an understanding of the history and purpose behind them. Originally, construction services in relation to all buildings were zero rated. This treatment was challenged by the EU Commission as being in breach of the U.K.’s Treaty obligations. In *EC Commission v United Kingdom* (Case 416/85) [1988] STC 456, the CJEU decided that this relief breached the U.K.’s Treaty obligations, insofar as the services in question were not provided to “final consumers”. This phrase referred primarily to persons who did “not use exempted goods or services in the course of an economic activity”; however it also extended to “the provision of goods or services at a stage higher in the production or distribution chain which is nevertheless sufficiently close to the consumer to be of advantage to him”.

101. In response to this decision, the UK reduced the scope of the zero rating on construction services so as to apply only to services falling within what is now item 2 of

Group 5 in Schedule 8 VATA, interpreted in accordance with Note 6. Note 6(a) clearly directly addresses services provided to persons not carrying on an “economic activity”, and Note 6(b) addresses, in line with the U.K.’s social aims, suppliers which are regarded as being “sufficiently close to” the final consumer.

102. Thus whilst the possibility of some overlap between Note 6(a) and Note 6(b) cannot be discounted, their separate existence mainly reflects a recognition that use of a building as a village hall or similarly might generally be expected to involve “economic activity” (prima facie disqualifying it from relief) and therefore a specific extension of the relief for such buildings was appropriate in order to further the U.K.’s permitted social policy of affording relief on the basis that the supplies of construction services to whoever was actually having the building erected were “sufficiently close” to the ultimate users of the building to “be of advantage” to them.

103. As stated by Sir John Vinelott in *Jubilee Hall Recreation Centre Ltd v CCE; St Dunstan’s Educational Foundation v CCE* [1999] STC 381, the provisions must be construed in a way which gives effect to the manifest purpose of bringing the scope of zero rating into accord with the EU provisions as construed by the CJEU.

***Was the boathouse intended to be used solely otherwise than in the course or furtherance of a business (Note 6(a))?***

104. The leading authority on this point is *Longridge on Thames v HMRC* [2016] EWCA Civ 930. Having examined the way the UK authorities had developed up to that time, Arden LJ in the Court of Appeal reached the view that they had “diverged” in some respects from the test under EU law. The latter laid down a “general rule” that an activity will be an “economic activity” (and therefore, in terms of the UK legislation, a “business”) where it is “permanent and is carried out in return for remuneration which is received by the person carrying out the activity” (see [91], referring to [24]). This general rule could be displaced by “evidence that there was no direct link between the service and the payment or by other evidence which shows there was no economic activity”.

105. It was made clear that the “*Fisher* criteria” have “a role to play” in deciding whether there is an “economic activity”, but could not displace the approach required by the EU jurisprudence [86]. We make the following assessment by reference to the criteria identified in *Fisher*:

- (1) We consider SSRC’s activities to be a “serious undertaking earnestly pursued”, bearing in mind the statement in *Fisher* that this did not necessarily require the undertaking to be commercial or profit-making.
- (2) Whether considered in terms of “continuity” (as referred to in the *Fisher* judgment) or in terms of “regularity” (as referred to in *Longridge* at [86]), we consider that SSRC’s activities would clearly qualify.
- (3) In terms of “substantiality”, we consider the combined subscription income and rowing fees totalling approximately £8,000-£9,000 per year around the time in question to be sufficiently substantial, in spite of coming nowhere near the VAT registration threshold (which The Viscount Dilhorne submitted to be important, a submission we reject).
- (4) In considering what the Court of Appeal referred to as the “organisational features” of SSRC, referring back to the *Fisher* criterion of whether the activity was “conducted in a regular manner and on sound and recognised business principles”, it is clear that SSRC sought by and large to balance its income with its expenditure and the

fact that volunteers gave freely of their time is not relevant here. We therefore consider this criterion to be satisfied.

(5) As to what the Court of Appeal referred to as “the predominant concern of the activity” (referred to in *Fisher* as “whether the activity is predominantly concerned with the making of taxable supplies to consumers for a consideration”), we do not consider that SSRC’s activities were predominantly so concerned. It had to meet the costs of furthering its charitable objects somehow, and chose to do so through a combination of members’ subscriptions and (until 2014) rowing fees. We do not therefore consider this criterion to be satisfied.

(6) As to what the Court of Appeal referred to as “a comparison with commercial providers of the same service” (referred to in *Fisher* as “whether the taxable supplies are of a kind which, subject to differences of detail, are commonly made by those who seek to profit by them”), we do not consider there to be any such comparison which can validly be drawn. The evidence before us was that sea rowing is a very specialised activity, carried on generally through clubs seemingly similar to SSRC. There was certainly no evidence before us of any commercial provider of similar supplies. We therefore do not consider this element of the *Fisher* criteria to be satisfied.

106. It can readily be seen that on our assessment, the application of the *Fisher* criteria does not point clearly in either direction, though on balance we consider it points slightly more towards characterising SSRC’s activities as “economic activity”.

107. The picture becomes much clearer when applying the “general rule” referred to above. There is no doubt in our minds that SSRC’s activities had the necessary degree of permanence (it had been operating for some ten years and had every intention of continuing) and it received consideration for them (in the form of both subscriptions and rowing fees). Following the approach of the Court of Appeal in *Longridge*, the questions then arise as to whether (a) there was a “direct link” between the services supplied by SSRC and the payments which it received or (b) there is some other evidence to show that there was no economic activity by SSRC.

108. As to the “direct link” point, we have found at [66] above that as a general rule an individual was required both to be a member of SSRC and (up to March 2014) to pay rowing fees when taking part in its activities. The sums involved may have been comparatively small and there may have been a degree of flexibility in enforcing payment, but they were not insignificant in aggregate and their actual amount was simply a reflection of the comparatively low running costs of SSRC, given that volunteers freely gave their time to support its activities. We therefore find there to have been a sufficient “direct link” between those payments and SSRC’s activities.

109. As to the “other evidence” point, we do not consider any of the other evidence before us points towards there being in fact no “economic activity”. As in *Longridge*, neither a predominant motive to further SSRC’s charitable objects, nor its extensive use of volunteers, nor its practice of waiving fees on a case-by-case basis constitutes such evidence.

110. Thus we find that SSRC intended to use the new boathouse “in the course or furtherance of a business” and accordingly zero-rating is not available to it pursuant to Note 6(a).

111. Having reached that view, it is not necessary for us to reach a decision on Mr Watkinson’s alternative submission, to the effect that SSRC was in any event deemed to use the boathouse in the course or furtherance of a business by reason of the application of s. 94(2) VATA, which provides that “the following are deemed to be the carrying on of a

business – ... the provision by a club, association or organisation (for a subscription or other consideration) of the facilities or advantages available to its members...”. We note the comment of Patten J in *CCE v Yarburgh Children’s Trust* [2001] EWHC 2201 (Ch) at [35], following a detailed consideration of the decision of the House of Lords in *Eastbourne Town Radio Cars Association v CCE* [2001] UKHL 19:

... I do not accept s. 94(2) should be treated as capable of converting into an economic activity a supply of services which would not otherwise be so treated. It seems to me that the legislative purpose of s. 94(2) was to ensure that the activities of an association or other organisation which is not a legal person should not be excluded from the VAT regime for that reason alone. Such an association could therefore be treated as a taxable person and be capable of making a taxable supply...

112. As the matter was not fully argued before us and it is not necessary for us to reach a decided view on it for the purposes of this appeal, we would wish to leave this question open for a future occasion in which it is determinative.

***Was the boathouse intended for use solely as a village hall or similarly in providing social or recreational facilities for the local community (Note 6(b))?***

113. It is worth reminding ourselves that the statutory test set out in the above heading is to be interpreted with the CJEU’s formulation in mind of whether the supply of building services to SSRC was “sufficiently close to” an actual user “to be of advantage to him”.

114. It is clear that it is not necessary for the building itself to have a design similar to that of the paradigm village hall, though it is equally clear that the design of the building might make it impossible for it to be used “as a village hall or similarly”. As Lord Tyre held in the Upper Tribunal in *New Deer Community Association v HMRC* [2015] UKUT 604 (TCC) at [20], the design of the building was relevant “to the extent that it dictated what uses were reasonably practicable”. We do not consider the design of the boathouse to be such as to render it impracticable to be used “as a village hall or similarly”: it has a large room suitable for a number of different uses and basic toilet, changing, washing and catering facilities, and the fact that it might not be suitable for all the activities one might see in some village halls does not in our view matter. Thus we do not consider that the design of the boathouse itself automatically excludes it from the relief.

115. If taking a very broad view of the matter, it would appear that the boathouse was intended solely for use in providing social or recreational facilities for the local community of Swanage and the surrounding area (and Mr Watkinson, correctly in our view, did not seek to argue that its intended use went wider than the “local community”). However, this view is predicated upon the assumption that the provision of social or recreational facilities to the members of SSRC in their capacity as such members (SSRC’s membership being drawn from the local community) can be regarded as provision of the facilities for the local community as a whole. This brings Mr Watkinson’s “capacity argument” into consideration.

116. In *HMRC v Greenisland Football Club* [2018] UKUT 440 (TCC), Horner J in the Upper Tribunal said this:

Modest incidental use of the facility by other than members of the local community may be acceptable. However, it is no answer to say that it was used by members of the local community because the clubhouse was being used by members of GFC who were from that community. This is because the important issue is the capacity in which they were using the facilities. If they were using the facilities as GFC members, junior members, affiliated members, associate members, playing members, its supporters, its parents

etc (hereinafter called “GFC users”), then they were not doing so as members of the local community (see *Jubilee Hall* at 394(f)).

117. The Upper Tribunal in *Eynsham Cricket Club v HMRC* [2019] UKUT 0286 (TCC), however, also considered this point (in addressing what was identified in that case as the “community issue” – i.e. whether members of the cricket club using the facilities were using them in their capacity as members of the local community in circumstances where the FTT had found that the club members were the primary intended users of the pavilion). They said this at [148] – [149]:

148. In the present case, the FTT found that ECC’s facilities were primarily for use by its members. The relevant question therefore is whether when it was used by the members of ECC (as a cricket pavilion), ECC was using the pavilion to provide recreational facilities for the local community of Eynsham. We do not see why not. ECC, as its name suggests, is a local club. Its objectives include the promotion of “participation *within the local community* in healthy recreation by the provision of facilities for the playing of cricket”... The FTT does not appear to have made a finding as to how many members of ECC in fact were residents of Eynsham, but it did find that the people capable of benefiting from ECC’s purpose of advancing amateur sport were the residents of Eynsham and surrounding villages..., that 10 of the 12 members of the General Committee that managed ECC were currently residents of Eynsham..., that there was no sharp division between club and community..., and that the pavilion was intended for use by ECC solely for the purpose of providing social or recreational facilities for a local community, namely Eynsham..., by which they meant that the pavilion was to be used in providing recreational facilities to a local community, some of whom would be members of the club and some of whom would not...

149. We do not think there is any principle of law that used by a local sports club cannot be regarded as used by the local community. If as here the club is established for the purpose of providing sporting facilities for the members of the local community, then we do not see that used by the members of the club ceases to be community use. If Horner J decided otherwise, then we respectfully disagree with him...

118. We take the point that in *Greenisland*, the ground of appeal under consideration when Horner J made the comment set out at [116] above was whether the FTT had given adequate reasons for its decision; Horner J was setting out the basis for his reasoning that they had not, but he decided the appeal on different grounds so his comments could not be regarded as central to his decision; equally, in *Eynsham*, the Upper Tribunal again decided the appeal on an entirely different issue and therefore its analysis of the point was similarly *obiter*. Thus there is apparently conflicting guidance from the Upper Tribunal, not directly binding on us, on the importance of the capacity in which club members use the facilities in deciding whether provision of the facilities to them can be regarded as their provision for a local community of which they form part.

119. The context of the two cases should be borne in mind. In *Greenisland*, there were only 40 members of the club, each paying a subscription of £20. The boys who played football for the club and used its facilities in that capacity were far more numerous (only persons aged 18 or above could be members) and paid £20 per month by way of “dues” (with some discounts available). The aggregate amount of the subscriptions and dues was substantial – over £55,000 in a year. Apart from priority being given to the club for footballing use on Saturdays during the season, there was apparently no priority for using the facilities, which were available to local individuals and groups on a “first-come first-served” basis. The FTT

had made no findings as to the intended use by the local community of the clubhouse or as to its intended use by the club (or as to the actual use in each case). Nor had it attempted to quantify or analyse the nature of their respective uses (albeit that an estimate had been put forward in correspondence to the effect that the club would use the facilities at most 20% of the available time, mostly on Saturdays). In *Eynsham*, where the annual cost of becoming a non-playing member of the club (and thereby entitled to access to all its facilities apart from eligibility to play for its cricket teams) was only £5, the approach of the Upper Tribunal set out above can be more readily understood.

120. In considering this point, it is also necessary to bear in mind the approach of the Court of Appeal in *Jubilee Hall & St Dunstan's*.

121. In *Jubilee Hall*, Sir John Vinelott did not really address the point, simply endorsing the reasoning of the VAT and Duties Tribunal, which regarded the “free use... by local people” as being

... subsidiary to what is quite plainly a well-organised commercial operation competing with other sports centres in the neighbourhood. Such a venture in my judgment is rather the antithesis of any normal conception of how a village hall operates.

In *St Dunstan's*, he took the view that

... the sports centre was constructed primarily for use as one of the facilities of a fee-paying school; use for community purposes at the direction of the council, was secondary. Insofar as pupils at the school benefited from that facility, they did so not as members of the local community, but as pupils.

In other words, use by the school (or its pupils) could not amount to use by the community. Beldam LJ thought that the “scale of Jubilee Hall’s commercial activities went well beyond the normal activities of a village hall”, and that the relevant “use” in *St Dunstan's* was “use by a fee-paying school”, which was obviously not use by a local community. Thus in *Jubilee Hall*, the Court of Appeal did not explicitly address the question of the capacity in which any particular user used the hall (whether free or subsidised local residents or “normal” members paying commercial rates), it simply considered the scale and nature of the “commercial” activities to be too great to bear comparison with a “village hall”; and in *St Dunstan's*, they did not consider the pupils to be using the facilities at all in any relevant way, so the question of whether they were part of the “local community” was itself irrelevant.

122. Overall, therefore, we do not consider the authorities lay down a general rule that the intended use of the new facilities by a member of the club constructing them cannot be regarded as use by the local community for the purposes of Note 6(b). To put it another way by reference to the facts of the present case, we consider there is no hard and fast rule that the requirements of Note 6(b) could not be satisfied just because the boathouse was intended for more than incidental use by SSRC members in their capacity as such.

123. In terms of the argument as advanced by Mr Watkinson, therefore, we consider the “capacity argument” to be something of a red herring, except in a situation such as *Jubilee Hall*, where the members are using the facilities in their capacity as such in the context of a “well-organised commercial operation, going well beyond the normal activities of a village hall”. Like the Upper Tribunal in *Eynsham*, we see no reason why, as long as the broader requirement of “providing social or recreational facilities for a local community” is satisfied, relief should be denied simply because some part of the local community accesses those facilities mainly through membership of the club which owns and manages the facilities. We consider the “capacity argument” has no application in the present case, because we do not consider the type and scale of activities of SSRC to be in any way comparable to the sorts of

activities under consideration in *Jubilee Hall*. Whilst it may be conducting an “economic activity”, it is certainly not “a well-organised commercial operation”. Thus we consider that the provision for the members of SSRC of the facilities of the boathouse should properly be considered as part of the provision of those facilities “for a local community” in the terms of Note 6(b).

124. We turn now to Mr Watkinson’s “primary submission”, the “twin purposes argument” referred to at [90] above.

125. It is clear that for the relief to be available, the boathouse must have been intended for use solely for a relevant charitable purpose – here, as a village hall or similarly in providing social or recreational facilities for a local community. Clearly, as has been remarked on in a number of the authorities, the intended use of the building for the provision of social or recreational facilities for a local community is not enough. The building must be intended for use solely as a village hall or similarly in the provision of such facilities. This calls for an enquiry into the intended use of the building, and then an assessment of whether that intended use meets the required test as “use solely as a village hall or similarly” in the provision of the relevant facilities.

126. It is clear to us that in this case the intended use of the boathouse was primarily to provide a permanent venue where SSRC’s boats and other equipment could be securely stored, and where its members could change, shower and participate in training (both educational and physical) associated with their sea rowing activities. Originally, that had been its sole intended purpose, but by the time the boathouse was being built, that purpose had evolved, following the involvement of Chalk and Cheese, such that it was also intended to be made available for a wide range of other activities by local groups and individuals as summarised above.

127. In our view, however, a significant feature of the present case is that even when there was nobody physically present using the boathouse, it would still have been generally fulfilling a main part of its intended primary purpose, namely to store SSRC’s boats and other equipment securely (thereby filling substantially all the available space). There was some suggestion that at times the boats would not necessarily be returned to the boathouse after use but would be moored up, but there was no clear evidence about this and we infer that it was certainly not the norm. Thus, rather than having an empty hall generally available for use, SSRC would have to make arrangements for the boats to be removed and temporarily stored before the boathouse could be used by other local community groups and individuals. This may not have been a particularly time-consuming process, but the fact that it would be necessary before the boathouse could be used for other significant activities in our view points quite strongly away from the boathouse having been intended solely for use “as a village hall or similarly”.

128. We reject any suggestion that Note 6(b) cannot be satisfied because the boathouse was owned and managed by SSRC through its executive committee, rather than by some committee of local individuals with no affiliations. As was made clear in *HMRC v Caithness Rugby Football Club* [2016] UKUT 354 (TCC) at [34]:

On a proper construction of the provision it does not require that a local community has direction over, or control of, the use of the building within which the relevant facilities are provided. In any particular case the existence or absence of direction or control will be a relevant factor, but not necessarily a decisive one. In my opinion the use of a building may be intended to be at the disposal of a local community even though the community is not the body directing or controlling its use.



129. We share that view. The individuals on the executive committee of SSRC represented a wide range of local groups and whilst their primary obligation in discharging their duties as committee members would have been to safeguard the interests of SSRC, that obligation must be seen against the background of SSRC's commitment to Chalk and Cheese to make the boathouse available to other users. We therefore consider that this factor does not point either way in making our overall assessment.

130. Having considered the overall picture and taken all the above matters into account, we do not consider it can fairly be said that the boathouse was intended for use solely as a village hall or similarly in providing social or recreational facilities for the local community around Swanage. In short, we consider the intended use of the building to have been too dissimilar from the paradigm village hall use to be capable of falling within Note 6(b).

### **Reasonable excuse**

131. We adopt the approach set out in the decision of the Upper Tribunal in *Perrin*:

70. ... the task facing the FTT when considering a reasonable excuse defence is to determine whether facts exist which, when judged objectively, amount to a reasonable excuse for the default and accordingly give rise to a valid defence. The burden of establishing the existence of those facts, on a balance of probabilities, lies on the taxpayer. In making its determination, the tribunal is making a value judgment ...

71. In deciding whether the excuse put forward is, viewed objectively, sufficient to amount to a reasonable excuse, the tribunal should bear in mind all relevant circumstances; because the issue is whether the particular taxpayer has a reasonable excuse, the experience, knowledge and other attributes of the particular taxpayer should be taken into account, as well as the situation in which that taxpayer was at the relevant time or times (in accordance with the decisions in *The Clean Car Co* and *Coales*).

72. Where the facts upon which the taxpayer relies include assertions as to some individual's state of mind (e.g. "I thought I had filed the required return", or "I did not believe it was necessary to file a return in these circumstances"), the question of whether that state of mind actually existed must be decided by the FTT just as much as any other facts relied on. In doing so, the FTT, as the primary fact-finding tribunal, is entitled to make an assessment of the credibility of the relevant witness using all the usual tools available to it, and one of those tools is the inherent probability (or otherwise) that the belief which is being asserted was in fact held; as Lord Hoffman said in *In re B (Children)* [2008] UKHL 35, [2009] 1AC 11 at [15]:

"There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not. Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities."

73. Once it has made its findings of all the relevant facts, then the FTT must assess whether those facts (including, where relevant, the state of mind of any relevant witness) are sufficient to amount to a reasonable excuse, judged objectively.

74. Where a taxpayer's belief is in issue, it is often put forward as either the sole or main fact which is being relied on – e.g. "I did not think it was necessary to file a return", or "I genuinely and honestly believed that I had submitted a return". In such cases, the FTT may accept that the taxpayer did indeed genuinely and honestly hold the belief that he/she asserts; however that fact on its own is not enough. The FTT must still reach a decision as to

whether that belief, in all the circumstances, was enough to amount to a reasonable excuse. So a taxpayer who was well used to filing annual self-assessment returns but was told by a friend one year in the pub that the annual filing requirement had been abolished might persuade a tribunal that he honestly and genuinely believed he was not required to file a return, but he would be unlikely to persuade it that the belief was objectively a reasonable one which could give rise to a reasonable excuse.

75. It follows from the above that we consider the FTT was correct to say (at [88] of the 2014 Decision) that “to be a reasonable excuse, the excuse must not only be genuine, but also objectively reasonable when the circumstances and attributes of the actual taxpayer are taken into account.”

...

81. When considering a “reasonable excuse” defence, therefore, in our view the FTT can usefully approach matters in the following way:

(1) First, establish what facts the taxpayer asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer or any other person, the taxpayer’s own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).

(2) Second, decide which of those facts are proven.

(3) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question “was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?”

(4) Fourth, having decided when any reasonable excuse ceased, decide whether the taxpayer remedied the failure without unreasonable delay after that time (unless, exceptionally, the failure was remedied before the reasonable excuse ceased). In doing so, the FTT should again decide the matter objectively, but taking into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times.

132. We reject Mr Watkinson’s argument that the requirements set out in *MFK* are applicable in a case such as this. *MFK* was a judicial review case in which the question for decision was whether the Revenue had, by its words and conduct, precluded itself from even seeking to impose a particular tax liability. That is not the issue in the present case. Similarly, we do not think it appropriate to apply the “legitimate expectation” criteria set out in *Corkteck*, which we consider to be equally inapplicable to a “reasonable excuse” case.

133. Following the approach in *Perrin*, therefore, we find as follows.

134. The facts which SSRC asserts give rise to a reasonable excuse are, in short, that Ms Bramwell and Ms Jennings read Notice 708, agreed that they thought SSRC should qualify for zero rating but realised the law was quite complex and technical. They agreed it was appropriate to seek reassurance as to the availability of zero rating by contacting HMRC’s helpline specifically established and advertised for the purpose of providing assistance in such matters. Ms Bramwell did so. In summary, she informed the helpline officer that SSRC

were a charity run by volunteers giving of their free time and they relied upon donations and membership subscriptions, including some small charges for rowing, to maintain the gigs and various equipment and generally cover their costs. They were planning to build a new boathouse, which would be used for SSRC's purposes but also be offered for use more widely to the local community. She told him that SSRC had no intention of using the boathouse to generate income – the most they might do would be to ask for potential third party users to make a voluntary donation for using it. She asked for confirmation that the construction of the building could be zero rated. The officer confirmed to her that as long as SSRC did not make any charges for the use of the new boathouse by third parties, zero rating was appropriate in the circumstances she outlined and he referred her to the form of certificate set out at the end of Notice 708. In doing so, he did not indicate that:

- (1) any further information was required from her before he could give the reassurance being sought,
- (2) a detailed written application was required from SSRC,
- (3) the advice being given could only be relied on if it was confirmed in writing by HMRC, or
- (4) she should make a specific request if she wanted a written record of the oral advice being given to be kept by HMRC.

135. Having had the opportunity to hear Ms Bramwell's evidence in person, and see it tested in cross examination, we find these facts to have been proven.

136. We consider Ms Bramwell's (and therefore SSRC's) acceptance of the advice given in this way to have been objectively reasonable in the circumstances. We do not consider there is anything in the knowledge or personal attributes of Ms Barron (or indeed of Ms Bramwell or any other member of SSRC's Executive Committee) which can affect this conclusion.

137. This covers paragraphs [81(1) to (3)] of the guidance given in *Perrin*. Paragraph [81(4)] is not relevant in the circumstances of this case.

138. We therefore find that, even if (as we have found) the issuing of the zero rating certificate was incorrect in law, SSRC had a reasonable excuse for issuing it.

#### **SUMMARY AND CONCLUSION**

139. We consider that the boathouse was not intended for use solely "otherwise than in the course or furtherance of a business" – see [110]. We therefore decide in favour of HMRC on this point.

140. We consider that the boathouse was not intended for use solely "as a village hall or similarly in providing social or recreational facilities for a local community" – see [130]. Again, therefore, we find in favour of HMRC on this point.

141. We consider that SSRC had a reasonable excuse for issuing the zero-rating certificate – see [138].

142. The appeal is accordingly ALLOWED.

#### **RIGHT TO APPLY FOR PERMISSION TO APPEAL**

143. 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.

**KEVIN POOLE**

**TRIBUNAL JUDGE**

**RELEASE DATE: 27 OCTOBER 2020**

## APPENDIX

### PART 1 – EXTRACT FROM NOTICE 708

#### 14.7 What ‘relevant charitable purpose’ means

##### 14.7.1 The definition

‘Relevant charitable purpose’ means use by a charity in either or both of the following ways:

- otherwise than in the course or furtherance of business – see sub-paragraph 14.7.3;
- as a village hall or similarly in providing social or recreational facilities for a local community – see sub-paragraph 14.7.4

##### 14.7.2 Where is the definition used?

The definition applies in the following situations:

- section 3 – zero-rating the construction of new buildings;
- ...

##### 14.7.3 Business

Information on what is meant by ‘business’ can be found in Notices:

- 700 The VAT Guide
- 701/1 Charities, and
- 701/30 Education and vocational training.

Remember, activities that do not make a profit, or activities where any profit is only used to further the aims and objectives of the charity, can still be business activities.

Buildings typically seen as not being used for business purposes include:

- Places of worship;
- offices used by charities for administering non-business activity, such as the collection of donations;
- school buildings where no fee is charged for the provision of education; and
- scout and guide huts that are used purely for scouting and guiding activities (**please note** that if the huts are let out for local community activities they can be seen as similar to village halls – see below)

Buildings typically seen as being used for business purposes:

- membership organisations where the organisation charges a membership fee;
- school buildings where a fee is charged for the provision of education;
- offices used by charities for administering business activities, such as fund-raising events where an entrance fee is charged; and
- village halls and similar buildings but see below.

##### 14.7.4 Village halls and similar buildings

A building falls within this category when the following characteristics are present:

- there is a high degree of local community involvement in the building's operation and activities; and
- there is a wide variety of activities carried on in the building, the majority of which are for social and/or recreational purposes (including sporting).

**NB:** Users of the building need not be confined to the local community but can come from further afield.

Any part of the building which cannot be used for a variety of social or recreational activities cannot be seen as being used as a village hall.

Buildings that are **not** typically seen as being similar to village halls are:

- community swimming pools;
- community theatres;
- membership clubs (although community associations charging a notional membership fee can be excluded); or
- community amateur sports clubs.

Buildings that are seen as being similar to village halls when the characteristics noted above are present:

- scout or guide huts (please note that where scout or guide huts are used purely for scouting and guiding activities, they are not being used as village halls but neither are they being used for business purposes);
- sports pavilions;
- church halls;
- community centres; and
- community sports centres.

## **PART 2 – RELEVANT EXTRACTS FROM VATA**

### **Schedule 8, Group 5:**

#### **Item No**

1. ...

2. The supply in the course of construction of –

(a) a building designed as a dwelling or number of dwellings or intended for use solely for a relevant residential purpose or a relevant charitable purpose...

...

of any services related to the construction other than the services of an architect, surveyor or any person acting as a consultant or in a supervisory capacity.

...

#### **NOTES**

...

(6) Use for a relevant charitable purpose means use by a charity in either or both the following ways, namely –

- (a) otherwise than in the course or furtherance of a business;
- (b) as a village hall or similarly in providing social or recreational facilities for a local community.

**Section 94 VATA:**

**94 Meaning of “business” etc**

(1) In this Act “business” includes any trade, profession or vocation.

(2) Without prejudice to the generality of anything else in this Act, the following are deemed to be the carrying on of a business –

- (a) the provision by a club, association or organisation (for a subscription or other consideration) of the facilities or advantages available to its members; and
- (b) the admission, for a consideration, of persons to any premises.

...

**Section 62 VATA:**

**62 Incorrect certificates as to zero-rating, etc**

(1) Subject to subsections (3) and (4) below, where –

- (a) a person to whom one or more supplies are, or are to be, made –
  - (i) gives to the supplier a certificate that the supply or supplies fall, or will fall, wholly or partly within... Group 5... of Schedule 8...

...

and

- (b) the certificate is incorrect,

the person giving the certificate shall be liable to a penalty.

...

(2) The amount of the penalty shall be equal to –

- (a) in a case where the penalty is imposed by virtue of subsection (1) above, the difference between –
  - (i) the amount of the VAT which would have been chargeable on the supply or supplies if the certificate had been correct; and
  - (ii) the amount of VAT actually chargeable;

...

(3) The giving ... of a certificate shall not give rise to a penalty under this section if the person who gave ... it satisfies the Commissioners or, on appeal, a tribunal that there is a reasonable excuse for his having given ... it.