TC06416

Appeal number: TC/2017/04267

STAMP DUTY LAND TAX – application of higher rate to certain high value residential transactions pursuant to Schedule 4A of the Finance Act 2003 – relief for trades involving the making of a dwelling available to the public – whether a dwelling that is to be converted into bed and breakfast accommodation qualifies for the relief – no – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

GOODE CUISINE COMPANY LIMITED **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE TONY BEARE

Sitting in public at Taylor House, 88 Rosebery Avenue, London EC1R 4QU on 19 March 2018

Ms C K Bun of Birketts LLP for the Appellant

Mrs C Cowan and Mr A Sayers, officers of the Respondents, for the Respondents

DECISION

1. This decision relates to an appeal by the Appellant against the conclusion set out in a closure notice issued by the Respondents on 25 January 2017 (and a consequent amendment to the Appellant's return), which was subsequently upheld on review by the Respondents on 5 May 2017, requiring the Appellant to pay additional Stamp Duty Land Tax ("SDLT") of £74,500 in respect of the Appellant's purchase of a residential property named Manor Lodge, Church Street, Thornham, Hunstanton, Norfolk (the "Property") for £645,000 in late 2015.

Background

2. The effective date of the purchase of the Property for SDLT purposes was 20 October 2015. On the same day, the Appellant filed an electronic SDLT return in relation to the acquisition of the Property in which it claimed relief under paragraph 5B of Schedule 4A to the Finance Act 2003 ("Schedule 4A") from the higher rate of 15% that was applicable under paragraph 3 of Schedule 4A to "high value residential transactions".

3. At the time of the acquisition, the Appellant intended to convert the Property into additional rooms to increase the capacity of the Appellant's bed and breakfast business, which was carried on as part of its business of running a public house called the Orange Tree. To that end, an application was made to Kings Lynn and West Norfolk Council to change the use of the Property from a single dwelling to "7 commercial letting rooms".

4. The Appellant considered that its proposed use of the Property to derive further income from its bed and breakfast business meant that it had the intention of exploiting the Property "as a source of income in the course of a qualifying trade" for the purposes of paragraph 5B(2) of Schedule 4A and therefore met the conditions in paragraph 5B of Schedule 4A.

5. The present dispute turns on whether the Appellant was entitled to claim that relief or whether the Respondents are correct in saying that the conditions necessary for the relief to apply have not been satisfied and that the Appellant must therefore pay the additional SDLT necessary to mean that, in aggregate, it will have paid a 15% charge to SDLT on the purchase price for the Property.

The relevant law

6. Schedule 4A provides for a higher rate of SDLT to apply to certain "high value residential transactions". The main charging provision in the schedule is paragraph 3 but this is then followed by various paragraphs that provide relief from the charge at the higher rate. One of those paragraphs is paragraph 5B, which is headed "Trades involving making a dwelling available to the public".

7. It is common ground that the acquisition of the Property met the conditions necessary to be subject to the charge at the higher rate under paragraph 3 of Schedule 4A if the relief in paragraph 5B of Schedule 4A is not available. This is because, at the effective date for SDLT purposes:

(a) the Property was a residential property and was therefore a "dwelling" (as defined in paragraph 7(2) of Schedule 4A);

(b) chargeable consideration of more than £500,000 was attributable to the purchase of the Property and therefore the Property was a "higher threshold interest", pursuant to paragraph 1(2) of Schedule 4A;

(c) the Property formed the entirety of the transaction and therefore the transaction was a "high value residential transaction" for the purposes of paragraph 3 of Schedule 4A, pursuant to paragraph 2(2) of Schedule 4A; and

(d) the purchaser of the Property was a company.

8. As such, both of the conditions set out in paragraph 3(2) of Schedule 4A were met.

9. Paragraph 5B of Schedule 4A provides as follows:

"(1) Paragraph 3 does not apply to a chargeable transaction so far as its subject-matter consists of a higher threshold interest in relation to which the conditions in sub-paragraph (2) are met.

(2) The conditions are that –

(a) the higher threshold interest is acquired with the intention that it will be exploited as a source of income in the course of a qualifying trade, and

(b) reasonable commercial plans have been formulated to carry out that intention without delay (except so far as delay may be justified by commercial considerations or cannot be avoided).

(3) "Qualifying trade", in relation to a higher threshold interest, means a trade that –

(a) is carried on on a commercial basis and with a view to profit, and

(b) involves, in its normal course, offering the public the opportunity to make use of, stay in or otherwise enjoy the dwelling as customers of the trade on at least 28 days in any calendar year.

(4) For the purposes of sub-paragraph (3), persons are not considered to have the opportunity to make use of, stay in or otherwise enjoy a dwelling unless the areas that they have the opportunity to make use of, stay in or otherwise enjoy include a significant part of the interior of the dwelling.

(5) The size (relative to the size of the whole dwelling), nature and function of any relevant area or areas in a dwelling are taken into account in determining whether they form a significant part of the interior of the dwelling."

10. Given their significance to this decision, I should also set out the terms of paragraph 7 of Schedule 4A, which is headed "Meaning of dwelling", and Section 116(3)

of the Finance Act 2003, which is part of the section that defines the term "residential property" for the purposes of Part 4 of the Finance Act 2003.

11. Paragraph 7 of Schedule 4A provides as follows:

"(1) This paragraph sets out the rules for determining what counts as a dwelling for the purposes of this Schedule.

(2) A building or part of a building counts as a dwelling if –

(a) it is used or suitable for use as a single dwelling, or

(b) it is in the process of being constructed or adapted for such use.

(3) Land that is, or is to be, occupied or enjoyed with a dwelling as a garden or grounds (including any building or structure on such land) is taken to be part of that dwelling.

(4) Land that subsists, or is to subsist, for the benefit of a dwelling is taken to be part of the dwelling.

(5) The subject-matter of a transaction is also taken to include an interest in a dwelling if –

(a) substantial performance of a contract constitutes the effective date of that transaction by virtue of a relevant deeming provision,

(b) the main subject matter of the transaction consists of or includes an interest in a building, or a part of a building, that is to be constructed or adapted under the contract for use as a single dwelling, and

(c) construction or adaptation of the building, or part of the building, has not begun by the time the contract is substantially performed.

(6) In sub-paragraph (5) "contract", "relevant deeming provision" and "substantially performed" have the same meaning as in paragraph 7(5) of Schedule 6B.

(7) A building or part of a building used for a purpose specified in section 116(2) or (3) is not used as a dwelling for the purposes of sub-paragraph (2) or (5).

(8) Where a building or part of a building is used for a purpose mentioned in sub-paragraph (7), no account is to be taken for the purposes of sub-paragraph (2) of its suitability for any other use."

12. Section 116(3) of the Finance Act 2003, so far as it is material to this decision, provides as follows:

For the purposes of subsection (1) a building used for any of the following purposes is not used as a dwelling -

…(f) a hotel or inn or similar establishment."

13. The above means that the conditions which the relevant transaction needed to satisfy at the effective date in order to qualify for the relief under paragraph 5B of Schedule 4A were that:

(a) the Property was acquired with the intention that it would be exploited as a source of income in the course of a "qualifying trade"; and

(b) reasonable commercial plans had been formulated to carry out that intention without delay (except so far as delay might be justified by commercial considerations or could not be avoided).

The Respondents' position

14. The Respondents do not take issue with the Appellant in relation to the second of the above conditions. They accept that, if the first condition is satisfied, then so too is the second because, at the effective date, the Appellant clearly had reasonable commercial plans to convert the Property into additional rooms for use in its existing bed and breakfast business without delay (except so far as any delay might be justified by commercial considerations or could not be avoided).

15. However, the Respondents say that this is irrelevant because the Appellant fails to satisfy the first of the above conditions and both conditions need to be satisfied before the relief is available.

16. In order to satisfy the first condition, the Appellant needs to show that, at the effective date, it had the intention to exploit the Property as a source of income in the course of a "qualifying trade".

17. The definition of a "qualifying trade" is in paragraph 5B(3) of Schedule 4A. In order to be a "qualifying trade", a trade:

(a) must be carried on on a commercial basis and with a view to profit; and

(b) must "[involve], in its normal course, offering the public the opportunity to make use of, stay in or otherwise enjoy the dwelling as customers of the trade on at least 28 days in any calendar year".

18. The Respondents do not take issue with the Appellant in relation to the first of the above conditions. They accept that the trade carried on by the Appellant from the Property will be carried on on a commercial basis and with a view to profit.

19. However, they do not accept that the second condition is satisfied.

20. Their reason for reaching this conclusion is that they consider that, once the necessary conversion work has been carried out and the Property is in use for the purposes of the Appellant's bed and breakfast business, the Property will no longer be a "dwelling". The Respondents say that this means that it is impossible for the transaction to satisfy the second condition of "qualifying trade" because that condition uses the term "dwelling" within the condition and therefore cannot be satisfied if the relevant property has ceased to be a "dwelling" when it is made available to the public. In other words, they say that, even if the trade involves offering the public the opportunity to make use of, stay in or otherwise enjoy the Property as customers of

the trade on at least 28 days in any calendar year, the Property will not be a "dwelling" at the point when it is used in the trade and therefore the terms of the condition are not, by definition, met. The Respondents say that this construction of the condition is clear on its face and that there is no need to have recourse to any material other than the express language of the statute in order to confirm the construction.

21. For completeness, I should mention that, prior to the hearing, the Respondents were also alleging that the trade which was intended to be carried on by the Appellant at the Property would not satisfy the second condition of the definition of "qualifying trade" for two further reasons.

22. The first was that, in the view of the Respondents, the income derived from carrying on the bed and breakfast business would derive from the provision of bed and breakfast facilities rather than from the Property itself. As such, they considered that it could not be said that the trade in question would involve, in its normal course, offering the public the opportunity to "make use of, stay in or otherwise enjoy" the Property – see paragraphs 49 to 53 of the Respondents' statement of case and paragraphs 46 to 54 of the Respondents' skeleton argument.

23. The second was based on the provisions of paragraph 5B(4) of Schedule 4A, which states that "persons are not considered to have the opportunity to make use of, stay in or otherwise enjoy a dwelling unless the areas that they have the opportunity to make use of, stay in or otherwise enjoy include a significant part of the interior of the dwelling". The Respondents were alleging that, because each customer of a bed and breakfast business does not have the right to use, stay in or enjoy any part of the relevant property other that his or her own room and the common parts, this threshold would not be met.

24. I believe that the Respondents withdrew both of the above arguments during the course of the hearing but, in any event, I consider that each of them is misconceived.

25. In relation to the first argument, regardless of whether a bed and breakfast business is conducted at a dwelling in which the owner of the business continues to reside or conducted at a building which is more like an hotel or inn, a bed and breakfast business clearly "involves, in its normal course, offering the public the opportunity to make use of, stay in or otherwise enjoy" the property at which the bed and breakfast business is being carried on. This is because, even if the customers of the bed and breakfast business may also receive services which are unrelated to the accommodation, such as the provision of food and drink, the accommodation is clearly a crucial part of the overall package for which they are paying. Thus, a bed and breakfast business clearly "involves" offering the public "an opportunity to make use of, stay in or otherwise enjoy" the property within which the business is conducted.

26. In relation to the second argument, I believe that the use of the plural in paragraph 5B(4) clearly indicates that, in applying the test which it lays down, one needs to look at the rights of the customers collectively, so that the fact that each customer does not have access to the room of any other does not of itself preclude the relief in paragraph 5B of Schedule 4A from applying.

27. In this case, it is common ground that, once the conversion of the Property was completed, the members of the public who stayed in the Property would collectively have the right to use the whole of the Property because, following the conversion, the Property would comprise solely seven new bedrooms and en suite bathrooms. It follows that paragraph 5B(4) of Schedule 4A does not prevent the second condition in the definition of "qualifying trade" from being satisfied in this case.

28. I would add that both of the above objections would arise in relation to a bed and breakfast business which remains a dwelling because the owner resides on the premises and, at the hearing, the Respondents accepted that the relief in paragraph 5B of Schedule 4A would be available in those circumstances.

29. The above means that the only issues to be determined as regards the question of whether the second condition in the definition of "qualifying trade" is met are:

> (a) whether the Property was going to have ceased to be a "dwelling" by the time that it was used in the trade and made available to the public; and
>
> (b) if so, whether the fact that the Property was going to have ceased to be a "dwelling" by that time means that the terms of the condition cannot, by definition, be satisfied.

The Appellant's position

30. In relation to the question of whether the relevant property needs to continue to be a "dwelling" following the effective date, Ms Bun, on behalf of the Appellant, contends that, in order for the second condition to be satisfied, it is merely necessary for the relevant property to be a "dwelling" at the effective date, and not at any time thereafter, because:

> (a) the effective date is the date when the charge to the higher rate arises. Schedule 4A is applicable only because the Property is a "dwelling" at the effective date and therefore any subsequent loss of status as a "dwelling" cannot be relevant; and
>
> (b) paragraph 5B(1) of Schedule 4A uses the present tense when it describes the availability of the relief – ie it says that paragraph 3 of Schedule 4A "does not apply to a chargeable transaction so far as its subject-matter consists of a higher threshold interest in relation to which the conditions in sub-paragraph (2) are met".

31. Ms Bun says that this construction of paragraph 5B of Schedule 4A is clear on its face and that there is no need to have recourse to any material other than the express language of the statute in order to confirm the construction.

32. Ms Bun also alleges that, in any event, the Property would not cease to be a "dwelling" following its conversion because:

(a) the Appellant's bed and breakfast business forms only a small part of its overall trade of running the Orange Tree public house;

(b) the local council has rated the pub as a "Public House and Premises"';

(c) the local council has rated the Property as a residential dwelling, chargeable under residential band E;

(d) the above means that the Property will not, following its conversion, fall within Section 116(3)(f) of the Finance Act 2003 because it will not be being used for the purposes of "a hotel or inn or similar establishment"; and

(e) in any event, Section 116(3) of the Finance Act 2003 applies only for the purposes of Part 4 of the Finance Act 2003 (in accordance with the opening line in Section 116(1) of the Finance Act 2003). Its terms are not to be read into the definition of "dwelling" in paragraph 7 of Schedule 4A, which is the relevant definition when it comes to the charge under Schedule 4A.

Discussion

33. The first question which I need to address in relation to this appeal is whether, following its conversion, the Property was going to remain a "dwelling" for the purposes of Schedule 4A or was going to cease to be a "dwelling" for those purposes.

34. It is clear, both from the correspondence which passed between the parties in the period preceding the hearing and the evidence provided by Mr Goode at the hearing, that the business which, as at the effective date, the Appellant intended to carry on at the Property once the necessary conversion work had been completed was a bed and breakfast business. In my view, this means that the Property was, at the effective date, intended to be used for the purposes of "a hotel, inn or similar establishment" as described in Section 116(3)(f) of the Finance Act 2003 once the necessary conversion work had been completed. As a result, pursuant to the terms of paragraphs 7(7) and 7(8) of Schedule 4A, once the necessary conversion work had been completed, the Property was going to cease to be a "dwelling" for the purposes of Schedule 4A.

35. I do not accept Ms Bun's contention that the terms of Section 116(3) of the Finance Act 2003 are not to be read into paragraph 7 of Schedule 4A. On the

contrary, paragraphs 7(7) and 7(8) of Schedule 4A make it clear that this is required by the terms of the schedule.

36. I also do not accept that the fact that the bed and breakfast business was only a small part of the Appellant's overall business prevents the Property from falling within Section 116(3) of the Finance Act 2003. The section applies to a particular property if that property is being used for the purposes of "a hotel or inn or similar establishment". Leaving aside the question of whether a public house, in and of itself, and even if it includes no provision for accommodation, can properly be described as an "inn or similar establishment", I consider that, on the facts in this case, where the bed and breakfast services were part of the business carried on by the Appellant and where the Property was to be used in its entirety to provide part of those bed and breakfast services, the only reasonable conclusion is that the Property was going to be used for the purposes of "a hotel or inn or similar establishment" and therefore falls within the ambit of Section 116(3) of the Finance Act 2003.

37. The above conclusion means that, although the Property was clearly a "dwelling" at the effective date of the transaction and therefore potentially within the ambit of the higher charge in paragraph 3 of Schedule 4A, it was not going to be a "dwelling" by the time that members of the public were invited to "make use of, stay in or otherwise enjoy" the Property following the conversion and it began to generate income for the Appellant in the course of the Appellant's business.

38. This means that I need to go on to consider whether the fact that the Property was not going to be a "dwelling" by the time that members of the public were invited to "make use of, stay in or otherwise enjoy" the Property following the conversion and it began to generate income for the Appellant in the course of the Appellant's business means that the second condition in the definition of "qualifying trade" was not satisfied.

39. In that regard, I have noted that:

> (a) whereas the Respondents consider that the loss of "dwelling" status is fatal to the Appellant's claim, the Appellant considers that the loss of "dwelling" status is irrelevant to the availability of the relief; and
>
> (b) each party alleges that its interpretation is clear on the face of the relevant provision and that there is no need to have recourse to any material other than the express language of the statute in order to confirm its interpretation.

40. For the reasons which follow, I do not agree that the correct interpretation of the relevant provision is clear beyond any doubt on the face of the provision.

41. I would start by saying that I do not agree with the reasons given by Ms Bun for concluding that the failure of the Property to qualify as a "dwelling" once the conversion work is completed is not relevant to the application of the relief. It is clear from the use of the future tense in paragraph 5B(2)(a) of Schedule 4A – ie the use of

the phrase "the intention that it will be exploited" – that, although both the charge under paragraph 3 of Schedule 4A and the availability of the relief under paragraph 5B of Schedule 4A depend on circumstances in existence as at the effective date – in the case of the charge, whether the relevant property is a "dwelling" on the effective date and, in the case of the relief, the purchaser's intention on the effective date – the purchaser's intention on the effective date necessarily relates to a future course of action, namely the future exploitation of the relevant property as a source of income in the course of a "qualifying trade".

42. This means that, in my view, in order to determine whether the intention at the effective date was to exploit the Property as a source of income in a "qualifying trade", it is necessary to consider the position as it was intended to be once the conversion work was completed and the public were given the opportunity to make use of, stay in or otherwise enjoy the Property. At that time, for the reasons which I have given above, I consider that the Property was not going to be a "dwelling".

43. It might be thought that this conclusion would be sufficient to determine this appeal in favour of the Respondents. After all, if the second condition in the definition of "qualifying trade" refers to the use of "the dwelling" by the public and the Property was not going to be a "dwelling" at the point when it was made available to the public, the second condition would seem not to be satisfied.

44. Moreover, there is considerable support for this interpretation both elsewhere in Schedule 4A and in certain changes which were made to the schedule after the effective date of this transaction.

45. First, although the heading to paragraph 5B of Schedule 4A is not conclusive in and of itself, that heading says "Trades involving making a dwelling available to the public", thereby suggesting that, at the time when the relevant property is made available to the public, it needs to continue to be a "dwelling".

46. Secondly, the word "dwelling" appears on five occasions in paragraphs 5B(4) and 5B(5) - the provisions elaborating on the meaning of the phrase "make use of, stay in or otherwise enjoy a dwelling" which is the cornerstone of the second condition in the definition of "qualifying trade". Some of those references are to "a dwelling" and others are to "the dwelling" but one might reasonably regard it as significant that the Parliamentary draftsman has used the word "dwelling" within the definition when he or she could presumably have referred simply to the relevant "property".

47. Thirdly, after the effective date for this transaction, paragraph 5 of Schedule 4A was amended by the Finance Act 2016 to the effect that, in relation to a high-value residential transaction occurring on or after 1 April 2016, paragraph 3 of Schedule 4A does not apply to, inter alia, "a chargeable transaction so far as its subject-matter consists of a higher threshold interest that is acquired exclusively for… use for the purposes of a relievable trade", where a "relievable trade" is defined solely as "a trade that is run on a commercial basis and with a view to profit" – see paragraphs 5(1)(ab)

and 5(3) of Schedule 4A following its amendment by the Finance Act 2016. The present transaction would clearly have fallen within this exemption if its effective date had occurred on or after 1 April 2016 because the exemption in paragraph 5 of Schedule 4A following the amendment makes no mention of the word "dwelling". As the Respondents have pointed out, this change to the scope of the regime would not have been necessary if the relief in paragraph 5B of Schedule 4A was as wide as the Appellant alleges.

48. Having said that, if the intention was that the relevant property needs to remain a "dwelling" at the time when it is made available to the public, it is odd that this is not stated expressly in paragraph 5B(3)(b) to be a necessary pre-condition for the availability of the relief. It would have been easy for the Parliamentary draftsman to have made it clear in the terms of the relevant provision that, in addition to the relevant property's being made available to the public in the course of a commercially-run trade, it would need to remain a "dwelling" at that time. Instead, the term "the dwelling", when it is used in paragraph 5B(3)(b) appears simply to be used as a means of identifying the property in respect of which the "making available to the public" condition needs to be satisfied.

49. And, given that the schedule applies only to a property that is a "dwelling" at the effective date for the transaction in the first place, one might choose to construe the use of that term in paragraph 5B(3) of Schedule 4A as doing no more than making it clear that the property referred to in the condition is the property in respect of which the charge under paragraph 3 of Schedule 4A would arise in the absence of the relief.

50. It is less easy to apply this approach in the case of the references to "a dwelling" in the heading to paragraph 5B of Schedule 4A and where it appears in paragraphs 5B(4) and (5) of Schedule 4A. Unlike references to "the dwelling", which could arguably be seen as being no more than a synonym for the property which is the subject of the transaction in respect of which the relief is being claimed, references to "a dwelling" suggest that continued status as a "dwelling" is a necessary pre-condition to the relief in paragraph 5B of Schedule 4A.

Conclusion

51. After taking into account the arguments on both sides of this debate, I have concluded, without recourse to any material apart from the express language in the statute, that, on balance, the Respondents' interpretation of the relevant legislation is to be preferred. That is to say, I believe that, when the provision is properly construed, relief in paragraph 5B of Schedule 4A depends on the continuing status of the property as a "dwelling" once the property is made available to the public. I am persuaded that the references to "dwelling" in the heading to, and the operative provisions of, paragraph 5B of Schedule 4A cannot all simply be explained as synonyms for the word "property" and that therefore the relevant property's continuing status as a "dwelling" once it becomes available for use by the public is a pre-condition to the availability of the relief.

52. Whilst the provision could have been drafted in a manner that made this requirement clearer, I believe that the construction advanced by the Respondents is the more cogent of the parties' respective contentions. Moreover, the fact that paragraph 5 of Schedule 4A was amended by the Finance Act 2016 to provide for relief in a wider range of circumstances (including these circumstances) strongly suggests that, at least in 2016 when the amending legislation was enacted, Parliament believed that the relief in paragraph 5B of Schedule 4A was confined to properties that continued to be dwellings when they were made available to the public in the course of a trade.

53. Notwithstanding the above conclusion, I have in any event considered whether the ambiguity in the language of the statute to which I have alluded above means that I am permitted to take into account, in the process of construing the relevant paragraph, the discussions which took place in relation to it when it was discussed in Parliament. This is because the House of Lords held in *Pepper (Inspector of Taxes) v Hart* [1993] AC 593 that reference may be made to Parliamentary materials where, inter alia, legislation is ambiguous.

54. In that regard, the following exchange took place in relation to Schedule 4A when the Bill which subsequently became the Finance Act 2013 was passing through the Committee stage:

> **"Catherine McKinnell:** The clause and schedule provide for extended reliefs from the 15% STLD higher rate that was introduced in the Finance Act 2012. ….There is …one commercial situation that does not appear to be covered by the proposed reliefs: if an existing business such as a hotel, school or care home acquires a high-value dwelling in order to convert it and run it as part of its trade, rather than reselling it. The extended relief for redeveloping property appears to preclude such relief because of the references to resale, so will the Minister confirm the position with regard to that situation?
>
> **Mr Gauke:** The clause and schedule introduce a series of reliefs to the 15% rate of stamp duty land tax on residential property valued at over £2 million purchased by certain non-natural persons….The hon. Member for Newcastle upon Tyne North asked…why there is no relief from the 15% rate for businesses that wish to purchase a residential property and convert it to non-residential for use in their trade, such as a care home. It is a general feature of the SDLT rules that there is a different rate for property that is residential or non-residential at the time of purchase. The rules are even-handed at present in that although a higher rate will apply to residential property for conversion, a lower rate applies to non-residential property that is acquired for conversion to residential. Additionally, such a relief could open up avoidance opportunities with companies claiming non-residential intentions to take advantage of the lower rate, but then not following through with the conversion. Although we could apply a clawback provision, we could still have anomalous situations in which the conversion could not proceed within the relevant time, so the rule might not solve all potential problems. It might be difficult to determine how much time to allow for the conversion to take place as well as for other operational complexities, such as knowing whether the property will be or is being used for non-residential purposes."

55. I read this exchange as confirming that the construction advanced by the Respondents in this case is indeed consistent with the intentions of Parliament. It is quite clear that both parties to the above exchange were working on the assumption that a business such as a care home or hotel that acquired a dwelling and then converted it for use in its business would fall outside the reliefs in paragraphs 5 et seq.

of Schedule 4A. Thus, this exchange supports the conclusion that I have reached on the language of the legislation in any event.

56. For the reasons given above, I have concluded that the relief set out in paragraph 5B of Schedule 4A is not available to the Appellant in the present case. I therefore dismiss this appeal and uphold the conclusion set out in the Respondents' letter of 25 January 2017.

57. 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.

TONY BEARE
TRIBUNAL JUDGE

RELEASE DATE: 28 MARCH 2018