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Case Number: TC09386

FIRST-TIER TRIBUNAL
TAX CHAMBER

Heard in Cardiff

Appeal reference: TC/2022/13744

CORPORATION TAX – Business Premises Renovation Allowances – works done to a warehouse which resulted in a Toyota car showroom – conversion or renovation - principles of statutory construction – London Luton, Senex and Marchday considered – continuity of identity of warehouse notwithstanding substantial alterations – appeal allowed

Heard on: 11 and 12 November 2024
Judgment date: 18 December 2024

Before

TRIBUNAL JUDGE NIGEL POPPLEWELL
MRS SONIA GABLE

Between

FRF (SOUTH WALES) LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Denis Edwards of counsel instructed by MHA

For the Respondents: Mr Sam Chapman of counsel instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. This is a case which deals with Business Premises Renovation Allowances ("**the allowances**") under Part 3A of the Capital Allowances Act 2001 ("**CAA**").

2. Between January 2016 and September 2016, the appellant carried out building works ("**the works**") on a disused retail warehouse in Carmarthen ("**the warehouse**"). Those works cost approximately £1.675 million. Following those works, the warehouse had been (to put it neutrally) transformed into a Toyota car showroom and workshop ("**the car showroom**").

3. The appellant claimed allowances on approximately £1.396 million of the works which generated a corporation tax benefit of approximately £280,000.

4. The allowances are only available if the expenditure was incurred on the conversion or renovation of the warehouse. The appellant says it was. HMRC say that it was not and issued a closure notice to that effect on 15 June 2021 in respect of the appellant's tax return for the period ending 31 December 2016.

5. The facts and the relevant law in this case are very largely agreed. We have to decide on a single issue. What are the statutory meanings of the words "conversion" and "renovation", and do the works answer to those statutory descriptions. If so, the appellant succeeds. If not, HMRC succeed.

6. We were very much assisted by the clear submissions, both oral and written, from Mr Edwards and Mr Chandler. However, although we have taken these into account in reaching our decision, we have not found it necessary to refer to each and every argument advanced or all of the authorities cited in reaching our conclusions.

7. For the reasons given later in this decision it is our view that the works fall within the statutory meaning of the word "conversion" and the appeal should be allowed.

THE LAW

8. The relevant law is set out in Appendix 1 to this decision ("**the allowances legislation**").

9. However, in summary:

(1) Allowances: Allowances are available where a taxpayer incurs "qualifying expenditure in respect of a qualifying building": see s.360A CAA. It is not in dispute that the appellant incurred expenditure, but HMRC does not agree that it was qualifying expenditure (see (3) below).

(2) Qualifying building: A qualifying building is defined at s.360C(1) CAA. By way of paraphrase, this is any building or structure, or part of a building or structure, which is situated in a disadvantaged area, has been unused for no less than a year before the work began, and had last been used for the purposes of a trade, profession or vocation or as an office or offices (and not as a dwelling). It is not in dispute that the warehouse was a qualifying building.

(3) Qualifying expenditure: The concept of "qualifying expenditure" is defined at s.360B CAA.

(4) By s.360B(2A) CAA, Condition A – which is central to this dispute – is that the taxpayer's expenditure is incurred on works of conversion, renovation, or repairs which are incidental to conversion / renovation works.

(5) Condition B: By s.360B(2B) CAA, qualifying expenditure is limited to that which is incurred on building works or associated fees / services.

(6) By s.360B(3) CAA, there are various specific exclusions for expenditure on or in connection with the acquisition of land or rights in or over land, the extension of a qualifying building (except to the extent required to provide a means of getting to or from the qualifying business premises), and the development of land adjoining or adjacent to a qualifying building.

(7) Qualifying business premises: Finally, "qualifying business premises" is defined at s.360D. CAA. Broadly, these are premises which comprise a qualifying building which is used, or available and suitable for letting for use, for the purposes of a trade profession or vocation, or as an office or offices (and not as a dwelling).

THE EVIDENCE AND THE FACTS

10. We were provided with a bundle of documents which included some very helpful photographs. Additional photographs were handed up to us during the hearing. Oral evidence of fact was given by Officer Lynch on behalf HMRC and by Mr Stuart Rees, the finance director of the appellant, for the appellant. Expert evidence was given orally by Mr Malcolm Lytton on behalf of HMRC, and by Mr Gavin Johnson on behalf of the appellant. We also had the benefit of their individual expert reports and their joint report on their agreements and differences. From this evidence we find as follows:

Background

(1) The appellant is a company specialising in the sale of motor vehicles.

(2) On 9 December 2015, FRF South Wales (Holdings) Ltd (the appellant's parent company) purchased the warehouse which was disused at that time. The purchase price of the warehouse was £978,000 inclusive of VAT and the vendor was Tesco Stores Limited.

(3) Until October 2008, the warehouse had been used as an MFI furniture store.

(4) The warehouse was immediately leased to the appellant for 99 years with a view to it engaging a contractor to build the car showroom at the site.

(5) The appellant contracted with T. Richard Jones (Betws) Limited ("**TRJ**") to carry out works at the warehouse for the sum of £1.45 million, and work commenced on 18 January 2016. The car showroom opened on 24 September 2016.

(6) The total sum of money incurred on the project was £1,674,818.25. In its 2016 tax return the appellant claimed allowances in the sum of £1,396,024.

(7) On 19 July 2018, HMRC issued the appellant with an enquiry notice in respect of the 2016 return under Paragraph 24(1) Schedule 18 to the Finance Act 1998 ("**FA 1998**").

(8) On 15 June 2021, HMRC issued the appellant with a closure notice in respect of the 2016 return under Paragraph 32(1A) Schedule 18 to FA 1998 ("**the closure notice**").

(9) The closure notice amended the return to exclude a deduction for the allowances claimed of £1,396,024.

(10) By an appeal notice dated 29 November 2022 the appellant appealed the closure notice.

(11) It has been agreed by the parties subsequent to the closure notice that expenditure of £198,862 incurred on the old car park at the site is eligible for allowances.

The planning consent

(12) The appellant had originally considered demolishing the building (i.e., the entire building at least to ground level) and constructing a new, smaller, building on the same site. However, the local planning authority, Carmarthenshire County Council ("**the Council**"), was unhappy with the height of the existing building and development consent would likely have been refused for a new build of the same or similar height.

(13) Planning permission for the works was required. Permission was sought from the Council on 15 September 2015. The planning application was for two consents, namely a change of use from Class A1 retail warehouse to sui generis car showroom, and "structural adjustments to the building and associated works".

(14) The Council granted full planning permission for both aspects of the application, on 8 October 2015. Amongst other reasons, the Council's planning permission reflected their decision that:

> "… the development proposed alterations to the building are of an appropriate scale and form and are not detrimental to the respective character and appearance of the townscape / landscape. The development proposals are of an appropriate scale and form compatible with its location and with neighbouring uses".

The works

(15) The plans for the "Proposed Building" are described in the Design Fee Proposal from Space Projects Ltd in a document dated 22 October 2015. We have not set this out in detail, but it is reflected in the synopsis and photographs of the works set out in Appendix 2 to this decision.

(16) Furthermore, the experts are agreed that the elements of the warehouse which were retained, and the works undertaken to that warehouse, are as follows:

The existing warehouse construction prior to the start of the works;

1. Structural steel portal frames at 6m centres supported off concrete foundations,

2. Concrete floor slab,

3. Secondary steelwork and sheeting rails to support the cladding,

4. Metal composite wall and roof cladding,

5. Internal masonry (blockwork) and non-load bearing walls,

6. Internal floor, wall and ceiling finishes,

7. Mechanical and electrical services,

8. Below ground foul and surface water drainage, incoming services and external works.

Elements retained

1. The ground floor slab and existing foundations,

2. The below ground drainage,

3. The incoming services (gas, water and electric),

4. 6 of the structural steel portal frames which provided the structural envelope for the new scheme,

5. The roof sheeting rails,

Elements removed

1. 4 portal frames,

2. The existing concrete floor slab was cut back,

3. The external composite metal wall and roof cladding,

4. Internal non-load-bearing walls,

5. Internal floor, wall, and ceiling finishes,

6. The mechanical and electrical services.

The expert evidence

(17) The experts agreed that the statutory construction of the terms "conversion" and "renovation" are matters for the tribunal. They also agreed that the area of reduction of the warehouse was approximately 43%, i.e. approximately 57% of the footprint of the warehouse was incorporated into the new showroom.

(18) As to whether the new showroom was a new building or conversion of the warehouse, the experts differ. That difference, which is reflected in their joint report, is set out below:

> "G Johnson – considers that the works comprise a conversion and renovation given the existing building structure i.e. foundations, floor slab, structural frame and also the below ground drainage was retained and fully relied upon by the car showroom – in the absence of any definitive definition of these terms "conversion / renovation" I have applied the ordinary meaning of the terms combined with my experience in the

construction industry. The reduction in the original floor footprint is agreed but with such a significant element of the original building retained i.e. its structure I do not see how the car showroom can be called a new building.

M Lytton – considers that with only part of the building's original foundations, floor slab and steel portal frame being retained, and all the internal services, roof and wall cladding replaced alongside the installations of new show room glazing, and vehicle roller shutters doors, the extent of the work undertaken goes beyond what can be considered to be a "conversion" or "renovation". The extensive replacement of large elements of the building, the different general appearance combined with its reduced size make it effectively a new building".

(19) In cross examination, Mr Johnson confirmed that the main reason for his opinion that the works effected a conversion was the structural continuity between the warehouse and the car showroom. It was his view that retention of any of the bays would provide that continuity as, indeed, would the retention of any of the foundations and floor slabs even if all of the portal frames had been removed.

DISCUSSION

Submissions

11. In summary Mr Edwards submitted as follows:

(1) The words "conversion" and "renovation" must be given a purposive construction and should be construed broadly in light of the statutory purpose for the allowances. A conversion involves a change of form from one thing to another which includes structural alterations and adaptations.

(2) The policy objective for the allowances was to encourage the conversion of disused properties and make them available for business use. This broad objective was endorsed in the case of *Senex Investments Ltd v HMRC* [2015] UKFTT 0107 ("***Senex***").

(3) The appellant acted precisely within that policy objective. It made a significant capital investment in a deprived area and carried out works to a previously long term disused building so as to make it suitable to bring back into use in the course of its business.

(4) When construed in the light of this policy objective, the works comprised a conversion. The building originally had nine bays and after conversion had five bays. It started with 10 portal frames and ended up with six. The fabric of the warehouse comprised cladding and windows. The car showroom is cladded, and there are more windows. Approximately 60% of the bays and the floor plate underneath those bays of the warehouse was retained, as were the foundations underneath that floor plate, and the below ground drainage. The sanitaryware in the car showroom is in the same place as it was in the warehouse. The car showroom is rectangular as was the warehouse.

(5) No new foundations were laid for the car showroom which rests on the same foundations as the warehouse had done. No new ground was broken for the conversion works and no new bases added. No new floors were added to the building which has always been a single story ground level building. Although the cladding on the roof was replaced, the pitch of the roof remained the same.

(6) The planning application and the resulting consent demonstrate that the works were structural alterations, and thus fall within the definition of "conversion".

(7) There is no requirement for any degree of continuity of existence between the warehouse and the car showroom as alleged by HMRC. But if there is such a requirement, then that degree of continuity has been established by dint of the retained characteristics mentioned above.

(8) Whilst it is demonstrably clear that the old cladding was replaced by new cladding of a slightly different colour, and bearing the Toyota logo, that was inevitable in light of the rationale for the project. To suggest that the changes to the cladding somehow prevent the works comprising a conversion is to fail to recognise the commercial reality of the situation. Those changes to the cladding, and the extensive changes to the internal configuration of the warehouse when it became a car showroom, are entirely consistent with the concept of conversion. And such changes are likely to be inevitable whenever an existing and derelict building is brought back into use for business purposes. HMRC's view that allowances will only be given if those business purposes are consistent with the previous business use to which the building was put is misconceived and contrary to the policy behind the legislation.

(9) HMRC appear to be asserting that any reduction in the footplate of a building renders it ineligible for the allowances as it is no longer a conversion or renovation. There is no such principle. Indeed, the legislation specifically provides that expenditure on an extension cannot be qualifying expenditure. If Parliament had intended that expenditure on a reduction in size would not qualify for allowances, it would have said so.

(10) Nor is there any indication in the policy background, the purpose of the legislation or in the legislation itself which suggests that a reduction in shape and size of a previously derelict building should not qualify for allowances.

(11) The cases relied upon by HMRC, many of which are planning cases, simply show that the definition of certain terms such as "demolition" and "conversion" are contextual and fact specific. HMRC suggest, in this appeal, that there has been a demolition of the warehouse and a rebuilding into the car showroom. That is incorrect. There has been no total destruction of all or a substantial part of the warehouse, and so there has been no demolition. More than 60% of the original building remains. HMRC's manuals, which reflect HMRC's view on demolition, indicate that demolition is to an entire building; and building works short of that are to be treated as renovation and conversion.

(12) In summary Mr Chandler submitted as follows:

(13) The legislation must be construed purposively. The words "conversion" and "renovation" should be given their ordinary meanings but construed against the purpose for which the legislation was introduced.

(14) In terms of ordinary language, "conversion" involves the process of changing or causing something to change from one form to another. "Renovation" involves the restoration of something old into a good state of repair. Conversion requires some degree of continuity between the starting building and the end product (changing the form of something implies that something still survives). Renovation is narrower than conversion.

(15) The purpose of the allowances legislation was to bring existing premises back into use. This is set out in the Court of Appeal decision in *London Luton BPRA Property Fund v*

HMRC [2023] EWCA Civ 362 ("***London Luton***"): "… The purpose of the legislation is plainly to encourage the conversion and renovation of existing business premises to facilitate their return to business use…".

(16) So, Parliament has prescribed the way in which business premises should be returned to business use, namely by conversion and renovation. We are concerned here with the process by which the policy objective is to be achieved. And because the legislation prescribes that process, it should be construed in accordance with the natural meaning of the words. There is no justification for a broad construction. Indeed, in *London Luton* the court, having recognised the aforesaid purpose of the legislation, went on to construe the words "in connection with" in the allowances legislation, relatively narrowly.

(17) In the Court of Appeal decision in *CCE v Marchday Holdings Ltd* [1997] STC 272 ("***Marchday***"), the court said:

> "(3) The touchstone for the application of Note (1A)(a) is whether a reasonable person, apprised of all the facts, would conclude that the building which existed before the works started still retains its identity — in that sense, still exists — at their completion, though it may have been transformed by conversion, etc. Whether that is the correct conclusion in any particular case will be a matter of fact and degree. The key is the continuity or otherwise of the identity of the building which was there before the works started."

(18) Although this is a VAT case, it is of general application and justifies HMRC's assertion that there must be continuity of existence or identity of the building which was there before the works started in order for there to be a conversion. That is key.

(19) Whether a process can be described as a "conversion", "renovation", "demolition", "alteration" or "rebuild" depends on a variety of factors. There is no bright line test. It requires the tribunal to undertake a multifactorial evaluation. This is what HMRC have done.

(20) This approach is consistent with the policy of the legislation which gives generous allowances for bringing premises previously used for business back into business use but looks at the process by which that is achieved.

(21) In the present case, the works went far beyond conversion or renovation. The destruction of 4 of the 9 bays and the 40% reduction in footprint, as well as the destruction of everything else both inside and outside the warehouse, demonstrate that. All that remained of the warehouse was a section of the skeleton and the reduced slab underneath it. The footprint was also substantially changed. It became a near square building with a significantly smaller footprint. The external and internal appearance of the warehouse was significantly changed, something which can be seen from the photographs.

(22) The appellant is misrepresenting HMRC's case when it suggests that demolition is central to it. It is not. HMRC's position is very straightforward and is set out above.

(23) The works changed the warehouse to such an extent that those changes could not be described as a "conversion" or "renovation". The warehouse did not survive the works. It effectively ceased to exist. The car showroom is a new building.

(24) This reflects the ordinary meaning of the words, the decisions in *Marchday* and *Hibbitt v Secretary of State for Communities and Local Government* [2016] EWHC 2853 (Admin) *("**Hibbitt**")* and the expert opinion of Mr Lytton.

(25) In *Marchday,* the works had resulted in an incomplete skeleton albeit of substantial construction. Both the High Court and the Court of Appeal decided that the works were so extensive that the building was essentially new, and it was not a conversion, reconstruction, alteration or enlargement of an existing building. This sits unhappily with Mr Johnson's view in this case that even if all that had remained of the warehouse was the floor plate, and no bays, or portal frames remained, that would still have been a conversion.

(26) The planning application and consequential consent are largely irrelevant to the analysis. It certainly doesn't follow from either that the works are works of conversion or renovation.

Our view

Statutory construction

12. The parties agreed that we have two issues to decide. Firstly, what is the statutory meaning of the words "conversion" and "renovation". Secondly do the works answer to that statutory description (see *Biffa* below).

13. As has been said many times since 2003, the ultimate question is whether the relevant statutory provisions, construed purposively, are intended to apply to the transaction, viewed realistically. The following extracts flesh out this principle on which the parties are agreed.

14. In *London Luton* the Court of Appeal approved the following passage from *Barclays Mercantile Business Finance Ltd v Mawson* [2004] UKHL 51 and that decision provided the "correct starting point":

> "32 The essence of the new approach was to give the statutory provision a purposive construction in order to determine the nature of the transaction to which it was intended to apply and then to decide whether the actual transaction (which might involve considering the overall effect of a number of elements intended to operate together) answered to the statutory description. Of course, this does not mean that the courts have to put their reasoning into the straightjacket of first construing the statute in the abstract and then looking at the facts. It might be more convenient to analyse the facts and then ask whether they satisfy the requirements of the statute. But however one approaches the matter, the question is always whether the relevant provision of the statute, upon its true construction, applies to the facts as found".

15. And when applying the purposive approach the Supreme Court has helpfully said this in *R (O) v SoS Home Department* [2022] UKSC 3 at [29]:

> "Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained".

16. Also relevant is the following extract from the judgment of Nugee LJ (to which we were not referred) in the Court of Appeal decision in *HMRC v Biffa Waste Services Ltd* [2021] EWCA Civ 584 ("***Biffa***") at [85];

> "…My understanding of the law is as follows. Whether a word in a statute has its ordinary meaning or some special meaning is a question of construction of the statute and hence a question of law. But once it has been decided that such a word does have its ordinary meaning, what that ordinary meaning is is a question of fact; and it is also a question of fact, and hence a matter for the tribunal that decides the case to consider, 'whether in the whole circumstances the words of the statute do or do not as a matter of ordinary usage of the English language cover or apply to the facts which have been proved' (per Lord Reid in *Brutus v Cozens* [1972] 2 All ER 1297 at 1299, [1973] AC 854 at 861). This was not cited to us but the principles it expresses are well known and fundamental".

17. The legislation does not define either "conversion" or "renovation".

18. We accept that in terms of ordinary language the dictionary definition of "conversion" is "the process of changing or causing something to change from one form or another". Or "the adaptation of a building or part of a building for a new use".

19. And "renovation" can be defined as to "restore something old, especially a building, into a good state of repair", or to "refresh" or "reinvigorate".

20. We also accept Mr Chandler's submission that "conversion" is broader in scope than "renovation". Indeed, neither party focused on renovation. The question is whether the works comprised a conversion.

21. So, "conversion" has no specific statutory meaning and its construction must start with its ordinary meaning.

22. It was Mr Chandler's submission that "conversion" requires some degree of continuity between the starting building and the end product. The identity or existence of the old building must survive the conversion and be present in the new building.

23. At the start of the hearing Mr Edwards roundly rejected this proposition, but it is our view that by the end of it, he had come round to accepting it. Indeed, his expert, Mr Johnson, accepted this view and went on to propound the theory that that continuity would exist in the context of the project if none of the portal frames had been retained, and all that was left was the footprint under those frames and the underlying foundations.

24. We take the view that as a matter of straightforward language, "conversion" does require a continuity of identity between the old building and the new building. The form of that building might change, but there must be some retention of identity between the two.

25. We are considerably fortified in taking this view from the Court of Appeal decision in *Marchday* in which Stuart-Smith LJ endorsed the following:

> "the words "conversion", "alteration" and "enlargement" seem to me to connote a state of affairs in which the building upon which such works are done necessarily remains after they are done. One cannot sensibly describe any of these three descriptions to a

case where the old building is, in effect, destroyed; it continues to exist though it may have been substantially transformed".

26. We accept that this was a VAT case, and Mr Edwards, certainly initially, suggested therefore that it was of limited value in the case of allowances. But the Judge was making a general point about the meaning of these words, and we do not believe that it cannot be read across into our interpretation of the word "conversion" in the context of allowances. It is of much more general application. And, as we say, by the end of the case it seemed to us that Mr Edwards accepted that this was applicable in this appeal.

27. Mr Edwards also urged us to adopt a broad interpretation of the word "conversion", citing *Sennex* as authority for that proposition. Mr Chandler took the contrary view and cited *London Luton* as authority for a narrow interpretation.

28. We accept that both cases were considering the allowances legislation. However, both cases were scrutinising different elements of that legislation to those with which we are concerned in this appeal. We have not, we are afraid, garnered much assistance from the comments made in either case.

29. *London Luton*, however, is authority for the proposition advanced by Mr Chandler, that the purpose of the legislation is "plainly to encourage the conversion and renovation of existing business premises to facilitate their return to business use".

30. We also accept his submission that what we are concerned with in this case is the process by which existing building premises are returned to business use and that Parliament has chosen only to give allowances where those existing building premises are converted or renovated.

31. We therefore need to construe the concept of "conversion" in light of that purpose and to consider whether the works answer to a purposive statutory construction of that term.

32. It is our view that they do. There is sufficient continuity of identity between the warehouse and the car showroom for the works to comprise a conversion. We do not consider that the warehouse was destroyed. It continues to exist but it was substantially transformed. We say this for a number of reasons.

33. Firstly, substantial elements of the framework of the building, and the underlying foundations were retained. Although four of the 10 portal frames were taken down and removed from the site, and the underlying footplate and foundations were broken up and removed, six of those portal frames together with the underlying footprint and their foundations were left "untouched". So, five of the nine bays were retained.

34. Furthermore, the below ground drainage was also retained.

35. So, these three significant structural elements of the warehouse survived the works and are equally important structural elements of the car showroom. The warehouse therefore continues to "exist" by dint of the fact that these characteristics flow through into the car showroom.

36. There is nothing in the legislation which prevents allowances been given where a building's area or volume is diminished. Only where a building is extended are allowances excluded.

37. We accept that there has been a substantial alteration to the warehouse. But, as Stuart-Smith LJ said, the concept of conversion is wide enough to include substantial alterations (indeed the dictionary definition also includes the concept of alteration), provided there is a continuing identity of the old building in the new.

38. Secondly, the external surface of both the warehouse and the car showroom consisted of cladding. The cladding on the warehouse was old and tired. There was a modest difference of opinion between the experts as to whether that cladding was past its sell by date and would have needed replacing sooner rather than later. But we do not think this is important in the context of this analysis.

39. More important to us is the fact that cladding was used as the external material for the car showroom.

40. Of course, it was much smarter than the cladding on the warehouse. And it was both branded, and of a slightly different colour, something which was inevitable given the changing nature of the use to which the building was to be put.

41. But the fact that the external surface of both the warehouse and the car showroom comprise cladding again demonstrates the continuing identity of the old building.

42. Furthermore, the pitch of the roof remained unchanged.

43. It is Mr Lytton's view, endorsed by Mr Chandler, that the works extend far beyond a conversion and there is little, if anything, of the warehouse reflected in the car showroom. So there is no continuing identity between the old building and the new building.

44. The size has reduced, the configuration has changed, four of the 10 portal frames and the underlying infrastructure has been removed, the cladding has been replaced, new showroom glazing has been installed along with vehicle roller shutter doors in the service bays, and the inside of the building has been emasculated so as to provide a car showroom rather than a warehouse facility.

45. We accept that what he says has indeed happened. That is apparent from the photographs which were presented to us, some of which are annexed to this decision.

46. We also accept Mr Chandler's submission that there is no "bright line" test. Whether something comprises a conversion requires a multifactorial test and factors which might be important in one set of circumstances may bear less weight in others.

47. However, when construing the word "conversion" in the allowances legislation, and considering it in the context of the purpose for which that legislation was introduced, we consider that conversion can, as a matter of principle, include alterations which reflect a change in the nature of the activities for which the building is intended. We do not believe that Parliament wished to restrict the concept of conversion so it applies only where the alterations are made to maintain the activities carried on in the old building. Indeed, that would be a renovation rather than a conversion.

48. It is wholly consistent with the concept of "conversion" in the allowances legislation, given the purpose of facilitating the return of existing business premises to business use, that it can include substantial alterations to the old building (and in particular to its internal arrangements) to reflect the use to which the new building is to be put. The transformation of

an old warehouse into a new car showroom seems to us to be the paradigm example of the sort of project to which this legislation is intended to apply. And where money is spent on that transformation, provided it comes within the ambit of comprising a conversion or renovation, it should attract allowances.

49. The foregoing is, of course, subject to the precondition that there must always be a sufficient continuing identity of the old building in the new building.

50. There is a spectrum along which one travels when considering whether works comprise a conversion. At the left-hand end there are modest alterations which clearly fall within that definition. At the right-hand end there is the total destruction of the old building. Somewhere along that spectrum (which will depend on all the circumstances in any particular case) there is a line. To the left of that line are works which comprise a conversion and to the right of it are works which do not.

51. In the case of this appeal, the question is whether the works fall on the left-hand side of the line or to the right. If they fall on the right, then the appeal must fail. There is no need for us to consider what they have become (for example a demolition and rebuild). What we have to determine is whether they fall on the left-hand side of the line and thus comprise a conversion.

52. It is our view that the works do so comprise such a conversion. The identity of the warehouse is retained to a sufficient extent by the aforementioned structural components which flow through (although reduced) from the warehouse into the car showroom. Both buildings are clad, the latter with upgraded and purpose specific cladding. The pitch of the roof has been maintained.

53. When one stands back and considers the photographs of the two buildings before and after the works, the overall impression which this panel has is that there has been a conversion of the warehouse into the car showroom. The warehouse was not destroyed and a new building put up in its place.

54. There has clearly been substantial alteration but that is acceptable. Substantial alteration comes within the ambit of conversion when that term is construed purposively in the context of the allowances legislation.

55. We have concluded therefore that the works comprise a conversion and thus the money spent on them attracts allowances.

DECISION

56. We allow this appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

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.

NIGEL POPPLEWELL
TRIBUNAL JUDGE

Release date: 18th DECEMBER 2024

APPENDIX 1

THE LEGISLATION

1. The allowances legislation is contained within Part 3A CAA 2001. The key provisions are s.360A, s.360B, s.360C, and s.360D. These four sections are reproduced below.

s.360A – Business premises renovation allowance

2. s.360A CAA provides:

(1) Allowances are available under this Part if a person incurs qualifying expenditure in respect of a qualifying building.

(2) Allowances under this Part are made to the person who—

(a) incurred the expenditure, and

(b) has the relevant interest in the qualifying building.

s.360B – Meaning of "qualifying expenditure"

3. S.360B CAA provides :

(1) In this Part "qualifying expenditure" means capital expenditure incurred before the expiry date—

(a) in respect of which Conditions A and B are met, and

(b) which is not excluded by subsection (3), (3B) or (3D).

(2) In subsection (1) "the expiry date " means—

(a) the fifth anniversary of the day appointed under section 92 of FA 2005, or

(b) such later date as the Treasury may prescribe by regulations.

(2A) Condition A is that the expenditure is incurred on—

(a) the conversion of a qualifying building into qualifying business premises,

(b) the renovation of a qualifying building if it is or will be qualifying business premises, or

(c) repairs to a qualifying building or, where the building is part of a building, to the building of which the qualifying building forms part, to the extent that the repairs are incidental to expenditure within paragraph (a) or (b).

(2B) Condition B is that the expenditure is incurred on—

(a) building works,

(b) architectural or design services,

(c) surveying or engineering services,

(d) planning applications, or

(e) statutory fees or statutory permissions.

(2C) But Condition B is treated as met in respect of expenditure incurred on matters not mentioned in that Condition to the extent that that expenditure (in total) does not exceed 5% of the qualifying expenditure incurred on the matters mentioned in subsection (2B)(a) to (c).

(3) Expenditure is excluded if it is incurred on or in connection with—

(a) the acquisition of land or rights in or over land,

(b) the extension of a qualifying building (except to the extent required for the purpose of providing a means of getting to or from qualifying business premises),

(c) the development of land adjoining or adjacent to a qualifying building, or

(d) the provision of plant and machinery, other than plant or machinery which is or becomes a fixture (as defined by section 173(1)) and falls within subsection (3A) .

(3A) The fixtures which fall within this subsection are—

(a) integral features within the meaning of section 33A (taking account of section 33A(6) and any provision for the time being made under section 33A(7)) or part of such a feature;

(b) automatic control systems for opening and closing doors, windows and vents;

(c) window cleaning installations;

(d) fitted cupboards and blinds;

(e) protective installations such as lightning protection, sprinkler and other equipment for containing or fighting fires, fire alarm systems and fire escapes;

(f) building management systems;

(g) cabling in connection with telephone, audio-visual data installations and computer networking facilities, which are incidental to the occupation of the building;

(h) sanitary appliances, and bathroom fittings which are hand driers, counters, partitions, mirrors or shower facilities;

(i) kitchen and catering facilities for producing and storing food and drink for the occupants of the building;

(j) signs;

(k) public address systems;

(l) intruder alarm systems.

(3B) Expenditure is excluded if, and to the extent that, it exceeds the market value amount for the works, services or other matters to which it relates.

(3C) "The market value amount" means the amount of expenditure which it would have been normal and reasonable to incur on the works, services or other matters—

(a) in the market conditions prevailing when the expenditure was incurred, and

(b) assuming the transaction as a result of which the expenditure was incurred was between persons dealing with each other at arm's length in the open market.

(3D) Expenditure is excluded if the qualifying building was used at any time during the period of 12 months ending with the day on which the expenditure is incurred.]

(4) For the purposes of this section, expenditure incurred on repairs to a building is to be treated as capital expenditure if it is not expenditure that would be allowed to be deducted in calculating the profits of a property business, or of a trade, profession or vocation, for tax purposes.

(5) The Treasury may by regulations—

(a) amend this section so as to add a description of fixture to the list in subsection (3A), or vary or remove a description of fixture in that list;

(b) make further provision as to expenditure which is, or is not, qualifying expenditure.

s.360C – Meaning of "qualifying building"

4. S.360C CAA provides:

(1) In this Part "qualifying building", in relation to any conversion or renovation work, means any building or structure, or part of a building or structure, which—

(a) is situated in an area which, on the date on which the conversion or renovation work began, was a disadvantaged area,

(b) was unused throughout the period of one year ending immediately before that date,

(c) on that date, had last been used—

(i) for the purposes of a trade, profession or vocation, or

(ii) as an office or offices (whether or not for the purposes of a trade, profession or vocation),

(d) on that date, had not last been used as, or as part of, a dwelling, and

(e) in the case of part of a building or structure, on that date had not last been occupied and used in common with any other part of the building or structure other than a part—

(i) as respects which the condition in paragraph (b) is met, or

(ii) which had last been used as a dwelling.

(2) In this section "disadvantaged area" means—

(a) an area designated as a disadvantaged area for the purposes of this section by regulations made by the Treasury,

(3) Regulations under subsection (2)(a) may—

(a) designate specified areas as disadvantaged areas, or

(b) provide for areas of a description specified in the regulations to be designated as disadvantaged areas.

(4) If regulations under subsection (2)(a) so provide, the designation of an area as a disadvantaged area shall have effect for such period as may be specified in or determined in accordance with the regulations.

(5) Regulations under subsection (2)(a) may—

(a) make different provision for different cases, and

(b) contain such incidental, supplementary, consequential or transitional provision as appears to the Treasury to be necessary or expedient.

(6) Where a building or structure (or part of a building or structure) which would otherwise be a qualifying building is on the date mentioned in subsection (1)(a) situated partly in a disadvantaged area and partly outside it, only so much of the expenditure incurred in accordance with section 360B as, on a just and reasonable apportionment, is attributable to the part of the building or structure located in the disadvantaged area is to be treated as qualifying expenditure.

(7) The Treasury may by regulations make further provision as to the circumstances in which a building or structure or part of a building or structure is, or is not, a qualifying building.

s.360D – Meaning of "qualifying business premises"

5. S.360D CAA defines "qualifying business premises":

(1) In this Part "qualifying business premises" means any premises in respect of which the following requirements are met—

(a) the premises must be a qualifying building,

(b) the premises must be used, or available and suitable for letting for use,—

(i) for the purposes of a trade, profession or vocation, or

(ii) as an office or offices (whether or not for the purposes of a trade, profession or vocation),

(c) the premises must not be used, or available for use as, or as part of, a dwelling.

(2) In this section "premises" means any building or structure or part of a building or structure.

(3) For the purposes of this Part, if premises are qualifying business premises immediately before a period when they are temporarily unsuitable for use for the purposes mentioned in subsection (1)(b), they are to be treated as being qualifying business premises during that period.

(4) The Treasury may by regulations make further provision as to the circumstances in which premises are, or are not, qualifying business premises.

APPENDIX 2

A BRIEF SYNOPSIS OF THE WORKS IN WORDS AND PICTURES

1. The construction project commenced on 18 January 2016 and continued until (or just before) 24 September 2016. The construction was undertaken by TRJ. The warehouse is pictured below:

2. The first step (the "**Enabling Works**") involved substantial "demolition" by TRJ of the warehouse – specifically, removal of the existing cladding and roofing and stripping back to the skeletal portal frame.

3. This took place under an initial contract with TRJ. The invoice dated 14 March 2016 (for the sum of £51,140 records: *"Enabling works comprising the stripping of the existing wall and roof cladding, stripping out and related works*". This involved: (1) Termination and disconnection of all existing incoming services; (2) Stripping out all internal partitioning / walling and associated stud work, doors, linings etc; (3) Stripping out existing display areas, floor finishes (to expose the existing concrete floor slab), all sanitary ware, and all mechanical and electrical installations; (4) Removing existing wall cladding, roof sheeting and roof lights, external canopies, all external doors including loading bay doors, to expose the portal frame.

4. The second step, which took place under the main contract with TRJ (for the sum of £1,479,977.23), involved "destruction / demolition" of 4 of the 9 structural bays (2 on each end of the building), and removal of gable end steel work, and thus the reduction of the length of the warehouse. The existing concrete base where the bays had been removed was then broken up.

5. As for the appearance of the building after this step, see photograph below.

6. Construction of car showroom: The next step involved adjusting the skeletal portal frame (by the removal of bracing members which ran horizontally along the frame), and building the car showroom. Specifically:

a. Firstly, new, secondary steelworks were added to the portal frame, including the construction of new gable ends. The progression of this part of the works can be seen in the photograph below.

b. Once this was completed, a new exterior – of walls, cladding and windows – was constructed. The building was then completely re-roofed.

c. Third, and in terms of the interior, new internal walls and features were installed, including booths made from concrete blocks to facilitate the servicing of vehicles, as reflected in the following diagram.