



TC05959

Appeal number: TC/2016/01264

Inheritance tax – business property relief – let holiday cottages – whether business mainly making or holding investments–qualitative test–level of services provided – held – despite high level of services main character of business was investment in land–appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**EXECUTORS OF THE ESTATE OF
MARJORIE ROSS (DECEASED)**

Appellants

- and -

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

Respondents

TRIBUNAL: JUDGE RACHEL SHORT

Sitting in public at Exeter Magistrates' Court, Heavitree Road, Exeter and Keble House, Southernhay, Exeter on 21 February 2017 and 10 – 11 May 2017

Ms Montes Manzano of Temple Tax Chambers for the Appellants

Dr Christopher McNall, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. This is an appeal against a determination issued by HMRC on 27 October 2015 to the executors of the estate of Mrs Marjorie Ross under s 221 of the Inheritance Tax Act 1984 stating that the property comprised in the partnership of which Mrs Ross was a partner (“the Green Door Cottages Partnership”) did not qualify for business property relief under s 104 Inheritance Act 1984. (“IHTA 1984”)

2. The Appellants requested a statutory review, which confirmed HMRC’s original view by letter to the Appellants on 29 January 2016. The Appellants appealed to this Tribunal on 26 February 2016.

3. The Appellants’ appeal is on the basis that the whole of the property comprising Mrs Ross’ two-thirds share of the Green Door Cottages Partnership is eligible for relief as business property, the business being the running and managing of eight holiday cottages and two staff flats situated at Port Gaverne in Cornwall and a property known as UpsideDown House in Weymouth.

4. The total value of that two-thirds share was stated in the IHT 400 completed after Mrs Ross’ death as £874,304.00. This was subsequently adjusted to £1,006,577.

5. HMRC’s position is that the property in question is property of a business which mainly consists of investment in land and so does not fall within the definition of “business property”, but is instead property of a business which consists “*mainly of making or holding investments*”.

Agreed matters

The following matters were agreed between the parties;

6. A partnership, the Green Door Cottages Partnership, existed for the relevant period. Mrs Marjorie Ross was a partner in that partnership.

7. The Green Door Cottages Partnership was carrying on a business.

8. The business of the Green Door Cottages Partnership did not consist “wholly” of making or holding investments.

9. Mrs Oldrieve is authorised to represent the executors of Mrs Marjorie Ross’ estate.

10. The burden of proof to demonstrate that the Green Door Cottages Partnership business is eligible for relief under s 104 IHTA 1984 is on the Appellants.

Preliminary matters

The hearing on 21 February

11. The hearing before me on 21 February 2017 commenced with a consideration of a number of preliminary issues concerning the accounting evidence which had been provided by the Appellants to demonstrate the character of the activities carried on by the deceased through the Green Door Cottages Partnership.

5 12. On 7 February 2017, 14 days before the Tribunal hearing, the Appellants served a supplementary witness statement and exhibits, including schedules detailing expenses analysis, setting out how expenses had been allocated to the deceased's Green Door Cottages Partnership business for the periods 2009 – 2012. Given the significance of the expense analysis to the matter in dispute, I decided to allow these
10 schedules to be considered by the Tribunal despite the fact that, as Mr McNall contended, this was new evidence which had been served late.

13. The Respondents served their skeleton argument on 14 February 2017 and this referred briefly to grounds of challenge to the Appellants' accounting evidence. Before the Tribunal Mr McNall said that this extended to the Respondents contending
15 that some of this accounting evidence was wrong. Ms Montes Manzano pointed out that the Respondents had not previously challenged any of the Appellants' accounting evidence and that the Appellants were not in a position to counter any of those challenges at the Tribunal without evidence from the Appellants' accountants.

14. Given the significance of the accounting evidence to the parties' arguments
20 about the character of the activities being carried on by the deceased, it was agreed between the parties that the hearing should be adjourned in order for HMRC to particularise their challenges to the accounting evidence and for the Appellants to respond and provide any further witness evidence which they considered appropriate.

15. The hearing was adjourned until 10 May 2017.

25

Background facts

16. Mrs Marjorie Ross died on 7 November 2011.

17. Her estate included a two-thirds share in a partnership, the Green Door Cottages Partnership, which owned eight holiday cottages and two staff flats, known as Green
30 Door Cottages and a property in Weymouth known as UpsideDown House. During the relevant period the eight cottages were rented out as holiday cottages. Of the two flats, one was on a long lease to the hotel across the road and used for occupation by the hotel's staff. Another was rented out to the only employee of Green Door Cottages, the handyman, Mr Howell. Mrs Ross occupied one of the cottages for the
35 period from 1992 until August 2007. UpsideDown House was also rented out as holiday accommodation.

18. The total value of all the properties held in the Green Door Cottages Partnership was valued by an external valuer as £1.5 million in April 2012.

19. Mrs Ross had originally owned the nearby hotel, the Port Gaverne Inn (“the Hotel”) with her husband and acquired Green Door Cottages in 1985. These were seen as a perfect fit with the existing Hotel business. However, the Hotel was subject to an agreement for sale dated 7 January 2002, when Mrs Ross was no longer fit enough to run this aspect of the business.

20. After the sale of the Hotel, the new owner, Mr Sylvester agreed to provide certain services to Green Door Cottage guests. As part of this agreement a tenancy was granted of the two flats and an adjoining laundry for the Hotel business.

21. Mrs Ross’ daughter, Mrs Oldrieve, took over running the Green Door Cottages in 2002. Mrs Oldrieve lives in Exeter, about 60 miles from Port Gaverne, but was brought up in Port Gaverne and views the Green Door Cottages Partnership as her family’s business.

22. In 2009 one of the Green Door Cottages was sold to a third party purchaser to finance Mrs Ross’ care costs.

23. UpsideDown house in Weymouth was fully managed by an agency on behalf of the Appellants for which a commission of 21% was paid. This property was sold in 2012 to pay an advance payment of the inheritance tax claimed on Mrs Ross’ death

24. Mrs Oldrieve is involved in other property businesses which are not part of this appeal.

25. Mrs Ross’ executors claimed business property relief on the whole of Mrs Ross’ two-thirds share of the Green Door Cottages Partnership.

The law – IHTA 1984

26. S 105 *Relevant Business Property*

(1) *Subject to the following provisions of this section..... “relevant business property” means in relation to any transfer of value,*

(a) *Property consisting of a business or interest in a business;*

(b) *.....*

(3) *A business or interest in a business, or shares in or securities of a company, are not relevant business property if the business or, as the case may be, the business carried on by the company consists wholly or mainly of one or more of the following, that is to say, dealing in securities, stocks or shares, land or buildings or making or holding investments.”*

Case authorities

27. We were referred to a number of authorities:

- (1) *Martin v IRC* [1995] STC (SCD) 5
- (2) *George and another v CIR* [2004] STC 147
- (3) *Clark v HMRC* [2005] STC (SCD) 823
- 5 (4) *McCall & another (personal representatives of McClean (deceased))v HMRC* [2009] NICA 12
- (5) *Lockyer & Robertson (Personal representatives of Pawson) v HMRC* , First-tier decision; [2012] UKFTT 51(TC), Upper Tribunal decision;[2013] UKUT 50 (TCC) and the related Court of Appeal decision; [2013] EWCA Civ 1864,
- 10 (6) *The Trustees of David Zetland Settlement v HMRC* [2013] UKFTT 284 (TC)
- (7) *John Best (Executor of Alfred Buller) v HMRC* [2014] UKFTT 077 (TC)
- (8) *Green v HMRC* [2015] UKFTT 0334 (TC)

15 **Witness evidence**

28. Much of the witness evidence provided by the Appellants was not contested. It is repeated in some detail here only because it gives the best flavour of the type of services provided at Green Door Cottages both from the perspective of the providers and the recipients of those services.

20 **Guests of Green Door Cottages**

29. We were provided with a number of written witness statements from those who had taken holidays at Green Door Cottages which were not contested by the Respondents and taken as read by the Tribunal. These served to illustrate the range of services which were provided at Green Door Cottages to guests.

25 30. *Tracy Mace* gives details of the many holidays which she has spent at Green Door Cottages and that payment and booking were arranged through the Hotel and that they would eat breakfast and dinner in the Hotel or have food brought over from the Hotel. She says “*one of the main reasons for visiting the cottages is that they are dog friendly and the cleaning staff are always wonderful*”.

30 31. *Aubrey Wright* says that he has been using Green Door Cottages for 20 years because of “*the whole holiday package... the ease of having the accommodation linked to the services which enhanced our holiday*”. He refers to the meals available at the Hotel, access to the Hotel’s internet, parking in the Hotel car park, arranging babysitters and meeting with Mrs Oldrieve on Fridays.

35 32. *Christopher Bowler* says that he first visited Port Gaverne in 1986, staying at the Hotel. In the 1990s he returned and stayed in Green Door Cottages saying “*What we experienced was so much more than with other self-catering houses. We certainly appreciated the difference compared with other holiday lets we have taken.*” Mr

5 Bowler mentions many of the additional services referred to by other witnesses, including the onsite handyman, the laundry room, dog bowls, barbeques, fishing nets, wood burning stove and logs. He concludes by saying that “A stay at one of Green Door Cottages provided the complete holiday experience as it was similar to checking into a hotel but with the ability to self-cater”.

Staff at Green Door Cottages

We were also provided with witness statements from those who worked at Green Door Cottages, these were also not contested by the Respondents and taken as read by the Tribunal:

10 Jeanette Honey

33. Ms Honey explained that she had been employed as the Hotel receptionist since May 1983, at the time when the Hotel was owned by Mr and Mrs Ross. She said that her responsibilities for the Green Door Cottages continued to support the close relationship between the Hotel and the cottages after the Hotel was sold in 2002. Ms Honey explained her duties towards the Green Door Cottages guests; managing phone and email enquiries, processing bookings, greeting guest and making sure cottages were warm prior to arrival, showed guests to cottages, settling bills on departure and dealing with any other issues which arose during their stay, including giving advice on where to go, where to eat, dealing with requests and ordering newspapers.

20 34. Ms Honey said that “*the two different types of holiday merged together with some hotel guests transferring to cottage accommodation and some cottage guests taking advantage of the hotel..... nothing was impossible – from hiring wheelchairs and oxygen tanks to helping guests celebrate special events*”. In her view there were not many guests who did not use the Hotel at some point during their stay. 25 She described Port Gaverne as “*A wonderful little bay on the North Cornwall coast where you can still get away from the busier places and walk you (sic) dog or simple (sic) read and gaze*”.

Mr Howell

30 35. Mr Howell’s witness statement explained that he is the caretaker employed at Green Door Cottages who lives on site. He has been employed there since 2008. He is employed on a nine to five basis including weekends, but helps guests with problems outside these hours saying “*I do this because of the personal nature of the business and as I live on site, it is something I am happy to do and the guests really appreciate it*”.

35 36. Mr Howell says that his work includes routine maintenance of the cottages and responding to requests from guests, each morning he will deal with any guest requests and then get on with general maintenance tasks, saying “*I see part of my job is making this a stress free holiday for guests*”. He lists some of the tasks which he has done for guests as including arranging car repairs, bike hire, fishing trips, and taxis. He 40 described his role as “*babysitting*” the guests, “*looking after them at grass roots level, making sure their stay is as pleasant as possible*”.

Alison Hughes

37. Mrs Hughes is employed as a housekeeper and cleaner at Green Door Cottages. She started by working in the kitchen and restaurants at the Hotel in 1979, moving to work for the cottages when the Hotel was sold in 2002. Mrs Hughes describes her role at Green Door Cottages as including cleaning, tidying, replacing broken items, making sure the welcome pack is available, organising laundry and buying uniforms for staff. She would liaise with the receptionist at the Hotel and Mr Howell about the jobs which needed to be done. She says that most of the guests used the extra services from the Hotel, such as having bar snacks delivered from the Hotel.

Jillian Schofield

38. Mrs Schofield is also a cleaner at Green Door Cottages and much of the information given in her witness statement supports Mrs Hughes' description of the work done and the fact that there was a need to liaise with the Hotel, for example if guests left things behind. She says "*if guests at the cottage needed anything, they went to the hotel where they could get daily newspapers ordered for them, breakfast at the hotel or evening meals booked*".

Graham Sylvester

39. We also saw a witness statement from the owner of the Hotel, Mr Graham Sylvester. This was taken as read by the Tribunal.

40. Mr Sylvester is the current owner of the Hotel. He says that when he bought the Hotel from Mrs Ross and Mrs Oldrieve they came to an agreement "*to ensure the smooth communication of the full services provided by the hotel prior to the sale.....so much so that guests were unaware that the businesses had been separated*".

41. Mr Sylvester describes the services provided by the Hotel to guests of Green Door Cottages as: administration (including handling bookings); personal guest services (turning on heating, accepting left luggage, answering queries); food services (delivery of bar meals and discounts on bar meals in the hotel); ordering milk and newspapers, and says that

"the GDC (green door cottage) guests had been accustomed to having full access to the hotel's amenities and this is how they wanted the relationship to carry on. The business continued to be run in conjunction with the hotel, the cottages on occasion being let as hotel bedrooms i.e. fully serviced, as well as separate self-catering cottages.....This gave us the option of what is now known as "apart hotels" that are only now becoming available elsewhere in Cornwall".

Mrs Oldrieve

42. We were also provided with two written witness statements from Mrs Oldrieve, who gave oral evidence to the Tribunal and was cross-examined.

Role in the business

43. Mrs Oldrieve told us that she had been actively involved in running the Green Door Cottages business since 2002. Her parents had started the business in 1968 with the acquisition of the Hotel and acquired the Green Door Cottages in 1985. She had
5 been a silent partner in the business since 1991. After her father's death in 1992, her mother ran the business but due to her mother's failing health and Mrs Oldrieve's not being in a position to take over, the decision was made to sell the Hotel part of the business in 2001 and retain the Green Door Cottages. Mrs Oldrieve accepted that running the Hotel was different from running the remaining holiday cottages and that
10 the cottages were described in marketing material as self-catering cottages.

44. However, Mrs Oldrieve said that on the sale of the Hotel it was considered important to ensure that nothing changed as far as the guest experience went, with guests continuing to be treated in exactly the same way as Hotel guests.

45. She described her involvement in the family business as part of her lifestyle, rather than "work".
15

46. In respect of the one cottage which was rented out to Hotel staff, Mrs Oldrieve explained that this could not be sold to the Hotel because of its position within the complex of cottages.

Time spent on the Green Door Cottage Business

20 47. Mrs Oldrieve explained that she spent every Friday at Green Door Cottages and worked on the business from home for five or six hours per day during the rest of the week. She would travel down to Green Door Cottages on an ad hoc basis on other days if required. Her tasks included paying salaries, compliance administration, annual upkeep of the cottages, strategic decisions, staff training, marketing, handling
25 bookings (liaising with the Hotel) and managing staff including the caretaker,

The profits of the business

48. Mrs Oldrieve's witness statement included an analysis of the partnership's expenditure for the three years prior to her mother's death and the year of her mother's death. On the basis of the figures provided Mrs Oldrieve said that "direct
30 property" costs represented only 34% of the Green Door Cottages Partnership's expenditure. The commissions payable to the Hotel (14%) are included as part of the partnership's non-property related costs.

49. Mrs Oldrieve's second witness statement made some correction to these figures in the light of HMRC's challenges at the hearing on 21 February 2017 and in response
35 to Mr Borton's additional evidence, giving a proportion of direct property costs representing only 30% of the overall expenditure by the Green Door Cottages Partnership.

50. Mrs Oldrieve was referred to the profit figures for the Green Door Cottages Partnership for the 2009-2011 years and the average profit margin of 17%. She

explained that profits fluctuated in the business depending on whether significant refurbishment was required. Those costs explained why losses were made in some years. She accepted Mr McNall's description of the profits made in other years as "modest".

5 51. In response to Mr McNall's suggestion that the real value of the Green Door
Cottages Partnership was in the capital value of the land, amounting to about £1.5
million in total, Mrs Oldrieve said that capital valuations had been done only because
these were required for inheritance tax purposes and that she had no intention of
selling any of the remaining properties. UpsideDown house had only been sold to pay
10 part of the inheritance tax due on her mother's death. One of the Green Door Cottages
had been sold, but that was to pay for her mother's care costs.

The services provided

15 52. Mrs Oldrieve described the services provided to guests at Green Door Cottages
by the Hotel; bar snacks, taking breakfast in the Hotel, ordering milk and papers.
During the shooting season guests would sometimes stay in the cottages but have their
meals in the Hotel, using the cottages as extra bedrooms.

53. The Hotel also provided booking services, dealt with phone enquiries, managing
petty cash and a guest welcome service. Guests checked in at the Hotel reception. Mrs
Oldrieve said "*once guests were settled, the amount of communication they had with*
20 *staff was very much at the guest's discretion. Some guests liked to keep themselves to*
themselves and didn't want much interaction, whereas others loved to be part of the
community. Both types of guest were respected accordingly". The ordering of bar
snacks from the Hotel was very popular as was taking breakfast in the Hotel.

54. Her business paid 14% of its turnover to the Hotel for the services provided.

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Accounting evidence - Mr Borton

55. In response to the Directions issued after the hearing of 21 February 2017, we
were also provided with a witness statement from Mr Borton, a partner in Bishop
Fleming who has advised the Green Door Cottages Partnership since 2004 and now
30 advises Mrs Oldrieve. Mr Borton gave oral evidence to the Tribunal and was cross-
examined.

Allocation of expenses

56. Mr Borton explained that the financial information originally provided by the
Appellants had included costs relating to two holiday properties (Upper and Lower
35 Tregudda) which were not part of the Green Door Cottages Partnership. Bishop
Fleming's analysis of the expenditure for the Green Door Cottages Partnership relied
on cash book figures and information provided by Mrs Oldrieve to separate the
expenditure relating to Upper and Lower Tregudda from that relating to the Green
Door Cottages Partnership. Bishop Fleming had now separated out joint costs of the

two separate businesses, including the expenditure which had erroneously been allocated to Green Door Cottages as identified at the hearing on 21 February 2017.

57. Mr Borton explained in some detail the methodology which had been used in allocating the expenses between the Green Door Cottages Partnership and Upper and Lower Tregudda and how expenses had been split between property investment and non-property investment expenditure, accepting that this was not a precise science and included an element of subjectivity. However he had taken HMRC's concept of "the direct costs of holiday services" from correspondence with HMRC. He had included all of the commission charged by the Hotel as part of the non-property investment costs on the basis that this cost was predominantly related to the provision of holiday services.

58. Expenditure allocated directly to the provision of holiday services was expenditure on; cleaning; heating and lighting; 50% of caretaker costs; commissions paid to agents (the Hotel and the agent of UpsideDown House); staff training costs; sundried (TVs, welcome packs); credit card charges; VAT administration costs; depreciation on furniture. Other costs were allocated on a pro-rata basis.

59. The adjusted expense allocations for the Green Door Cottages Partnership were provided with Mr Borton's witness statement as was a detailed explanation of how expenditure had been split between the provision of services and property investment costs. This method resulted in substantially more than half of the Green Door Cottages Partnership costs being allocated to the provision of holiday services:

Year	Total costs	Holiday service costs %	Property investment costs %	
2012	£124,638	69.1%	30.9%	
2011	£121,439	65.0%	35%	
2010	£136,156	64.7%	35.3%	

Written evidence

60. We also saw:

61. the website advertising for Green Door Cottages from 2012 stating the extensive services available;

- (1) Central heating & double glazing,
- (2) Wood burning stoves,
- (3) TV, direct dial phone, CD DVD player,
- (4) Fully equipped kitchen and dishwasher,

- (5) Laundry facilities on site,
- (6) Cots and high chairs,
- (7) Car parking,
- (8) Disabled access,
- 5 (9) Dogs welcome,
- (10) Free wi-fi,
- (11) Handyman on site,
- (12) Children's sand pit, surf boards, fishing nets, croquet set,
- (13) OS maps of local area,
- 10 (14) Newspapers/milk delivered,
- (15) Change of bed linen during stay,
- (16) Recycling facilities,
- (17) Portable BBQ,
- (18) Sun loungers and garden furniture,
- 15 (19) Kayak/surf boards,
- (20) Feather pillows,

and referring to the opportunities to use the Hotel's facilities "*all meals, including breakfast can be taken in the Port Gaverne Hotel restaurant or in the bar – bar meals can also be delivered to your door. Our guests benefit from an exclusive 10% discount on bar meals (offer excludes peak weeks)*".

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62. Schedules prepared by Mr Borton and his colleagues allocating expenses between Tregudda and Green Door Cottages and between property investment and non-investment activities.

63. The accounts for the Green Door Cottages Partnership for the years ended 31
25 March 2009, 2010 and 2011.

64. Correspondence between the parties from June 2013 to February 2016 including the Bishop Fleming letters of 1 November 2013, 1 April 2014, 3 June 2014 and 12 June 2015 setting out their clients' case in detail.

65. A subject to contract letter dated 23 August 2001 from Mr Oldrieve at Vickery
30 Holman setting out the management services which Mr Sylvester would provide after the sale of the Hotel and the terms on which the staff flats were to be leased.

66. The valuation report of Vickery Holman dated 3 April 2012 giving a value of all of the property assets held in the Green Door Cottages Partnership.

Appellants' Arguments

67. The main focus of the Appellants' arguments is that the Green Door Cottages Partnership provided a holiday experience, not just the right to stay in a cottage for a particular period of time. The extensive services provided comprised in the "holiday experience" move the character of the business from being one whose character is mainly an investment in land to one whose character is mainly in providing this holiday experience, of which the investment in land is a subordinate part.

68. The Appellants' arguments rely on the approach of the Tribunal in the *George* decision to determine whether activities are mainly investment activities; following the Special Commissioner's division of activities in that case into activities carried on by the partnership of (i) the making of investments (ii) compliance activities and (iii) management activities. Stressing that "management activities" are not related to the making of investments if they are "*additional services or facilities provided to the occupants*" (Carnwarth LJ in *George*)

69. The Appellants accept that the *George* decision suggests that it will be difficult for non-investment related services to be sufficiently significant to overcome an otherwise investment activity, but point out that this is not impossible depending on the facts of each individual case and consider that the Appellants' case is an example of this. Carnwarth LJ said in the *George* decision at [27] that:

"In the case of a building for letting it [the additional services provided] is unlikely to be material. They will not be enough to prevent the business remaining "mainly" that of holding the property as an investment"

70. The Appellants say that the Tribunal must look at the facts of this case and the services provided by the Appellants "in the round" and that this includes consideration of how the facilities and services provided to the guests at Green Door Cottages should be allocated between investment and non-investment purposes and allocating the trading figures and expenses in the same way.

71. The Appellants refer to the unchallenged witness evidence of the guests and employees of Green Door Cottages to demonstrate the level and extent of services which were provided to guests.

72. The Appellants also reference the amount of time spent by Mrs Oldrieve on managing the Green Door Cottages Partnership business to support their argument that the business is not mainly concerned with the making of investments, stressing the significance of Mrs Oldrieve's regular attendance at the cottages on a Friday and the personal welcome which she gave to guests.

73. Following this line of analysis, the Appellants have split the expenses for each of the 2009 – 2012 years into those which they believe fall on the investment and those which fall on the non-investment side of the line, concluding that those services which fall on the non-investment side of the line represent a significantly higher cost to the business than those falling on the investment side.

74. In reference to previous authorities, the Appellants say that the level of services provided distinguish their case from both *Pawson* (the letting of a single holiday bungalow) and *Green*, (five units of self-contained holiday accommodation) suggesting that the Green Door Cottages Partnership business is providing services more akin to a hotel than a typical self-catering holiday, and those services should include the services provided by the Hotel as agent for the partnership. Those services in particular set this business in a different category than even the most actively managed holiday lets.

75. The Appellants are clear that they are not arguing that the Green Door Cottages Partnership is providing hotel like services, but they are arguing that the additional services provided put the partnership on the side of line where additional services are more than ancillary to provision of land.

76. The Appellants distinguish the facts in this case from decided cases because: of the quality of the additional services provided; the mid-week change of bed-linen, the day to day availability of Mr Howell, guests' access to Hotel services for food and other services, cleaning during the week and numerous other additional services (such free accommodation for dogs, wifi, Christmas trees at Christmas and easter eggs at Easter). They point out that unlike in *Green*, at Green Door Cottages guests are not just "left to own devices", but are being offered a whole holiday package.

77. The Appellants say that the allocation of expenditure between property investment and the provision of holiday services supports this conclusion, the expenses allocated to the provision of holiday services being much more than 50% of all of the expenditure made by the Green Door Cottages Partnership. The Appellants accept that while this by itself is not determinative it is indicative of the character of the business being carried on.

78. The Appellants say that any actual or potential capital gain on the sale of the assets of the Green Door Cottages Partnership is not relevant to this analysis. This has not been considered in any of the authorities which have been cited and is merely a necessary economic consequence for any business which holds land.

30 **HMRC's arguments**

79. HMRC point out that it is a high hurdle for the Appellants to turn the holding of land into a mainly non-investment activity for these purposes. They refer to the statement in *Martin* that it was not the intention of parliament that business property relief should be available to a landlord letting land and rely on later decisions of superior courts which demonstrate this, *Pawson* and *George* in particular. Mr McNall referred to the statements of Henderson J in *Pawson* at [42] that

40 *"I take as my starting point the proposition that the owning and holding of land in order to obtain an income from it is generally to be characterised as an investment activity. Further, it is clear from the authorities that such an investment may be actively managed without losing its essential character as an investment"*

80. HMRC refer to the allocation of activities on the investment and non-investment side of the line in *George* and reiterate the point made in that decision that even the provision of non-investment linked services are unlikely to be sufficiently material to prevent a letting business being treated as mainly that of holding property for investment. HMRC consider that the *Pawson* decision laid to rest any doubts about the availability of business property relief for holiday letting businesses.

81. In HMRC's view the recent First-tier Tribunal decision in *Green* is particularly apposite, being based on facts very similar to those under consideration in this appeal; five holiday lets were rented out on the north Norfolk Coast, and were treated as not eligible for relief.

82. While HMRC accept that the level of services provided to guests of Green Door Cottages are more extensive than those considered in any previous decisions, they consider that the Appellants' case does not differ so significantly from the facts in *Green* and *Pawson* to result in the activities being treated as anything other than a business investing in land with ancillary services. Even if this partnership business is further down the spectrum of active investment activities than in either of those cases, the essence of the activity remains the exploitation of land in return for rent.

83. On the basis that the services which the Appellants refer to are accepted as having been provided, those services do not go sufficiently beyond active management to move the business away from a mainly investment business. The fact that the business is run on sound business lines and with much effort by Mrs Oldrieve is not relevant.

84. The services provided to guests by third parties, particularly the Hotel are not a relevant element in this analysis. Those services are provided by the Hotel and not by the partnership and do not alter the nature of the Green Door Cottages Partnership business.

85. Mr McNall also cast doubt on the figures provided by the Appellants for the allocation of the Green Door Cottages Partnership expense allocation. Suggesting that the allocation methodology was not objective or reliable and was in any event not a decisive factor in determining the true character of the business.

86. In HMRC's view what is really being provided is land, or the right to rent land in a particularly attractive location in Cornwall and that is the main reason why people stay at these properties.

87. This is supported by the fact that the profits actually generated by the Green Door Cottages Partnership are rather small; the real gain is in the increasing capital value of the properties (on Mr McNall's estimate from £200k to approximately £1.25m).

88. In conclusion, despite the admittedly high level of services provided by the Appellants, HMRC says this is not sufficient to demonstrate that the main business of the Green Door Cottages Partnership is the provision of holiday services with the rental of land as an ancillary part of its business. The services provided by the

partnership which are not part of its land investment activities are not sufficient to put the business on the non-investment side of the line.

Findings of Fact

5 89. On the basis of the evidence provided the Tribunal has made the following findings of fact:

10 90. The services provided by the Green Door Cottages Partnership to its guests were above the standard level of services for self-catering cottages, especially access to the Hotel, the availability of a resident on-site caretaker and Mrs Oldrieve's personal presence to welcome the guests and ensure that they had everything which was required for a happy holiday.

Decision

15 91. We were referred to a number of authorities in which s 105 IHTA had been applied to a range of businesses based on renting land, some of which were holiday rental businesses similar, if not exactly the same as Green Door Cottages. The principles to be derived from these authorities were not disputed between the parties, their only dispute was whether, if you applied those principles to the Green Door Cottages Partnership, that business did not consist "mainly of making or holding investments".

92. Those principles derived from the authorities can be summarised as:

20 (1) The owning and holding of land to earn rental income is generally to be treated as an investment activity.

(2) The holding of land can include non-investment activities.

(3) The test under s 105 IHTA 1984 requires a considered of whether those non-investment activities are more significant than the investment activities.

25 (4) The question of whether a business is mainly an investment business is a question of fact and degree.

(5) The question of whether something is an investment activity is not limited to passive investment activities such as long leases managed by managing agents.

30 (6) The holding of land may be incidental to the running of a business (as in a hotel or holiday camp) or may be the essence of the business.

(7) Accounting evidence and the profits or expenses allocated to the investment and non-investment activities of the business is one factor but is not the decisive factor.

35 (8) Additional services provided to a rental property are "unlikely to be material" and in a normal property rental business additional services will either be incidental or will not be sufficient to prevent the business being one of mainly holding investments.

(9) The characterisation of any additional services provided depends on the nature and purpose of the activity and not on the terms of any lease.

(10) To come to a conclusion the business must be looked at in the round.

5 (11) The test to be applied is that of an intelligent business person concerned with the use to which an asset is put and the way it is turned to account.

Accounting evidence

Capital gains

10 93. Mr McNall made the point that looking at the Green Door Cottages business as a whole, the profits which it made for the years in question were relatively modest. The real “value” in the business was in the capital value of the cottages which were estimated to have increased in value from £200 thousand when they were acquired to £1.2 million.

15 94. The Tribunal’s view is that the mere fact that a gain has been made from land does not inevitably mean that land is held as an investment. It is an inherent feature of the UK property market in recent years that property increases in value. Mrs Oldrieve told us that she had no intention of selling the remaining properties in the Green Door Cottages Partnership to realise this gain and those that properties which had been sold had been sold as a result of particular circumstances, including the need to make an
20 advance payment of inheritance tax.

95. For these reasons I have not taken account of the potential capital value in the assets of the Green Door Cottages Partnership in coming to a conclusion about whether its business is mainly an investment business.

Income expenses

25 96. Mr McNall attempted to cast some doubt on the credibility of the expense allocation exercise undertaken by Mr Bolton and Mrs Oldrieve. I have accepted that this is not an exact science and that although some questions could be raised over the precise allocation of some of the expenses by Mr Borton, overall the allocation of
30 expenses produced by Mr Borton was a reasonable one based on the information which he had.

97. Accepting that allocation, significantly more than half of all of the expenditure of the Green Door Cottages Partnership was spent not on property investment but on providing what was described as “the holiday experience”. This is not determinative, but is a factor which weighs in favour of the business being treated as not mainly one
35 of property investment.

Active investment activities

98. Although the cases authorities to which we were referred say that the test is not whether the investment activities are passive or active, the way in which the test has

been formulated in the authorities by reference to the additional management services provided tends to encourage this approach. The approach of the Appellants, in stressing the time which Mrs Oldrieve spent on the Green Door Cottages Partnership business, was in effect arguing that this degree of active management must amount to more than merely an investment activity.

99. The extent of Mrs Oldrieve's involvement in the Green Door Cottages Partnership business was not contested by the Respondents and I accept that Mrs Oldrieve devoted a significant amount of time and effort to running this business to a very high standard.

100. Mrs Oldrieve's own evidence suggests that her role covered both tasks which would be treated as investment related as well as non-investment related tasks by reference to the criteria established in *George*. The Appellants did not seek to demonstrate that all, or the majority of, Mrs Oldrieve's time was spent on non-investment activities or "additional management services" for the business.

101. The authorities make clear that even if a property business is actively managed that does not necessarily mean that it is not mainly an investment business; this was stated in *Martin* at [20]

"There is no necessary implication in the words of s 105(3) that the expression business of holding investments is to be confined to the passive investment of property..... To imply that is to narrow the scope of the words of exclusion to a point that is not in line with their ordinary meaning" [Stephen Oliver QC]

102. My view is that concentrating on how much Mrs Oldrieve contributed to the business is not sufficient to demonstrate that the character of the business was other than mainly an investment business. The test is a qualitative test of the nature of the business, not merely a quantitative test about the extent of the activities carried out by those who run it. Even if Mrs Oldrieve had spent every hour of a six day working week at Green Door Cottages, that would not necessarily have demonstrated that this business was not a predominantly investment business.

Services test

Services provided by third parties

103. The authorities suggest that that it is "unlikely" for the rental of property with services to be able to pass from being mainly a property investment business which includes the provision of services to a business providing services which includes the provision of property to rent. The Appellants have stressed that while this is a high hurdle, it is not an impossible one and relied on the quantity and quality of the services provided by the Green Door Cottages Partnership to demonstrate that this hurdle has been passed in this case.

104. The Tribunal accepts that the level of services provided by the Green Door Cottages Partnership were more extensive than in *Green* and did provide something which was closer to a hotel or serviced apartment type of experience for their guests.

The Appellants' business is certainly further down the spectrum than the holiday business considered in *Green*.

Integration with Hotel

105. The services provided by the Hotel to the guests of Green Door Cottages raise two questions. First, does it matter in considering the extent of the services provided by the Appellants, who actually provides the services? On this point I agree with the Appellants that it is not relevant whether the services were provided directly by Mrs Oldrieve (as some were) by her agents (such as Mr Sylvester at the Hotel or the managing agents at UpsideDown House) or by her employees (such as Mr Howell). They remain services provided to guests from the Green Door Cottages Partnership and I have taken account of the services provided through Mr Sylvester and the other agents of the Appellants to the Green Door Cottages guests for that reason.

106. I am less convinced by the Appellants' arguments that the "integration" of the Green Door Cottages services with those provided by the Hotel (both before and after the sale of the Hotel) mean that those services should be treated as akin to services provided by a hotel business.

107. Although the Appellant made clear that they were not arguing that their business should be treated as a hotel business, much of the evidence and arguments was directed at demonstrating that the services provided were akin to the type of services provided in a hotel.

108. This approach has failed to convince me that Green Door Cottages Partnership can be treated as mainly a non-investment business for a number of reasons.

109. The witness evidence does suggest that there was some overlap between the self-catering facilities provided at the cottages and the Hotel accommodation and that in some cases guests swapped between the two.

110. However, the mere proximity of the Hotel and the fact that from the guests' perspective nothing changed before and after the Hotel was separated from the Green Door Cottages business cannot disguise the character of what is actually being provided by Green Door Cottages in the relevant periods.

111. Whatever the Appellants attempted to argue, several statements made by Mrs Oldrieve herself and by other of the Appellants' witnesses indicates the qualitative difference between what the Hotel (or any hotel) would provide to guests and what was provided by Green Door Cottages;

(1) Mrs Oldrieve herself accepted that she was unable to run the Hotel because of the time commitments involved; that is the reason why the Hotel was sold but the cottages were retained. Mrs Oldrieve's clear evidence was that her mother sold the Hotel because it was significantly more time consuming and difficult to manage than the self-catering cottages, suggesting that from a practical perspective there is a significant difference in kind in running the two kinds of holiday accommodation.

(2) Mr Sylvester in his evidence makes a distinction between the circumstances in which the cottages were used as extra hotel rooms and their normal use and used as his distinguishing point “serviced apartments”, accepting that the cottages did not fall into that category.

5 (3) In his witness evidence Mr Sylvester refers to the fact that the cottages and the Hotel were interchangeable, but says, rather tellingly:

10 *“The business continued to be run in conjunction with the hotel, the cottages on occasion being let as hotel bedrooms i.e. fully serviced, as well as separate self-catering cottages.....This gave us the option of what is now known as “apart hotels” that are only now becoming available elsewhere in Cornwall”.*

Running the cottages as “fully serviced” apart-hotel type accommodation was done on an occasional basis, it was not how Mr Sylvester viewed them in the normal course.

15 (4) The advertising material provided for Green Door Cottages did not attempt to describe them as anything other than self-catering accommodation.

112. There is a place where quantitative differences can result in a qualitative change. In essence the Appellants’ argument is that the extent of the services provided at Green Door Cottages changes the quality of the business which is being carried on,
20 from something which is the mere renting of land to something closer to a mainly non-investment business like a hotel. I do not agree.

113. A focus of the Appellant’s argument is to draw out similarities between a guest staying in a hotel and a guest staying in Green Door Cottages to suggest that the level of services is similar. This misses the other side of the coin; the way in which the two
25 types of accommodation differ. The Appellants referred to the decision in *Green* to distinguish its position, at Green Door Cottages guests were not “left to their own devices” to the same extent.

114. It is worth considering what the guests who stayed at Green Door Cottages got for their money which Hotel guests did not get: exclusive occupation of a whole
30 property, with private living space, cooking facilities and outside space, in other words, the ability, if they wanted to, to be “left to their own devices” in a private dwelling which is theirs for their holiday period. Compared to guests at a hotel who paid for exclusive occupation of sleeping accommodation only, shared communal areas and access to restaurant food.

35 115. Mr McNall pointed out that Green Door Cottages described itself for “Visit England” purposes as self-catering accommodation, not serviced apartments or anything else, making the point that there is a clearly understood difference between the two types of holiday accommodation. No amount of cross-over services or shared facilities can alter this fundamental difference, whatever the quantity or quality of the
40 additional services provided.

116. This is in line with the conclusion in *George*; which can be distinguished from these facts because it concerned a caravan park which was described as a “hybrid” business – the land was provided, but as far as the caravan park itself was concerned, the holiday accommodation was provided by the clients (their caravans) and the taxpayer provided additional services (electricity, gas, water etc) which made up a significant proportion of what was provided.

117. In my view the Green Door Cottages Partnership business is more similar on its facts to *Pawson* and *Green*, even accepting that there are some differentiating features which move Green Door Cottages slightly further down the line towards the “holiday camp” end of the spectrum (unlike in *Green*, the guests were not “left to their own devices” unless they chose to be), but this is a question of degree and is not so significant as to change the qualitative nature of what is being provided by Green Door Cottages to their guests; which is primarily a beautiful place to stay.

118. The Tribunal suspects that neither Mrs Ross nor Mrs Oldrieve would have wanted their business compared to a “holiday camp”, but this is a telling comparison; the business of a holiday camp is to provide complete package of entertainment to guests and although location is a consideration, it is only one consideration.

Looking at the business in the round

119. Finally, it is necessary to step back and look at the business in the round and look at the question from the perspective of an intelligent business person and ask what the essence of this business is. This is significant in a case such as this which involves a consideration of activities which fall on a spectrum and serves to discourage an over formulaic approach to the question to be answered; it would be a strange conclusion to come to that merely by providing an extra high level of laundry service or an especially helpful handyman, the essential character of a business could be changed. The test is a qualitative as well as quantitative test.

120. On this point we have to agree with Mr McNall that however high the standard of services which were provided, and whatever the level of expenditure incurred on those services, what guests at Green Door Cottages really wanted was access to a property to call their own in a beautiful part of Cornwall to enjoy for a specific period. The essence of that is the right to rent land in the form of one of the Green Door Cottages for a specific period. That is an activity which consists mainly of the investment in property.

121. For these reasons the Appellants’ appeal in respect of Mrs Ross’ part share of the eight holiday cottages is not allowed.

The staff flats and UpsideDown House

122. The focus of both parties in this appeal, and much of the witness evidence, concerned the services which were supplied to the eight holiday cottages at Port Gaverne, but the Appellants’ claim for business property relief included her share of the two flats at Port Gaverne which were used for staff (including the one that Mr Howell lived in) and a separate property in Weymouth, UpsideDown House.

123. Mr Borton told us that the expense allocation exercise which he had undertaken took account of the expenses which could be allocated to Mr Howell's flat, which he had treated as related to employment and so wholly genuine non-investment business expenses. Mr Borton also said that expenses allocated to the flat let to the Hotel took account of the fact that this was let on a full tenant repairing lease with the tenant responsible for all utility bills and other costs (such as insurance) reimbursed by the Hotel.

124. Many of the arguments concerning the level of services which were provided to the holiday cottages simply do not apply to these two staff flats and the Appellants did not seek to argue in any positive way that these should be treated in the same way as the eight holiday cottages.

125. Given my conclusions about those holiday cottages, I cannot see any reasonable basis on which either of the two staff flats could be treated as anything other than a business which consists mainly of holding land as an investment, being much closer in character, on the basis of the information which was provided to the Tribunal, to the business centre considered in the *Best* case.

UpsideDown House

126. The Appellants suggested that despite the fact that Mrs Oldrieve was not directly involved in providing the services to UpsideDown house, the same level of services was provided by her property agent and so this property should be treated in the same way as the eight cottages at Port Gaverne. We were not provided with any evidence which suggested that those services were more extensive than those provided to Port Gaverne guests and for that reason the appeal in respect of this property must also fail.

127. For these reasons this appeal is dismissed.

128. 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.

**RACHEL SHORT
TRIBUNAL JUDGE**

RELEASE DATE: 20 JUNE 2017