

FALKIRK COUNCIL

Subject: ZERO VAT RATING AND PLANNING AGREEMENT OCCUPANCY RESTRICTIONS
Meeting: PLANNING COMMITTEE
Date: 20 April 2011
Author: DIRECTOR OF DEVELOPMENT SERVICES

1. INTRODUCTION AND CONTEXT

1.1 At the meeting of the Planning Committee of 23 February 2011, Members requested that the Director of Development Services present a report to the Planning Committee, in response to questions in relation to VAT and planning agreement occupancy restrictions.

2. VAT POSITION

2.1 Some goods and services are zero rated, meaning they are taxable for VAT, but the VAT is zero per cent. Construction of a new building would normally be charged VAT at the standard rate. However, construction of a building ‘designed as a dwelling’ that will be used solely for a ‘relevant residential purpose’ would incur a zero rating under certain circumstances. To qualify for the zero rating a building ‘designed as a dwelling’ must meet the following conditions:

- the dwelling consists of self-contained living accommodation;
- there is no provision for direct internal access from the dwelling to any other dwelling or part of a dwelling;
- the separate use of the dwelling is not prohibited by the terms of any covenant, statutory planning consent or similar provision;
- the separate disposal of the dwelling is not prohibited by the terms of any covenant, statutory planning consent or similar provision; and
- statutory planning consent has been granted in respect of that dwelling and its construction or conversion has been carried out in accordance with that consent.

2.2 The Council sought specialist VAT advice in relation to the questions raised by Members. The law in relation to zero rating has not changed since 1989. The regulations state that occupancy restrictions do *not* explicitly or automatically remove the VAT zero rating. The VAT zero rating would only disappear if the Council had prohibited either *separate disposal* or *separate use* of a property. Neither of these are *explicitly* prohibited by the Council, in its normal occupancy restriction contained in Section 75 legal agreements and expert advice on the regulations appear to indicate that the Council does not *implicitly* create such prohibitions.

2.3 Four Councils have responded to our enquires. With one exception, none of the Councils are aware of any instances where VAT has been raised as an issue, specifically in relation to occupancy restrictions. However, one Council did recall a case some 6 years ago where VAT issues arose. However this was resolved and VAT issues have not been raised since.

3. CONCLUSION

3.1 The Council does not generally appear to be creating circumstances where applicants are unable to reclaim VAT. Members should note, however, that each applicant is responsible for taking his or her own accounting and/or legal advice and that issues relating to VAT are not a material planning consideration.

4. RECOMMENDATION

4.1 **That the Planning Committee note the content of this report.**

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Director of Development Services

Date: 12 April, 2011

LIST OF BACKGROUND PAPERS

1. HMRC Reference: Notice 708 (February 2008).

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504880 and ask for Julie Seidel (Planning Officer).