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Case Number: UT/2025/000044

UPPER TRIBUNAL
Tax and Chancery Chamber

Rolls Building, London, EC4A 1NL

Corporation tax – capital allowances – expenditure on the construction of a quay wall at the Port of Liverpool – whether expenditure on the provision of plant or machinery – if so, whether the expenditure is saved by section 23 CAA 2001, List C

Heard on: 14 – 16 July 2026
Judgment date: 2026

Before

MR JUSTICE MELLOR
JUDGE JONATHAN CANNAN

Between

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Appellants

and

THE MERSEY DOCKS AND HARBOUR COMPANY LIMITED

Respondent

Representation:

For the Appellants: Jonathan Bremner KC, Edward Waldegrave of counsel and Riya Bhatt of counsel, instructed by the General Counsel and Solicitor of HM Revenue and Customs

For the Respondent: Jonathan Peacock KC and Edward Hellier of counsel instructed by Ernst & Young LLP

DECISION

INTRODUCTION

1. This is an appeal by HMRC against a decision of the First-tier Tribunal (Tax Chamber) ("the FTT") released on 23 December 2024 ("the Decision"). In the Decision, the FTT had allowed the appeal of The Mersey Docks and Harbour Company Limited ("MDHC") against a decision of HMRC to deny its claim for capital allowances in respect of expenditure in the sum of £57,134,538 incurred on construction of a quay wall ("the Quay Wall"). The Quay Wall had been constructed as part of a new deep-water container terminal at the Port of Liverpool known as "Liverpool2". The FTT held that the expenditure was incurred on the provision of plant and machinery and was eligible for plant and machinery allowances.

2. HMRC appeal against the Decision pursuant to permission granted in part by the FTT on 9 April 2025 and in part by the Upper Tribunal on 24 June 2025. MDHC also seeks to challenge two aspects of the Decision in a Respondent's Notice dated 24 July 2025.

3. We have been greatly assisted by the written and oral submissions of counsel on behalf of the parties, and the collaborative way in which both parties' legal teams have approached preparation for the appeal.

4. We shall summarise the relevant legal framework, the issues before the FTT, the facts found by the FTT, and the reasoning of the FTT. We shall then consider HMRC's various grounds of appeal and issues raised in the Respondent's Notice.

THE LEGAL FRAMEWORK

5. We have included the relevant statutory provisions as Appendix 1 to this decision. By way of summary, section 1(2)(a) Capital Allowances Act 2001 ("CAA 2001") makes provision for capital allowances in respect of capital expenditure on plant and machinery.

6. Section 11 CAA 2001 sets out general conditions as to the availability of plant and machinery allowances. Allowances are available if a person carries on a qualifying activity and incurs qualifying expenditure. The "general rule" is that expenditure is qualifying expenditure if it is capital expenditure "on the provision of plant or machinery" wholly or partly for the purposes of the qualifying activity carried on by the person incurring the expenditure. However, the general rule is affected by subsequent provisions.

7. Section 22 CAA 2001 provides that expenditure on the provision of plant or machinery does not include expenditure on the provision of a structure or other asset in List B. List B includes at Item 5:

> 5. A dock, harbour, wharf, pier, marina or jetty or any other structure in or at which vessels may be kept, or merchandise or passengers may be shipped or unshipped.

8. Section 23 CAA 2001 can be described as an exception to the exclusion in section 22. Section 23(3) provides that section 22 does not affect the question of whether expenditure on an item in List C is expenditure on the provision of plant or machinery. It will be necessary to refer to various items in List C when we come on to the parties' submissions. For present purposes, the relevant items in List C are Items 1, 22 and 24:

> 1. Machinery (including devices for providing motive power) not within any other item in this list.
>
> 22. The alteration of land for the purpose only of installing plant or machinery.
>
> 24. The provision of any jetty or similar structure provided mainly to carry plant or machinery.

9. When List C was introduced in 1994, the various Items were intended to save expenditure on structures which, following previous case law or existing revenue practice, were entitled to

plant and machinery allowances. Some Items in List C are subject to a purpose test, including Items 22 and 24. Item 1 is effectively a sweeping up provision which saves expenditure on the provision of any machinery not included elsewhere in List C.

10. There is, in effect, a common law test in section 11 which requires the expenditure to be on the provision of "plant or machinery", and then a statutory code which bars certain expenditure from qualifying for allowances, subject to certain exceptions. The expenditure must still pass the common law test in section 11 before the question of whether it is excluded by List B or saved by List C arises: see *Urenco Chemplants Limited v HM Revenue and Customs* [2022] EWCA Civ 1587 at [21] - [23] and [28].

11. Expenditure can qualify as expenditure on the provision of plant or machinery in one of two ways. Firstly, the expenditure can be on something which is itself plant or machinery. Secondly, the expenditure can be on the provision of something else which is plant or machinery. For example, the costs of installing plant or machinery or enabling it to function which Henderson LJ described as "parasitical expenditure" at [97] of *Urenco*.

ISSUES BEFORE THE FTT

12. The first issue before the FTT was to identify the relevant asset. In particular, whether the relevant distinct asset for the purpose of the provisions was the Quay Wall or whether it was the Quay Wall together with another part of the container terminal known as the container transition area. The FTT found that the Quay Wall was the relevant distinct asset and it was expenditure on the Quay Wall which was relevant for capital allowances purposes. There is no challenge to that aspect of the Decision.

13. The FTT then addressed the following issues, and its conclusions on these issues are challenged by HMRC on this appeal:

(1) Was expenditure on the Quay Wall expenditure on the provision of plant or machinery within section 11(4)(a) CAA 2001? The FTT held that it was.

(2) If so, it was common ground that the expenditure was prima facie excluded from the scope of capital allowances by Item 5 List B. The issue was whether it was "saved" from exclusion by Items 1, 22 or 24 of List C. The FTT held that it was saved by Item 1, List C.

FACTS FOUND BY THE FTT

14. The FTT's findings of fact are set out at [20] of the Decision by reference to a statement of agreed facts. The FTT went on to make further findings of fact at [29] – [57] on the basis of the evidence before the FTT. That evidence included evidence from various witnesses including expert evidence adduced by both MDHC and HMRC. We summarise the FTT's findings of fact in the following paragraphs.

15. MDHC operates the Port of Liverpool and is a harbour authority for the Port. As such, it has the right to levy pilotage and ships' dues on all vessels entering the harbour and goods' dues on all goods imported and exported through the Port. The income from cargo handling is subject to corporation tax. We were told that most of MDHC's profits come from loading and unloading container vessels.

16. MDHC developed Liverpool2 between 2013 and 2017. It was a new deep-water container terminal at the Port of Liverpool. The new terminal was designed to accommodate larger container vessels known as "Post-Panamax" vessels following the completion of work to expand the Panama Canal in 2016. Post-Panamax vessels can carry up to four times the capacity of Panamax vessels. They are up to 380m long and typically carry 18-20,000 twenty foot equivalent containers.

17. The Liverpool2 Terminal is roughly triangular in shape and lies on 17 hectares of land reclaimed as part of the project. It comprises various elements, some of which are shown on the diagrammatical representation and the image at Appendix 2 of this decision. The various elements are described in the Decision as follows.

18. The Berthing Pocket was an area of the River Mersey dredged to allow the berthing, unloading and loading of two Post-Panamax vessels at all states of the tide.

19. The Quay Wall was a structure abutting the river. It consisted of three sections: the North Tie-in at the existing riverbank, the main section and the South Tie-in at the existing Gladstone River Entrance Lock. The Gladstone River Entrance Lock provides access to the original Royal Seaforth Container Terminal which is still in operation.

20. The main section of the Quay Wall was approximately 830m long. It had Outer Pilings on the river side and a concrete coping beam sitting on the Outer Piling line. There was an Inner Piling line on the landward side and steel tie-backs from the Outer Piling line to the Inner Piling line. The area between these two piling lines was filled with sand and has a concrete slab sitting above to provide the upper surface of the Quay Wall. A long, concrete coping beam sits on the Outer Piling line. Bollards and fenders were set into the river side of this concrete coping beam. Crane rails were set into the concrete coping beam to accommodate the front wheels of ship-to-shore cranes ("STS Cranes"). Another concrete coping beam sits on the Inner Piling line with crane rails set in to accommodate the rear wheels of the STS Cranes.

21. There were initially five STS Cranes, with a further three STS Cranes added in 2020. They were constructed off-site and delivered to the Quay Wall by ship. They were dragged sideways off the ships on to the Quay Wall. The STS Cranes extend over the water and ships moored at the Quay Wall. The STS Cranes each have 16 wheels and run on the rails set into the concrete coping beams. They are not structurally fixed to the Quay Wall but they are tied down to anchor blocks. The STS Cranes cannot function without specialist foundations and supporting infrastructure provided by the Quay Wall. Containers are loaded and unloaded from lorries on the Quay Wall and transported to and from the Container Transition Area.

22. At the extreme lifting position, the distance between the centre of the container being lifted and the front crane rail is approximately 65m leading to very heavy loading on the front rail. For the STS Cranes to function effectively they require:

(1) Significant ballast on the landward side of the STS Cranes to ensure that they remain stable.

(2) Level rails.

(3) A level interchange area between the front and rear legs of the cranes.

(4) A mooring system with a high vertical face enabling vessels to be held firmly in position close to the STS Cranes.

23. The FTT described the Outer Piling of the Quay Wall and the Outer Coping Beam of the Quay Wall as follows:

> 41. The functions of the Outer Piling include the following:
>
> (1) It retains the reclaimed land and protects the Liverpool2 site against waves, currents and flooding from the River Mersey. It would however be a very expensive and ill-suited design solely for the purposes of retaining fill or providing protection from the river.
>
> (2) It forms one side of the Berthing Pocket…
>
> (3) It supports the legs of the STS Cranes nearest the water by providing a vertical wall which is necessary for the functioning of the STS Cranes in loading and unloading ships, and it holds the

Coping Beam in place so as to ensure that the crane rail does not move beyond the allowed tolerances.

42. The functions of the Outer Coping Beam include the following:

(1) It accommodates the rails for the STS Cranes and spreads the concentrated load of the wheels of the STS Cranes.

(2) It acts as a mounting point for fenders and bollards.

(3) It provides support and installation points for utilities and other ancillary equipment essential to the operation of the STS Cranes and determining the width of the beam.

24. The Container Transition Area is immediately behind the Quay Wall and forms part of land reclaimed from the River Mersey in the construction of Liverpool2. It is used for the storage and handling of containers to be loaded onto or unloaded from ships moored at the Quay Wall. Containers are moved using Cantilever Rail Mounted Gantry Cranes ("CRMG Cranes").

25. There were initially 12 CRMG Cranes, with a further ten added in 2020. They run on rails in the Container Transition Area and perform operations such as stacking and organising containers and loading/unloading containers onto/from lorries.

26. The FTT made the following specific findings about the functions of the Quay Wall:

46. One of the Quay Wall's functions is to provide access to Post-Panamax vessels when they are berthed. This includes access for lorries which transfer containers to and from the STS Cranes. It is the place where this 'container interchange' happens, providing access to the Post-Panamax vessels necessary in order for Mersey Docks to be able to carry on its activities of loading and unloading them.

47. The Quay Wall provides one side of the Berthing Pocket (above a layer of rock at the bottom of the pocket). The Berthing Pocket allows Post-Panamax vessels to remain moored at all states of the tide, so that they can be loaded and unloaded. The Quay Wall enables up to two Post-Panamax vessels to berth at Liverpool2.

48. The Quay Wall provides the necessary foundation for the STS Cranes. The need to support and ensure the proper operation of the STS Cranes was the driving force behind the Quay Wall's design and significantly impacted the cost of construction.

49. The Quay Wall retains the reclaimed land. Without the Quay Wall, the land would ultimately be washed away.

27. The FTT then made findings about the predominant function of the Quay Wall at [50] and [51]. In these paragraphs it referred to the expert evidence of Mr Corrigan on behalf of HMRC and the expert evidence of Mr Neal on behalf of MDHC. Mr Corrigan is a chartered civil engineer, a chartered water engineer and a chartered project manager. His specialist field is civil engineering. Mr Neal is a technical director of Royal Haskoning, an international consultancy working on the design and construction of port development works. Royal Haskoning had provided consultancy services in relation to the construction of Liverpool2, although Mr Neal was not involved in providing those services. He has extensive experience in planning, design and management of marine works. The FTT said this about their evidence:

50. In his evidence, Mr Corrigan stated his opinion that the primary purposes of the Quay Wall are to retain over 30m depth of reclaimed land on which to build the Terminal and premises of adequate capacity for the purposes of loading and unloading containers and providing a 7m deep berthing pocket and mooring point for 2 post-Panamax vessels. The view given by Mr Neal is that the primary purpose of the Quay Wall is to provide a platform which enables the STS Cranes

to operate immediately adjacent to the vessel and, with the chosen form of construction, this requires a retaining wall approximately 30m high.

51. We do not consider the evidence given by either expert regarding the calculations outlined in support of their view to be clear or conclusive. We accept that one of the functions of the Quay Wall is to retain the reclaimed land. However, having considered the totality of the evidence before us, it is our finding that the Quay Wall's primary purposes are to provide mooring and to provide support for the STS Cranes, which are equally important. Both are key functions and are essential to the proper operation of the business.

28. The FTT went on to make findings as to the relationship between the Quay Wall and the Container Transition Area. Some of these findings were relevant to the issue involving identification of the relevant asset, but the findings at [57] are relevant to the functioning of the Quay Wall itself:

57. [The Quay Wall and the Container Transition Area] are constructed differently with different design criteria. The Quay Wall enables mooring and provides support for the STS Cranes and the operations associated with these cranes, which are essentially related to getting containers off and on the vessel as quickly and efficiently as possible. The CTA provides an area where containers are stored and sorted, using the CRMG cranes, prior to or after transport on the national road or rail transport systems. They therefore fulfil different functions, with different engineering and construction requirements.

THE FTT'S DECISION

29. The FTT held that expenditure on the Quay Wall was expenditure on the provision of plant or machinery within section 11(4)(a) CAA 2001. It set out its reasoning at [68] – [83], including a summary of the legal principles at [69]:

69. HMRC submits that a helpful and convenient summary of the key principles is set out in the Court of Appeal judgment in *Urenco Chemplants Limited v HMRC* [2022] EWCA Civ 1587 ('*Urenco*') at [28] to [46]. We agree that the main relevant principles can be summarised as follows:

(1) The concept of plant excludes the premises or place in or upon which the business is conducted (see *Cheshire Cavity Storage 1 Ltd v HMRC* [2022] EWCA Civ 305 ('*Cheshire Cavity*') [82]-[83]).

(2) The fact that two things may perform the same function does not mean that both are plant. One thing may function as part of the premises and the other as part of the plant (see *Cheshire Cavity* at [60]).

(3) It is possible for a large structural item to constitute plant, such as the dry dock in *Barclay Curle*.

(4) A building or structure does not fall to be regarded as plant simply because it is "purpose-built for a particular trading activity" (see *Gray v Seymour* (1995) 67 TC 401 at 413).

(5) In determining whether a given item is plant or premises, the correct approach is to ask whether it is "more appropriate" to describe the item as apparatus for carrying on the business or as the premises in or upon which the business is conducted (see *Cheshire Cavity* at [24]).

(6) It is not sufficient for a taxpayer merely to establish that the item performs "any plant-like function" (see *Cheshire Cavity* at [24] and [81]-[83]).

(7) As Lewison LJ noted in *Cheshire Cavity* at [3]:

'Since the question whether something is or is not plant is a question of fact, or a question of fact and degree, it is necessary to pay close attention to the

> facts of previous cases. In some cases the court has upheld the decision of the fact-finding tribunal on the basis that it was entitled to find as it did. In such a case, it does not follow that the fact-finding tribunal would have made an error of law if it had decided the question differently.'

30. Much of this summary was taken from HMRC's skeleton argument and there was no dispute before the FTT as to the principles described.

31. The FTT set out at [70] HMRC's submission that it was more appropriate to describe the Quay Wall as part of the premises at which the business was carried on than as apparatus with which it was carried on. Supporting the STS Cranes was an ordinary function of premises. The FTT then went on to describe at [71] – [75] various authorities where the Court of Appeal has held that a structure functions as premises rather than plant.

32. The FTT at [76] – [83] rejected HMRC's submission that the Quay Wall functioned as premises rather than plant. It considered that the Quay Wall, viewed as a whole, functioned as plant in the business of MDHC. It stated that the reasoning of the House of Lords in *IRC v Barclay, Curle & Co Ltd* [1969] 1 All ER 732 was directly applicable to the facts of this case. In *Barclay, Curle*, the House of Lords held that a dry dock functioned as plant and the FTT considered that the Quay Wall was analogous to a dry dock. It was more appropriate to describe the Quay Wall as apparatus rather than premises.

33. Having held that expenditure on the Quay Wall was expenditure on the provision of plant, the FTT acknowledged the common ground that the expenditure was prima facie excluded from the scope of capital allowances by List B as a dock, harbour, wharf, pier, marina or jetty or any other structure in or at which vessels may be kept, or merchandise or passengers may be shipped or unshipped. It therefore went on to consider the exceptions to that exclusion in List C.

34. The FTT found at [87] – [90] that expenditure on the Quay Wall was on installing machinery, namely the STS Cranes. The expenditure was therefore saved by Item 1 List C.

35. It was unnecessary for the FTT to consider any other Items in List C. For the sake of completeness however, it held at [91] – [95] that the expenditure did not fall within Item 22 or Item 24. It was not expenditure on the alteration of land for the purpose only of installing plant and it was not expenditure on the provision of a jetty or similar structure provided mainly to carry plant.

36. We shall consider the FTT's reasoning on these issues in more detail below.

THE GROUNDS OF APPEAL

37. The FTT granted permission to appeal on various grounds. However, the scope of the grounds for which permission was granted was not entirely clear. HMRC therefore made a subsequent application to the Upper Tribunal for permission to appeal, and they were granted permission to appeal on two broad grounds. Counsel for HMRC summarised the grounds of appeal in their skeleton argument and MDHC did not take issue with that summary. Effectively, the grounds are as follows:

> **Ground 1** – The FTT wrongly characterised the Quay Wall as "*apparatus*". It is a purpose-built structure which fulfils ordinary premises functions. All the functions of the Quay Wall, including supporting the STS Cranes, are normal functions of specialist premises. Further, and in any event, even if supporting the STS Cranes is a 'plant-like' function, the FTT's decision that it was "*more appropriate*" to describe the Quay Wall as apparatus rather than premises was fundamentally flawed. In particular, the FTT misapplied the relevant test; misunderstood the reasoning in *Barclay, Curle*; and reached

a conclusion not reasonably open to it. Overall, the FTT erred in law in concluding that the expenditure was expenditure on the provision of plant or machinery within section 11(4).

Ground 2 – Item 1, List C is not applicable. Expenditure on the construction of the Quay Wall cannot properly be characterised as expenditure on the provision of the STS Cranes. The FTT erred in law in concluding to the contrary. The FTT further erred in deciding that Item 1 List C was engaged on a factual basis which was inconsistent with its findings on whether the expenditure on the Quay Wall passed the 'premises' test. The FTT erred in law in concluding that Item 1, List C 'saved' the disputed expenditure.

38. There is a third ground, although it is recognised by HMRC that it is not a freestanding ground of appeal. HMRC say that a delay of some 11 months between the hearing and the FTT's Decision has so adversely affected the quality of the Decision that it cannot be allowed to stand.

39. MDHC has served a Respondent's Notice challenging the FTT's conclusions in relation to Items 22 and 24. MDHC says that the FTT was wrong to conclude that expenditure on the Quay Wall was not expenditure on the alteration of land for the purpose only of installing plant and was not expenditure on the provision of a jetty or similar structure provided mainly to carry plant.

40. In relation to Item 22, there is a further matter to note. In *Urenco*, the Court of Appeal held at [164] that Item 22 does not include expenditure which consists of the construction of a structure intended to function as a single item of plant in its own right. MDHC acknowledges that the FTT and the Upper Tribunal are bound by that proposition of law. Hence, MDHC accepts that even if it successfully challenges the FTT's finding that Quay Wall was not expenditure on the alteration of land for the purpose only of installing plant, we would not be in a position to find that the expenditure fell within Item 22.

DISCUSSION

41. HMRC allege various errors of law under Ground 1, and we consider each alleged error below. HMRC's case is that these errors, individually or collectively, amount to material errors of law. Before considering the errors of law alleged by HMRC, it is convenient to consider the relevant authorities on identifying plant for the purposes of capital allowances.

42. It is well established, going back to *Yarmouth v France* (1887) 19 QBD 647, that plant includes whatever apparatus is used in a business for carrying on the business. It does not include stock-in-trade but it includes goods and chattels, fixed or moveable, which are kept for permanent employment in the business. *Yarmouth v France* was not a tax case, but an employer's liability case involving a worker who was kicked by a horse. The employer carried on a wharf business, moving goods around by horse and cart. The issue was whether the horse was plant. The Divisional Court held that the horse was plant, in that it was being used to pull the cart in the employer's business of moving goods. It was not an abstract question of whether a horse was plant. What was important was the use made of the horse in the employer's business.

43. Plant also excludes the premises or place in or upon which the business is conducted. There are many cases exploring the distinction between plant and premises. The authorities and the principles to be derived from those authorities were summarised by Henderson LJ in *Urenco* at [28] – [46].

44. A key authority in the FTT's analysis was Barclay, Curle. The House of Lords concluded that expenditure on a concrete dry dock was expenditure on plant. To fully understand the

reasoning and the FTT's reliance on that reasoning it is necessary to quote from the decision at length. Lord Reid set out the facts at p738:

> My Lords, during 1965 and earlier years the taxpayer company installed a new dry dock at their shipyard at Elderslie. The cost has been divided into three parts. Preliminary excavation cost some £187,000; concreting cost some £500,000; and ancillary plant cost some £243,000… The Crown admits the claim with regard to the £243,000 for ancillary plant but maintains that only the smaller allowance is due in respect of the excavation and concreting. The Special Commissioners held that the larger allowance was due in respect of the concreting but not the excavation. The First Division held that the larger allowance was due for both.
>
> I can summarise the facts found by the commissioners. The dock had to be made at the right level adjacent to the Clyde and some 200,000 tons of earth had to be removed to make room for it. The walls and bottom of the dock had to be strong and impervious to water so that some 100,000 tons of concrete had to be used. The gate, included in the ancillary plant, is of a falling leaf type. It is opened and when the dock is full of water at high tide the ship to be inspected or repaired is caused to enter the dock. The gate is then closed, the water pumped out, and the ship properly supported so that work can proceed on the outside of the hull. When the work is finished the process is reversed and the ship can at high tide re-enter the river. From the findings of fact I need only quote the following:
>
> > "The function of a dry dock is to lower ships into a position where they can be securely held exposed out of the water and inspected and repaired and to raise them again to a level where they are free to sail away.
> >
> > The No. 3 dry dock could only be used for this purpose. The dock acted like an hydraulic chamber in which a volume of water variable at will could be used to lower and raise a ship. The valves and pumps could not be used to lower or raise ships without the remainder of the dock. The dock could not be used to repair ships without the valves and pumps. The dock could not have fulfilled its purpose unless there had been excavated a depth sufficient to enable ships of the contemplated draught to enter and leave it.
> >
> > The valves, the machinery for the provision of electricity and the pumps were an integral part of the dock as a functioning entity. The remainder of the dock would have been useless to the [taxpayer] company without them and, similarly, they would have been useless without the remainder of the dock."

45. Lord Reid's reasoning as to why expenditure on the dry dock was expenditure on plant appears at p740G to 741C:

> The taxpayer company say that the whole dock was part of their plant used by them for the purposes of their trade. "Plant" is nowhere defined in the Act and they rely chiefly on what was said by Lindley LJ, in *Yarmouth* v. *France* and on the statement of the question by Pearson LJ, in *Jarrold (Inspector of Taxes)* v. *John Good & Sons, Ltd.*
>
> > "… whether the partitioning is part of the premises in which the business is carried on or part of the plant with which the business is carried on?"
>
> As the commissioners observed, buildings or structure and machinery and plant are not mutually exclusive, and that was recognised in *Jarrold's* case. Undoubtedly this concrete dry dock is a structure but is it also plant? The only reason why a structure should also be plant which has been suggested or which has occurred to me is that it fulfils the function of plant in the trader's operations. And, if that is so, no test has been suggested to distinguish one structure which fulfils such a function from another. I do not say that every structure which fulfils the

> function of plant must be regarded as plant, but I think that one would have to find some good reason for excluding such a structure. And I do not think that mere size is sufficient.
>
> Here it is apparent that there are two stages in the taxpayer company's operations. First the ship must be isolated from the water and then the inspection and necessary repairs must be carried out. If one looks only at the second stage it would not be difficult to say that the dry dock is merely the setting in which it takes place. But I think that the first stage is equally important, and it is obvious that it requires massive and complicated equipment. No doubt a small vessel could be got out of the water by the use of comparatively simple plant and machinery but clearly that is impossible with a very large vessel. It seems to me that every part of this dry dock plays an essential part in getting large vessels into a position where work on the outside of the hull can begin, and that it is wrong to regard either the concrete or any other part of the dock as a mere setting or part of the premises in which this operation takes place. The whole dock is, I think, the means by which, or plant with which, the operation is performed.

46. The FTT quoted both these passages from the opinion of Lord Reid. However, it did not have the benefit of the Supreme Court's decision in *Orsted West of Duddon Sands (UK) Ltd v HM Revenue and Customs* [2026] UKSC 12 which was handed down on 15 April 2026 and dealt with the meaning of the phrase "on the provision of plant". Lady Rose (with whom the other Justices agreed) reviewed the House of Lords decision in *Barclay, Curle* in detail. She described it in the following terms at [30]:

> 30. The leading authority on the meaning of this key phrase is the decision of the House of Lords in Inland Revenue Comrs v Barclay, Curle & Co Ltd [1969] 1 WLR 675 ("Barclay, Curle"). This classic case has been analysed and pored over for many years as lawyers and judges attempt to divine, from the application of the law by their Lordships to the very unusual fact pattern arising in that case, some principles to assist in deciding a dispute over some completely different kind of plant.

47. The issue in *Orsted* concerned whether certain surveys and studies in connection with the construction of an offshore windfarm qualified for capital allowances as being "on the provision of plant". The Supreme Court held that the word "on" indicated a narrow test requiring a close connection between the expenditure and the plant. Lady Rose went on to state at [76] – [80]:

> 76. The expansive construction of the phrase is not, in my judgment, consistent with *Barclay, Curle*. One starts with the fact that the House of Lords clearly found the question whether the excavation of the dry dock basin and the concreting of the basin was expenditure on plant to be a difficult question. The answer required a detailed analysis of the way in which the dry dock functioned and how the hollowed out basin was integral to that. If the test were really as broad as the Court of Appeal has held in this case, there would have been no difficulty in resolving the question of whether the expenditure on concreting and excavation was "on" the provision of the dry dock.
>
> 77. Mr Jones' case [for the taxpayer] on necessity is nuanced. He rejects the FTT's insistence that each of the surveys or studies must be shown to have been necessary to the final design or installation of the windfarm. On the other hand, he relies on *Barclay, Curle* as authority that as long as one can say broadly that designing the windfarm was "necessary" before it could be provided, then all expenditure on surveys which inform or feed into the design qualifies. Mr Jones therefore points to statements in the speech of Lord Reid referring to the necessity of having to excavate and line the basin as support for the test Orsted proposes. Lord Reid described these as costs "necessary to make room for plant" or, as he put it "... the question is whether, if the dock is plant, the cost of making room for it is expenditure on the provision of the plant for the purposes of the trade of the dock owner." Mr Jones argued that Lord Reid here was not treating the excavated basin itself as plant but treating it as something necessary to the provision of the plant. Or perhaps Lord Reid was treating it as part of the costs of installing the

plant, because in the same passage (at p 680D), Lord Reid said that the cost of making room for the plant was expenditure on the provision of plant because "plant cannot be said to have been provided for the purposes of the trade until it is installed: until then it is of no use for the purposes of trade."

78. That is not, in my view, a correct reading of Lord Reid's speech or the speeches of the other members of the majority. On the contrary, each member of the panel emphasised how integral the lined excavated basin was to the dry dock. Lord Donovan described the whole dry dock as a unit which, despite its size, was really a tool used in the shipbuilders' business. Lord Reid was not, in my view, drawing a distinction between the concreted excavated basin on the one hand and the valves and pumps which the Crown accepted were plant on the other so as to suggest that the former was not itself "plant" but just something required in order to provide the plant. Lord Reid's point rather was that the plant includes the excavated basin that enabled ships to enter and leave. The only way the taxpayer in *Barclay, Curle* could provide itself with a large hole in the ground was by digging out 200,000 tonnes of earth. You cannot buy a hole in the ground off the shelf or commission the manufacture in a factory of a bespoke hole in the ground which you can then install. The excavation works were expenditure on the provision of the plant because the plant included the lined basin and the lined basin was part of the overall dry dock.

79. Another way of making a large cavity was considered by the Court of Appeal in *Cheshire Cavity Storage 1 Ltd v Revenue and Customs Comrs* [2022] STC 622. That case concerned the creation of cavities in salt-bearing rock by the introduction of water which dissolved the rock to leave an impervious cavity. The cavity was used by the taxpayer to store gas at high pressure as part of its gas storage business. The issue was whether the cavity was plant so that the cost of creating it was capital expenditure on the provision of plant for the purposes of section 11(4). Lewison LJ with whom Baker and Whipple LJJ agreed discussed *Barclay, Curle* at para 30 onwards. He said that the key to Lord Reid's decision was that the dry dock was to be viewed as a whole and the whole dock was the means by which the operation of ship repair was performed. As to why Lord Reid accepted that the cost of excavation qualified, Lewison LJ read the speech as stating that the cost of excavating the dock if it stood alone would not have qualified as plant: "It was because the excavation was necessary before the plant was installed, that it was qualifying expenditure": para 37. He saw the emphasis as being on the excavation being part of creating the dock itself to be seen as an integral whole; the expenditure qualified only because it was part of the whole which included machinery necessary for its operation. Lewison LJ referred to the application of the principle he had identified in *Cooke v Beach Station Caravans Ltd* [1974] 1 WLR 1398. There the cost of excavating a hole into which a swimming pool was installed with filtration, heating and diving boards was held to be part of the cost of providing a single unit of plant. By contrast, in the case before him in *Cheshire Cavity Storage*, there was no equipment put into the salt rock cavity in order for it to function as a store for gas. The Court held that it was not plant.

80. I do not see Lewison LJ's judgment as inconsistent with my view of *Barclay, Curle*. It appears that the stumbling block for the taxpayer in *Cheshire Cavity* was not to do with the proximity or lack of it of the excavation costs to the provision of the plant or whether the excavation costs were necessary for, or a preliminary to, the provision of the plant but rather that the cavity was not plant and did not become an integral part of an item of plant—it was simply a hole in the rock.

48. The Supreme Court found that the expenditure on surveys in that case was not close to the boundary of what should be regarded as “on” plant and therefore it did not satisfy the test in section 11.

49. It is not the case that the existence of any plant-like function means that a structure will be plant. A submission to that effect was rejected by the Court of Appeal in *Cheshire Cavity Storage 1 Ltd v HM Revenue and Customs* [2022] EWCA Civ 305 at [81]. Similarly, the existence of a premises-like function does not mean that the structure will not be plant (see

Carr v Sayer [1992] STC 396 at p402f). The significance of those functions will be matters to take into account in the evaluative exercise of determining whether it is more appropriate to describe the structure as plant or premises.

50. With these principles firmly in mind we can now consider the grounds of appeal.

Ground 1

51. It is common ground that the FTT was required to make an evaluative finding as to whether the Quay Wall was apparatus used in MDHC's business or the premises from which MDHC conducted its business, based on a multi-factorial assessment of the facts. As the Court of Appeal stated in *Cheshire Cavity* at [3]:

> [3] In order to qualify for capital allowances, the expenditure must be expenditure on the provision of plant. It is clear from the authorities that a decision whether something is or is not plant is a question of fact, or a question of fact and degree. In some cases it is possible to take either view, and in such a case the decision of the fact-finding tribunal cannot be impugned. Since the question whether something is or is not plant is a question of fact, or a question of fact and degree, it is necessary to pay close attention to the facts of previous cases. In some cases the court has upheld the decision of the fact finding tribunal on the basis that it was entitled to find as it did. In such a case, it does not follow that the fact-finding tribunal would have made an error of law if it had decided the question differently.

52. It is also common ground that we should be slow to interfere with an evaluative finding of the FTT. HMRC's allegations of errors in the Decision must be approached as outlined by the Court of Appeal in *Re Sprintroom Ltd, Prescott v Potamianos* [2019] EWCA Civ 932 at [76]:

> 76. So, on a challenge to an evaluative decision of a first instance judge, the appeal court does not carry out a balancing task afresh but must ask whether the decision of the judge was wrong by reason of some identifiable flaw in the judge's treatment of the question to be decided, "such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion.

53. This was endorsed in the context of plant and machinery allowances in *Urenco* at [77] and [78]. More broadly, it is well-established that we should not subject the Decision to a narrow textual analysis. We must read the Decision fairly and as a whole, without focussing too much on individual phrases or passages in isolation and without being hypercritical.

54. The parties addressed Error 1 and Error 4 together and we shall do the same.

Error 1 – Did the FTT analyse the wrong asset? Error 4 – The analogy with Barclay, Curle

55. HMRC say that the FTT should have focussed specifically on the Quay Wall. It should have considered whether the Quay Wall itself constituted "plant" and then if not, whether expenditure on the Quay Wall could be regarded as "on" the provision of something else which was plant. As to the latter question, the only candidate was the STS Cranes.

56. HMRC submit as Error 1 that the FTT failed to adopt this approach. Instead, it analysed the Quay Wall together with the STS Cranes, wrongly treating them as a "composite" asset. It is said that this can also be seen from the analogy which the FTT drew between the facts of this case and the facts in *Barclay, Curle*. HMRC submit as Error 4 that the FTT was wrong to draw that analogy.

57. As we have noted, at [76] – [83] the FTT rejected HMRC's submission that the Quay Wall functioned as premises rather than plant. In this section of the Decision, the FTT quoted at [77] Lord Reid's summary of the facts in *Barclay, Curle* and at [80] his reasoning for finding that the dry dock as a whole functioned as plant. The submissions of the parties require us to look carefully at this section of the Decision. The FTT stated at [76], [78] and [79]:

> 76. Having carefully considered HMRC's submissions, it is our view that the facts in this appeal fall on the other side of the line with the relatively small number of cases where a complex structure, viewed as a whole, has been held to function as plant in the taxpayer's business, and thus passes the premises test, *Barclay Curle* being the classic example of this in the English authorities (see *Urenco* at [35]). We agree with Mersey Docks that the reasoning in *Barclay Curle* applies directly to the facts in this appeal.
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> 78. It is worth noting here that in *Barclay Curle* the cost had been divided into three parts, being preliminary excavation cost, concreting cost, and ancillary plant. The Crown admitted the claim with regard to the ancillary plant leaving the matters regarding excavation and concreting costs to be determined. The facts found included that the dock had to be made at the right level adjacent to the Clyde, and some 200,000 tons of earth had to be removed to make room for it. The walls and bottom of the dock had to be strong and impervious to water, so that some 100,000 tons of concrete had to be used. The dock could not have fulfilled its purpose unless there had been excavated a depth sufficient to enable ships of the contemplated draught to enter and leave it. We consider these circumstances to be analogous to the appeal before us. The relevant cost has been divided into the costs of the STS Cranes and the costs of construction of the Quay Wall. HMRC admit the claim with regard costs of the STS Cranes. We have found that the STS Cranes could not have fulfilled their purpose unless the Quay Wall was constructed in accordance with its detailed specifications.
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> 79. We therefore do not accept HMRC's submission that no analogy can be drawn with the dry dock in *Barclay Curle* because Lord Reid described the dry dock as "massive and complicated equipment" (i.e. to remove ships from the water) and the Quay Wall cannot be characterised as a "tool" or "apparatus" in any comparable way. In this appeal, it is the STS Cranes which can be described as "massive and complicated equipment" and the Quay Wall costs are comparable with the excavation and concreting, which also cannot be characterised as a "tool" or "apparatus".

58. We accept HMRC's submission that at this crucial point in its Decision, the FTT was analysing the wrong asset. The majority in *Barclay, Curle* regarded the entire dry dock as a single item of plant. Expenditure on the dry dock comprised excavating the hole, lining it with concrete and the ancillary items of plant. The House of Lords was considering the functions of the dry dock as a discrete item of plant. However, the FTT at [78] draws an analogy between the three parts of the cost of the dry dock in *Barclay, Curle* and the cost of the STS Cranes and the Quay Wall in the present case. The fact that HMRC admit the claim in relation to the cost of the STS Cranes is in no way analogous to the fact that the Crown admitted the claim in relation to the ancillary plant in *Barclay, Curle*. When the FTT referred to the "relevant cost" it ought to have been considering the cost of the asset under consideration, namely the Quay Wall.

59. The FTT also states in [78] that the STS Cranes could not have fulfilled their purpose without the Quay Wall. That is clearly a reference to Lord Reid's observations that the valves and pumps could not be used to lower or raise ships without the remainder of the dock and that the dock could not have fulfilled its purpose without the excavation costs. However, Lord Reid was looking at individual elements of the entire dry dock. The FTT was looking at the Quay Wall together with the STS Cranes.

60. In our view, the FTT was wrong to find in [78] that the reasoning in *Barclay, Curle* could be applied by analogy to the Quay Wall and the STS Cranes. In deciding whether the Quay Wall was itself plant, the FTT ought to have been considering the functions of the Quay Wall itself. We acknowledge the submission of Mr Peacock KC for MDHC that it was required to consider those functions in the context of MDHC's business. However, in our view the FTT

went beyond that, and was wrongly considering the functions of the Quay Wall as a composite asset together with the STS Cranes.

61. Both parties had difficulty understanding what the FTT was saying at [79]. In the first sentence, the FTT is recording and rejecting HMRC's submission that there was no analogy with the dry dock in *Barclay, Curle*. Having said that, the FTT does not record HMRC's submission that there was no analogy because the entirety of the dry dock in *Barclay, Curle* was the asset under consideration in that case, although as part of that submission Mr Bremner KC for HMRC had identified Lord Reid's reference to the dry dock being "massive and complicated equipment". He had also submitted that the only way the analogy could hold good would be if the Quay Wall and the STS Cranes were viewed as one item of plant. It appears that the first sentence of [79] derives from Mr Bremner's skeleton argument before the FTT where he submitted as follows:

> Moreover, no analogy can be drawn with the dry dock in ***Barclay, Curle***. As the Appellant identifies, Lord Reid described the dry dock as *"massive and complicated equipment"* (i.e. to remove ships from the water). The Quay Wall cannot be characterised as a "tool" or "apparatus" in any comparable way.

62. In the second sentence, it is not clear whether the FTT is continuing its description of HMRC's submissions or explaining why it was rejecting HMRC's submission. It was certainly HMRC's submission that the Quay Wall could not be characterised as a tool or apparatus. However, HMRC had not submitted that the cost of the Quay Wall was comparable to the cost of excavating and concreting the dry dock. Nor did they describe the STS Cranes as being massive and complicated equipment in the same way as the dry dock.

63. Mr Bremner submitted that the FTT was making a finding in [79] that the Quay Wall could not be characterised as a tool or apparatus. However, that seems most unlikely because it would be inconsistent with the FTT's finding at [83] that it was more appropriate to describe the Quay Wall as apparatus rather than premises. It may be that the FTT was saying that if the Quay Wall costs were comparable to the excavation and concreting then those costs in themselves would not be characterised as expenditure on a tool or apparatus. However, that was not a submission made by Mr Bremner and it would be inconsistent with the analogy to *Barclay, Curle*.

64. Mr Peacock initially submitted that the second sentence amounted to "editorial comment" by the FTT responding to HMRC's submissions. If that is right, then the FTT was again treating the Quay Wall and the STS Cranes together as analogous to the dry dock and the Quay Wall as comparable to the excavation and concreting. However, Mr Peacock did recognise the possibility that the FTT was describing Mr Bremner's submissions.

65. We are conscious that we should not seek to construe [79] as if it were a piece of legislation and we should not focus too much on individual passages. However, it is important for us to understand what the FTT was seeking to convey at [79]. On balance, it seems to us that the FTT was seeking to describe Mr Bremner's submissions, but it had misunderstood Mr Bremner's submission as to why there was no analogy with *Barclay, Curle*.

66. The FTT went on to quote Lord Reid's reasoning as to why the dry dock in *Barclay, Curle* was an item of plant, including his reference to there being two stages to the taxpayer's operations: isolating the ship from the water and carrying out inspections and repairs. The FTT then stated at [81]:

> 81. It is also apparent to us in this appeal that there are two stages in the operations. First, the ship must be moored close to the STS Cranes and then the STS Cranes are used to load and offload containers. If one looks only at the first stage it would not be difficult to say that the Quay

> Wall is merely the setting in which it takes place. But we think that the second stage is equally important, and it is obvious that it requires massive and complicated equipment. No doubt a small vessel could be loaded and unloaded by the use of comparatively simple plant and machinery, but clearly that is impossible with a very large vessel. It seems to us that every part of the Quay Wall plays an essential part in getting large vessels into a position where loading and unloading can take place, and that it is wrong to regard any part of the Quay Wall as a mere setting or part of the premises in which this operation takes place. The whole Quay Wall is, we think, the means by which, or plant with which, the operation is performed.
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> 83. In these circumstances, we consider it is "more appropriate" to describe the Quay Wall as apparatus rather than "premises". It is our conclusion that the Quay Wall Expenditure was, in principle, "on the provision of plant or machinery" within the meaning of that expression in section 11(4)(a) CAA 2001.

67. Again, we consider that at [81] the FTT was wrongly considering the Quay Wall and STS Cranes as a single item. The language used is derived from Lord Reid in *Barclay, Curle*. It seems to us that the FTT was seeking to effectively transpose the facts of the present case into the words and reasoning of Lord Reid at p741A of *Barclay, Curle* (the last paragraph in the passages cited at [45] above). The "massive and complicated equipment" being referred to by Lord Reid as necessary to isolate a ship from the water was the asset under consideration namely the dry dock. When the FTT refers to "massive and complicated equipment" at [81] it is referring to the STS Cranes which load and unload the containers. It is not referring to the Quay Wall itself, which ought to have been the asset under consideration.

68. The FTT refers to two stages in the operations. The mooring of vessels and the loading and unloading of vessels. It refers to the loading and unloading, described as the second stage, being carried out by the STS Cranes. The FTT then refers to the Quay Wall playing an essential part in "the operation". Mr Bremner suggested that this was the operation of getting vessels into place, whereas Mr Peacock suggested that this was the operation of loading and unloading. It is not clear which operation the FTT was referring to, but if Mr Peacock is right then again, it cannot be the Quay Wall alone which is the means by which that operation is performed and the FTT was again looking at a composite asset.

69. Mr Bremner made trenchant criticisms of the FTT's exercise of transposing the facts of this case into the reasoning of Lord Reid in *Barclay, Curle*. Courts and tribunals do occasionally carry out such an exercise as part of their reasoning. Indeed, we note from *Bradley v London Electricity plc* [1996] STC 1054 at p1066f that the Divisional Court (Cooke J) in a case called *Mitchell Construction Company Limited v Secretary of State for Employment* (1971) 6 ITR 202 carried out an identical exercise using the words and reasoning of Lord Reid. However, it is necessary to do so with great care.

70. Looking at the Decision as a whole, we are satisfied that the FTT was wrongly considering the functions of the Quay Wall and the STS Cranes as a single asset. In our view, that undermines the FTT's finding that the Quay Wall was the means by which vessels were loaded and unloaded and its conclusion at [83] that it was "*more appropriate*" to describe the Quay Wall as "*apparatus*" rather than "*premises*".

71. We have formed that view notwithstanding that in the first part of the Decision the FTT made specific findings that the relevant asset for consideration was the Quay Wall rather than the Quay Wall and the Container Transition Area as a whole. Mr Peacock submitted that the FTT was simply identifying the nature and function of the Quay Wall in its proper context, including its finding that one of the predominant functions of the Quay Wall was to provide

support for the STS Cranes. It did so in the same way that the Divisional Court in *Yarmouth v France* held that the horse was plant in the context of the employer's business of using horses and carts to carry goods.

72. There would be considerable force in Mr Peacock's submission were it not for the direct analogy which the FTT drew with the facts of *Barclay, Curle*. However, in our view the FTT has gone beyond that and has looked at the functions of the Quay Wall and the STS Cranes as a composite asset.

73. It is not disputed that courts and tribunals should look to authorities in order to identify relevant legal principles rather than to seek analogies on the facts (see *Marson v Morton* [1986] STC 463 at p470 and *Urenco* at [83]). That is not to say that it is never helpful to identify factual analogies, but it is necessary to take great care when doing so. That is particularly important in the context of capital allowances where the evaluative question of whether something is plant is highly fact sensitive. There are many cases where, as noted by Lewison LJ in *Cheshire Cavity* at [3], different tribunals can reach different conclusions without any error of law. He was not suggesting in that paragraph that close attention to the facts should be paid in order to draw analogies on the facts. It is also the case, as Lady Rose noted in *Orsted*, that the facts of *Barclay, Curle* were "very unusual".

74. MDHC says that it was perfectly sensible for the FTT to analyse the facts in the light of *Barclay, Curle*. We agree with that submission. It is necessary to understand the facts of *Barclay, Curle* to understand how the principles were applied in that case. However, it was important for the FTT to analyse the Quay Wall as a single asset. In our view the FTT erred in law in not analysing the function of the Quay Wall itself in the context of the business of MDHC.

75. We are satisfied that this was a material error of law and as a result it is necessary for us to set aside the Decision. The question will arise in due course whether we should re-make the decision or remit the appeal to the FTT for it to re-make the decision. That in turn will depend on whether the other errors of law alleged by HMRC are made out.

Error 2 – The FTT's analysis

76. As stated above, expenditure can qualify as expenditure on the provision of plant or machinery in one of two ways. Either as expenditure on something which is itself plant or machinery, or as expenditure on the provision of something else which is plant or machinery. HMRC say that the FTT confused these two routes. At times the FTT suggested that the Quay Wall itself was plant. At other times the FTT suggested that the expenditure was on the provision of the STS Cranes.

77. We are satisfied that the FTT was taking the first route at [81] where it held that the Quay Wall was the means by which or plant with which the operation was performed. Similarly, at [83] where the FTT held that it was more appropriate to describe the Quay Wall as apparatus rather than premises.

78. HMRC submit that at [78], where the FTT drew its analogy with *Barclay, Curle*, it appeared to be taking the second route. That is because it states that the STS Cranes could not have fulfilled their purpose unless the Quay Wall was constructed in accordance with its detailed specifications. That appears to be based on the FTT's finding of fact at [48] that the Quay Wall provided the necessary foundation for the STS Cranes and at [51] that this was one of the primary purposes of the Quay Wall.

79. We do not consider that in this part of the Decision the FTT was finding that expenditure on the Quay Wall was "on" the provision of the STS Cranes. It does not say so in terms and at

this stage it has not considered any authorities on what amounts to expenditure "on" the provision of plant. Everything that is said in this part of the Decision is referable to the common law question of whether the Quay Wall was plant. The FTT's reference to the STS Cranes not fulfilling their function without the Quay Wall was made because the FTT was looking at the Quay Wall and the STS Cranes as a composite asset.

80. HMRC relied for the purposes of Error 2 on the FTT's statement at [79] that the Quay Wall could not be characterised as a tool or apparatus. However, for the reasons given above that was not a finding made by the FTT. It was intended by the FTT to be part of a summary of HMRC's submissions.

81. In the context of Error 2, HMRC also relied upon a finding by the FTT at [87] – [90] that expenditure on the Quay Wall was expenditure on installing the machinery, namely the STS Cranes. That was on the basis that without installation the machinery could not be said to have been provided for the purposes of the trade. However, that was said in relation to MDHC's case on Item 1, List C. At that stage of the Decision, the FTT was clearly considering whether expenditure on the Quay Wall could be seen as expenditure "on" the provision of the STS Cranes. It was at that stage that the FTT referred to the Upper Tribunal decision in *Gunfleet* as to what was meant by expenditure "on" the provision of machinery. Gunfleet was the name of one of the taxpayers in *Orsted* and when those proceedings were before the Upper Tribunal they were known as *Gunfleet*.

82. We do not consider that the FTT erred in law in confusing the two routes to establishing that expenditure on the Quay Wall was expenditure on the provision of plant for the purposes of section 11.

Error 3 – The concept of expenditure "on the provision of" plant

83. Error 3 is closely connected to Error 2. HMRC say that to the extent that the FTT decided that expenditure on the Quay Wall was expenditure on the provision of the STS Cranes then it erred in law. Although the STS Cranes are eligible for capital allowances as machinery, expenditure on the Quay Wall cannot be regarded as part of the cost of providing the STS Cranes.

84. For the reasons just stated, we do not consider that the FTT did decide at [70] – [83] that expenditure on the Quay Wall was qualifying expenditure because it was on the provision of the STS Cranes. We shall therefore say nothing more about Error 3 at this stage. However, the question of whether the expenditure was on the provision of the STS Cranes does arise as Ground 2 when we come to consider the application of Item 1, List C.

Error 5 – The functions of the Quay Wall

85. The FTT found at [51] that the primary purposes of the Quay Wall were to provide mooring and to provide support for the STS Cranes. This was why the FTT considered that the Quay Wall was functioning as plant. It was these purposes which the FTT relied on at [81] to support its analogy with *Barclay, Curle* and, it appears, its conclusion at [83] that it was more appropriate to describe the Quay Wall as apparatus rather than premises.

86. HMRC say that the FTT made errors of principle in its analysis of the Quay Wall's functions, and in particular its finding that the Quay Wall did not function as premises.

87. The distinction between plant and premises is clearly described by Fox LJ in *Wimpy International Limited v Warland* (1988) 61 TC 51 at p97:

> It is proper to consider the function of the item in dispute. But the question is what does it function as? If it functions as part of the premises it is not plant. The fact that the building in which a business is carried on is, by its construction particularly well-suited to the business, or

> indeed was specially built for that business, does not make it plant. Its suitability is simply the reason why the business is carried on there. But it remains the place in which the business is carried on and is not something with which the business is carried on.

88. There are various authorities to the effect that an asset which has a function of supporting equipment is not necessarily plant and that expenditure on creating the asset is not necessarily expenditure on the provision of plant. For example, in *Hampton v Fortes Autogrill* (1979) 53 TC 691 (Ch) 696, a false ceiling in a restaurant which supported equipment was held to be part of the premises. In *Bradley v London Electricity plc* [1996] STC 1054, cited by the FTT at [73], the concrete structure of the electricity substation did not have any plant-like function even though it supported the electrical equipment. In *Urenco*, a wall and floor slab which supported pipework was held to be premises. Similarly, the fact that a building or structure is purpose-built for a particular activity does not make it plant. For example, in *Carr v Sayer* [1992] STC 396 (Ch) 402 purpose-built kennels for animals were not plant. In *Gray v Seymours Garden Centre* (1995) 67 TC 401, cited by the FTT at [72], a purpose-built structure known as a planteria built to house ornamental plants was held to be premises. In *Bradley*, the purpose-built underground sub-station functioned as premises. In *Attwood v Anduff Car Wash Ltd* (1997) 69 TC 575, cited by the FTT at [74], a purpose-built car wash hall functioned as premises not plant. In *Shove v Lingfield Park 1991 Ltd* (2004) 76 TC 363, cited by the FTT at [75], an all-weather horse racing track was premises rather than plant.

89. HMRC say that the Quay Wall cannot be characterised as the means by which the operation of loading or unloading vessels is performed and the FTT was wrong to make that finding if that is what it meant when it referred to "the operation" being performed by the Quay Wall at [81]. The Quay Wall is the location upon which the STS Cranes were placed and formed part of the very site at which the business was carried on. It is the STS Cranes which are the means by which loading and unloading operations are performed.

90. HMRC also say that the FTT gave no proper consideration to the other functions of the Quay Wall in concluding that it was functioning as plant rather than premises. The FTT identified various functions of the Quay Wall at [46] – [49]. Apart from supporting the STS Cranes, the other functions included enabling vessels to berth, providing access to the vessels including access for lorries to transfer containers to and from the STS Cranes, and retaining the reclaimed land. It is said that the FTT did not undertake any assessment of the extent to which all the functions identified are functions of premises rather than plant.

91. The FTT noted HMRC's submissions in relation to the distinction between plant and premises at [70]:

> 70. HMRC submits that it is more appropriate to describe the Quay Wall as part of the premises at which the business is carried on, than as apparatus with which the business is carried on. In particular, they argue, the function of supporting the cranes is an ordinary premises function, an ordinary function of a purpose-built structure is to support any equipment that is to be placed upon it. Even if the provision of support could, in this case, be "a plant-type" function, the Quay Wall has numerous other functions which are functions of premises and which substantially outweigh any plant-like function that the Quay Wall may have, including the retention of the reclaimed land on which the CTA and the top of the Quay Wall stand, and the provision of support and mounting points for bollards used to secure vessels, and fenders. HMRC contend that the Quay Wall has undoubtedly been designed to meet the particular requirements of the business, but this is not enough to make the Quay Wall plant.

92. The FTT then referred to the cases identified above where assets were held to fall on the premises side of the line. It went on to reject HMRC's submission at [76] which we have set out above. However, HMRC say that the FTT did not address why providing support for the

STS Cranes, together with the other functions of the Quay Wall, led to a conclusion that the Quay Wall was functioning as plant and not premises.

93. There are various aspects to Error 5. It was not expressly put as a challenge on the basis that the only reasonable conclusion available to the FTT was that the Quay Wall was the premises from which the trade was conducted rather than apparatus with which the trade was conducted. However, it seems to us that, at least in part, Error 5 does amount to such a challenge. To some extent it can also be viewed as an allegation that the FTT failed to give reasons for its conclusion that the expenditure was on plant not premises. It is also a challenge on the basis that the FTT failed to take into account the other functions of the Quay Wall in considering whether it amounted to plant or premises.

94. MDHC submits that the FTT recognised the role of the Quay Wall in loading and unloading ships and was entitled to reach an evaluative conclusion at [81] and [83] that as a matter of fact the Quay Wall was the apparatus by which MDHC carried out its operations and not the premises at which those operations occurred. Further, it is clear from Item 24, List C that expenditure on certain structures to carry plant or machinery can qualify for capital allowances and that is why such expenditure is saved.

95. Mr Peacock gave as an example expenditure in *Orsted* on the foundations of the wind turbines which qualified for capital allowances. However, in that case the asset being considered was not the foundations, but the windfarm as a whole. *Bradley* provides a better example where it refers at p1065 to the non-tax case of *Mitchell Construction Company Limited v Secretary of State for Employment* (1971) 6 ITR 202 where it appears that specialist concrete foundations were held to be plant. In *Bradley* itself, it appears from a Scott Schedule annexed to the judgment (item 12) that expenditure on a concrete transformer plinth had been allowed.

96. Looking at the structure of the Decision, the FTT deals with HMRC's submissions on plant versus premises at [76]. It does so by reference to *Barclay, Curle* which it describes as a classic example of expenditure on plant rather than premises. It states that the reasoning in *Barclay, Curle* applies directly to the facts of this appeal. We have found that the FTT was wrong to apply that analogy to the Quay Wall. It appears that because the FTT relied on that analogy, it did not expressly deal with HMRC's submissions on premises and did not conduct a multi-factorial analysis of the functions of the Quay Wall. We are satisfied therefore that the FTT's reasoning as to why the Quay Wall functioned as plant not premises was flawed. As such, we consider that the FTT did err in law in its consideration of whether the Quay Wall functioned as plant or premises.

97. We recognise that expenditure on specialist foundations to support plant or machinery might itself, depending on the facts, amount to expenditure on the provision of plant or machinery. However, it is necessary to conduct a multi-factorial assessment of the particular facts to determine whether it is expenditure on plant or premises. We shall return to that question under Error 8 where HMRC allege that the only reasonable conclusion open to the FTT was that the Quay Wall was the premises at which the business was conducted or plant with which the business was conducted.

98. To the extent described above, we are satisfied that the FTT did err as alleged in Error 5. As a result of its reliance on an analogy with *Barclay, Curle*, the FTT did not make any separate assessment of whether the Quay Wall was functioning as plant or premises.

Error 6 – The FTT's approach to the evidence

99. HMRC say that the FTT failed to take relevant evidence into account and/or failed to give adequate reasons for rejecting that evidence. It is well established that a court or tribunal must give adequate reasons for its decision (see *Flannery v Halifax Estate Agencies Ltd* [2000]

1 WLR 377 and recently in this Tribunal, *Medpro Healthcare Ltd v HM Revenue & Customs* [2025] UKUT 255 (TCC) at [29] – [39]). The decision should be viewed in the context of the material evidence and submissions before the FTT. As the Court of Appeal stated in *Flannery* at p382:

> … where the dispute involves something in the nature of an intellectual exchange, with reasons and analysis advanced on either side, the judge must enter into the issues canvassed before him and explain why he prefers one case over the other. This is likely to apply particularly in litigation where as here there is disputed expert evidence; but it is not necessarily limited to such cases.

100. In *English v Emery Reimbold & Strick Ltd* [2002] EWCA Civ 605, the Court of Appeal explained at [19] that:

> 19. …if the appellate process is to work satisfactorily, the judgment must enable the appellate court to understand why the judge reached his decision. This does not mean that every factor which weighed with the judge in his appraisal of the evidence has to be identified and explained. But the issues the resolution of which were vital to the judge's conclusion should be identified and the manner in which he resolved them explained. It is not possible to provide a template for this process. It need not involve a lengthy judgment. It does require the judge to identify and record those matters which were critical to his decision.

101. We also bear in mind the practice statement issued by the Senior President of Tribunals in June 2024 referred to in *Medpro* at [34]. Providing concise reasons is to be encouraged. The Upper Tribunal should take a realistic and reasonably benevolent approach when faced with a challenge based on adequacy of reasons.

102. HMRC say that the FTT effectively ignored the evidence of HMRC's expert, Mr Corrigan, without any adequate engagement or explanation. In this regard, Mr Bremner focussed his submissions on what he said was the FTT's failure to give adequate reasons for preferring the evidence of Mr Neal to that of Mr Corrigan.

103. HMRC also say that the FTT failed to take into account or give proper consideration to contemporaneous documentary evidence in a report prepared by Royal Haskoning.

104. Mr Corrigan and Mr Neal gave detailed expert evidence setting out their views as to the functions of the Quay Wall. Mr Corrigan's evidence was that the loads associated with the STS Cranes were of limited significance in determining the required structural capacity of the Quay Wall. The primary function of the Quay Wall was to enable reclamation of the land on which the terminal was built, withstanding the lateral forces associated with soil and water either side of the Quay Wall. The Outer Coping Beam was built primarily to withstand fender loads of moored vessels. He considered that providing support to the STS Cranes was not a predominant function of the Quay Wall. It was the lateral forces which determined the structural size of the Quay Wall, including the Outer Coping Beam, rather than the vertical forces associated with the STS Cranes. He based these conclusions at least in part on design specifications prepared by BAM Infra prior to construction of the Quay Wall.

105. HMRC say that Mr Corrigan's evidence about the Outer Coping Beam was not the subject of effective challenge in cross-examination. It was put to Mr Corrigan that he had incorrectly stated the size of the Outer Coping Beam in his Report. However, Mr Corrigan explained that his calculations were "slightly inaccurate by 1%, perhaps, but not 30%" and would have a "very, very small impact".

106. HMRC say that other aspects of Mr Corrigan's calculations were not challenged at all. Indeed, Mr Neal confirmed that he had not performed any calculations himself and he did not dissent from Mr Corrigan's calculations. He said that he did not think that the calculations were required. He did say that he had looked at some of the calculations prepared by BAM Infra but

he was not asked to explain their significance in the context of his conclusion that the predominant functions of the Quay Wall were to provide mooring and to support the STS Cranes.

107. We were taken to the experts' joint report. There was a large measure of agreement between the experts as to the functions of various aspects of the Quay Wall. Their disagreement was in relation to the predominant function of the Quay Wall.

108. Against that background, HMRC say that Mr Corrigan's evidence was highly relevant and ought to have been addressed by the FTT in its findings as to the Quay Wall's functions and their relative importance. It was not sufficient for the FTT to simply say at [51] that it did not consider the expert evidence regarding the calculations to be "clear or conclusive" and that having considered the totality of the evidence it was finding that the primary purposes of the Quay Wall were to provide mooring and to support the STS Cranes. That is especially the case when the FTT raised no questions about the calculations at the hearing and gave no opportunity to the experts to provide clarification. It is further submitted that the FTT failed to recognise that the calculations were only one aspect of Mr Corrigan's evidence. It gave no adequate reasons for rejecting Mr Corrigan's other evidence.

109. Mr Peacock submitted that one particular difference between the evidence of Mr Corrigan and Mr Neal was that Mr Neal had expressed his views in the context of the business of MDHC whereas Mr Corrigan had not. We accept that might have been one reason to prefer the evidence of Mr Neal to that of Mr Corrigan, but it was not a reason given by the FTT.

110. MDHC submits that appellate courts and tribunals should not interfere with evaluative findings by first instance judges because, as in this case, the tribunal will have regard to the whole sea of evidence presented. The FTT expressly reached its conclusion at [51] based on the totality of the evidence. For example, there was evidence before the FTT as to how the Quay Wall might have been built differently if it was simply intended to hold back soil and water and berth vessels. It was entitled to conclude that the calculations presented by the experts were neither clear nor conclusive. The FTT plainly did address the evidence now highlighted by HMRC in making its findings of fact as to the requirements of the STS Cranes at [37] – [39] and the functions of the Quay Wall at [40] – [49]. It is notable that at [48], the FTT had found as a fact that the need to support and ensure the proper operation of the STS Cranes was the driving force behind the design of the Quay Wall and significantly impacted the cost of construction. HMRC have not challenged that finding of fact by the FTT. It was in the light of all those findings and the evidence as a whole that the FTT reached its conclusion at [51] as to the predominant functions of the Quay Wall. It was not necessary for the FTT to address every piece of evidence in stating its conclusion.

111. The report prepared by Royal Haskoning as part of the construction project identified various functions of the Quay Wall in addition to supporting the STS Cranes. Those functions included providing for berthing and mooring of container vessels, providing for handling and storage of containers, providing access for emergency vehicles, retaining the reclaimed land, and withstanding incidental loadings including loadings from moored vessels.

112. It is not suggested that the Royal Haskoning report itself had anything to say about the relative importance of the functions identified in the report. Indeed, Mr Neal agreed that the Quay Wall needed to perform all of the functions identified in the Royal Haskoning report. In those circumstances, we take the view that it was not necessary for the FTT to refer to the report in the Decision.

113. We were also told that the Royal Haskoning report was canvassed extensively in oral evidence and in submissions. Mr Charnock, who was a director and chief financial officer of

MDHC, accepted that all the functions listed in the report were important. Mr Patterson, who was the project manager for the principal contractor, accepted that they were important, perhaps equally important. Mr Charnock and Mr Patterson were not expert witnesses but their evidence was before the FTT. The FTT gave no express indication as to what weight if any it gave to their evidence. Looking at the decision as a whole, we can infer from the absence of any reference to their evidence in this regard that the FTT gave it little or no weight. It was fully entitled to do so.

114. We are mindful that we have not seen all the evidence that was available to the FTT and that we should take a realistic and benevolent approach in considering whether the FTT gave adequate reasons for its findings as to the primary purpose of the Quay Wall. There was clearly a significant dispute between the expert witnesses on a matter which was key to the determination of the appeal. The Quay Wall had various functions and the FTT was required to make an evaluative decision as to the predominant function or functions of the Quay Wall as a whole. We do consider that it was incumbent on the FTT to give some explanation as to why the purpose of mooring vessels and supporting the STS Cranes predominated over retaining the reclaimed land. The FTT may have been entitled to conclude that the calculations relied on by Mr Corrigan were not clear, although we cannot see why the FTT reached that conclusion. As to whether the calculations were conclusive, the fact that they were not conclusive does not mean that they should be given no weight. Overall, we cannot see from the Decision why the FTT reached the conclusion it did as to the predominant purposes of the Quay Wall. In our view, on such a key issue it was not sufficient to say that the conclusion was reached on the basis of the totality of the evidence.

115. In the circumstances, we are satisfied that Error 6 does in part establish an error of law on the part of the FTT.

Error 7 – The parties' agreement in relation to the rear crane piles and rear crane rails

116. Paragraph 6 of the agreed statement of facts, which was adopted by the FTT at [20], stated that there was no dispute as to the relevant tax treatment of expenditure on the berthing pocket, the container transition area, the CRMG Cranes or the STS Cranes, including the rear crane piles and the crane rails. The rear crane piles and the crane rails were actually part of the Quay Wall. On Day 4 of the hearing before the FTT, HMRC applied to withdraw their agreement as to the treatment of the rear crane piles and the crane rails. They relied on the fact that the closure notice had disallowed all expenditure on the Quay Wall. The FTT records that application and its reasons for refusing the application at [21] – [28]. In the course of submissions, HMRC submitted that it was difficult to see how the crane rails and the rear crane piles could sensibly be regarded as part of the STS Cranes. HMRC also submitted that if they were bound by the agreement and expenditure on those items did qualify for allowances, then that should not inform the analysis of the rest of the Quay Wall.

117. In short, the FTT considered that it was too late for HMRC to withdraw their concession and that if HMRC were permitted to change the basis on which the proceedings had been conducted then it would prejudice MDHC.

118. At [82] of the Decision, having concluded at [81] that the whole of the Quay Wall was plant, the FTT stated as follows:

> 82. As stated at [28] above, we have refused HMRC permission to withdraw from their agreement that the parts of the Quay Wall that include the rear crane piles and the crane rails qualify for PMAs. We agree with the submissions made by HMRC during that application that it is very hard indeed to see why the rear crane piles and the crane rails should be regarded separately from the rest of the Quay Wall. This supports our finding that the whole Quay Wall qualifies for PMAs. However, if we were wrong to refuse HMRC's application to withdraw their agreement, we

would still find that the whole Quay Wall qualifies for PMAs following our analysis of the decision in *Barclay Curle*.

119. HMRC submit that the FTT was wrong to find that HMRC's agreement on the rear crane piles and the crane rails supported its decision on the Quay Wall as a whole. If the rear crane piles and the crane rails did qualify for capital allowances, that could only be on the basis that they were separate assets apart from the Quay Wall. On that basis, their treatment could not support the analysis as to other parts of the Quay Wall.

120. It is not disputed that just because part of an asset has a plant-like function does not mean that the whole asset is plant. As indicated above, a submission to that effect was rejected in *Cheshire Cavity*. However, the FTT's reasoning as to why the Quay Wall as a whole qualified as plant did not rely on its view as to the consequences of HMRC's concession. The FTT had already concluded at [81] that the Quay Wall as a whole was plant. At [82], the FTT was simply gaining comfort in relation to that conclusion because HMRC had conceded that the rear crane piles and the crane rails separately qualified as plant.

121. We do not consider that HMRC have established any error of law based on Error 7. It is clear that the FTT's conclusion did not depend on the concession.

Error 8 – The FTT's evaluative conclusion

122. HMRC say that the FTT's conclusion that expenditure on the Quay Wall was on the provision of plant was outside the ambit of any reasonable evaluative judgment. The Quay Wall clearly provides a location where the business of MDHC is carried on. It is an ordinary function of premises to support equipment and providing support for the STS Cranes was an ordinary function of premises. Further, the Quay Wall performs a series of important and critical other functions including retaining the reclaimed land, providing a location for ships to berth and for lorries to drive. These are quintessential functions of premises. It is irrelevant that the Quay Wall may have been constructed in accordance with certain specialised requirements. In short, this case is like *Gray*, *Bradley* and *Lingfield Park* where the only reasonable conclusion was that the asset comprised premises rather than plant.

123. HMRC also say that expenditure on the Quay Wall cannot reasonably be regarded as having been on the provision of the STS Cranes. Expenditure on the Quay Wall was not part of the cost of providing the STS Cranes. Again, it could only reasonably be characterised as expenditure on premises. However, as we have stated above in the context of Error 2, the FTT was not considering at [67] – [83] whether expenditure on the Quay Wall was expenditure on the provision of the STS Cranes.

124. The FTT set out the relevant principles as to what amounts to plant at [68] and [69]. It considered various authorities in relation to whether an asset functioned as premises or plant. Neither party takes any issue with the principles stated by the FTT. There is no indication on the face of the Decision that the FTT was applying the wrong legal test in considering whether the Quay Wall functioned as plant being used in the business rather than the premises from which the business was conducted.

125. The distinction between plant and premises is extremely fact sensitive. Mr Peacock criticised HMRC for not putting before us all the evidence relevant to the multi-factorial analysis that the FTT was required to perform. In essence, he submitted that HMRC were "island-hopping" and had simply highlighted the evidence which favoured their case. However, Mr Bremner confirmed that for the purposes of Error 8, HMRC were relying only on the findings of fact made by the FTT.

126. We must exclude from the findings of fact made by the FTT, its finding at [51] that the primary purposes of the Quay Wall were to provide mooring for vessels being loaded or

unloaded and to support the STS Cranes. That leaves the finding at [48] that the need to support and ensure the proper operation of the STS Cranes was the driving force behind the design of the Quay Wall. However, it seems to us that to understand the significance of that finding it would be necessary to have a full appreciation of the evidence before the FTT, including the expert evidence of Mr Corrigan and Mr Neal.

127. Providing support for plant can be a function of premises, but it can also be a function of plant. In our view, the FTT rightly approached the question by reference to the totality of the evidence when it sought to identify the primary function of the Quay Wall in the business. We have not had the benefit of hearing or considering by reference to the transcripts the totality of the evidence. In those circumstances, we cannot be satisfied on the basis of the facts found by the FTT that there was only one reasonable answer to the question of whether the Quay Wall was plant or premises.

128. In the circumstances, we are not satisfied that what is alleged to be Error 8 establishes any error of law on the part of the FTT.

Ground 2

129. HMRC contend as Ground 2 that expenditure on the construction of the Quay Wall cannot properly be characterised as expenditure on the provision of machinery within Item 1 List C. It is necessary for us to consider this Ground because it may still be the case, despite the errors we have identified under Ground 1, that expenditure on the Quay Wall was expenditure on the provision of plant within section 11.

130. HMRC make two broad criticisms under Ground 2. First, it is said that the FTT applied the wrong test in determining whether expenditure on the Quay Wall was expenditure on the provision of machinery. They say that the FTT applied a test of necessity. Second, they say that the basis for the FTT's conclusion that Item 1 was engaged is inconsistent with its finding that the Quay Wall was itself plant.

131. The principles concerning the scope of the costs which can properly be regarded as being "on" the provision of plant or machinery were considered by the Supreme Court in *Orsted* at **[**30] – [58]. This included consideration of *Barclay, Curle* and *Ben-Odeco Limited v Powlson* [1978] STC 460. Expenditure on the provision of plant is not limited to the purchase price. It includes items such as transport and installation – see Lord Reid in *Barclay, Curle* at p741 and 742, Lord Wilberforce in *Ben-Odeco Limited* at p464 and Lady Rose in *Orsted* at [85]. What is required is a close connection between the expenditure and the plant. It is a narrow test, but none of the cases describe how close the connection must be. Henderson LJ did describe qualifying expenditure at [97] of *Urenco* as "parasitical expenditure which qualifies for allowances because it is incurred in installing an item of plant or otherwise enabling it to function".

132. The FTT did not have the benefit of the judgment of the Supreme Court in *Orsted*. It is now established that expenditure "on" the provision of plant or machinery involves a narrow test. It requires a close connection between the expenditure and the plant provided. That case involved expenditure on various technical reports in connection with an offshore windfarm. The relevant plant in that case was the windfarm as a whole rather than individual wind turbines. The Supreme Court at [77] - [78] rejected the proposition that any expenditure which can be regarded as "necessary" before an item of plant can be provided qualifies as being on its provision. In this regard the Supreme Court upheld the Upper Tribunal in *Gunfleet*. At [140(3)], the Upper Tribunal in *Gunfleet* had rejected a proposition that any expenditure that the taxpayer needs to incur in order for the plant to be provided is allowed.

133. HMRC's case is that on no view can the construction of the Quay Wall be characterised as part of the cost of providing the STS Cranes given the narrow test in *Orsted*. Rather, the Quay Wall provided a location at which the STS Cranes were situated.

134. The FTT recorded HMRC's submissions on Item 1 List C at [87] and at [88] – [90] it rejected those submissions:

> 87. HMRC accepts that the STS Cranes constitute "machinery" but contend, on the basis of the arguments we have considered and rejected above, that the Quay Wall Expenditure cannot be seen as having been on the provision of the STS Cranes. They argue that the most that can be said is that specific elements of the Quay Wall were incorporated into the design because of the need to support the STS Cranes, but it is unsustainable to say that the Quay Wall as a whole was constructed as part of the provision of the STS Cranes because the Quay Wall has functions which predominate over the need to support the STS Cranes, including in particular the retention of the reclaimed land.
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> 88. We do not agree with HMRC's submissions. We accept Mersey Docks' contention that the Quay Wall Expenditure must be incurred before the STS Cranes can be provided and that the expenditure is a cost necessarily incurred on the provision of the STS Cranes themselves.
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> 89. We note the remark made by the Upper Tribunal in *Gunfleet* at [121]:
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> > 'In summary therefore, *Barclay Curle* does not impose a necessity test but makes the point that "provision of plant" may cover more than the cost of plant itself or its actual supply. It can also cover expenditure on installing the plant on the basis that without installation the plant cannot be said to have been provided for the purposes of the trade.'
>
> 90. In our view, the Quay Wall Expenditure is expenditure on installing the machinery, namely the STS Cranes, on the basis that without installation the machinery cannot be said to have been provided for the purposes of the trade. We have therefore concluded that the expenditure is "saved" by item 1 of List C in section 23 CAA 2001.

135. HMRC say that in these paragraphs the FTT was wrongly applying a test of 'necessity'.

136. It does appear that the FTT was indeed applying a test of necessity at [88]. It accepted a submission that the Quay Wall expenditure had to be incurred before the STS Cranes could be provided and that the cost was necessarily incurred on the provision of the STS Cranes. We acknowledge that at [89] the FTT noted a passage from *Gunfleet* that *Barclay, Curle* did not impose a necessity test. However, there is no suggestion that the FTT was looking more broadly at the nature of the connection required between the expenditure and the plant. In one sense that is not surprising because it was the Supreme Court in *Orsted* which focussed on the closeness of the required connection between the expenditure and the provision of the plant in the context of a narrow test.

137. The FTT then went on to reason at [90] that expenditure on the Quay Wall was expenditure on installation and that without installation the STS Cranes could not be said to have been provided for the purposes of the trade. However, it is not clear why the FTT concluded that the expenditure was on installation of the STS Cranes. The FTT cannot be criticised for not appreciating that what was required was a close connection and that the test was a narrow test. However, we must conclude that the FTT did err in law in failing to apply a narrow test and to look for a close connection between the expenditure and the plant provided.

138. We do note that at [87] the FTT says that it has already considered and rejected HMRC's arguments that expenditure on the Quay Wall cannot be seen as having been on the provision of the STS Cranes. It is not entirely clear which specific arguments the FTT is referring to here. As we have said, there is no indication that the FTT had previously decided that expenditure on the Quay Wall was not expenditure on the provision of the STS Cranes. If it had done, that was the short answer to HMRC's case on Item 1, List C. It seems likely that it is referring to

the rejection of HMRC's submission that the predominant functions of the Quay Wall included retention of the reclaimed land.

139. In any event, given our findings on Error 6, the FTT's conclusion that the expenditure was part of the cost of installing the STS Cranes cannot safely stand. We are satisfied therefore that there was an error of law in the FTT's conclusion that the expenditure was saved by Item 1, List C.

140. HMRC also say that once the FTT had found that the Quay Wall was plant for the purposes of section 11, the expenditure could not be saved by Item 1, List C. Such expenditure could not at the same time amount to expenditure on the provision of machinery. The expenditure resulted in the construction of the Quay Wall which was a substantial structure forming the location in which the business was carried on, with multiple functions besides supporting the STS Cranes and which had an existence of its own not related to the STS Cranes. That expenditure cannot properly be characterised as expenditure on the provision of the STS Cranes.

141. MDHC submit that the legislative scheme envisages that expenditure might be on the provision of plant within section 11, excluded as being on the provision of a List B structure, but might then be saved as being on the provision of machinery. The best example of that is a specialist foundation or support.

142. Given our findings on Ground 1, it would not be appropriate for us to make any finding in relation to this aspect of Ground 2. It remains to be seen what the primary functions of the Quay Wall were and whether the Quay Wall should properly be seen as the premises from which the business of MDHC was carried on. It is safer to determine the issue raised by HMRC in the light of findings in relation to those matters.

143. To the extent described above, we are satisfied that the FTT erred in its approach to the issue under Item 1, List C. It applied a test of necessity rather than applying a narrow test and asking whether there was a sufficiently close connection between expenditure on the Quay Wall and the STS Cranes.

Delay

144. HMRC do not rely on delay as a freestanding ground of appeal. However, they say that there are good reasons to conclude that the FTT's delay in producing the Decision undermined its findings and/or its evaluation of the evidence. The hearing in this case took place between 29 January 2024 and 2 February 2024. The Decision was not released until 23 December 2024, almost 11 months later.

145. It is generally accepted that in most cases a decision ought to be released within 3 months of the hearing. Clearly, a period of 11 months between the conclusion of a hearing and the decision of a tribunal without good reason is unacceptable. It appears that there may have been a good reason for part of the delay in this case, but not for the whole of that period. Taking into account the nature of the issues and the evidence in this case, including the availability of transcripts and detailed written submissions, we cannot say that the delay has undermined the FTT's findings of fact or its evaluative judgment. There is nothing to suggest that the FTT has misunderstood or misremembered the facts and evidence before it. It does appear that the FTT partly misunderstood HMRC's submissions which it recorded at [79]. However, we are not satisfied that the delay has "so adversely affected the quality of the decision that it cannot be allowed to stand" (see *NatWest Markets Limited v Bilta (UK) Limited (in liquidation)* [2021] EWCA Civ 680 at [43]).

146. Whilst we have found that the FTT failed to give adequate reasons for its finding at [51], we are not satisfied that was or might have been because of the delay in releasing the Decision. The requirement for such a causal link was considered by the Court of Appeal in *Phones4U Ltd v EE Ltd* [2025] EWCA Civ 869 at [218] – [228] (not cited to us).

147. We have addressed the question of whether the FTT failed to deal with relevant evidence and/or failed to give adequate reasons for its decision in light of the fact that there has been a period of 11 months between the hearing and the Decision. In some respects, we have found that there are errors of law in the Decision. In relation to errors which have not been made out, we do not consider that the delay in any way contributed to the alleged errors so as to make the Decision unsafe in those respects. In the circumstances, we do not consider that delay adds anything to HMRC's other grounds of appeal.

MDHC's Respondent's Notice

148. It was not necessary for the FTT to consider whether Item 22 or Item 24 saved expenditure on the Quay Wall because it found that the expenditure was saved by Item 1. However, for the sake of completeness it made findings that Item 22 and Item 24 would not have saved the expenditure. MDHC challenges those findings.

Item 22

149. Item 22, List C saves expenditure on the alteration of land for the purpose only of installing plant or machinery. The FTT found at [92] that it would not have been satisfied that the expenditure properly falls within Item 22:

> 92. … This Item refers to the "alteration of land for the purpose only of installing plant or machinery". We accept HMRC's submission that the Quay Wall was not constructed (altering the land) for the purpose only of installing the STS Cranes, as it was also constructed for the purpose of providing a berth where vessels can be safely moored.

150. MDHC submits that this finding is inconsistent with the FTT's primary findings of fact at [39(5)] and [39(8)] that for the STS Cranes to function effectively they required a mooring system to enable vessels to be firmly held in place and a high vertical face against which ships could moor at all levels of the tide. It is said that the FTT was wrong to distinguish between the Quay Wall's function of enabling the STS Cranes to operate effectively and the mooring function of the Quay Wall. The mooring function was part of installing the STS Cranes so that they could operate efficiently.

151. HMRC submit that the FTT was entitled to find as a fact that there was a separate purpose for constructing the Quay Wall. Namely, to provide a berth for ships to safely moor.

152. We have noted MDHC's acceptance that even if it were to successfully challenge the FTT's finding that the Quay Wall expenditure was not expenditure on the alteration of land for the purpose only of installing plant, we would not be in a position to find that the expenditure fell within Item 22. That is because the FTT found that the Quay Wall was intended to function as a single item of plant in its own right. In the circumstances, we do not consider there is any good reason for us to consider what is an academic ground of appeal.

Item 24

153. It is common ground that the purpose of Item 5, List B is to exclude expenditure on all marine infrastructure assets at which vessels may be kept, or merchandise or passengers may be shipped or unshipped. Item 24 then saves expenditure on the provision of any jetty or similar structure provided mainly to carry plant or machinery.

154. The FTT found at [94] and [95] that Item 24 did not save the expenditure on the Quay Wall:

> 94. [Item 24] refers to the "provision of any jetty or similar structure provided mainly to carry plant or machinery". We do not consider the expenditure could rightly be said to be on the provision of any jetty or similar structure when considering the ordinary meaning of the term "jetty" (Mersey Docks referred to the Oxford Dictionary of English 3rd Edition 2010 definition of a "jetty" as "a landing stage or small pier at which boats can dock").
>
> 95. We also do not consider the expenditure could rightly be said to be on the provision of any jetty or similar structure when considering the concept of a "jetty or similar structure" interpreted in its statutory context (HMRC referred to the Item 5 in List B in section 22 exclusion on the provision of a "dock, harbour, wharf, pier, marina or jetty or any other structure in or at which vessels may be kept, or merchandise or passengers may be shipped or unshipped". We agree that in List C Item 24, Parliament has chosen not to remove from that exclusion any of the other excluded items in Item 5 of List B such as a "wharf" or "pier" and the term "jetty" is not, in this context, apt to describe the Quay Wall).

155. MDHC submits that the FTT gave the term "jetty or similar structure" an unduly narrow interpretation, taking into account:

> (1) The reference in Item 24 is to "any" jetty, without prescribing the form, size or nature of the jetty. Use of the word "any" in the context of a structure was deliberately chosen by Parliament to give an expansive interpretation and appears only in Items 17, 24, 27 and 32 of List C.
>
> (2) The provision is not limited to a jetty. It extends to a similar structure which also indicates an expansive interpretation. That extension appears only in Items 4, 5, 14, 15 and 24 of List C.
>
> (3) Item 24 is the only Item in List C to use both the extension "any" and the extension to similar structures.

156. Further, it is said that in common parlance the term "jetty" can apply to a broad range of structures, including "The Princess Royal Jetty" in Portsmouth which is home to the Queen Elizabeth class aircraft carriers. A jetty can also run parallel to the shore.

157. Against that background, MDHC submits that the FTT was wrong to find that the Quay Wall was not a jetty or similar structure. The FTT did not go on to consider whether the Quay Wall was provided mainly to carry plant or machinery. If it had done so, it is clear that the test was met. The FTT had found that the primary purpose of the Quay Wall was to provide mooring and support for the STS Cranes to operate efficiently.

158. We are satisfied that the FTT reached the right conclusion for the right reasons in relation to Item 24. We consider that as a matter of ordinary language and in the statutory context, a jetty connotes a relatively small, narrow structure. In Item 5, List B, Parliament chose to distinguish jetties from docks, harbours, wharfs and piers. In our view the exclusion in Item 5 would be undermined if "jetty or similar structure" was intended to have a broad meaning that encompasses a structure such as the Quay Wall. As Henderson LJ pointed out in *Urenco* in relation to a similar argument on Item 22, it "*would in practice swallow up the basic disqualification*" in Item 5 List B. The existence of a purpose test in Item 24 does not counter that argument. It is unlikely that the term jetty in Item 24 was intended to have a different meaning to the same term in Item 5. In our view, the Quay Wall is more aptly described as a wharf in Item 5 than a jetty. Nor in the light of the statutory context can the Quay Wall be seen as a similar structure to a jetty.

159. In any event, it is not clear to us that the Quay Wall was provided mainly to carry plant or machinery.

CONCLUSION

160. For the reasons given above, we are satisfied that the FTT erred in law as follows:

(1) In its analysis of whether the Quay Wall functioned as plant. In particular, in considering the Quay Wall and the STS Cranes as a composite asset and in relying on a direct analogy to *Barclay, Curle*.

(2) In not giving reasons as to why it preferred the expert evidence of Mr Neal to that of Mr Corrigan in finding that the primary purposes of the Quay Wall were to provide mooring and to provide support to the STS Cranes but did not include retaining the reclaimed land.

(3) In applying a test of necessity for the purposes of Item 1, List C, rather than applying a narrow test and asking whether there was a sufficiently close connection between expenditure on the Quay Wall and the STS Cranes.

161. These are material errors of law and we must therefore set aside the Decision. For the reasons given above, we are not in a position to re-make the decision. We therefore remit the appeal to the FTT for re-consideration in the light of our decision. The reconsideration will be of those matters where we have identified errors of law and consequential matters flowing from those errors. We consider that the re-consideration should be by a new panel but it will not be necessary for there to be a full re-hearing of the appeal. The findings of fact made by the FTT will stand, save to the extent indicated in this decision. The new panel will have transcripts of the evidence and submissions made by the parties before the FTT. It will no doubt be necessary for the FTT to have further oral submissions from the parties. Beyond that, case management will be a matter for the new panel.

MR JUSTICE MELLOR
JUDGE JONATHAN CANNAN

Release date: 28 October 2026

Appendix 1

Statutory Provisions

Capital Allowances Act 2001

1 Capital allowances

(1) This Act provides for allowances in respect of capital expenditure (and for charges in connection with those allowances).

(2) The allowances for which this Act provides are those under —

(a) Part 2 (plant and machinery allowances);

11 General conditions as to availability of plant and machinery allowances

(1) Allowances are available under this Part if a person carries on a qualifying activity and incurs qualifying expenditure.

(2) "Qualifying activity" has the meaning given by Chapter 2.

(3) Allowances under this Part must be calculated separately for each qualifying activity which a person carries on.

(4) The general rule is that expenditure is qualifying expenditure if—

(a) it is capital expenditure on the provision of plant or machinery wholly or partly for the purposes of the qualifying activity carried on by the person incurring the expenditure, and

(b) the person incurring the expenditure owns the plant or machinery as a result of incurring it.

(5) But the general rule is affected by other provisions of this Act, and in particular by Chapter 3.

22 Structures, assets and works

(1) For the purposes of this Act, expenditure on the provision of plant or machinery does not include expenditure on —

(a) the provision of a structure or other asset in list B, or

(b) any works involving the alteration of land.

LIST B EXCLUDED STRUCTURES AND OTHER ASSETS

1. A tunnel, bridge, viaduct, aqueduct, embankment or cutting.

2. A way, hard standing (such as a pavement), road, railway, tramway, a park for vehicles or containers, or an airstrip or runway.

3. An inland navigation, including a canal or basin or a navigable river.

4. A dam, reservoir or barrage, including any sluices, gates, generators and other equipment associated with the dam, reservoir or barrage.

5. A dock, harbour, wharf, pier, marina or jetty or any other structure in or at which vessels may be kept, or merchandise or passengers may be shipped or unshipped.

6. A dike, sea wall, weir or drainage ditch.

7. Any structure not within items 1 to 6 other than —

(a) a structure (but not a building) within Chapter 2 of Part 3 (meaning of "industrial building"),

(b) a structure in use for the purposes of an undertaking for the extraction, production, processing or distribution of gas, and

(c) a structure in use for the purposes of a trade which consists in the provision of telecommunication, television or radio services.

(2) The provision of a structure or other asset includes its construction or acquisition.

(3) In this section—

(a) *"structure"* means a fixed structure of any kind, other than a building (as defined by section 21(3)), and …

(4) This section is subject to section 23 …

23 Expenditure unaffected by sections 21 and 22

…

(3) Sections 21 and 22 also do not affect the question whether expenditure on any item described in list C is, for the purposes of this Act, expenditure on the provision of plant or machinery.

(4) But items 1 to 16 of list C do not include any asset whose principal purpose is to insulate or enclose the interior of a building or to provide an interior wall, floor or ceiling which (in each case) is intended to remain permanently in place.

LIST C EXPENDITURE UNAFFECTED BY SECTIONS 21 AND 22

1. Machinery (including devices for providing motive power) not within any other item in this list.

2. Gas and sewerage systems provided mainly —

(a) to meet the particular requirements of the qualifying activity, or

(b) to serve particular plant or machinery used for the purposes of the qualifying activity.

…

4. Manufacturing or processing equipment; storage equipment (including cold rooms); display equipment; and counters, checkouts and similar equipment.

5. Cookers, washing machines, dishwashers, refrigerators and similar equipment; washbasins, sinks, baths, showers, sanitary ware and similar equipment; and furniture and furnishings.

6. Hoists.

7. Sound insulation provided mainly to meet the particular requirements of the qualifying activity.

8. Computer, telecommunication and surveillance systems (including their wiring or other links).

9. Refrigeration or cooling equipment.

10. Fire alarm systems; sprinkler and other equipment for extinguishing or containing fires.

11. Burglar alarm systems.

12. Strong rooms in bank or building society premises; safes.

13. Partition walls, where moveable and intended to be moved in the course of the qualifying activity.

14. Decorative assets provided for the enjoyment of the public in hotel, restaurant or similar trades.

15. Advertising hoardings; signs, displays and similar assets.

16. Swimming pools (including diving boards, slides and structures on which such boards or slides are mounted).

17. Any glasshouse constructed so that the required environment (namely, air, heat, light, irrigation and temperature) for the growing of plants is provided automatically by means of devices forming an integral part of its structure.

18. Cold stores.

19. Caravans provided mainly for holiday lettings.

20. Buildings provided for testing aircraft engines run within the buildings.

21. Moveable buildings intended to be moved in the course of the qualifying activity.

22. The alteration of land for the purpose only of installing plant or machinery.

23. The provision of dry docks.

24. The provision of any jetty or similar structure provided mainly to carry plant or machinery.

25. The provision of pipelines or underground ducts or tunnels with a primary purpose of carrying utility conduits.

26. The provision of towers to support floodlights.

27. The provision of—

(a) any reservoir incorporated into a water treatment works, or

(b) any service reservoir of treated water for supply within any housing estate or other particular locality.

28. The provision of —

(a) silos provided for temporary storage, or

(b) storage tanks.

29. The provision of slurry pits or silage clamps.

30. The provision of fish tanks or fish ponds.

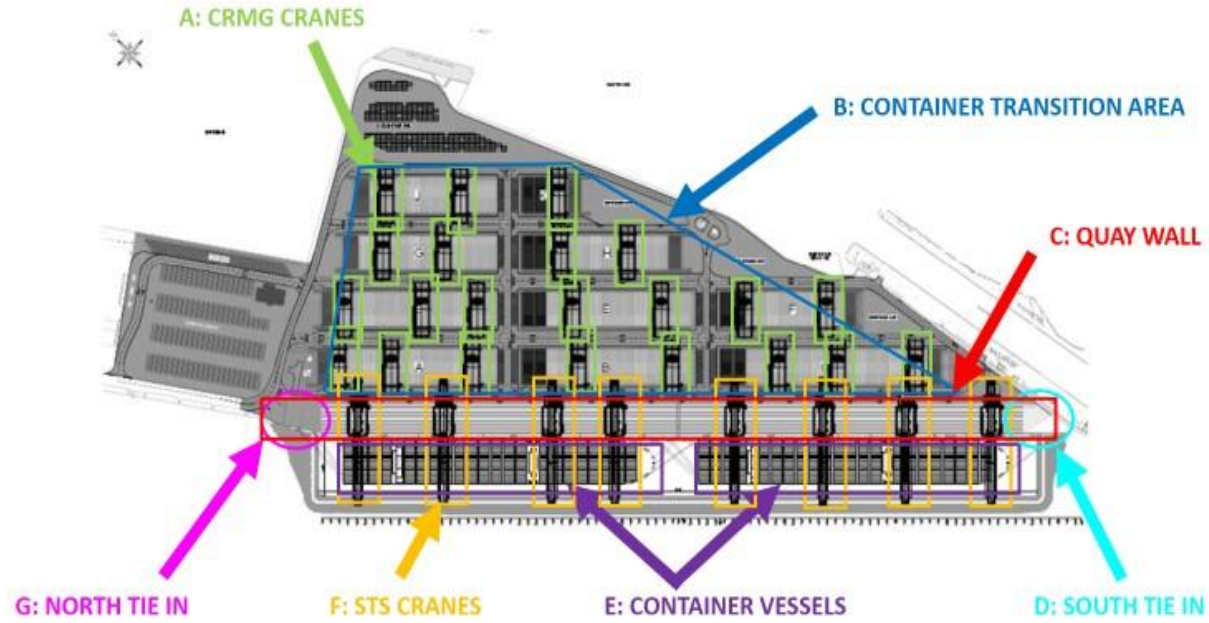
31. The provision of rails, sleepers and ballast for a railway or tramway.

32. The provision of structures and other assets for providing the setting for any ride at an amusement park or exhibition.

33. The provision of fixed zoo cages.

Appendix 2

Diagrammatical Representation of Liverpool2



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Image of the STS Cranes on the Quay Wall

