Summary
A gazebo, used as a smoking shelter in the grounds of a rural public house, qualified for capital allowances because it was ‘plant’.

Background
The taxpayer ran a country public house and purchased a gazebo (ie, garden pavilion). This was placed in the pub garden to provide shelter for customers who could no longer smoke inside the pub because of the recent smoking ban.

The gazebo was made of wood, with a regular polygonal floor and roof. It had three foot high dado timber walls with crosshatched lattice work above, which was open to the elements. Timber benching was arranged around the panelled inside. The entrance was open, with no door. The gazebo sat directly onto the ground, with no base or bolts, just resting under its own weight. It was capable of being moved and the taxpayer was considering moving it. It was placed near tables with integral benches and its use was not limited to smokers, so it was used like the garden bench tables for customers to sit at when they ate, drank or talked.

The taxpayer claimed capital allowances for the cost of the gazebo in the view that it was ‘plant’. HM Revenue & Customs (‘HMRC’) disagreed.

Relevant Law/Practice
Section 11 of the Capital Allowances Act 2001 (‘CAA 2001’) allows a business to claim plant and machinery capital allowances if it incurs capital expenditure on the provision of plant or machinery for business purposes and owns the asset in question (or is deemed to do so for tax purposes).

Machinery takes its ordinary meaning and is usually easily recognised. However, plant is more difficult to identify. Aside from a few limited examples designated by statute, CAA 2001 generally attempts to designate what is not plant. Sections 21 and 22 provide that a ‘building’ or ‘structure’ (which must be fixed) cannot be plant. Also, case law provides that the ‘premises’ in which the business is carried on cannot be plant (Wimpy International Ltd v Warland [1989] 61 TC 51). The terms ‘building’, ‘structure’ and premises’ all have specific tax law meanings. Fundamentally, plant is business ‘apparatus’ (Yarmouth v France (1887) LR 19 QBD 647).

Tax Tribunal Decision
The first-tier tribunal found in favour of the taxpayer. It held that the gazebo was ‘plant’.

The gazebo was not a ‘building’ because it was insubstantial and provided limited shelter and little security. Nor was it a fixed ‘structure’ because it was moveable.

The tribunal was in no doubt that the gazebo was kept in the permanent employment of the business and functioned as ‘apparatus’ (as an embellishment of the garden that provided facilities for customers to sit and eat and drink). Furthermore, it had retained a separate identity from the ‘premises’ because it did not look like it was part of the garden; it was attached by its own weight and not in any permanent way; the pub gardens were complete without it; and it was moveable and could be moved.

Our View
To quote Lord Justice Ormerod “The dividing line between what is ‘plant’ and what is not is a narrow one” (Jarrold v John Good & Sons Limited [1963] 40 TC 681). This case illustrates that practical difficulty, but we agree with the tribunal’s conclusion.

However, we wonder whether HMRC’s enquiry might not have arisen at all if the taxpayer had from the outset described the gazebo in terms which more accurately brought out its true features, for example as moveable garden furniture.