Neutral Citation: [2024] UKFTT 00734 (TC)

Case Number: TC09259

FIRST-TIER TRIBUNAL
TAX CHAMBER

In public by remote video hearing

Appeal reference: TC/2023/08552

SDLT – claim for multiple dwelling relief – appeal allowed

Heard on: 8 July 2024
Judgment date: 7 August 2024

Before

TRIBUNAL JUDGE NIGEL POPPLEWELL
MR JAMES ROBERTSON

Between

JAMES WINFIELD

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Heather Moore of HM Consulting

For the Respondents: William Scott litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. This appeal concerns Stamp Duty Land Tax ("**SDLT**") and in particular whether the appellant benefits from Multiple Dwellings Relief ("**MDR**") on the acquisition of a residential property known as Gilboa Barn ("**the property**") for £1.8 million on 16 December 2021 ("**the transaction**").
2. The effect of MDR is to lower the effective rate of SDLT by splitting the chargeable consideration among the number of dwellings which are the subject matter of a land transaction.
3. It is the appellant's assertion that the property comprises two dwellings and MDR is available. He filed his SDLT return on this basis, assessing tax due at £70,000.
4. It is HMRC's contention that the property comprises a single dwelling and so no MDR is available. This is reflected in their closure notice issued on 9 December 2022 in which they amended the appellant's SDLT return increasing the self-assessment by £59,750. That is the amount at stake in this appeal.
5. For the reasons given later in this decision, it is our view that the appellant benefits from MDR and we allow his appeal.
6. We are grateful for the clear submissions, both written and oral, provided by Mrs Moore on behalf of the appellant and Mr Scott on behalf of HMRC. However, we have not found it necessary to refer to each and every argument advanced or all of the authorities cited in reaching our conclusions.

THE LEGISLATION

7. The legislative framework for SDLT is largely contained in the Finance Act 2003 ("**FA 2003**"). Unless otherwise stated, references to sections and schedules are to FA 2003, and of which the following are directly relevant to this appeal.

(1) Section 55 provides for the applicable rates of SDLT, in accordance with the land transaction in question, by reference to factors such as residential or non-residential, whether as a transaction in a number of linked transactions, or any relevant relief is due.
(2) Section 58D provides for the claim of relief in relation to transfers involving multiple dwellings to be in a land transaction return, or an amendment of such a return.
(3) Schedule 6B contains the provisions for MDR, and sub-para 2(2) states as follows:

> **'**(2) A transaction is within this sub-paragraph if its main subject-matter consists of—
>
> (a) an interest in at least two dwellings, or
>
> (b) an interest in at least two dwellings and other property'.

(4) Schedule 6B para 4 provides for the calculation of the relief. There is no dispute between the parties in terms of the quantification of the relief.
(5) Schedule 6B para 7 defines '*What counts as a dwelling*', and sub-para 7(2) states:

> '(2) A building or part of a building counts as a dwelling if—
>
> (a) it is used or suitable for use as a single dwelling, or
>
> (b) it is in the process of being constructed or adapted for such use'.

8. Section 83 provides HMRC with the power in relation to the formal requirements as to assessments, penalty determinations etc, with further provisions in this respect being contained in

Schedule 10. Paragraph 12 in relation to the 'Notice of enquiry' provides, inter alia, for the time limit for opening an enquiry being nine months of the 'relevant date' of: (a) the filing date, (b) the date of return being delivered if after the filing date, or (c) the date amendment made to a filed return. Paragraph 23 provides for the completion of enquiry by the issue of a closure notice.

CASE LAW

9. The essential enquiry in this case is whether the property comprises an interest in at least two dwellings, and that in turn depends on whether dwelling 1 and dwelling 2 are (or rather were at the date of the transaction) used or suitable for use as a single dwelling.

10. The leading authority on this is the case of *Fiander and Brower v HMRC* [2021] UKUT 0156 ("***Fiander***") in which the Upper Tribunal at [47- 48] said as follows:

> "47. The HMRC internal manuals on SDLT contain various statements relating to the meaning of "dwelling" and "suitable for use as a single dwelling", but these merely record HMRC's views and do not inform the proper construction of the statute.
>
> 48. We must therefore interpret the phrase giving the language used its normal meaning and taking into account its context. Adopting that approach, we make the following observations as to the meaning of "suitable for use as a single dwelling":
>
> (1) The word "*suitable*" implies that the property must be appropriate or fit for use as a single dwelling. It is not enough if it is capable of being made appropriate or fit for such use by adaptations or alterations. That conclusion follows in our view from the natural meaning of the word "suitable", but also finds contextual support in two respects. First, paragraph 7(2)(b) provides that a dwelling is also a single dwelling if "it is in the process of being constructed or adapted" for use as single dwelling. So, the draftsman has contemplated a situation where a property requires change, and has extended the definition (only) to a situation where the process of such construction or adaption has already begun. This strongly implies that a property is not suitable for use within paragraph 7(2)(a) if it merely has the capacity or potential with adaptations to achieve that status. Second, SDLT being a tax on chargeable transactions, the status of a property must be ascertained at the effective date of the transaction, defined in most cases (by section 119 FA 2003) as completion. So, the question of whether the property is suitable for use as a single dwelling falls to be determined by the physical attributes of the property as they exist at the effective date, not as they might or could be. A caveat to the preceding analysis is that a property may be in a state of disrepair and nevertheless be suitable for use as either a dwelling or a single dwelling if it requires some repair or renovation; that is a question of degree for assessment by the FTT.
>
> (2) The word "*dwelling*" describes a place suitable for residential accommodation which can provide the occupant with facilities for basic domestic living needs. Those basic needs include the need to sleep and to attend to personal and hygiene needs. The question of the extent to which they necessarily include the need to prepare food should be dealt with in an appeal where that issue is material.
>
> (3) The word "*single*" emphasises that the dwelling must comprise a separate self-contained living unit.
>
> (4) The test is objective. The motives or intentions of particular buyers or occupants of the property are not relevant.
>
> (5) Suitability for use as a single dwelling is to be assessed by reference to suitability for

occupants generally. It is not sufficient if the property would satisfy the test only for a particular type of occupant such as a relative or squatter.

(6) The test is not "one size fits all": a development of flats in a city centre may raise different issues to an annex of a country property. What matters is that the occupant's basic living needs must be capable of being satisfied with a degree of privacy, self-sufficiency and security consistent with the concept of a single dwelling. How that is achieved in terms of bricks and mortar may vary.

(7) The question of whether or not a property satisfies the above criteria is a multi-factorial assessment, which should take into account all the facts and circumstances. Relevant facts and circumstances will obviously include the physical attributes of and access to the property, but there is no exhaustive list which can be reliably laid out of relevant factors. Ultimately, the assessment must be made by the FTT as the fact-finding tribunal, applying the principles set out above".

EVIDENCE AND FACTS

11. We were provided with a substantial bundle of documents which included many helpful photographs and plans. Mr Winfield tendered a witness statement and gave oral evidence on which he was cross examined. From this evidence we find as follows:

(1) On completion, the property comprised two "dwellings" (at this stage we simply use this as a neutral term to describe the two areas of accommodation). We shall use the terms "dwelling 1" and "dwelling 2" for the purposes of this decision.
(2) Dwelling 2, the larger tranche of accommodation, which is where the appellant's family currently live, comprises four bedrooms, two bathrooms, toilets, sitting room, dining room, kitchen/utility room, large hallway, and separate outside doors for access.
(3) Dwelling 1, which is currently unoccupied and has been so unoccupied since completion, comprises one large bedroom, a landing, a snug/office, a bathroom, a large living/dining area, kitchen/utility room, downstairs toilet, office/storage room. It also has separate outside entrances.
(4) The electricity for both dwellings comes into the back of dwelling 1 on the ground floor by way of a single cable which somehow splits into two, and services two independent fuse boxes, located on the inside of the outside wall, one of which serves dwelling 1 and one of which serves dwelling 2.
(5) There is a single oil-fired boiler located at the same place as the fuse boxes which serves both dwellings. It provides domestic hot water, and water for the central heating system for both dwellings. The temperature of the water issuing from the boiler is fixed for both dwellings as is the time when the boiler comes on or off. However, each dwelling can separately boost the boiler to provide instant hot water (but that of course also boosts the water for the other dwelling). Radiators in both dwellings have separate thermostats.
(6) Although there are two electricity meters, the electricity is billed to the property and not to each dwelling. The same is true of the oil for the boiler.
(7) Each dwelling has a separate water supply and its own separate stopcock.
(8) The property has a single council tax account. We were told that the postman had no difficulty in delivering post to the "annex" if letters were properly addressed. However, the property appears to have a single postal address.
(9) As well as the external doors which allow independent access to each dwelling, there are internal doors which separate the two dwellings. The photographs of these show that

these are substantial doors, lockable from both sides, and provide soundproofing and fireproofing. This was also Mr Winfield's evidence.
(10) The site on which the property is located extends to approximately 2.8 acres. A single drive extends from the northern boundary and then splits to run round the back of dwelling 1, and the front of dwelling 2.
(11) Both dwellings are registered with the same title number with HM Land Registry.
(12) The property was marketed as a single dwelling. At the time of the transaction it was, as a whole unit (i.e. dwellings 1 and dwelling 2) used as holiday accommodation but prior to that, had been used as family accommodation as a single unit for many years.
(13) A letter from the previous owner dated 25 March 2023 indicated that at various times she had rented out one of the dwellings (and lived in the other), rented both dwellings out separately, and rented out the entire property.
(14) In 2007 the property was modified pursuant to a planning permission dated 8 October 2007 which granted permission for the conversion of the existing garage to a family room and the erection of a new detached double garage with a studio/office over. The new garage was never built, but it was pursuant to this planning permission, as we understand it, that the accommodation in dwelling 1 was created, and separated from the accommodation in dwelling 2 by the aforementioned internal doors.
(15) A term of that planning permission was that the "use of the garage hereby permitted shall be limited to the domestic and private needs of the occupier and shall not be used for any business or other purpose whatsoever".
(16) We were provided with a pro forma assured shorthold tenancy agreement which Mr Winfield explained comprised the terms on which he was intending to let dwelling 1 in the foreseeable future. He had intended to let it before now, but the necessary remediation/repair had taken longer than he had anticipated. Clause 5.4 of that pro forma permits the landlord or the landlord's agent to enter the demised premises (i.e. dwelling 1) on giving the tenant 24 hours notice in writing to visit and examine the condition of those premises and to carry out any repairs, maintenance, alterations or replace the fixtures and fittings for the purposes of complying with any obligations imposed on the landlord by law.
(17) A recent planning application for the conversion of a barn in the grounds of the property was rejected in June 2022 on the grounds that the level of accommodation for the proposed annex (i.e. the converted barn) would be beyond that which could be considered as ancillary accommodation to the host dwelling, and it could readily be occupied as an independent dwelling resulting in the creation of a new planning unit.
(18) A valuer who the appellant consulted prior to purchasing the property confirmed in writing that, following inspection of the property, at the time of his inspection the property was occupied as two dwellings.

DISCUSSION

12. It is for Mr Winfield to establish, on the balance of probabilities, that he is entitled to MDR. In essence, this requires him to establish that dwelling 1 and dwelling 2 were both, on the effective date of the transaction, either used or suitable for use as single dwellings.

Mr Winfield's submissions

13. In summary, Mrs Moore submitted as follows:

(1) Dwelling 1 and dwelling 2 each have all the physical attributes and facilities to comprise separate dwellings. They are clearly suitable for use as such. They have separate entrances. The internal doors are substantial and provide soundproofing, fireproofing, and independence.

(2) HMRC's submissions that the property is a single dwelling, are essentially; a lack of privacy; a lack of independent utilities; and that there is a single council tax account and address.
(3) These matters should carry little weight in the multifactorial assessment when compared to the fact that the facilities in each dwelling are manifestly suitable for each of them to comprise a separate dwelling.
(4) No weight should be attached to the estate agent's marketing of the property as a single dwelling. The valuer's letter provides helpful evidence that at the time of completion there were two dwellings.
(5) The limitation in the October 2007 planning consent does not assist HMRC. It gives no indication as to whether the property is a single dwelling or whether each dwelling is suitable for use as a single dwelling. The same is true of the justification for the rejection of the 2022 planning application.
(6) Whilst it is true that there is a single boiler serving both properties and two fuse boxes, and it is not possible to identify the units of oil or electricity consumed by each dwelling, an apportionment of that use would be dealt with via a tenancy agreement (as is commonplace in these sort of situations).
(7) The pro forma assured shorthold tenancy agreement would be adapted for a particular tenant, and it is likely therefore that the terms of emergency access would be amended.
(8) Limited help can be given by previous decisions which turn on their own facts. So, for example HMRC rely on *Dower v HMRC* [2022] UKFTT 170 ("***Dower***") as authority that privacy is something which carries considerable weight. But in *Dower*, it was also true that there was no kitchen. And this should colour other elements of the judgment.
(9) Any lack of privacy associated with looking through the windows of an adjacent dwelling could readily be cured by blinds and curtains.

HMRC's submissions

14. In summary, Mr Scott submitted as follows:

(1) Whether the property comprises one or more dwellings must be resolved by consideration of all of the circumstances. We must undertake a multifactorial assessment. The test is objective and suitability as a single dwelling must be assessed by reference to occupants generally.
(2) At the time of the transaction the property was a single dwelling. Dwelling should be construed in accordance with *Dower* as somewhere where the occupier can inhabit with a degree of settled permanence to form the centre of his existence. Suitability for shorter term lets or airbnb is insufficient.
(3) Dwelling 2 is physically integrated into "the main house" (i.e. dwelling 1) to such an extent that it was more akin to additional rooms in the main house.
(4) The factors which we must take into account do not all bear the same weight.
(5) In this case the factors that militate against there being more than one dwelling are:

(a) the dwellings cannot be sold separately (a point made in *Dower*);
(b) the property was marketed as a single dwelling;
(c) the 2007 planning application was not either made or granted on the basis that it would enable dwelling 1 to be used as an additional dwelling;
(d) the 2022 planning application was rejected on the grounds which suggest that the property was a single dwelling;
(e) whilst there is separate access to the dwellings, dwelling 2 has a much grander door allowing access than dwelling 1 and it seems unsatisfactory for the main dwelling to lose its main access;

(f) there is insufficient internal separation between the dwellings. The internal doors do not provide the necessary degree of soundproofing and fireproofing;
(g) an occupier of the dwellings would expect a greater degree of privacy than that which currently subsists. It is possible for the occupiers of each dwelling to see into the rooms of the other dwelling. Whilst this might be acceptable in an urban environment, the objective occupier would not accept this in a rural context.
(h) there is a single boiler providing domestic hot water and central heating to both dwellings;
(i) there is a single electricity supply (albeit two fuse boxes) to both dwellings;
(j) the fact that the controls for these single supplies are located in dwelling 1 has an impact on privacy and self-sufficiency;
(k) the property has a single council tax account and postal address.

(6) The fact that the agents, and indeed others, considered that the property was suitable for use as two dwellings carries little weight. The same is true of the assertions by the previous owner that the dwellings have been let separately, and of the opinion of the appellant's valuer.

Our view

15. The statutory test requires us to consider whether each dwelling is used or is suitable for use as a single dwelling. *Fiander* tells us that this must be assessed by reference to suitability for occupants generally and that the test is objective. It is a multifactorial assessment which requires us to take into account all the facts and circumstances. What matters is that the occupant's basic living needs must be capable of being satisfied with a degree of privacy, self-sufficiency and security consistent with the concept of a single dwelling.

16. It is equally clear that the facts and circumstances, and weight which is attached to the facts and circumstances vary considerably, and we should be very cautious of deriving principles from other cases which have very different fact patterns.

17. We need to consider the facts and circumstances in this appeal and apply the relevant principles to those.

18. We accept Mr Scott's assertion that the concept of dwelling requires a greater degree of permanence than would be afforded by short-term holiday lets and airbnb.

19. It is clear that the physical configuration and facilities of the respective dwellings, which HMRC accept in their manuals as being "very important" and "of great importance" militate very strongly in favour of there being two dwellings. Each dwelling benefits from all of the facilities (kitchen, bathroom, living quarters etc.) required for occupation on a permanent basis. And HMRC appear to accept this. What they say is that the privacy, self-sufficiency and security of these dwellings is brought into question by the fact that the internal doors separating the two dwellings do not provide adequate separation; and the fact that the utilities are shared and are not under separate control requires the occupiers of dwelling 2 to have access to dwelling 1.

20. As regards the first of these, it is our opinion that the internal doors do provide an effective barrier between the two dwellings. They are substantial, lockable, and on the evidence, soundproof and fireproof. They provide wholly effective security and privacy.

21. As regards the shared utilities, it is clear that entry onto dwelling 1, by the occupants of dwelling 2 will have an impact on the former's security and privacy. But it is equally clear that if dwelling 1 was let for, say six months (sufficient in our case to provide the degree of settled permanence required to comprise a dwelling) it would be on the basis of a proper legal agreement which would cater for that access. And access pursuant to the terms of a tenancy is

something which is commonplace in the myriad of dwellings which are let on leases rather than occupied on a freehold basis. And indeed, freehold owners are subject to common rights-of-way in many urban and rural situations. So legal rights over property, whilst relevant, do not of themselves, weigh heavily against the privacy and security which the *Fiander* criteria requires us to consider.

22. Further, we take the view that although Mr Winfield was tested on whether 24 hours was adequate access in an emergency, this is on the basis of a pro forma tenancy agreement. And we further take the view that, properly advised, in the context of a specific letting, it is likely that he would be advised that emergency access should be granted on shorter notice. We do not think this is a significant point in HMRC's favour.

23. HMRC submit that an occupier in the country would expect a greater degree of privacy than one in the urban context, and that an occupier of these dwellings would expect a greater degree of privacy than is afforded by the physical configuration of the dwellings.

24. Whilst it is clear that the test is not one size fits all, we are suspicious of the principle that an occupier of rural property would expect a greater degree of privacy than an occupier of urban property. In our view privacy is a relative quality and the weight to be attached to it depends on the characteristics of the objective occupier.

25. We take judicial notice of the fact that in many small rural developments involving barn conversions, separate dwellings are built, cheek by jowl, with plate-glass windows, around a single courtyard, where occupants of one dwelling can readily see into the rooms of another. Yet these dwellings fly off the shelves. Any perceived lack of privacy in this rural context does not seem to affect the willingness of purchasers to acquire such properties.

26. And in that context, as in this appeal, privacy can be readily secured by the use of curtains and blinds.

27. Whilst the fact that the dwellings do not have separate council tax accounts or postal addresses is something we take into account and have considered, we do not consider that the weight which attaches to these is anywhere near sufficient to outweigh the facts of the physical attributes and facilities of the dwellings.

28. Nor do we think that the planning consents and applications militate against the dwellings being treated as suitable for use as single dwellings. In our view the suggestion that the 2022 planning application and rejection militate towards this is misconceived. And the fact that the 2007 application does not specifically say that dwelling 1 should be occupied as a separate dwelling does not shed any light on whether the property is actually suitable for use as a single dwelling.

29. Whilst we have considered Mr Scott's submission that the access to dwelling 2 is far grander than that of dwelling 1, we do not consider that this carries much weight either. The statutory question is whether the dwellings are suitable for use as single dwellings. And it is clear that both have wholly satisfactory, and independent, access. This is consistent with the requirement for privacy, self-sufficiency and security.

30. The fact that the property was marked as a single dwelling is something which we have considered but to which we attach little weight. Estate agents will do anything to get a deal and market to that effect.

31. Finally, HMRC suggest that the dwellings cannot be sold separately. This is clearly incorrect. There is no legal impediment to such separate sales as there was in *Dower*. The dwellings could be sold separately and cross rights-of-way accommodated in the usual way.

32. So, standing back and considering things in the round and applying the multifactorial test set out in *Fiander* when interpreting the statutory provisions of whether the dwellings are used or suitable for use as single dwellings, we have no hesitation that the factors weigh heavily in favour of there being two dwellings. We say this for the reasons outlined above. The physical configuration and attributes of each dwelling carries very considerable weight,

and that is not, in our opinion, diminished by the common utilities or the state of the internal doors.

33. Notwithstanding these, there is still a sufficient degree of privacy, self-sufficiency and security for the dwellings to be consistent with the concept of each being a single dwelling.

34. And this is not diminished by the other factors suggested by HMRC to the extent necessary to justify their assertion that the property is a single dwelling.

35. It is our conclusion therefore that dwelling 1 and dwelling 2 are each suitable for use as a single dwelling. And so, the transaction benefits from MDR.

DECISION

36. For the reasons given above we allow the appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

37. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

NIGEL POPPLEWELL
TRIBUNAL JUDGE

Release date: 07th AUGUST 2024