



NCN: [2021] UKFTT 6 (TC)

**TC07991**

*STAMP DUTY LAND TAX – transaction involving multiple dwellings – purchase of property with main house and an annexe – did main house and annexe each count as a dwelling? – were main house and annexe both suitable for use as a single dwelling? - no – appeal dismissed.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2019/05848**

**BETWEEN**

**EDWARD AND CLARE PARTRIDGE**

**Appellant**

**-and-**

**THE COMMISSIONERS FOR  
HER MAJESTY’S REVENUE AND CUSTOMS**

**Respondents**

**TRIBUNAL: JUDGE KELVAN SWINNERTON**

**The Tribunal determined the appeal on 2 November 2020 without a hearing. Both parties had agreed to the matter being determined on the papers because of the ongoing Covid-19 pandemic and Judge Geraint Williams therefore directed that the appeal be determined without a hearing under the provisions of Rule 29 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The documents to which I was referred are a bundle of 158 pages and a document entitled ‘Statement of Case’ from the Appellants.**

## DECISION

### INTRODUCTION

1. The issue in this appeal was whether a main house and an annexe acquired as parts of a residential property were both suitable for use as a single dwelling such that the acquisition qualified for multiple dwellings relief (“MDR”) from stamp duty land tax (“SDLT”).

### THE APPEAL

2. HMRC issued closure notices on 6 June 2019 amending the SDLT return of the Appellants to show that the acquisition by the Appellants of Thatched Cottage, Tilebarn Lane, Brockenhurst, Hampshire SO42 7U3 (“the Property”) did not qualify for MDR. That resulted in an additional liability to SDLT of £10,000.

3. The Appellants notified their appeal to the tribunal on 19 August 2019.

### FINDINGS OF FACT

4. The Appellants purchased the Property on 26 April 2017 for the sum of £915,000.

5. Different rates of SDLT are applied to different parts of the consideration. Applying these rates to the purchase consideration of the Property resulted in SDLT of £35,750.

6. A request was received by HMRC on 22 May 2018 for an amendment to the SDLT return of the Appellants to include a claim for MDR.

7. The Appellants provided additional evidence, on 30 May 2018, to support their request for an amendment to their SDLT return.

8. On 13 September 2018, HMRC refunded the amount of £10,000 (plus interest of £70.33) to the Appellants. That amount constituted the difference between the SDLT paid originally (35,750) and the amount payable on the amended basis that the Property qualified for MDR (£25,750).

9. On 13 February 2019, HMRC sent a Notice of Enquiry to each of the Appellants informing them that HMRC would be enquiring into their SDLT return.

10. On May 2019, HMRC wrote to the Appellants and their agent advising the Appellants that the Property did not qualify for MDR.

11. After receipt of the closure notices, the Appellants requested a statutory review. The review conclusion letter dated 24 July 2019 of HMRC upheld the closure notices.

12. The Property was listed as a freehold, detached house consisting of six bedrooms.

13. The Property was lived in by two elderly occupants prior to it being purchased by the Appellants.

14. It was used as a single dwelling prior to being purchased by the Appellants.

15. The Property comprises of a cob cottage (dating back to the eighteenth century) with an extension carried out in the 1960’s made of standard brick.

16. The cob cottage part of the Property is the annexe contains the annexe.

17. The Appellants purchased the Property to live in with their three children and to allow, in the near future, for the parents of Mrs Partridge who are in their 80’s to live in the Property permanently.

18. The six bedrooms of the Property are all situated in the main house.
19. The annexe has a separate entrance door and a separate kitchen area.
20. The internal doors to the annexe can be shut off from the main house.
21. The annexe has a separate garden.
22. The bathroom for the annexe is accessed through the main hallway of the house.
23. The Appellants were considering plans to make alterations to portion off the bathroom from the hallway in order to section off the living and bathroom facilities of the annexe from the main house.

## **LAW**

24. The law relating to SDLT is contained largely in the Finance Act 2003 (“FA 2003”).
25. SDLT is a tax on chargeable transactions.
26. Under section 49 of FA 2003, these chargeable transactions are ‘land transactions’ which are not exempt.
27. Section 43 of FA 2003 states that ‘land transaction’ means the acquisition of a ‘chargeable interest’.
28. Section 48 of FA 2003 states that a chargeable interest in this respect is an estate or interest in or over land.
29. The effective date for a land transaction for the purposes of SDLT is the date of completion.
30. Section 55 details the amount of SDLT chargeable in relation to chargeable transactions. Different rates of SDLT are applied to different parts of the consideration. The relevant rates in respect of this case are: 0% for so much of the consideration that does not exceed £125,000; 2% for so much of the consideration that exceeds £125,000 but does not exceed £250,000; and 5% for so much of the consideration as exceeds £250,000 but does not exceed £925,000.
31. Schedule 6B details relief for transfers involving multiple dwellings. It applies, amongst other things, to a chargeable transaction if the subject matter consists of an interest in at least two dwellings.
32. Paragraph 7 of Schedule 6B contains the provisions for determining what counts as a dwelling.
33. Paragraph 7(2) states: “*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 ...*”.
34. If it is determined that there is an acquisition of two dwellings, paragraphs 4 and 5 of Schedule 6B detail how SDLT is charged.
35. That involves determining the amount of SDLT that would be chargeable if the total consideration (£915,000 in this case) was divided by the number of dwellings (two in this case – the main house and the annexe). The amount of SDLT is then multiplied by the number of dwellings. If the amount of SDLT so calculated is less than 1% of the total consideration, then the SDLT is that 1% amount.

## DISCUSSION

36. This case relates to whether the main house and the annexe each count as a dwelling for the purposes of MDR. The position of the Appellants is that there are two dwellings. The position of HMRC is that there is a single dwelling.

37. The burden of proof is on the Appellants to demonstrate that the annexe was used or was suitable for use as a single dwelling for the purposes of SDLT.

38. In their grounds of appeal, the Appellants state (amongst other things) that the annexe has separate kitchen access, a separate entrance and exit doors (and locks) to the self-contained area, and that internal doors in the self-contained area “*can be shut off from the main residence*”.

39. The Appellants acknowledge that the annexe does not have a self-contained bathroom but maintain that the occupants of the main house would not need to use the bathroom adjacent to the annexe and that it is surplus to the requirements of the occupants of the main house.

40. This issue is referred to in a communication from the Appellants to Ms Panchioli of HMRC. Specifically, the Appellants refer to consideration of plans to portion off the bathroom from the hallway and to provide a door from kitchen 2 (the kitchen in the annexe) into the dining room which would “*completely section off the living and bathing facilities from the main dwelling*”.

41. HMRC, in their arguments, maintain that the annexe does not have a self-contained bathroom within it. The bathroom for the self-contained area is adjacent to the utility room of the annexe. It does not have independent access from the rest of the house.

42. HMRC, in their Statement of Case, contend therefore that the annexe is not a separate dwelling because (amongst other reasons) the bathroom facilities for the annexe are accessed via the hallway in the main house such that the main house can be accessed by all the occupants in the annexe.

43. The independence required for two separate dwellings is, HMRC maintains, therefore not present.

44. It is also contended by HMRC that there is access to the kitchen facilities (or the utility room) via the hallway in the main house as well as via the external access and, additionally, that the only internal access between the main rooms of the annexe is through access from the main dwelling.

45. Reference is made in the bundle to the case of *Fiander and Brower v The Commissioners for Her Majesty's Revenue and Customs* [2020] UKFTT 00190. That decision was released on 9 April 2020.

46. The more recent case of *Merchant and another v HMRC* [2020] UKFTT 299 (TC) was released on 20 July 2020. In that case, the First-tier Tribunal held that MDR did not apply to the acquisition of a residential property with a basement annexe.

47. The *Fiander* case also related to a main house with an annexe. The central issue in that case was whether or not the main house and the annexe were both suitable for use as a single dwelling. It was decided that the main house and the annexe did not each count as a dwelling for the purposes of MDR.

48. The approach adopted in the *Fiander* case with respect to “suitability for use” was an objective determination of the physical attributes of the property at the relevant time. It was stated that suitability for a given use is “*to be adjudged from the perspective of a reasonable*

*person observing the physical attributes of the property at the time of the transaction*". That is the approach that I have adopted with respect to this case.

49. The time of the transaction is the date of completion which was 26 April 2017. It is at that point in time that the physical attributes of the property are to be adjudged and not a later point in time based upon any potential or proposed changes that could be made to the physical attributes of the Property.

50. It was also stated that the suitability test cannot be performed on the assumption that new physical features will be introduced to enable a new and different kind of use and that this is the case even if the new physical features are relatively easy or quick to install. That is also the approach that I have adopted in this case.

51. A dwelling is a place where a person or a number of persons live. A building or a part of a building can be suitable for use as a dwelling only if a building or part of a building accommodates all of the basic domestic living needs of that person or persons.

52. Those basic domestic living needs are to sleep, to eat, and to attend to the personal and hygiene needs of the person or persons living in the dwelling.

53. Those basic domestic living needs also are to be accommodated with a reasonable degree of privacy and security.

54. HMRC, in their Statement of Case, referred to their guidance SDLT00410-15 which seeks to provide assistance in determining what constitutes a single dwelling. That guidance is not binding.

55. It is stated in that guidance that the test of whether a property is "suitable for use" as a single dwelling is a more stringent test than whether it forms a self-contained part of a larger dwelling.

56. It is also stated that whether or not a property is suitable for use as a single dwelling requires consideration as to whether it is sufficiently independent to be considered a dwelling on its own.

57. In considering whether or not a property includes one or more dwellings, the guidance refers to a wide range of factors coming into consideration and it is stated that no single factor is likely to be determinative by itself.

58. With respect to the physical attributes of the Property, the Rightmove sales particulars for the Property contain a Master Floorplan Image. With respect to the ground floor of the Property, the Master Floorplan Image shows a study, a snug, a dining room, a utility room, a kitchen/breakfast room, a sitting room, a bedroom numbered 2, a bathroom and an entrance hall.

59. On the first floor of the Property, the Master Floorplan Image shows bedrooms numbered 1 and 3-6, an airing cupboard, a WC and two bathrooms.

60. The bundle also contains another version of the same Master Floorplan Image provided by the Appellants which marks out the "annexe area". This is on the ground floor of the Property and comprises of the study, the snug, the dining room, the utility room, and the bathroom.

61. This version of the Master Floorplan Image highlighting the annexe area does not contain an area designated as a bedroom in the annexe.

62. The Master Floorplan Image detailing the annexe area shows that access to the bathroom on the ground floor is through a door in the main entrance hall of the Property. There is also access to the utility room of the annexe through a door in the main entrance hall of the Property.

In other words, there was no access to the study, snug or dining room of the annexe area as indicated on the Master Floorplan Image other than through the entrance hall of the main house.

63. In the *Fiander* case, it was decided that the short, open corridor connecting the main house and the annexe resulted in the main house and the annexe simply being too closely physically connected for either to be suitable for use as a “single” dwelling (see paragraph 62 of the decision).

64. In the present case, it is not in dispute between the parties that the annexe does not have a self-contained bathroom within it. The bathroom for the annexe is adjacent to the utility room of the annexe. It does not have independent access from the rest of the house.

65. Regardless of whether or not the occupants of the main house would make use of the bathroom adjacent to the annexe, the occupants of the main house would be able to do so.

66. As at the date of completion, on 26 April 2017, it is clear that the living and bathing facilities of the annexe were not sectioned off from the main house. That does not support the existence of a separate independent dwelling.

67. That said, in the *Fiander* case, reference was made to imagining that the annexe was occupied by an older relative of the occupants of the main house or by one of their grown-up children.

68. It was stated that it could be imagined that such arrangements could provide adequate privacy and security to occupants of both the main house and the annexe given the family bonds of trust in existence between all occupants of both the main house and the annexe.

69. It was also stated in the *Fiander* case that a scenario could be imagined where a lodger could have sufficient ties of trust with the occupants of the main house such that the lodger could occupy the annexe and the need for privacy and security of all occupants of the main house and the annexe were satisfied.

70. With respect to whether or not a building or part of a building is suitable for a use, I agree with the approach taken in the *Fiander* case that it is if it can generally be so used. In other words, if a building (or part of a building) is suitable for use only in quite specific circumstances, then this points against the conclusion that the building (or part of a building) is suitable for that use. That is the position in this case.

71. In the absence of any specific circumstances, such as the parents of one of the Appellants intending to live in the annexe, the main house and the annexe would not be suitable for use as dwellings due to the insufficiency of privacy and security for the occupants of both the main house and the annexe.

72. In relation to the contention of the Appellants that, after minor alterations, the main house and the annexe could be made suitable for use as separate dwellings, the suitability test is an objective test based upon the physical features of the property at the time of the completion in the eyes of the objective observer.

73. The suitability test is not to be performed on the assumption that new physical features of the property are to be introduced in order to bring about a new and different kind of use. That is the case even if the new physical features to be introduced are quick to effect and relatively easy to bring about.

74. The test in issue in this case is a test of suitability for use and not one of adaptation for use.

75. It is also a test of use a single dwelling and not of use as separate living accommodation.

76. In the eyes of an objective observer at completion, the main house and annexe would have been regarded as suitable for use as one single dwelling and not as two dwellings. Such an objective observer would not reasonably have concluded that the Property was suitable for a different use on the basis of alterations being made.

77. I conclude, therefore, that the main house and the annexe did not each count as a dwelling for MDR purposes but that they counted as a single dwelling.

78. The appeal is dismissed.

## **SUPER HEADING**

### **RIGHT TO APPLY FOR PERMISSION TO APPEAL**

79. 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.

**KELVAN SWINNERTON  
TRIBUNAL JUDGE**

**Release date: 13 January 2021**