Neutral Citation: [2023] UKFTT 00628 (TC)

Case Number: TC08866

FIRST-TIER TRIBUNAL
TAX CHAMBER

[By remote video/telephone hearing]

Appeal reference: TC/2020/01423

Stamp Duty Land Tax - purchase of house and land - whether the house and land were wholly residential at acquisition- yes – whether sewage treatment plant formed part of the garden and grounds of a building – yes - whether covenants in title deeds amounted to a commercial agreement-no- Finance Act 2003, sections 55 and 116.Appeal dismissed.

Heard on: 13 June 2023
Judgment date: 12 July 2023

Before

TRIBUNAL JUDGE RUTHVEN GEMMELL WS

Between

ANDREW JONATHAN and DELLA ANN BLOOM

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Patrick Cannon, Counsel, instructed by Cornerstone Tax Ltd

For the Respondents: Ms Fiona Man, Litigator, of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. The form of the hearing was by video, all parties attended remotely, and the remote platform used was the Tribunal video hearing system. The documents which were referred to comprised of a Hearing bundle of 279 pages and skeleton arguments for both parties.

2. Prior notice of the hearing had been published on the gov.uk website with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

Background

3. The Appellants, Mr and Mrs Bloom ("AB"), appealed against a closure notice issued by the Respondents ("HMRC"). The closure notice disallowed a claim for overpayment relief in the sum of £265,750 in respect of a self-assessed Stamp Duty Land Tax ("SDLT") payment of £441,750.

4. The SDLT payment was in respect of a property known as 24 Totteridge Common, London N20 8NE which was purchased by AB on 4 September 2015 for a price of £4,400,000 ("the Property").

5. The Property comprised of two registered titles one being "The Paddocks", 24 Totteridge Common, comprising of a 6 bedroom house, cottage, swimming pool, garage, stables and equestrian facilities,("The Paddocks") and the other being 5.6 acres of land to the north-west of 24 Totteridge Common on which is situated a sewage treatment plant ("STP"), which facilitates the Property and 10 other neighbouring flats created in 22 Totteridge Common ("Totteridge Park"), which adjoins the Property, and all or part of a tennis court ("5.6 acres").

6. HMRC issued the Closure Notice on 5 November 2019 concluding that HMRC were unable to accept that the Property should be classified as mixed residential/non-residential property.

7. A Statutory Review concluding letter was issued on 26 February 2020 upholding HMRC's decision.

8. This application to appeal to the First-tier Tribunal was stayed behind two cases which were dismissed, and, on 20 October 2022, AB confirmed they intended to proceed with the appeal.

Legislation

9. See Appendix A

Authorities Referred To

10. See Appendix B

Burden of Proof

11. The burden of proof is on AB to demonstrate that the Property has been incorrectly classified as wholly residential and failure to discharge the burden will result in the Closure

Notice standing good. The standard of proof is on the ordinary civil test on the balance of probabilities.

Evidence

12. The parties do not dispute that The Paddocks, including the main house and cottage together with a swimming pool and equestrian facilities/menage at the Property, together with its garden and grounds on 1.9 acres of land, are considered to be residential property for SDLT purposes.

13. The whole area of the Property was classified as residential on the SDLT return submitted on behalf of AB on 7 September 2015 and the amount of SDLT of £441,750 calculated on the purchase price of £4,400,000, in terms of section 55 of the Finance Act 2003, was not in dispute.

14. The point at issue is whether a small part of the land ("the Disputed Area"), specifically referred to the AB's Notice of Appeal as "the sewage treatment plant" ("STP"), located within the 5.6 acres, does or does not form part of the garden and grounds of the Property for the purposes of SDLT.

15. There were two registered titles: one for The Paddock, of approximately 1.9 acres, and the other for the 5.6 acres of land, lying to the north-west of The Paddocks, which included the Disputed Area.

16. Despite the appeal relating only to the Disputed Area, no measurements of this area were produced. AB, in their submissions claimed that the 5.6 acres is affected by the Disputed Area and accordingly the whole 5.6 acres is non-residential.

17. The 5.6 acres is six feet lower than the land on The Paddocks and access to it is via steps and/or a restricted use access road from the boundary of the Property.

18. Within the 5.6 acres of land, is some or all of the tennis court created by AB and its 'top' end is near to the STP. Andrew Jonathan Bloom, ("AJB") who gave evidence, believed 'but could not say with certainty' that the boundary of the 5.6 acres began at the fence of the top end of the tennis court.

19. HMRC considered that the Disputed Area represented the footprint of the STP providing waste disposal facilities to the Property and the neighboring buildings. The Tennis Court was also in whole or in part within the 5.6 acres.

20. AJB estimated that the footprint of the STP comprised of an underground area of seven chambers, three of which would be the size of a small car and four of which would be the size of a 3-seater sofa. These are connected by piping.

21. The only visible parts of the STP at ground level were the manhole covers for the 7 chambers and nearby two small wooden structures to store items in and the electrical controls for the STP, safety vents, and air blowing machinery ("the other structures"). The tennis court had been built close to the manhole covers.

22. In addition, there is a storm drain at the farthest boundary of the Property from the main house, which allows for overflow from the STP usually in the event of floods.

23. The previous owner of the property to AB had obtained a licence for this overflow. He had also arranged for the STP to have a separate electricity supply.

24. The manhole covers allow access for a vehicle to remove the effluent, approximately four times a year. To do so, they use an access road which can only be used for that and for equestrian purposes. The access road, accordingly, provides access to the manhole covers, to the menage and the 5.6 acres.

25. The arrangements for recovering the costs of running and maintaining the STP are noted in the title deeds as being 25% to AB and 75% to the other users of which there were formally nine but are now ten.

26. AJB considered that there had been a change from the previous division to a 50% share to the Property and 50% to the other owners but no agreement was produced in respect of this and a copy invoice from AJB to the other proprietors reflected a 25/75 split of costs, as stated in the title deeds.

27. There was no evidence that a profit was made by AB in relation to their obligations and responsibilities in the title deeds as regards the STP and no written agreement was produced and may not exist.

28. AJB confirmed that the equestrian use of the ménage and the 5.6 acres had continued during the period between AB's exchange and completion. Whereas there had been horses in the 5.6 acres when AB had viewed the property these had all been removed by the time of completion and the agreement between third parties for use of the menage and the stables had also ended by that time. There was no evidence as to whether any such agreement was commercial in nature.

29. AB were prohibited in terms of their title deed from erecting a building on the 5.6 acres and were required to inspect, empty, clean, repair and renew the septic tank and drains leading thereto subject to the contribution for the expense being recovered to the extent of three quarters from the owners of Totteridge Park.

30. AB stated that when they first viewed the property, they were misled by the estate agents and had formed an initial view that they would not purchase the 5.6 acres. They were then informed that they would not be allowed to purchase The Paddocks if they did not purchase the 5.6 acres and, therefore, 7.5 acres in total. They were given no choice in the matter and the Property came as "a package".

31. AB stated that they did not use the 5.6 acres other than by necessity because of the STP but this area also has the tennis court which AB had constructed.

32. AJB gave evidence that the STP emits, from time to time, a repugnant smell which has prevented them and their family from enjoying the land. He stated that as the STP does not subsist solely for their benefit of the property but also for the benefit of the neighbouring users, it prevents him and his family from having exclusive use of 5.6 acres.

33. Reference was made to a 1997 planning application for a wildlife pond at which time the whole area of the Property was referred to as 'residential'.

34. Photographs were submitted of a vehicle, suitable for the purpose, extracting effluent from the STP and reference was made to the ground surrounding the manhole covers which was brown in colour. It was clarified that this had not been caused by any leakage from the STP and that had simply been the condition of the land when it was photographed and prior

to its being seeded for grass. An aerial photograph at a subsequent date showed the whole area to be grassed over.

AB's Submissions

35. AB say that the Property is of mixed residential and non-residential use for SDLT purposes due to (1) the presence of the STP, (2) the legal and practical restrictions that the presence of the STP imposes on their residential use of the area of land affected and (3) the existence of the commercial arrangements under which AB pay for and are compensated by the owners of the neighbouring properties for the use of the sewage treatment facility.

36. The SDLT chargeable on the purchase of the Property was originally self-assessed at the residential rates of SDLT at £441,750. An overpayment relief claim was subsequently submitted to HMRC on the basis that the Property was of mixed residential and non-residential use which, if correct, gave rise to SDLT of £176,000 so that an overpayment of £265,750 had been made. HMRC say that the purchase was taxable at full residential rates and if that is correct, this has the effect of denying the claim for overpayment relief of £265,750.

37. In *Hyman and Goodfellow v HMRC* [2022] EWCA Civ 185, the Court of Appeal declined to place an objective limit on the meaning of "grounds" for SDLT purposes in section 116(1)(b) FA 2003 and said that this was a matter of policy with which the Court was not concerned. The Court did however acknowledge that "there will be cases in which there is room for reasonable disagreement": [11] and [12].

38. In particular, the Court said at [12] that:

> *"The only question for us is whether that [i.e., the reasonable enjoyment test] is what section 116, as enacted, actually means. It is not uncommon for Parliament, even in a taxation context, to use coarse-grained words whose outer limits are left to the courts and tribunals to work out: "plant", "emoluments" and "resident" are but three examples."*

39. The Court, therefore, declined to place any flesh on the bare bones of the definition of 'grounds of a building" for SDLT purposes, leaving it for the Tribunals to work out while acknowledging that there will be cases in which there will be room for reasonable disagreement.

40. In *Sloss v Revenue Scotland* [2021] FTSTC 1, a case in Tax Chamber of the FTT for Scotland dealing with almost similar legislation, fit was held that in relation to the definition of residential property in section 59 LBTTA 20131 (which is in all material respects the same as section 116 FA 2003), certain parts of the property purchased did not fall within the 'garden or grounds' of the dwelling. In particular the FTT said:

> *"88*. We therefore agree with Mr Small that there must be some link with the dwelling and the grounds beyond the fact that they had been purchased together in a single transaction. There must be a functional relationship between the dwelling and the grounds. Ms van der Westhuizen agreed with that analysis.
>
> 106. Even if we are wrong in saying that the grazing was, and is commercial, nevertheless we find that with the exception of field 7 and the paddock, the other fields

have very little functional purpose for a house of this size and type. It is not a stately home. It is an attractive house that, with an adequate curtilage, is of a style and size that is available, for example, in Edinburgh.

107. In summary, looking at all of the evidence, we find that the Appellants have discharged the burden of proof and established that at least part of the pastureland was non-residential. Accordingly, too much LBTT has been paid."

41. In *Withers v HMRC* [2022] UKFTT 00433 (TC), the appellant had purchased a dwelling house plus gardens, fields and woodlands. The FTT said:

"123. This Tribunal adopts the reasoning of Judge Citron in Myles- Till as follows: at [44]:

> "What indicates that a piece of adjoining land has become part of the "grounds" of a dwelling building? Technically, fact that a dwelling building is sold together with adjoining land, as a single chargeable transaction for SDLT purposes, does not make that adjoining land, necessarily, part of the grounds of the dwelling building: section 55 clearly envisages the possibility that the subject matter of a single chargeable transaction will include both residential and non-residential land. Common ownership is a necessary condition for the adjacent land to become part of the grounds of the dwelling building – but not, in my view, a sufficient one."

124. In respect of HMRC's submissions relating to the "use of land" the Tribunal does not accept their submission that it is sufficient that the adjacent land is available to the GW to use as he wishes**.** The Grazing agreement does contain restrictions on his use of the land as set out in his submissions.

125-144...

145. HMRC's manual, SDLT 00470 - extent of land and geographic factors states that the extent/size of land in question will also be relevant in relation to a building and that the test is not simply whether the land comprises garden or grounds but whether it comprises the gardens or grounds of the dwelling.

146...

147. GW stated that if the grazing lands and the Woodland Trust land where [sic] disposed of, then the property would have a perfectly adequate garden and grounds. The property would, however, require the driveway through the grazing lands in order to obtain access.

148. The Tribunal considered that the extent of land the grazing land and Woodland Trust land do not form part of the garden or grounds of the dwelling.

148-152...

153. The Tribunal again adopts the approach of Judge Citron in Myles-Till that "the words "of" and "use" indicate that the use or function of adjoining land itself must support the use of the building concerned as a dwelling. The grazing land and Woodland Trust land do not provide that support."

42. In *The How Development 1 Ltd v HMRC* [2023] UKUT 00084 (TCC), the UT said that:

"115. In determining whether the woodland formed part of the grounds of The How, we have taken no account of the following points:

(1) The fact that the initial SDLT return was made on the basis that the land was entirely residential.

(2) The position or potential position in relation to planning consent for change of use of the woodland, or the basis of its rateable valuation.

(3) Whether or not the woodland was within the legal curtilage of The How.

4) Whether or not the woodland fell within section 116(1)(c).

116. We have adopted the approach suggested in Hyman UT and endorsed by the Court of Appeal in Hyman of weighing up all material factors, based on the FTT's relevant findings of fact. We have taken the following factors in particular into account in reaching our decision, all of which were taken into account by the FTT:

(1) There was no evidence of the use or exploitation of the woodland for commercial purposes. Nor was there any evidence of the use or exploitation of the woodland for any purpose other than that of woodland.

(2) The woodland provided privacy and security to The How by virtue of its location as a hillside barrier between The How and the River Ouse.

(3) The woodland fell within the legal title to the property.

(4) The position and layout of the land and outbuildings was such that the woodland was not inordinately distant from the house and its size and location increased the privacy and security of The How from the south.

(5) The woodland was densely populated and relatively inaccessible.

43. In the FTT decision in *Hyman v HMRC* [2019] UKFTT 0469 (TC), Judge McKeever said at [62]:

"In my view 'grounds' has, and is intended to have, a wide meaning. It is an ordinary word and its ordinary meaning is land attached to or surrounding a house which is occupied with the house and is available to the owners of the house for them to use. I use the expression 'occupied with the house' to mean that the land is available to the owners to use as they wish. It does not imply a requirement for active use. 'Grounds' is clearly a term which is more extensive than 'garden' which connotes some degree of cultivation. It is not a necessary feature of grounds that they are used for ornamental or recreational purposes. Grounds need not be used for any particular purpose and can, as in this case, be allowed to grow wild. I do not consider it relevant that the grounds and gardens are separated from each other by hedges or fences. This may simply be ornamental or may serve the purpose of delineating different areas of land as being for different uses. Nor is it fatal that other people have rights over the land. The fact that there is a right of way over grounds might impinge on the owners' enjoyment of the grounds and even impose burdensome obligations on them, but such rights to not make the grounds any the less the grounds of that person's residence. Land would not constitute grounds to the extent that it is used for a separate, e.g.

commercial purpose. It would not then be occupied with the residence, but would be the premises on which a business is conducted."

44. It is submitted that Judge McKeever was correct to say that land would not constitute grounds to the extent that it is used for a separate purpose, such as for commercial use.

45. AB say that only section 116(1) (b) is relevant and that HMRC's assertion that Section 116(1) (c) is applicable incorrect. Section 116 (1) (c) is dealing with an interest in or right over land which subsist for the benefit of a building such as a right of way and is not relevant for a right over land which the taxpayer owns but also has rights.

46. AB say that the payments to them for their respective share of the cost of the STP are commercial payments and that AB does not have unfettered access to the Disputed Area over which there are restrictions for the operation and maintenance of the STP which are on a commercial basis.

47. AB say that the covenant obligations in the Title Deeds have been expanded upon, but no written agreement exists in relation to these, and no evidence was given to the extent or nature of the expanded terms.

48. AJB stated that the STP is not just a septic tank as HMRC allege but includes various items of equipment above ground and it produces a constant repugnant smell which prevents him and his family from enjoying this part of the land.

49. There is also a commercial agreement between the properties using the plant to treat their sewage involving quarterly payments to maintain and cover the operating costs of the plant and AB commercially benefits from these arrangements in the form of a reduced pro-rata share of the annual costs that he would otherwise have to pay.

50. On the authority of *Shylock* 2023 UKUT 00187 [at 121-123], AB say it is permissible for fresh evidence not in the grounds of appeal to be introduced at a Tribunal hearing and consequently AB say that the 1.9 acres was utilised for commercial purposes by third-party informal use prior to completion but after exchange. Accordingly, there was a commercial arrangement up to and on the date of completion during which time the users of the equestrian facilities and stables could have bought those assets.

51. AB referred to a recent case where Mr Cannon acted for the Appellant, and Ms Man for the Respondents in *Suterwalla v HMRC* as authority that the decision on the facts should be grounded "on reality" (on whether a 'scintilla temporis' - a moment in time - was 'no more than a legal artifice') where a lease was entered on the same day as completion.

52. AB say the Wildlife Pond planning application in 1997 was on the 1.9 acres but it was, in any event, from a planning perspective which should be viewed differently from SDLT considerations.

53. AB say that notwithstanding that the reimbursement of costs requires the split originally set out in the title deeds, AB has to provide 100% funding prior to obtaining the contribution from the other owners.

54. AB similarly states that the fact there is no right to terminate such a commercial agreement because of the covenants in the title deeds does not mean there is no commercial agreement as a 999-year lease has, AB says, no realistic right of termination nor does a

perpetual licence in relation to intellectual property but these are both classified as commercial agreements.

55. AB say the 5.6 acres is affected by the Disputed Area and is accordingly entirety non-residential.

56. Based on the evidence, the dwelling house with its garden forms a coherent whole on its own. The area housing the STP (1) cannot be said to be "of the dwelling" because it is not available to the occupants of the dwelling to use for residential purposes due to the presence of the STP and the pungent unpleasant odour emanating therefrom and (2) is subject to the documented commercial arrangements with the owners of the neighbouring properties that govern the maintenance and operation of the plant and which commercially benefits AB and meets the test in [62] of the FTT decision in Hyman that: "Land would not constitute grounds to the extent that it is used for a separate, e.g. commercial purpose."

57. It is not the case that the Disputed Area "forms part of the garden or grounds of" the dwelling and as such it is not residential in nature so that for SDLT purposes the Property consists of both residential and non-residential property.

58. Consequently, the Property was of mixed residential and non-residential use at the effective date of the transaction and that the conclusion in Closure Notices dated 5 November 2019 November 2021 should be varied to show the claimed SDLT refund of £265,750 is due to AB.

HMRC's submissions

59. There is no dispute between the parties that s.116(1)(a) of the FA 2003 is satisfied in relation to 'The Paddocks'.

60. The Disputed Area houses the STP, which provides waste disposal facilities to the Property and other nearby buildings. This is located to the north of the dwelling, and it is disputed whether this land is residential or non-residential. HMRC submit that the entire Property is residential, along with its garden and grounds which include the Disputed Area.

61. The septic tank serves multiple properties. This is commonplace in rural areas, or areas where there is no mains drainage. This is an essential utility for the Property, and HMRC maintain that whether a septic tank serves one or multiple properties is irrelevant. HMRC submit that the STP is a structure within the garden and grounds of the Property and is therefore residential.

62. HMRC contend that the entirety of the Property, including the Disputed Area, meets the requirements of s.116(1)(b) of the FA 2003 and, therefore, must be classified as residential property for the purposes of SDLT.

63. The leading definition of 'garden or grounds' is set out in *Hyman v HMRC* [2019] UKFTT 469, which was subsequently heard at both the Upper Tribunal (*Hyman and Others v HMRC* [2021] UKUT 68 (TCC)) and the Court of Appeal (*Hyman and Goodfellow v HMRC* [2022] EWCA Civ 185), which states at [62]:

> "In my view "grounds" has, and is intended to have, a wide meaning. It is an ordinary word and its ordinary meaning is land attached to or surrounding a house which is occupied with the house and is available to the owners of the house for them to use. I

use the expression "occupied with the house" to mean that the land is available to the owners to use as they wish. It does not imply a requirement for active use."

64. Further, when considering whether land forms the gardens or grounds of a dwelling, HMRC contend that all relevant factors must be considered and weighed against each other; no single factor is likely to be determinative by itself (per *Hyman* UT at [49]). However, not all factors are of equal weight either, and one strong factor could outweigh several weaker or contrary indicators.

65. HMRC's guidance at SDLTM00455 onwards, outlines the relevant factors that should be considered.

66. This balancing exercise must be based on the relevant factors at the time of completion per *Brandbros Ltd v HMRC* [2012] UKFTT 157 at [47].

67. Judge Mark Baldwin in *James Faiers v HMRC* [2023] UKFTT 212 (TC), helpfully set out principles derived from various SDLT case law on "grounds" at [44]:

"The pointers I take from these cases are as follows:

(1) "Grounds" is an ordinary (albeit a little archaic, at least in the view of some of my fellow judges) English word which has to be applied to different sets of facts. So, in deciding whether a particular piece of land comprises all or part of the "grounds" of a dwelling, it is necessary to adopt an approach which involves identifying the factors relevant in that case and balancing them when they do not all point in the same direction.

(2) The discussion in HMRC's SDLT Manual is a fair and balanced starting point for this exercise, but each case needs to be considered separately in the light of its own factors and the weight to be attached to them. Listing them briefly, the factors addressed in the SDLT Manual are historic and future use; layout; proximity to the dwelling; extent; legal factors/constraints.

(3) Section 116(1)(b) refers to a garden or grounds "of" a dwelling. The word "of" shows that there must be a connection between the garden or grounds and the dwelling.

(4) Common ownership is a necessary condition for adjacent land to become part of the grounds of the dwelling, but it is clearly not a sufficient one.

(5) Contiguity is important; grounds should be adjacent to or surround the dwelling; *Hyman.*

(6) One requirement (in addition to common ownership) might be thought to be that the use or function of the adjoining land must be to support the use of the building concerned as a dwelling (Myles-Till). That may be putting the test too high to the extent it suggests that unused land cannot form part of the "grounds" of a dwelling (cp *Hyman in the FTT* at [62]). Such a requirement must also contend with the decision of the Court of Appeal in *Hyman and Goodfellow* that it is not necessary, in order for garden or grounds to count as residential property, they must be needed for the reasonable enjoyment of the dwelling having regard to its size and nature.

(7) In that light, the "functionality" requirement might perhaps be put the other way round: adjoining land in common ownership will not form part of the "grounds" of a dwelling if it is used (*Hyman in the FTT* at [62]) or occupied (*Withers* at [158]) for a purpose separate from and unconnected with the dwelling. That purpose need not be (although it commonly will be) commercial (*Withers*). This is subject to the points discussed in (8) and (9) below.

(8) Other people having rights over the land does not necessarily stop the land constituting grounds. For example, the fact that there is a right of way over grounds might impinge on the owners' enjoyment of the grounds and even impose burdensome obligations on them, but such rights do not make the grounds any the less the grounds of that person's residence. As the recent decision of the Supreme Court in *Fearn and Others v Board of Trustees of the Tate Gallery,* [2023] UKSC 4, indicates, other people may have a range of rights that can impact on a landowner's use and enjoyment of their land and statute law intervenes in a range of fields (planning and environmental law being obvious examples). Indeed, once one accepts (as we are bound by authority to accept) that "grounds" extends beyond the land needed for the reasonable enjoyment of a dwelling, it seems almost inevitable, particularly in a rural context, that third parties (not the landowner) may have rights over or use parts of the "grounds" without that affecting the status of the land for these purposes. All of that together must mean that, whatever else "available to the owners to use as they wish" (*Hyman* at [62]) may mean, it cannot mean (and Judge McKeever, who herself referred to others' rights, clearly did not intend it to refer to) untrammelled dominion unaffected by the presence or rights of others.

(9) Some level of intrusion onto (or alternative use of) an area of land will be tolerated before the land in question no longer forms part of the grounds of a dwelling. At one end of the spectrum, rights of way will generally not have this effect, even when the right is used for a commercial purpose and the existence and exercise of those rights is unconnected with the dwelling. At the other end of the spectrum, the use of a large, defined tract of land (which had historically been in separate ownership) for agricultural purposes by a third party who has rights enabling them to use that land in that way will result in that area of land not forming part of the grounds of a dwelling (*Withers*)."

Historic and future use of the land

68. The Land Registry documents show that there is a strong historical connection between the two property titles.

69. The Stanton's estate agent plan of the Property shows that this is one continuous plot, it doesn't differentiate between the two titles, and the septic tank wasn't identified on the map (handwritten annotations were added later).

70. HMRC submit that it is necessary to consider whether the Disputed Area has been used or occupied for a purpose separate from and unconnected to the dwelling.

71. HMRC submit that the Property has been subject to the conveyance, which binds purchasers to the covenants relating to the STP since 15 April 1980.

72. The grant of planning permission dated 12 September 1997 refers to planning permission for a wildlife pond (which was directly opposite the then tennis court) shows that the whole land was in the ownership of the vendor. In the application form for the wildlife pond, questions 8 and 9 ask about the existing and proposed use. The answer provided for both questions was "Private house - residential". HMRC submit that the vendors held and enjoyed the two property titles together as their home with gardens and grounds since they acquired it.

73. HMRC submit that the Disputed Area houses the STP which serves the Property, as it carries out an essential facility of the Property dealing with the waste produced by this dwelling and others. The use of the Disputed Area, to contain a septic tank or STP is entirely residential.

74. HMRC submit that this is sufficient to dispose of this appeal however, if the Tribunal do not agree, there are further factors that demonstrate the Property is wholly residential.

75. In the AJB's witness statement, he states that the Disputed Area has had instances where the human excreta have overflown, and the repugnant smell has prevented him and his family from enjoying the land. HMRC submit that the instances involving human excreta do not preclude the Disputed Area from being classified as residential, this is part of the maintenance obligation of any normal homeowner in a rural setting such as the Appellant.

76. The Upper Tribunal in *Hyman UT* and the Court of Appeal in *Hyman COA* have confirmed that there is no 'reasonable enjoyment' test for land to form 'gardens or grounds' of a dwelling.

77. Further to this, in *The How UT* at [73], it was stated that land can be passive: "[73.] … Insofar as the FTT was making the point that land may perform a passive as well as active function and still be "grounds", we agree.".

78. However, the Disputed Area does perform an essential function, it houses the STP tank which is required to process the waste from the Property. It therefore follows that the Disputed Area is connected to the dwelling and is residential property.

79. The contention made in AB's claim that the STP does not subsist solely for the benefit of the Property but also for the benefit of Totteridge Park, preventing AB from having exclusive use of the 5.6 acres is not accepted, as per paragraph 37 (*Danielle Katie Sexton and Emma Rachel Sexton v HMRC* [2022] UKFTT 00160).

> '… However, I can find nothing in sub-section 116(1) which suggests that, to the extent such an interest or right also subsists for the benefit of another building within (a) or piece of land within (b) (or even a building or piece of land not within (a) or (b)), it does not fall within section 116(1)(c) …'

80. AB argue that the structure of the STP is substantial, HMRC submit that it is merely a septic tank in reality and is described as such in the deed 24 August 1962, and simply a drain in the deed 23 February 1992.

81. The STP is a structure on the land, and it is to be treated as residential regardless of the use to which it is put (*Brandbros Limited v HMRC* at [40] – [41]).

Proximity to the dwelling, layout of the land and outbuildings

82. HMRC contend that, all the land forms a contiguous plot and that the Disputed Area within the 5.6 acres is immediately adjacent to the gardens and is sufficiently close to the dwelling and serves the Property.

83. A selling feature of the Property was the 5.6 acres itself along with the 'equestrian facilities. HMRC submit that the paddocks in the 5.6 acres provided AB with the necessary facilities to exercise / keep horses or other animals on that land, given that those facilities were already in place.

84. HMRC considers its view to be consistent with Goodfellow where it was determined that the land surrounding the house in that case was "…very much essential to its character, to protect its privacy, peace and sense of space, and to enable the enjoyment of typical country pursuits…".

85. In this case, the 5.6 acres containing the Disputed Area formed part and parcel of the residential and rural lifestyle marketed to and acquired by AB.

86. Structures on land was explored in the case of *Brandbros*. In that appeal, the Appellant unsuccessfully appealed HMRC's decision to classify the property's garage as residential resulting in a closure notice being issued.

87. In that case, Judge Bower explained that it necessary to look at the status of the land first and if the land in question falls to be 'garden and grounds' it follows that any buildings or structures on that land will be classified as residential, regardless of the use that they are put to.

88. HMRC contend that this also applies to structures underground, as foundations are formed underground which help to form a part of the building/structure overground.

89. HMRC submit that Judge Bower's approach is correct, and this approach was endorsed by Judge Raghaven of the Upper Tribunal in *Goodfellow v HMRC* UT/2020/0027 (permission to appeal, unpublished) at [13]:

> "The applicants' submission that the FTT's conclusion is not one that a tribunal could have reached applying the facts to the law is in my view unsustainable. This is because the terms of s116(1)(b) clearly necessitate a decision against the applicants despite all the factual features they emphasise. It was not suggested, and from the application appears to be accepted, that the garage building in which the office room was situated was a building on land which was land that formed part the grounds of the dwelling (the dwelling being the applicants' house – and which fell within s116(1)(a)). Thus the garage building was prima facie within the scope of s116(1)(b). There is however nothing within subsection (b) to indicate the applicants' submission, that the use or suitability of use of the room for non-residential purposes is contemplated as relevant, so as to extricate it from s116(1)(b). As far as the wording of s116(1)(b) is concerned, a building in the garden or grounds of a dwelling within subsection (a) such as the garage building including the office space in this case is residential irrespective of its use or suitability of use (in contrast to subsection (a)). The HMRC guidance relied on by the applicants simply reflects HMRC's view of the law and cannot affect the interpretation of the law which is a matter of statutory interpretation. It is not an interpretative tool, but even if it were, the guidance referred to would seem to be relevant to whether a building was used or suitable for use as a dwelling for the

purpose of s116(1)(a) not s116(1)(b). In the light of the relevant facts it is difficult to see how a tribunal could have reached any conclusion other than the one the FTT did."

Geographical factors and size of the land

90. At the time of completion, the Disputed Area formed part of the garden and grounds of the Property and was marketed as such.

91. HMRC say that the Disputed Area is clearly located within the grounds of the Property. It is situated next to the tennis court, which is clearly residential. The Google maps aerial photograph clearly shows that there is a path that leads from the swimming pool area, past the tennis court, next to the Disputed Area, and into the 5.6 acres.

92. HMRC submit that the Property is a 6-bedroom dwelling with surrounding land of approximately 7.5 acres which is commensurate to the size of the dwelling. It is not unusual for a property of this nature to include this amount of land, and it is common for residential properties with a menage and stables to include paddocks. It also adds to the rural character.

93. Further, there is no limitation in s.116 of the FA 2003 regarding the size of the land required for a property to be classified as a residential or non-residential dwelling. Following the Upper Tribunal and Court of Appeal decisions in *Hyman & Goodfellow* which confirmed that whether land falls inside or outside any such "Permitted Area" has no bearing on whether that land could be considered garden or grounds of a dwelling in the context of s.116(1)(b) FA 2003, which makes no reference to permitted area and does not place any restrictions on the size of grounds for SDLT purposes, as per the Court of Appeal's decision in *Hyman & Goodfellow*, [28] to [30].

Legal factors and constraints

94. All the land forms a contiguous plot. HMRC say that the restrictions in the conveyance are minimal, and they are related to the maintenance and upkeep of the STP, which is an essential facility of the Property.

95. HMRC submit that the Disputed Area is easily accessible to AB, and is within close proximity of the tennis courts, a residential part of the Property.

96. The STP is located underground and common to many residential properties that are not connected to mains sewerage. Above ground, it consists of two small wooden structures (to store items in), manhole covers, safety vents, and air blowing machinery.

97. Google maps and the photographs of the Disputed Area show that there is very little above ground.

98. AB contend that the Disputed Area is non-residential as there is a commercial agreement between AB and the owner of Totteridge Park, however HMRC submit that it is not a genuine commercial agreement as there is no view to profit.

99. What AB describes as a "commercial agreement" is simply a restrictive covenant which provided a method to split the maintenance costs for the STP in proportion to the benefit received by each property. The Disputed Area should, therefore, still be considered as residential.

100. In a similar vein, Judge John Manuell in *Goodfellow* at [20] found that "…There was no evidence that anything approaching a commercial arrangement was made at any material time for use of the paddocks".

101. There was no prior history that the Disputed Area was used or occupied separately and unconnected with the dwelling and at the time of completion, the Disputed Area formed part of the Property's gardens and grounds and therefore satisfies s.116(1)(b) of the FA 2003.

102. The agreement between AB and the other residents at Totteridge Park in respect of shared maintenance costs, is evidence of the STP subsisting for the benefit of multiple dwellings, and thus also being residential property under s.116 (1)(c)."

103. The Disputed Area has not been actively and substantially exploited. It is simply a way of dealing with waste produced by the dwelling and neighbouring properties which are not connected to mains drainage.

104. In *The How FTT* [83], Judge Connell stated that:

> "… Certain types of land can be expected to be garden or grounds, so paddocks and orchards will usually be residential, unless actively and substantially exploited on a regular basis. That logic applies equally to woodland. There is no suggestion of any previous commercial activity in the recent past and whatever may happen in the future has no relevance in determining the current status of the woodland for the purposes of SDLT."

105. HMRC submit that the restrictions obliging a landowner to allow the relevant authority to access and carry out maintenance of the STP does not preclude the land from being grounds and, therefore, residential.

106. In *James Faiers*, the Appellant sought unsuccessfully to appeal HMRC' decision to reject his claim that his property should be classified as mixed use due to the commercial electricity distribution network on his property.

107. In his witness statement, AJB stated that the vacuum trucks visit the STP four times a year. In *Faiers* at [50] Judge Baldwin explains why the electricity distribution network does not prevent the land from being non-residential.

108. HMRC submit that the same principles in *Faiers* apply to this appeal. The requirement to allow vacuum trucks to empty the STP does not prevent the land from being non-residential. As in *Faiers*, the land in question is contiguous and not separated from the dwelling, and the level of physical intrusion seen in this appeal is also not extensive. As per [51] of *Faiers*, the presence of the STP impinges on the owner's enjoyment of the ground, but it does not in any realistic way make the affected land any less part of the grounds of the dwelling. The type of use and intrusion as a result of the STP is far removed from the type seen in *Withers.*

109. While obligations and burdens relating to the maintenance of the STP may impinge on the owner's enjoyment of the land, this would not prevent the land from being residential in nature, similar to that of a public footpath over private land. The First-tier decisions in *Hyman* and *Averdieck* support HMRC's view in this regard.

110. Landowners are often prevented from erecting buildings in their garden and grounds. They have to apply for planning permission from their local authority if they wish to do so,

but this does not stop the land subject to those restrictions from being garden and grounds of the property in question.

Interaction with Capital Gains Tax ("CGT" (or other legislation)

111. HMRC submit that the CGT treatment of the transaction is irrelevant; SDLT is a separate tax with different legislation, for a different purpose. CGT legislation restricts the area of 'garden or grounds' that may qualify for Principle Private Residence Relief, but it does not follow that any land beyond the 'CGT' permitted area is not the 'garden or grounds.

112.AB contend that the Disputed Area does not form the gardens or grounds of the property because it exceeds the permitted area and is not required for the reasonable enjoyment of the dwelling.

113. HMRC say this argument is unsustainable. *Hyman & Goodfellow* at [28] confirmed that whether land falls inside or outside any such "Permitted Area" has no bearing on whether that land could be considered garden or grounds of a dwelling in the context of s.116(1)(b) FA 2003, which makes no reference to permitted area and does not place any resections on the size of grounds for SDLT purposes,

114.HMRC submit that, when taking a balanced judgement weighing up all relevant factors, the Disputed Area forms part of the 'garden or grounds' of the Property, thereby meeting paragraph 116(1)(b) of the FA 2003. Therefore, the Property is entirely residential as per s.116 of the FA 2003.

Section 116(1)(c): an interest in or right over land that subsists for the benefit of a building or land.

115.HMRC submit that as the Disputed Area forms part of the gardens and grounds of the dwelling, then the whole transaction will be residential property, and that is enough to dismiss the appeal.

116.In the alternative, if the Tribunal does not agree that the Disputed Area forms part of the gardens and grounds of the dwelling, HMRC contend that the freehold interest in the Disputed Area is an interest or right over land that subsists for the benefit of a building (within paragraph (a)) pursuant to s.116(1)(c) FA 2003.

117. The STP very clearly exists for the benefit of dwellings that fall within s.116(1)(a) FA 2003, as it deals with the waste produced by these dwellings.

118. The contention made in AB's claim that the legislation referred to a "building" in the singular and could not be applied to a group of buildings was negated by s.6 Interpretation Act 1978, which states that "unless the contrary intention appears, […] words in the singular include the plural […]". There was no contrary intention within the provisions of s.116 FA 2003 and so references to a "building" also included buildings in the plural, meaning both the Property and Totteridge Park.

119. AB's contention that exclusive use of the Disputed Area is restricted because the STP does not subsist solely for the Property but also for the benefit of Totteridge Park, is refuted.

120.HMRC say that the reliance placed on an alleged commercial agreement subsisting between third party users of the equestrian facilities between AB's exchange and

completion was not raised in their grounds of appeal and is a new line of argument, for which there is no corroborating evidence, which the Tribunal should not take into consideration.

121. HMRC say that notwithstanding the restrictions on the use of the access road to the STP and the equestrian facilities, AB could choose to use the latter if they wished to.

122. HMRC request that the Tribunal find that:

1. The Property is wholly residential as per s.116(1) of the FA 2003.

2. The Disputed Area acquired with the purchase of the Property forms part of the garden and grounds of the dwelling.

3. The Disputed Area under s.116(1)(b) is residential, and is not exploited commercially; and

4. The conclusions stated within the Closure Notice are correct and the additional amount of £265,750 is due.

DECISION

123. The issues before the Tribunal were whether the Property is wholly residential in terms of Section 116 (1) Finance Act 2003 or whether part of the Property, the Disputed Area, is non-residential and whether the conclusions stated within the Closure Notice issued on 05 November 2019 are correct.

124. It was common ground that the dwelling and buildings on the 1.9 acres of property referred to on the Title NGL 372392 were residential property. The issue was whether the land containing the STP within the 5.6 acres adjoining the 1.9 acres of the property is or forms part of the garden and grounds of a building that is used or is suitable for use as a dwelling.

125. Property, both 'residential' and 'non-residential' is defined pursuant to s.116(1) of the FA 2003:

"(1) In this Part "residential property" means—

(a) a building that is used or suitable for use as a dwelling, or is in

the process of being constructed or adapted for such use, and

(b) land that is or forms part of the garden or grounds of a building

within paragraph (a) (including any building or structure on such land),

or

(c) an interest in or right over land that subsists for the benefit of a

building within paragraph (a) or of land within paragraph (b);

and "non-residential property" means any property that is not residential.

property.…"

126. As Judge Citron succinctly noted in *Myles-Till*,

> "a source of difficulty is the draughtsman's choice of a word that is not only legally imprecise but is also somewhat archaic; "the "grounds" of a dwelling building. Few people nowadays would describe the land surrounding their homes as the "grounds"-the word "grounds" was not used in the estate agent's particulars, yet the statute here requires a line to be drawn between the "garden or grounds" of the dwelling building and any other land acquired as part of the same transaction-and provides no definitional assistance."

127. In *Hyman and Goodfellow in the Court of Appeal*, the issue on appeal was whether there was an objective quantitative limit on the extent of the garden or grounds that fell within the definition of "residential property".

128. The Court, at [30], stated that section 116 was concerned with characterising property as residential property on the one hand or non-residential property on the other: "That characterisation of property applies generally for the purposes of SDLT; not merely to the availability of one form of relief against tax. Land does not cease to be residential property merely because the occupier of a dwelling house could do without it."

129. The Court of Appeal rejected the limitation that section 116 required the reasonable enjoyment of land in order to fall within the definition of residential property.

130. Accordingly, there is no quantitative limit on the extent of the garden or grounds and there is no requirement for it provide reasonable enjoyment.

131. In this appeal the Disputed Area was within the 5.6 acres, but the area measurement was not accurately ascertained.

132. AJB's evidence in relation to this area was unclear and only approximate measurements were provided after detailed questioning by the Tribunal.

133. AJB could not "say with any certainty" whether or not the tennis court had been erected on the 5.6 acres was wholly within the boundary of area of the 5.6 acres or partially within the 1.9 acres.

134. From the evidence that was before the Tribunal and following examination of the plans attached to Title NGL3201221 for The Paddocks and Title NGL372392 of the 5.6 acres of land lying to the north, the Tribunal considered that approximately 50% of the tennis court was within 5.6 acres.

135. The tennis court was also constructed in relatively close proximity to the manhole covers and the other structures. Given the 5.6 acres available in which this tennis court could have been erected it did not seem credible that it had been placed so near to a septic tank if it 'constantly' emitted a repugnant smell as submitted by AB.

136. The Tribunal had difficulty accepting how great a hazard this repugnant smell might make the Disputed Area or indeed the remainder of the 5.6 acres to render them 'unusable'. The STP was emptied/serviced four times a year and there was a suitable access for the appropriate machinery to do this. A well-managed and serviced septic tank plant should not 'constantly' emit pungent smells.

137. AJB stated in his evidence that whereas he and his wife might have preferred not to purchase the 5.6 acres which included the STP they were given no option but to do so. On

the basis that the 1.9 acres was clearly wholly residential the 5.6 acres which had to be sold with it was part of the 'package'.

138. The Property prior to exchange had 'working' equestrian facilities being a 'menage' [an outdoor arena for training horses and riders] and stables on The Paddock's 1.9 acres which was residential. The 5.6 acres allowed for grazing and exercising horses, and it is not uncommon for residential properties with stables to also have adjoining paddocks for grazing and exercising horses.

139. AJB gave evidence that the previous owner had, with his knowledge, continued to use the menage facility between exchange and completion but there was no other evidence in relation to this nor whether such use was commercial.

140. There was also a statement from AB that horses had been allowed on the property during the period between exchange and completion but that the horses had been removed by the time of completion. AB said this was because they wished to give further thought to its future use for equestrian purposes and intended to decide on that use within three months after completion.

141. On the evidence before it the Tribunal considered that there was no use of the ménage nor the fields by horses or their riders at the date of completion.

142. As AB had decided that equestrian activity should cease on their occupation, they stated that they made 'no use' of the 5.6 acres. The Tribunal considered that having built the tennis court partly on this land they would likely use or had use of the court and that the 5.6 acres was available for their use.

143. HMRC's submissions referred to *James Fraiers* and to the useful summary by Judge Mark Baldwin, at [44], of a number of the recent cases, whether persuasive or binding on this Tribunal, relating to the interpretation of "the garden or grounds of a building" as set out in section 116 (1) (b) of the Finance Act 2003.

144. The Tribunal therefore consider these 'pointers' as follows.

Connection, Common Ownership and Contiguity

145. The Disputed Area was clearly continuous with the 1.9 acres and there was common ownership of the Property.

146. AB had been given no option but to purchase the entire 7.2 acres if they wish to buy the 1.9 acres Paddocks.

147. There was a strong historic connection between the two parts of the Property, not least following the construction of the STP.

Historic and Future Use

148. There was no prior history that the Disputed Area nor the 5.6 acres was used or occupied separately or was unconnected with the dwelling and at the time of completion it formed part of the Property and therefore satisfies section 116 (1) (b) of the Finance Act 2003.

149. The stables and menage within The Paddocks could be, and had been, used with the 5.6 acres for grazing and exercising horses. It was not relevant that AB decided not to use the 5.6 acres for this purpose after completion.

150. The Tribunal considered that AB did or could make use of the tennis court, part of which was situated in the 5.6 acres, and did make partial use of the STP. The 5.6 acres was suitable for leisure use.

151. The Tribunal considered that the existence of horses and riders between exchange and completion, based on the evidence before it, was insufficient to establish 'a prior commercial agreement' and, in any event, this ceased on completion.

152. The intention to consider, within three months of completion, whether equestrian activities should continue after completion did not equate to a commercial use on the date of completion, from the date of completion nor at any time thereafter.

153. The Tribunal distinguishes *Suterwalla,* which is not binding on this Tribunal, as it relates to a lease created on completion by the purchaser. AB's claim for which there was no other evidence, was that the seller may have had a commercial agreement, in relation to the equestrian facilities and the 5.6 acres, prior to completion.

Layout and Proximity to the dwelling

154. The layout and extent of the Property was appropriate for a large countryside property with stables, a menage, a swimming pool and including extensive gardens and grounds in a traditional setting. In addition, when purchasing The Paddocks AB had no option but to also purchase the 5.9 acres as it could only be purchased as 'one package'.

Use or function to support, or use for a purpose separate and unconnected with, the dwelling.

155. It is necessary to look at the use or function of the adjoining land to decide if its character answers to the statutory wording in s116(1). Adopting Judge Citron's analysis: -

> "Is the land grounds "of" a building whose defining characteristic is its "use" as a dwelling? The emphasised words indicate that that the use or function of adjoining land itself must support the use of the building concerned as a dwelling. For the commonly owned adjoining land to be "grounds", it must be, functionally, an appendage to the dwelling, rather than having a self-standing function."

156. This formulation, Judge Citron believed, was consistent with the analysis in Hyman at [92],

> "Provided one reads that paragraph to the end which he read as land under common ownership and control with the dwelling building – "would not constitute grounds to the extent it is used for a separate e.g., commercial purpose". I read this as a very similar understanding of the meaning of "grounds" to mine here, in that use for a "commercial" purpose is a good and (perhaps the only) practical example of commonly owned adjoining land that does not function as an appendage but has a self-standing function."

157. HMRC's SDLT Manual at 00460 states that the aim of the legislation is to distinguish between residential and non-residential status and that it is logical that where land is in use for a commercial rather than purely domestic purpose the commercial use would be a strong indicator that the land is not the "garden or grounds" of the relevant building.

158.This is qualified by a statement that "it would be expected that the land had been actively and substantially exploited on a regular basis for this to be the case".

159.The Tribunal did not consider that the STP has been used for a self-standing function, namely a commercial purpose being the provision of effluent storage and removal as it accepts HMRC's submissions that the STP is an essential facility of the Property, or any similar property that has no connection to mains sewage disposal.

160.The Tribunal did not accept AB's submission that they had a commercial agreement with the neighbouring owners in relation to the STP and its use.

161.The Tribunal did not believe there was a genuine commercial agreement but simply a restrictive covenant which provided a method to split the maintenance costs for each of the users of the STP in proportion to the benefit each received from the property.

162.AJB stated that he makes a profit because of a change from the original position in the title deeds to the allocation of costs but the only evidence provided to the Tribunal, being an invoice from AJB, showed the split of costs as stated in the title deeds.

163. Unlike a normal commercial agreement there is no ability to bring this agreement to an end in the usual commercial way.

Rights over land

164.SDLTM475 considered the legal factors and constraints that would affect whether land is chargeable. This states that "hindrances" such as rights-of-way and pylons will not usually prevent land constituting garden grounds. The Tribunal considered the various constraints in relation to the 5.6 acres and Disputed Area but did not consider that the constraints prevented the land from being residential property as stated by Judge Mark Baldwin in *James Faiers v HMRC.*

165.The presence of the STP does not make the Disputed Area non-residential. The legal and practical restrictions that the presence of the STP imposes similarly do not affect residential use of the Property and the Tribunal does not accept that any commercial agreement exists. Instead, there is an arrangement as a result of a covenant which can be categorised as paying for and being compensated by the owners of neighbouring properties for costs of maintaining the STP facility.

166.The presence of the STP and any unpleasant odours emanating from them do not constitute any legal constraints or rights on land or intrusion sufficient to confirm the Disputed Area or the 5.6 acres as non-residential.

167.The Disputed Area housing the STP carried out an essential facility not only for the Property but also for the neighbouring 10 users. All users of the STP were residential properties and it was vital for The Paddocks to have such a facility. The Tribunal did not consider this precluded the Disputed Area from being classified as Residential.

168.Accordingly, the presence of the STP did not convert the Property to mixed residential and non-residential use.

Legal and Practical restrictions

169. The Tribunal could see no evidence of a genuine commercial agreement in relation to these obligations in relation to the STP and there was no evidence of any other commercial agreement nor how the covenant positions could "commercially benefit" AB.

170. Whereas it is accepted that there appeared to be a burden on AB to organise the removal of waste from STP, this was required as part of the covenant.

171. The arrangements specified in the title deeds provided for obligations and a division of costs. The Tribunal did not accept that AB's financing those costs, prior to obtaining reimbursement, constituted their making a profit. This was just a consequence of recovering the costs due to them under the title deeds.

172. The division of costs was as specified title deeds and there was no evidence of any favourable split between the users of the STP which might have changed that distribution of the costs so as to provide AB with a 'profit'.

173. The Tribunal agreed with HMRC that what AB describes as a "commercial agreement", is simply a restrictive covenant which provided a method to split the maintenance costs for the STP in proportion to the benefit received by each property.

174. As a result of the covenant in the title deeds there is no agreement that could in a normal commercial sense be terminated at any stage. The Tribunal were not persuaded by AB's suggestion that the covenant was similar to a 999-year lease for a property as, albeit difficult to imagine in practice, the lease is nonetheless finite.

175. Notwithstanding the obligation to have the tanks emptied four times a year, the Tribunal did not consider that this prevented the land from being non-residential in the same way that an electricity distribution network did not prevent the land from being non-residential in *James Faiers v HMRC.*

176. As the requirement for the STP was mandatory and essential, as by living in the country where they had no connection to mains sewerage drainage,the Disputed Area and the whole 5.6 acres formed part of the garden or grounds of the dwelling.

177. Insufficient evidence was put forward to convince the Tribunal that the Disputed Area was used and occupied separately or unconnected with the dwelling.

178. The Tribunal preferred the submissions of HMRC and weighing up all the relevant factors, found insufficient reasons why the presence of the STP and its restrictions, which were not in the form of a commercial agreement, imposed on its residential use could not convert the Disputed Area or the 5.6 acres to allow mixed residential and non-residential use of the Property.

179. Accordingly, the appeal is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

180. 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.

Ruthven Gemmell WS
TRIBUNAL JUDGE

Release date: 12th JULY 2023

Appendix A - Legislation

s.43 Finance Act 2003 - Land transactions
s.48 Finance Act 2003 - Chargeable interests
s.55 Finance Act 2003 - Amount of tax chargeable
s.76 Finance Act 2003 - Duty to deliver land transaction return
s.103 Finance Act 2003 - Joint purchasers
s.116 Finance Act 2003 - Meaning of "residential property".
Schedule 6A Finance Act 2003 - Relief for certain acquisitions of residential property
Schedule 10 Finance Act 2003 - Returns, enquiries, assessments and appeals
Schedule 11A Finance Act 2003 - Claims not included in returns
s 59 of the LBTTA 2013 - Residential property

Appendix B – Cases Referred to

Khawaja v HMRC [2008] EWHC 1687(CH)
Goodfellow v HMRC [2019] UKFTT 0750 (TC)
Hyman v Revenue and Customs [2019] **UKFTT** 0469 (TC)
Pensfold v The Commissioners for Her Majesty's Revenue & Customs [2020] UKFTT 116 (TC)
Myles-Till v HMRC [2020] UKFTT 0127 (TC)
Goodfellow v HMRC UT20200027
Brandbros Limited v HMRC [2021] UKFTT 157
The How Development 1 Limited v The Commissioners for Her Majesty's Revenue & Customs [2021] UKFTT 0248 (TC)
Hyman & Goodfellow v Revenue and Customs [2021] **UKUT** 0068 (TCC)
Khatoun v HMRC [2021] UKFTT 104 (TC)

Danielle Katie Sexton and Emma Rachel Sexton v HMRC [2022] UKFTT 00160
Averdieck v Revenue and Customs [2022] UKFTT 374
Withers v HMRC [2022] UKFTT 433 (TC
Ladson Preston Ltd and another v HMRC [2022] UKUT 301
(1) David Hyman and Sally Hyman and (2) Craig Goodfellow and Julie Goodfellow v HMRC [2022**] EWCA Civ** 185
Faiers v HMRC [2023] UKFTT 212 (TC)
The How Development 1 Limited v HMRC [2023] UKUT 00084
Taher and Zahra Suterwalla v HMRC [2023] UKFTT 03979