Neutral Citation: [2024] UKFTT 00350 (TC)

Case Number: TC09150

FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video hearing

Appeal reference: TC/2023/08387

STAMP DUTY LAND TAX-Mixed Use-substantial house purchased with 22 acres of land-18 acres used by local farmer to graze cattle for part of the year-whether "commercial"-importance of use and commerciality in applying multifactorial evaluation

Heard on: 5 April 2024
Judgment date: 26 April 2024

Before

TRIBUNAL JUDGE MARILYN MCKEEVER
MR DUNCAN MCBRIDE

Between

MARTIN LYNCH AND JULIA LYNCH

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Lyudmil Stoyanov, solicitor, of Womble Bond Dickinson (UK) LLP

For the Respondents: Ms Varuna Jeewon litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. With the consent of the parties, the form of the hearing was V (video). All parties attended remotely and the hearing was held on the Tribunal's VHS platform. The hearing had originally been listed as a face to face hearing but owing to train strikes on the day of the hearing, it was transferred to video. The documents to which we were referred are a Hearing Bundle of 209 pages, a Joint Authorities Bundle of 398 pages, the Skeleton Arguments of both parties and a recent case not included in the bundles (*Harjono & Santoso v HMRC* [2024] UKFTT 00228 (TC)) which had been drawn to the notice of the parties by the Tribunal. We also heard witness evidence from Mrs Julia Lynch.

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.

THE APPEAL

3. References to legislation below are to the Finance Act 2003 unless otherwise stated.

4. Mr and Mrs Lynch appeal against a closure notice dated 13 January 2023 denying an overpayment relief claim under paragraph 34 of schedule 10. The Appellants purchased a property, which included a substantial house (the Main House), a converted barn, a cottage and 22 acres of land (the Property), on 7 May 2021 for £3,075,000 and paid Stamp Duty Land Tax (SDLT) of £258,750 on the basis that the Property was wholly residential but Multiple Dwellings Relief applied. The rates were the higher rates applicable to additional dwellings under Schedule 4ZA. The claim for Multiple Dwellings Relief is not disputed.

5. On 5 May 2022, the Appellants' agent, Womble Bond Dickinson (UK) LLP made an in time claim for overpaid tax under paragraph 34 of schedule 10 on the footing that the property was "mixed use", and that part of the consideration should be apportioned to 18 acres of agricultural land. The amount reclaimed was £104,433.

6. Following an enquiry, HMRC issued the closure notice reducing the claim to nil.

7. The Appellants appealed to HMRC which maintained its view. Following a statutory review which upheld the closure notice, the Appellants made an in-time appeal to the Tribunal on 19 May 2023.

8. The issue we must determine is whether the Property is wholly residential or is mixed use by virtue of part of the property being used for the grazing of cattle.

9. The burden is on the Appellants to show, on the balance of probabilities, that the closure notice is incorrect.

10. We have carefully considered all the evidence, submissions and cases referred to by both parties but have not found it necessary to refer to all of them in this decision.

THE LAW

11. The law is not in dispute.

12. If the Property is wholly residential, SDLT is payable at the rates set out in Table A in section 55 as modified by paragraph 1(2) schedule 4ZA, which applies higher rates of SDLT to the purchase of additional dwellings. If the Property is "mixed use" that is, if it includes land which is non-residential, the lower rates in Table B in section 55 apply.

13. The definition of "residential property" is set out in section 116(1). The definition of a "dwelling" in paragraph 18 of schedule 4ZA is essentially the same. Section 116(1), so far as material, is as follows:

> **"116 Meaning of "residential property"**
>
> (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." (emphasis added)

14. In the present case, the question is whether the 18 acres of land which had been used to graze cattle fall within paragraph (b) above as land that forms part of the garden or grounds of a dwelling.

15. We have carefully considered the following cases referred to by the parties although we do not refer to all of them in our decision. *Hyman v Revenue and Customs Commissioners* [2019] UKFTT 469 (TC), *Hyman and Others v HMRC* [2021] UKUT 68 (TCC), *Hyman and Goodfellow v HMRC* [2022] EWCA Civ 185, *Myles-Till v HMRC* [2020]UKFTT 127, *Ladson Preston v HMRC* [2022] UKUTT 301 (TCC), *Gary Withers v HMRC* [2022] UKFTT 00433 (TC), *James Faiers v HMRC*[2023] UKFTT 00297 (TC), *The How Development 1 Ltd v HMRC* [2023] UKUT 00084 (TCC), *Thomas Kozlowski v HMRC* [UKFTT] 711 (TC), *Modha v HMRC* [2023] UKFTT 783 (TC) and *39 Fitzjohns Avenue Ltd v HMRC* [2024] UKFTT 28 (TC).

THE FACTS

16. These findings of fact are derived from the documentary evidence in the Hearing Bundle and the witness evidence of Mrs Lynch, who we found to be an open and honest witness. The farmer whose cattle grazed the land made a witness statement but as he did not attend the hearing and was not cross-examined we attach appropriate weight to his comments.

The Property

17. Mr and Mrs Lynch bought the Property on 7 May 2021. The Property consisted of a large, five-bedroom house, a one-bedroom converted barn, a two-bedroom cottage, various domestic outbuildings and 22 acres of land. The land included extensive formal gardens, a kitchen garden and 18 acres of paddocks. We will use the neutral term "Grazing Land" when referring to the paddocks.

18. The Main House is a substantial T-shaped building with parts dating from the 16th and 18th centuries with later additions. The front of the house is south of and faces a road. Looking at the Property from the road, one wing of the house is on the east side of a courtyard, the barn is between the road and the courtyard at the north side of the courtyard and the cottage is at right angles to the road on the west side of the courtyard.

19. The kitchen garden is behind and to the right of the cottage. It is bordered by a hedge which has a gap giving entry to the main garden.

20. At the back of the Main House is a stone paved patio with two steps up to the main garden which extends behind the house to the south, with a small part to the east of the house

and a larger area to the right of the house and behind the kitchen garden. The gardens include lawns, an area of bushes and trees referred to as "the shrubbery" and an ornamental pond with a stone bridge over it. At the end of the formal gardens, parallel with the road is a ha-ha. There is a wall along part of the ha-ha and the rest is bordered by a fence which has a gate leading into the Grazing Land.

21. The Grazing Land slopes down steeply from the other side of the fence. There are two rectangular paddocks enclosed by fences with a small, fenced holding area at the eastern boundary. To the right of and behind the fenced paddocks is a third, larger paddock which occupies the remainder of the Grazing Land. The Property is bordered by trees and, we assume, fences to contain the animals.

22. There are two public rights of way which cross the Grazing Land.

23. The sales brochure for the Property contained extensive descriptions of the Property together with numerous photographs. We acknowledge that this is a marketing document, but it is helpful to see how the property was presented.

24. The brochure states:

> "This beautiful family home …occupies a superb position within the pretty… village of W…. It boasts twenty-two acres of stunning grounds and enjoys magnificent views across the Vale of Aylesbury… ."

25. The "Seller Insight" states:

> "From the road it's extremely pretty, but it isn't until you go through to the back of the property that you can appreciate just how special it is; the grounds stretch out before you and the views are absolutely magnificent. …
>
> "The grounds too are absolutely beautiful, …I rent a large proportion out to a farmer, which generates a small income, and where the boundary of the garden meets the pastureland there is a ha-ha wall, that not only keeps out any animals, but which also creates the most stunning uninterrupted view. Within the main garden area we have a small orchard, an open lawn and there's also the remains of the water garden…"

26. Mrs Lynch explained that the Grazing Land could not be seen from the house because of the slope of the land. It could only be seen from the fence/ha-ha wall. The "treasured view" was of the valley and hills beyond their property and did not include the Grazing Land.

27. A Design and Access Statement dated September 2019 which was used by the previous owner in support of a planning application stated:

> "The rear of the property comprises a small patio area, with steps leading to the extensive 18 acre grounds."…
>
> "The extensive 18 acre grounds are a large asset to The Main House, perfectly adequate to support the development of the existing dwelling."

28. The land as far as the ha-ha and first fence constitutes the gardens of the Property. We must consider whether the 18 acres of land beyond the fence constitutes the "grounds" of the Property.

The grazing arrangement

29. The Grazing Land had been used by a local farmer, a Mr Watts, for many years to graze his beef cattle. Having reviewed the witness evidence including photographs, screenshots of mobile phone messages, the marketing brochure and the insurance policy for the Property which included public liability insurance in relation to "[the Appellants'] legal liability

arising from ownership of land situate TBC (sic) used for Let to a farmer", we find that the land was being grazed by cattle at the Effective Date of the Transaction.

30. Our bundle contained an unsigned Grazing Agreement dated 21 March 2019 between the previous owner and Mr Watts the farmer. The Agreement was a licence which gave Mr Watts the right to graze and mow the Grazing Land between 1 March 2019 and 31 October 2019. The land could only be used by cattle and sheep but no bulls could be kept on the land. The Agreement was a non-transferrable, personal agreement between the parties. We were not taken to any signed or later agreement and we infer that there was none.

31. The consideration payable for the licence was £1,000, payable in advance. Mr Watts was also required to keep all the fences, gates and so in in proper stock proof conditions and to maintain them, preserve trees and bushes, remove weeds and moles and to prevent the land from becoming "poached" in wet weather. If the land was being damaged, the cattle had to be removed.

32. The Agreement expressly stated that Mr Watts did not have exclusive occupation of the Grazing Land and that the owner and his family and visitors had the right to go on the land at any time for any purpose.

33. The owner could get the land back at any time for any reason by giving one month's written notice.

34. Mrs Lynch said that there were cattle on the Grazing Land when they went to view the Property initially and the cattle were there at completion and beyond. There were photographs showing at least a dozen cattle on the land and it seems that Mr Watts grazed between 15 and 20 cattle on the Grazing Land.

35. This Agreement, even if completed, ended on 31 October 2019. We were not taken to any other agreement. Mrs Lynch understood that there was an existing informal arrangement for grazing the cattle at the time of completion, possibly on the terms of the unsigned agreement, and the Appellants intended to enter into a new contract with Mr Watts to formalise matters. The Appellants were content to allow the existing informal arrangements to continue until the new arrangements were completed.

36. The parties did not, in the event, enter into a new contract.

37. Mr Watts grazed bullocks on the Grazing Land which could be aggressive. Mr and Mrs Lynch were chased by the cattle when they went onto the Grazing Land and had to take refuge on a tractor which was in the field. They also saw an extract from the local Parish newspaper detailing "incidents" in March and April (the year was not stated but Mrs Lynch said it was shortly before they bought the house) recording the fact that a lady who had been walking on one of the footpaths on the Grazing Land had been chased by "five frisky cattle" and had fallen and badly injured her ankle. Mrs Lynch said that neighbours had told her the bullocks had previously been troublesome. The Appellants were concerned about the risks and potential liability to the public.

38. The final straw came when the cattle got into a neighbour's garden. Mr Lynch called the farmer and told him the arrangement could not continue and the cattle were to be removed as soon as possible. This was done a month or so later, around July 2021. The grazing during the Appellants' period of ownership according only lasted from the time of the purchase in May 2021 until July 2021.

39. Given that the Appellants moved in part way through the grazing season, it may be that Mr Watts had paid the rent to the previous owner. In any event, the Appellants did not

receive any rent in relation to the grazing. The only maintenance carried out was the repair of the fences when the cattle broke into the neighbour's garden.

40. The grazing cattle had kept the grass on the Grazing Land short. Since the arrangement was terminated, the Appellants have had problems maintaining the land as the slope of the paddocks means that it is dangerous to use equipment to mow the grass and they have struggled to find anyone to do the work.

41. To summarise the position regarding the grazing arrangements:

(1) There was no contract in place at the time of completion.

(2) At that time, Mr Watts' cattle grazed the Grazing Land on an informal basis which was a continuation of the arrangements which had been in place for many years.

(3) The Appellants intended to formalise the arrangements but did not do so.

(4) The Appellants received no consideration for the use of the Grazing Land.

(5) The arrangements were terminated, on request, a few months after the Appellants moved in because of concerns about the behaviour of the cattle.

DISCUSSION

42. The question we must answer is whether the Grazing Land was land that forms part of the grounds of The Main House, which is clearly a "dwelling".

The approach to determining whether the Grazing Land is "grounds" of the dwelling

43. The expression "grounds" was defined at [62] of the First Tier Tribunal in *Hyman*.

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

44. This formulation was considered by the First Tier Tribunal in *Myles-Till*, where the tribunal said at [44]-[45]:

> "44. …One must, …look at the use or function of the adjoining land to decide if its character answers to the statutory wording in s116(1) – in particular, 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.
>
> This formulation is, I believe, consistent with the analysis in Hyman at [92] (sic. The correct reference is [62]), provided one reads that paragraph to the end. … the Tribunal stated that land – which I 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."

45. The Court of Appeal in *Hyman* held that it was for the Courts and Tribunals to work out the meaning of a word like "grounds" and the Upper Tribunal held that this is a multi-factorial test. No one factor is determinative and different factors may be given different weight. The Tribunal must carry out a balancing exercise, weighing up all the factors in order to come to a balanced judgement as to whether the land in question constitutes "grounds" of a dwelling.

46. The factors in each case depend on the facts of the case, but a number of relevant considerations have been set out in the case law. Some of the factors were summarised at [37] in *39 Fitzjohns Avenue*:

> "37. These may be summarised as follows:
>
> (1) Grounds is an ordinary English word.
>
> (2) HMRC's SDLT manual is a fair and balanced starting point (considering historic and future use, layout, proximity to the dwelling, extent, and legal factors/constraints).
>
> (3) Each case must be considered separately in the light of its own factors and the weight which should be attached to those factors in the particular case.
>
> (4) There must be a connection between the garden or grounds and the dwelling.
>
> (5) Common ownership is a necessary condition, but not a sufficient one.
>
> (6) Contiguity is important, grounds should be adjacent to or surround the dwelling.
>
> (7) It is not necessary that the garden or grounds be needed for "reasonable enjoyment" of the dwelling having regard to its size and nature.
>
> (8) Land will not form part of the "grounds" of a dwelling if it is used or occupied for a purpose separate from and unconnected with the dwelling.
>
> (9) Other people having rights over the land does not necessarily stop the land constituting grounds. This is so even where the rights of others impinge on the owners' enjoyment of the grounds and even where those rights impose burdensome obligations on the owner.
>
> (10) 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. There is a spectrum of intrusion/use ranging from rights of way (still generally grounds) to the use of a large tract of land, historically in separate ownership used by a third party for agricultural purposes under legal rights to do so (not generally grounds).

> (11) Accessibility is a relevant factor, but it is not necessary that the land be accessible from the dwelling. Land can be inaccessible and there is no requirement for land to be easily traversable or walkable.
>
> (12) Privacy and security are relevant factors.
>
> (13) The completion of the initial return by the solicitor on the basis the transaction was for residential property is irrelevant.
>
> (14) The land may perform a passive as well as an active function and still remain grounds.
>
> (15) A right of way may impinge an owner's enjoyment of the grounds or even impose burdensome obligations, but such rights do not make the grounds any less the grounds of that person's residence.
>
> (16) Land does not cease to be residential property, merely because the occupier of a dwelling could do without it."

47. We will first consider the applicable factors and apply them to the facts of this case and then weigh the various factors in the balancing exercise.

Consideration of the factors

Use of the land

48. The actual use of the land is a very, if not the most, important factor.

49. We have found that the land was used at the date of completion, and for many years before that, for grazing cattle as part of Mr Watts business of farming cattle for meat.

50. There was no formal grazing agreement in place at the time of completion and the Appellants received no consideration for Mr Watts' use of the land. Nor did he carry out any maintenance during the Appellant's period of ownership (except for repairing the fences broken by his bullocks) as the arrangement was terminated soon after the Appellants moved into the Property.

51. Even assuming, the terms of the 2019 grazing agreement were followed in practice, Mr Watts did not have exclusive possession of the Grazing Land. The Appellants could and did go on the Grazing Land for any purpose and at any time. This is an important factor.

52. Whatever the terms of the arrangements, the Appellants had not ceded the Grazing Land to Mr Watts for his business. They had retained full rights over the land whilst permitting him limited, concurrent, use for a specified period.

53. Members of the public could and did use the public footpaths over the Grazing Land. This is not so important, as the existence and use of rights of way does not prevent land from being grounds.

Commerciality of the grazing arrangements

54. Much was made by both parties of the question whether or not the grazing arrangements were commercial in nature. Mr Stoyanov contended that the arrangements were commercial in that a rent of £60 an acre and maintenance obligations were the "going rate" in the area. Further, the land was being used by a third party as part of his undeniably commercial farming business.

55. Ms Jeewon contended that the rent was nominal and the arrangement for the farmer to graze his cattle in return for a small rent and maintenance of the land was a mere "barter of convenience" which suited both parties and did not amount to a commercial use of the Grazing Land.

56. The burden is on the Appellants to show that the arrangements were commercial. They have not done that. There was no formal agreement of any kind in place at the date of completion. The unsigned Grazing Agreement expired some time before the Appellants purchased the Property. They allowed the grazing to continue, on an informal basis, pending the preparation of a new contract which was never in fact concluded. They received no consideration for that use even assuming that the rent was a "commercial" rent in the circumstances. There were no agreed terms for the continued grazing and the arrangements were terminated without notice, although it took a few weeks for Mr Watts to move his cattle.

57. From Mr Watt's perspective the grazing arrangements were carried out as part of his farming business and to that extent he was using the land for his commercial purposes.

58. From the Appellants' perspective, it was simply an arrangement which they had "inherited" and were prepared to continue as is would help them maintain the land.

59. What matters is not whether Mr Watts was running a commercial business, but whether his use of the land for his business was a commercial arrangement.

60. In any event, the commerciality of the arrangements is only one factor in the balancing exercise we must carry out.

61. The final sentence in the definition of grounds in *Hyman* set out above has frequently been misinterpreted as equating commercial use with non-residential use. That does not follow.

62. The passage in *Myles-Till* cited at [44] above emphasises that one must look at the use or function of the land to determine whether it is grounds "of" a building which is a dwelling, and this means that the use of the land must support the use of the building as a dwelling. It must be an "appendage to the dwelling, rather than having a self-standing function". Land which is used for a "commercial" purpose may (or may not) have a self-standing function.

63. HMRC's guidance at SDLTM00460 considers the issue of grazing land:

> "The aim of the legislation is to distinguish between residential and non-residential status, so 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. It would be expected that the land had been actively and substantively exploited on a regular basis for this to be the case.
>
> …
>
> Parkland which, whilst grazed by livestock, primarily provides an appealing setting for a dwelling and on which the livestock are not kept on a commercial basis is likely to remain the 'garden or grounds' of the relevant building. In contrast the same land grazed by livestock under a genuine commercial arrangement would be far less likely to be the 'garden or grounds' of the building.
>
> The grazed land might also have a value as part of a 'treasured view' from the dwelling. In this case the relative uses of the land would have to be weighed up in deciding whether it formed part of the 'garden or grounds' of the dwelling.
>
> Where a lease has been granted to a third party for exclusive occupation of the land, this may be an indicator of non-residential use. However occasionally allowing third parties to occupy or exploit the land is unlikely to mean that the land ceases to be 'garden or grounds'. Where a lease or

> licence is in place, the true nature (including commencement and duration) of the agreement will need to be established.
>
> Certain types of land can be expected to be 'garden or grounds' or be expected to be commercial land unless otherwise established. So paddocks and orchards will usually be residential, unless actively and substantively exploited on a regular basis. …"

64. The importance or otherwise of commerciality was further considered in *Harjono*.

65. The Tribunal emphasised that whilst the commercial nature of the arrangements in question were a factor to be included in the balancing exercise, the weight to be given to the use of the land is largely to be determined by the ultimate use of the land. The Tribunal continues at [72]:

> "72. To illustrate this point. Let us say that the paddock was being used for quarrying operations at the point of completion. These quarrying operations were carried out by the sellers. The quarried materials were being sold as part of the seller's trade.
>
> 73. It is this sort of situation envisaged by Judge McKeever in *Hyman* and *Kozlowski*, and by Judge Baldwin at [44 (9)] in *Faiers.* It is at the end of the spectrum when commercial use is likely to be a very significant factor pointing away from the land being grounds.
>
> 74. And we think this would be the case, too, if instead of the quarrying operations being carried out by the sellers, they were carried out by a commercial organisation to whom the sellers had let, on a turnover rent arm's length commercial lease, the paddock to enable them to do so.
>
> 75. The extent and nature of the use would still be judged by the ultimate use to which the land was put (namely quarrying) rather than the terms of the lease.
>
> 76. If instead of the arm's length turnover commercial lease, the lease was on uncommercial terms (at a peppercorn say) what would be the impact on the ultimate commercial use, and the weight that should carry in the multifactorial test?
>
> 77. Our view is that the impact will be negligible. One would look through the terms of the arrangement with the quarrying company and consider the actual use to which the paddock was being put by that company. It would be surprising if HMRC were to argue that because the terms of the lease were uncommercial, the use to which that quarried paddock was put, which is clearly for a purpose separate from and unconnected with the dwelling, is brought back into domestic use."

66. The Tribunal considered that the actual use of the land was of more importance than the commerciality of any arrangements and it was important to consider whether that use is inconsistent with the householders' use of the dwelling as such.

67. We agree with these comments.

68. We do not consider that the grazing arrangements with the Appellants were commercial. That is a factor to consider but is not determinative.

69. The land was used for grazing cattle. Had the arrangements continued, it would have been so used only for part of the year. It was not used for grazing in the winter months. The farmer did not have exclusive occupation of the grazing land. The Appellants could and did

use the land whenever they wanted. The Appellants could terminate the arrangement at any time and did terminate it soon after moving in.

Layout of the Property and the view

70. The Main House and the land are contiguous. They are included in a single piece of land, albeit that different areas are used for different purposes and delineated by hedges, fences and the ha-ha.

71. The Main House, cottage and barn are surrounded by the gardens of the Property, including the kitchen garden. At the bottom of the garden a fence and ha-ha mark the boundary between the gardens and the Grazing Land. There was ready access between the gardens and the Grazing Land through a gate in the fence.

72. HMRC made much of the "treasured views" afforded by the Grazing Land. We accept Mrs Lynch's evidence that the view was of the Vale of Aylesbury, beyond the Appellants' property and that the Grazing Land itself was not visible from the house because it sloped down steeply from the ha-ha and fence.

73. We do, however, consider that the Grazing Land was part of the pleasant rural setting of the Main House and protected the view to the extent that ownership of that land prevented others from developing it.

Proximity and extent

74. Although the Grazing Land might have been some distance away from the house, this is only because there are large formal gardens between it and the house. Mr Watts' witness statement suggested that the gardens might have extended to 100 yards, although this is unsubstantiated.

75. Even if it is correct, the Grazing Land is still part of a single, uninterrupted piece of land owned by the Appellants and acquired with the house.

76. The Court of Appeal in *Hyman* specifically found that there is no requirement for land to be necessary for the "reasonable enjoyment" of the dwelling for the land to be grounds. Land which is not needed by the owners can still be grounds as in *Hyman* itself where the land was not used by the owners of the house and was allowed to grow wild.

77. In the present case, Mr and Mrs Lynch had no particular use for the Grazing Land. Mrs Lynch said that they only bought it because it came with the house. Indeed, since they terminated the grazing arrangements they have struggled to maintain the land.

78. The size or extent of the land is, however, a relevant factor as the land must be grounds "of" a dwelling. HMRC guidance at SDLTM00470 suggests that for this reason large tracts of moorland purchased with a dwelling are unlikely to be residential in nature.

79. In the present case, The Main House is a substantial country home which shares the land with further dwellings. Although the Grazing Land extends to 18 acres, that is not disproportionate for a property of this nature.

Privacy and security

80. HMRC argued that the Grazing Land provided privacy and security for the property which *The How Development 1 Ltd* indicates can be a residential purpose.

81. We accept Mr Stoyanov's submission that the Grazing Land did not provide privacy or security as it was used by the farmer and also members of the public who used the two public footpaths over the land.

Legal factors and constraints

82. The land consists of two title numbers at HM Land Registry. The Main House, gardens and Grazing Land are comprised in one title and the cottage is held under a separate title.

83. Both titles were in common ownership and were purchased as a single transaction.

84. There are no restrictive covenants or other legal conditions that inhibit or permit certain uses of the land.

85. The grazing arrangements did not place any legal constraints on the Appellants' use of the land. They were informal and did not grant the farmer exclusive occupation or prevent the Appellants using the land should they wish.

Other factors

86. The marketing and planning documents present the Grazing Land as being part of the grounds of the Property.

87. The estate agent's brochure describes The Main House as "an important and substantial attractive village house" and states that "it boasts twenty-two acres of stunning grounds".

88. The Design and Access Statement states "the extensive 18-acre grounds are a large asset to The Main House, perfectly adequate to support the development of the existing dwelling.

89. Whilst we doubt that the authors of these documents had section 116(1)(b) of the Finance Act 2003 in mind when writing them, they do indicate how the Property as a whole would appear to, and be presented by, a lay observer.

90. The right of the public to use the public footpaths does not prevent the Grazing Lands being grounds of the dwelling.

91. The grazing arrangements constitute an intrusion onto the Property and the question is where on the grounds/not grounds spectrum they fall.

92. The Grazing Land is easily accessible from the house and gardens.

93. The mere fact that the Appellants could do without the Grazing Land does not mean that it cannot be residential property.

Evaluating all the factors

Factors suggesting the Grazing Land is not part of the grounds of The Main House

94. The Grazing Land was, at the Effective Date of the transaction being used by a third party for his own business use, namely grazing cattle to fatten and sell them.

95. The Grazing Land could not be seen from the house and did not form part of the "treasured view" which was a selling point of the Property.

96. The Grazing Land did not contribute to the security and privacy of the dwelling. On the contrary, the use of the land by a third party and the use of the footpaths by the public made it the least secure part of the Property.

97. The Appellants did not need such a large piece of land and had no use for the Grazing Land. Indeed, they found it something of a liability when they had to maintain it themselves.

98. The grazing arrangements were an intrusion on the Property.

Factors suggesting the Grazing Land is part of the grounds of The Main House

99. The whole of the property was purchased in a single transaction from the single owner of both Land Registry titles.

100. The Grazing Land is adjacent to the gardens of the house.

101. Whilst extensive, the Grazing Land is of a size which is appropriate to a substantial house of this nature.

102. The Grazing Land is presented as being part of the grounds of the Property and an asset of the Property as a whole.

103. The Grazing Land is accessible from the house and garden.

104. The Grazing Land is part of the pleasant rural setting of the house, even if it is not visible from the house.

105. The grazing arrangements were not commercial.

106. There were no legal constraints on the Appellants' use of the Grazing Land; the farmer did not have exclusive possession.

107. The grazing arrangements did not, of themselves, prevent the Appellants from using the land as they wished (whether or not they wanted to or did in fact use it).

108. We do not consider that the use of the Grazing Land for grazing constituted a self-standing function which prevented the land from supporting the use of the Main House as a dwelling.

109. Whilst the grazing arrangements, and indeed the use of the footpaths by the public, undoubtedly constituted an intrusion on the Property, they did not prevent the Appellants from continuing to use the Grazing Land as an adjunct to the Property. The arrangements did not prevent the Grazing Land from being an "appendage" to the house and gardens. Had the cattle been better behaved, the arrangements would no doubt have continued and provided the significant benefit to the dwelling that the land would have been maintained, the grass controlled, and the Grazing Land would have been a pleasant field contributing to the attractiveness of the Property as a whole.

110. In summary, the overall use of the Grazing Land is not separate from and unconnected with the use of the Main House as a dwelling. It is consistent with the use by the Appellants of The Main House as a dwelling.

Conclusion

111. Having weighed all the factors and having attached particular significance to the way in which the land was actually used, we find that the Grazing Land constitutes grounds of the Main House.

112. The land was not used for a purpose so separate and unconnected with the use of the dwelling as such as to take it out of the definition of "grounds". In particular, Mr Watts' use for grazing his cattle did not prevent the Appellants from using the Grazing Land as grounds of their dwelling.

113. As the Grazing Land is part of the garden or grounds of the dwelling, it is residential land, which means that the Property was wholly residential at the Effective Date of the Transaction. Accordingly, the rates of SDLT in Table A of section 55 as modified by paragraph 1(2) schedule 4ZA apply and the SDLT paid by the Appellants at completion was the correct amount.

DECISION

114. For the reasons set out above we have concluded that the Grazing Land was part of the garden or grounds of The Main House. The whole of the Property was therefore residential property and the right amount of SDLT was paid at the outset.

115. HMRC were therefore correct to refuse the overpayment claim.

116. We dismiss the appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

117. 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.

MARILYN MCKEEVER
TRIBUNAL JUDGE

Release date: 26th APRIL 2024