



Neutral Citation: [2024] UKFTT 894 (TC)

Case Number: TC09311

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

Taylor House, London

Appeal references: TC/2023/16062

*SDLT – Whether Appellant entitled to Multiple Dwellings Relief – Whether property consists of two dwellings – Appeal dismissed*

**Heard on:** 26 September 2024  
**Judgment date:** 7 October 2024

**Before**

**TRIBUNAL JUDGE BROOKS  
TRIBUNAL MEMBER SIMS**

**Between**

**SHINE BUSINESS LIMITED**

**Appellant**

**and**

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

**Respondents**

**Representation:**

For the Appellant: Graham Callard, of counsel, instructed by Cornerstone Tax

For the Respondents: Kate Birtles, litigator of HM Revenue and Customs’ Solicitor’s Office

## DECISION

### INTRODUCTION

1. On 28 January 2022 the Appellant, Shine Business Limited (“Shine” or the “Company”), purchased a property in Purley, London (the “Property”) for £1,900,000. Its Land Transaction Return (the “Return”) was filed by Shine’s then representative on 28 February 2022. The Return showed a liability to stamp duty land tax (“SDLT”) of £198,750. On 24 March 2022 Shine’s current representative, Cornerstone Tax (“Cornerstone”) wrote to HMRC to amend the Return and claim a £64,250 SDLT refund. This was on the basis that, as it was considered that the Property consisted of two separate dwellings, multiple dwellings relief (“MDR”) was applicable. The letter explained that, at the time the Return had been filed Shine did not know that MDR “was available to them.”

2. However, following correspondence between the parties and further information being provided to them, HMRC concluded that the Property consisted of only a single dwelling and MDR did not apply. Therefore, on 4 April 2023, HMRC issued Shine with a Closure Notice, pursuant to paragraph 23 of Schedule 10 to the Finance Act 2003, in the sum of £64,250 that the Company had claimed as MDR.

3. This is Shine’s appeal, made to the Tribunal on 13 October 2023, against that Closure Notice.

4. Graham Callard of counsel appeared for Shine. HMRC was represented by Kate Birtles, a litigator of it’s Solicitor’s Office. We are grateful for their helpful submissions, both written and oral. However, even though we have taken account of all the submissions made and of all the materials to which we were referred, we have not found it necessary to make specific reference to all of these in our decision.

### STATUTORY FRAMEWORK

5. The legislative framework for SDLT is largely contained in the Finance Act 2003. Unless otherwise stated, all subsequent references to sections, schedules and paragraphs are to the sections, schedules and paragraphs in the schedules of that Act.

6. Section 49 provides that SDLT is a tax on “chargeable transactions”. A “chargeable transaction” is a “land transaction” which is not exempt (see s 49(1)) and a “land transaction” is “any acquisition of a chargeable interest” (see s 43(1)). A “chargeable interest” is defined in s 48(1) as “an estate, interest, right or power in or over land in England or Northern Ireland.” The “effective date for a land transaction” is the date of completion (see s 119(1)(a)).

7. Section 55 provides for the applicable rates of SDLT, in accordance with the land transaction in question. This is by reference to factors such as residential or non-residential, whether as a transaction in a number of linked transactions, or any relevant relief that is due.

### MULTIPLE DWELLINGS RELIEF

8. Until 1 June 2024 (prior to its repeal by s 7 of the Finance (No 2) Act 2024) MDR could be claimed, pursuant to s 58D and schedule 6B “in the case of transfers involving multiple dwellings.”

9. Section 58D provided:

#### **Transfers involving multiple dwellings**

(1) Schedule 6B provides for relief in the case of transfers involving multiple dwellings.

(2) Any relief under that Schedule must be claimed in a land transaction return or an amendment of such a return.

10. Paragraph 2(2) of schedule 6B provided:

(2) A transaction is within this sub-paragraph if its main subject-matter consists of—

- (a) an interest in at least two dwellings, or
- (b) an interest in at least two dwellings and other property.

11. Paragraphs 4 and 5 of schedule 6B provided for the calculation of the relief. There is no dispute between the parties in terms of the quantification of the relief in the present case.

12. The material parts of paragraph 7 of schedule 6B, under the sub-heading ‘What counts as a dwelling’, provided:

(1) This paragraph sets out rules for determining what counts as a dwelling for the purposes of this Schedule.

(2) A building or part of a building counts as a dwelling if—

- (a) it is used or suitable for use as a single dwelling, or
- (b) it is in the process of being constructed or adapted for such use.

13. Schedule 6B was considered by the Upper Tribunal (Judge Thomas Scott and Judge Greenbank) in *Fiander and Brower v HMRC* [2021] UKUT 156 (“*Fiander*”) which observed, at [47] – [48], that:

“47. The HMRC internal manuals on SDLT contain various statements relating to the meaning of “dwelling” and “suitable for use as a single dwelling”, but these merely record HMRC's views and do not inform the proper construction of the statute.

“8. We must therefore interpret the phrase giving the language used its normal meaning and taking into account its context. Adopting that approach, we make the following observations as to the meaning of “suitable for use as a single dwelling”:

(1) The word “*suitable*” implies that the property must be appropriate or fit for use as a single dwelling. It is not enough if it is capable of being made appropriate or fit for such use by adaptations or alterations. That conclusion follows in our view from the natural meaning of the word “*suitable*”, but also finds contextual support in two respects. First, paragraph 7(2)(b) provides that a dwelling is also a single dwelling if “it is in the process of being constructed or adapted” for use as single dwelling. So, the draftsman has contemplated a situation where a property requires change, and has extended the definition (only) to a situation where the process of such construction or adaption has already begun. This strongly implies that a property is not suitable for use within paragraph 7(2)(a) if it merely has the capacity or potential with adaptations to achieve that status. Second, SDLT being a tax on chargeable transactions, the status of a property must be ascertained at the effective date of the transaction, defined in most cases (by section 119 FA 2003) as completion. So, the question of whether the property is suitable for use as a single dwelling falls to be determined by the physical attributes of the property as they exist at the effective date, not as they might or could be. A caveat to the preceding analysis is that a property may be in a state of disrepair and nevertheless be suitable for use as either a dwelling or a single dwelling if it requires some repair or renovation; that is a question of degree for assessment by the FTT.

(2) The word “*dwelling*” describes a place suitable for residential accommodation which can provide the occupant with facilities for basic

domestic living needs. Those basic needs include the need to sleep and to attend to personal and hygiene needs. The question of the extent to which they necessarily include the need to prepare food should be dealt with in an appeal where that issue is material.

(3) The word “*single*” emphasises that the dwelling must comprise a separate self-contained living unit.

(4) The test is objective. The motives or intentions of particular buyers or occupants of the property are not relevant.

(5) Suitability for use as a single dwelling is to be assessed by reference to suitability for occupants generally. It is not sufficient if the property would satisfy the test only for a particular type of occupant such as a relative or squatter.

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

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

14. Also, as confirmed by the Upper Tribunal (Judge Richards, as he then was, and Judge Ramshaw) in *Ladson Preston and AKA Developments Greenview Ltd v HMRC* [2022] UKUT 301 (TCC) at [59] – [62], the status of a property is to be determined on the EDT and any work undertaken subsequently should not be taken into account when determining the nature of the chargeable interest acquired. Similarly, any evidence of the past history of a property will be of limited relevance to suitability for use as at completion (see *Fiander* at [62]).

#### **EVIDENCE**

15. We were provided with a Hearing Bundle comprising 173 pages and also 13 pages of additional evidence. The Hearing Bundle included photographs of the Property taken on 25 and 28 January 2022 by Mr Amin Virani. Mr Virani is the husband of Mrs Laila Virani the director of Shine. Mr Virani was authorised to give, and gave, evidence on the Company’s behalf. We found Mr Virani to be a credible, honest and straightforward witness who clearly sought to assist the Tribunal throughout his evidence.

#### **FACTS**

16. As noted above, Shine purchased the Property on 28 January 2022 for £1,900,000. The Sales Particulars described the Property, in the opinion of the Estate Agents as being:

“... the best house to be offered For Sale on the highly sought after [*name redacted*] Estate in many years. The property is situated on a secluded West facing corner plot, approached via a blacked paved in & out driveway leading to four car garaging. The beautiful secluded West facing rear garden is a special feature of this spacious five/six bedroom family residence.

The Accommodation Comprises: Entrance Porch, WC, Reception Hall, Study, Dining Room, Living Room, Kitchen/Breakfast Room, Games Room/Bedroom, En Suite, Utility Room, Four Car Garage, Swimming Pool

Complex With Jacuzzi, Spacious Landing, Principal Bedroom With En Suite.  
Guest Bedroom With En Suite, Four Further Bedrooms. Bathroom, Separate  
Shower Room.

17. Mr Virani confirmed that the purchase by Shine had been as an investment with the intention to let the Property as two dwellings. During the hearing these were referred to as the “Annex” and the “Main Property”, we shall do the same.

18. Mr Virani visited the Property on 25 January 2022 and took photographs of the Annex during his visit. He took further photographs on the EDT, 28 January 2022. He explained that the previous occupants, the vendors of the Property, had lived almost exclusively in the Annex before selling the Property and that the current occupier of the Annex, a mother and baby, did not have any connection, familial or otherwise, to the occupiers of the Main Property.

19. Access to the Annex from the street is over the “paved in & out” driveway onto a path alongside the right hand side of the Property. That path leads via a side gate to the rear garden of the Property. The sole external door to the Annex is on the left of the path at the rear of the Property (the rear right hand side of the Property) next to a garage. That door, and indeed the Annex, is concealed and separated from the garden of the Main Property by plants and shrubs. Although Mr Virani explained that the occupier of the Annex does not have any right to use the garden or access to the glazed swimming pool/jacuzzi complex of the Main Property, there is nothing to prevent the occupier of, or a visitor to, the Annex from entering or wandering into the rear garden of the Main Property.

20. The door providing the sole external access to the Annex was described in the Estate Agent’s “Description” of the Property as the “door to rear terrace” which opens into what that Description called the “ensuite shower room” of the “games room/bedroom six”.

21. That room, the initial point of entry to the Annex, contains a full bathroom/shower, WC and hand sink. An internal door to the right of the external door to the Annex leads from the shower/bathroom into a single main room of approximately 20 square metres which includes bedroom, lounge and kitchenette areas.

22. To the right, on exiting the doorway from the shower/bathroom of the Annex, is a window. On the opposite side to that doorway is a lockable glazed double door that connects the Annex to the Main Property. The interior of the Annex is clearly visible in a photograph taken by Mr Virani on 28 January 2022 of those doors from the Main Property. No doubt the reverse would also be true and an occupant of the Annex would have a clear view of the kitchen/breakfast room of the Main Property.

23. Photographs taken by Mr Virani on 25 January 2022 show in one corner of that room (on the left of the door from the shower/bathroom) a kitchen extractor unit/canopy attached to the ceiling. There are also marks on the wall where Mr Virani supposed there might have been a wall mounted kitchen cupboard. Ms Birtles suggested in closing that this might have been the location of a bracket for a wall mounted television although this was not put to Mr Virani in cross-examination.

24. In the wall below the extractor canopy there are hot, cold and waste water pipes. Mr Virani explained that alongside these, a little further along the wall, are two power outlets which, as these were behind the wall, are not visible in the photograph. Further along that wall, below the marks where the cupboard might have been, is a television arial cable.

25. On 21 December 2021 Shine had ordered a free standing Elfin Kitchin unit for the Annex. The unit was paid for and delivered to the Annex on 25 January 2022. It was installed on the EDT. The unit comprised a sink, draining board, double hot plate (which can be used to either heat or cook food), dual function microwave/oven and an integral fridge freezer.

26. A photograph of the unit, taken by Mr Virani on 28 January 2022, shows it in front, and blocking the view, of the hot, cold and waste water pipes described above.

27. Other photographs taken by Mr Virani on 25 January 2022 show what appears to be a double bed alongside the window although the glazed double door linking the Annex to the Main Property cannot be seen.

28. A photograph, taken on 28 January 2022 by Mr Virani, the decoration of the room is different to that shown in the photograph with the bed. The later photograph, of a small round table and three chairs, shows the wall near the window being different colours above and below a dado rail, whereas in the photograph with the bed, the wall is a single colour and there is no dado rail. Mr Virani said in evidence that he had taken the photographs, that no decoration had taken place in the meantime and that it was the same room. However, he was unable to explain the differences in the photographs.

29. Mr Virani confirmed that the utilities and water stop tap for the Annex are independent of the Main Property. Also, that as the gas and electricity meters are attached to the front of the Property no internal access, to either the Main Property or the Annex, is needed to read them. Mr Virani also confirmed that the heating system of the Annex is separate from that of the Main Property and that the Annex also has its own independent intruder alarm

30. The Main Property and Annex, which had the same address, did not receive separate utility bills. Additionally, the Annex and Main Property shared a land registry title and the Property is treated as a single dwelling for council tax purposes.

### **Discussion and Conclusion**

31. It is common ground that the Property was land situated in England, that the EDT was 28 January 2022, the date of completion and that MDR was claimed by an amendment to a land transaction return. Therefore, if the Annex meets the statutory criteria (ie it was suitable for use as a single dwelling) as at 28 January 2022, Shine is entitled to MDR.

32. The parties agree that, as at that date, there was independent access to the Annex, that the Annex had bathroom facilities and that there was an area suitable for living and sleeping. However, they part company in relation as to whether the facilities of the Annex were, at the EDT, sufficient to satisfy the basic living needs of its occupier.

33. For HMRC, Ms Birtles contends that this was because, at the EDT, the Annex did not have kitchen facilities and, as such, without storage, a food preparation area or cooking facilities the basic needs of an occupier could not be satisfied. In this regard she relies on *Ralph v HMRC* [2023] UKFTT 901 (TC) in which the Tribunal had found, at [79], that it was not relevant that the Appellant had ordered household goods, kitchen units and appliances prior to completion or that these had been delivered to the property concerned before completion.

34. Ms Birtles also refers to the location of the Annex, particularly in relation to the Main Property. She contends that the access to the Annex, via the garden of the Main Property, through the bathroom, and its link with, and clear view through it to, the Main Property as being inconsistent with it, or indeed the Main Property, being separate dwellings independent of each other. Therefore, she says, Shine is not entitled to MDR and its appeal should be dismissed.

35. Mr Callard, for Shine, contends that at the time of completion the Annex did have suitable kitchen and food storage, preparation and cooking facilities. He relies on the observations of Judge Gething in *Mullane v HMRC* [2020] UKFTT 2159 (TC) ("*Mullane*") at [27] in support.

36. In relation to the connecting doors, Mr Callard says that privacy could be ensured by the addition of a curtain or blinds on one or both sides as was the case in *Millane* (see at [27(6)]).

He also cites Judge Gething in *Millane* (at [27(7)-(9)]) in relation to the Main Property having sole access to a garden as not being an “impediment to qualifying for MDR” or that one council tax bill or a single utility bill would “prevent the annex from being regarded as being suitable for use as a dwelling on completion.”

37. However, as is clear from *Fiander*, the questions of whether a property is “suitable for use as a single dwelling” is particularly fact sensitive. It is therefore a matter of fact and degree in each case whether MDR applies as at the EDT. As such, previous decisions of the Tribunal, although illustrative of how the multi-factorial assessment was approached in that particular case, do not really provide us with much, if any, assistance in relation to the present case.

38. Having carefully considered all the circumstances and factors in this case, we have come to the conclusion that, on balance, even if we were to wholly accept Mr Callard’s submissions in relation to the kitchen facilities, the Annex does not have sufficient facilities to meet an occupier’s basic living needs. In particular, we consider that neither the connecting glazed double doors (with the clear views into the Main Property and vice versa) which can be locked, and therefore unlocked, from both sides, nor the fact that the sole external entrance to the Annex is through its bathroom, are capable of providing the necessary degree of privacy or security consistent with the concept of it being a single dwelling.

39. Therefore, for the reasons above, the appeal is dismissed.

**RIGHT TO APPLY FOR PERMISSION TO APPEAL**

40. 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.

**JOHN BROOKS  
TRIBUNAL JUDGE**

**Release date: 07<sup>th</sup> OCTOBER 024**