Neutral Citation: [2025] UKFTT 00752 (TC)

Case Number: TC09559

FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video hearing

Appeal reference: TC/2024/02856

SDLT – multiple dwellings relief – appeal allowed

Heard on: 14 May 2025
Judgment date: 19 June 2025

Before

TRIBUNAL JUDGE SUSAN TURNER
MANU DUGGAL

Between

STEVEN JAMES HARVEY SMITH AND CAROLINE RACHAEL SMITH
Appellants

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS
Respondents

Representation:

For the Appellant: Louise Wise, Relatus Limited

For the Respondents: Darren Bradley, litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. This is an appeal against the conclusion of a closure notice dated 2 February 2024 (the Closure Notice) issued by HMRC under para 23, sch 10 Finance Act 2003. The Closure Notice amended the Appellants' Stamp Duty Land Tax (SDLT) return, as HMRC concluded that the Appellants' property acquisition (the Transaction) did not qualify for the Multiple Dwellings Relief (MDR) claimed by the Appellants.

2. The SDLT return submitted (after amendment) by the Appellants showed tax due of £14,750. The Closure Notice amended that figure to £27,250, increasing the SDLT due by £12,500. There is no dispute about these figures.

3. The form of the hearing was V (video) and all parties attended remotely via Microsoft Teams. We referred to a hearing bundle of 187 pages, which included the Appellants' notice of appeal and fully particularised grounds of appeal, the witness statement of Mr Steven Smith, and the Respondents' statement of case. We also referred to an authorities bundle of 294 pages, and the Respondents and Appellants provided helpful skeleton arguments.

4. At the hearing, we heard witness evidence from Mr Smith, who provided a straightforward account focusing on the physical attributes of the buildings acquired in the Transaction and their fittings, utilities and access, and his evidence was uncontroversial. We were also provided with several photographs, plans and marketing materials relating to the property.

5. 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

6. On 11 November 2022 (the Effective Date), the Appellants jointly purchased a property, South Cottage, and submitted an SDLT return. This was subsequently amended to include an MDR claim in an amount of £12,500.

7. HMRC opened enquiries into the amended SDLT return on 15 November 2023 and, on 2 February 2024, issued the Closure Notice.

8. The Appellants appealed the decision in the Closure Notice on 9 February 2024 to HMRC and further correspondence followed, including a statutory review of the matter pursuant to which HMRC upheld the decision communicated in the Closure Notice.

9. On 10 May 2024, the Appellants appealed to this Tribunal.

ISSUE

10. In this case, there is no dispute about the validity of the enquiry, that SDLT applies to the Transaction, or about the rates of SDLT or the MDR calculation.

11. The issue before the Tribunal is whether the Appellants benefit from MDR because the Transaction involved the purchase of two separate dwellings.

12. It is HMRC's position that the property purchased on the Effective Date comprises a single dwelling and therefore no MDR is available.

13. It is the Appellants' position that the property comprises two separate dwellings, being (a) the main house (the Main House) and (b) a separate cart lodge annex (the Cart Lodge).

14. It is for the Appellants to show, on the balance of probabilities, that MDR is available in respect of the Transaction. In order to do this, the Appellants must show that, on the Effective Date, the Main House and the Cart Lodge were separate dwellings.

15. The relevant legislative provisions, found in FA 2003, are set out below, followed by relevant case law.

THE LAW

16. Paragraph 2, sch 6B FA 2003 sets out the law relevant to MDR, providing:

> "(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."

17. Therefore, in determining whether MDR may apply to the Transaction, the Tribunal must decide whether the Cart Lodge counts as a dwelling separate to the Main House. Paragraph 7, sch 6B FA 2003 provides what counts as a dwelling:

> "(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."

18. There is no suggestion that any part of the property acquired by the Appellants as part of the Transaction was in the process of being constructed or adapted for use as a dwelling, nor was any part of the property other than the Main House used as a single dwelling. It follows that, in this case, we must consider whether the Cart Lodge is suitable for use as a single dwelling. In doing so, we are required to have regard to the Upper Tribunal decision in *Fiander and Brower v HMRC* [2021] UKUT 0156, which considers the meaning of the phrase "suitable for use as a single dwelling" at [47-48] as follows:

> 47. The HMRC internal manuals on SDLT contain various statements relating to the meaning of "dwelling" and "suitable for use as a single dwelling", but these merely record HMRC's views and do not inform the proper construction of the statute.
>
> 48. We must therefore interpret the phrase giving the language used its normal meaning and taking into account its context. Adopting that approach, we make the following observations as to the meaning of "suitable for use as a single dwelling":
>
> (1) The word "*suitable*" implies that the property must be appropriate or fit for use as a single dwelling. It is not enough if it is capable of being made appropriate or fit for such use by adaptations or alterations. That conclusion follows in our view from the natural meaning of the word "suitable", but also finds contextual support in two respects. First, paragraph 7(2)(b) provides that a dwelling is also a single dwelling if "it is in the process of being constructed or adapted" for use as single dwelling. So, the draftsman has contemplated a situation where a property requires change, and has extended the definition (only) to a situation where the process of such construction or adaption has already begun. This strongly implies that a property is not suitable for use within paragraph 7(2)(a) if it merely has the capacity or potential with adaptations to achieve that status. Second, SDLT being a tax on chargeable transactions, the status of a property must be ascertained at the effective date of the transaction, defined in most cases (by section 119 FA 2003) as completion. So, the question of whether the

property is suitable for use as a single dwelling falls to be determined by the physical attributes of the property as they exist at the effective date, not as they might or could be. A caveat to the preceding analysis is that a property may be in a state of disrepair and nevertheless be suitable for use as either a dwelling or a single dwelling if it requires some repair or renovation; that is a question of degree for assessment by the FTT.

(2) The word "*dwelling*" describes a place suitable for residential accommodation which can provide the occupant with facilities for basic domestic living needs. Those basic needs include the need to sleep and to attend to personal and hygiene needs. The question of the extent to which they necessarily include the need to prepare food should be dealt with in an appeal where that issue is material.

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

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

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

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

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

19. *Fiander* makes clear at [48(1)] that 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. There was no dispute amongst the parties that we should consider the relevant facts and circumstances as at the Effective Date.

SUBMISSIONS AND EVIDENCE

The Facts

20. The Main House is a five-bedroomed family home incorporating a playroom on the ground floor. The Cart Lodge is accessed from the main drive, which is shared with the Main House. It is attached to, and is located beside and above, a sheltered car port and has a lockable external door to the rear of the car port.

21. The ceiling heights are low and sloping throughout much of the upstairs portion of the Cart Lodge, which is accessed by a ladder-style staircase without a handrail.

22. While Mr Smith acknowledged that the Cart Lodge had not previously been occupied separately, he confirmed that he and Mrs Smith had considered prior to purchase that the Cart Lodge was laid out and fitted with features and amenities such that family and friends might

stay in it. It does have kitchen and bathroom facilities, and it is currently used as a workspace. There are no current plans to use the Cart Lodge as a separate dwelling for third parties and, as such, the Cart Lodge has no fire safety certificate and had none at the Effective Date.

23. The Cart Lodge receives hot water supply on demand from the combi-boiler located in the Main House via a pipe running from the Main House and under the driveway. The combi-boiler is supplied by oil, for which the owner of the Main House is responsible. There is no gas supply to the Cart Lodge, which is heated by electric heaters and has its own consumer unit for electricity. Cart Lodge has its own water stop tap and a separate fuse box, allowing an occupier independent control over these utilities.

Suitability for use as a single dwelling

24. While we were directed to several cases which considered suitability for use as a single dwelling, it was common ground that these cases were highly fact-specific and our decision in this case should be reached by considering its own unique facts and circumstances.

25. For the Appellants, Mrs Wise contended that that the Cart Lodge had, at the Effective Date, all of the physical elements needed to be considered suitable for use as a single dwelling, with kitchen, bathroom facilities and living and sleeping space sufficient to meet basic living needs and an appropriate degree of privacy, self-sufficiency and security.

26. For HMRC, Mr Bradley submitted that, while some elements of Cart Lodge would lend themselves to suitability, they are, on balance, outweighed by those factors pointing towards the Cart Lodge not being a single dwelling and, furthermore, not being suitable for use as a dwelling. These factors include: safety concerns, in particular relating to the ladder-style access to the first floor and the lack of fire safety certificate; the lack of independent control over the Cart Lodge's hot water supply; and the insufficient privacy Cart Lodge afforded an occupier.

Privacy and Access

27. HMRC contended that access to the Cart Lodge being possible only through the car port detracted from the privacy afforded as a separate dwelling. In particular, because the car port remains within the control of the residents of the Main House, any occupants would require permission to access Cart Lodge. Mr Bradley noted that if a dispute arose surrounding access arrangements, this could result in the occupier being unable to access the Cart Lodge and so use it as a dwelling. He also argued that the unrestricted access of the Main House resident to the car port, including for storage, would negatively affect the privacy of any occupier of the Cart Lodge.

28. Mrs Wise pointed to the lockable entrance to the Cart Lodge, albeit from within the car port, which would afford a suitable degree of privacy for any occupier. She submitted that, should the Cart Lodge be used as a separate dwelling, an arrangement would be reached regarding use of the car port and that any items stored within it would be cleared away.

Safety

29. Mr Bradley submitted that the level of safety afforded by the Cart Lodge would be insufficient for the property to be considered suitable for occupation by a willing and objective observer.

30. First, he said that the ladder-style stairs without a handrail presented a safety risk and could not be used by an elderly or disabled occupant. This would mean that use of the property would be restricted to those occupiers who could use the ladder currently installed. In particular, Mr Bradley argued that it would be necessary to have a free hand to transport items up and down the stairs, which would be challenging and potentially dangerous in the

case of hot food or drink. He noted that there were no photographs of the top of the installed ladder available to assist the Tribunal and to contradict his submission that it was simply not safe from the perspective of the objective observer. Furthermore, Mr Bradley submitted that the ladder-style access to the first floor of the Cart Lodge presented a safety risk in the case of a fire.

31. Mrs Wise submitted that there was no evidence that the ladder-style stairs were not safe. She said that they were more substantial than a simple ladder and that Mr Smith had given evidence that the stairs were adequate, grounded and attached, and were used by his own family. She contended that concerns of a particular occupier about this could be alleviated by the addition of a handrail in the future and that this would be a de minimis alteration to the property as it was at the Effective Date, but that this did not mean that the property was not suitable for occupancy as a dwelling from the perspective of an objective observer.

32. Mr Bradley argued that the addition of a handrail to the access ladder would be a major addition to the property, beyond that contemplated by *Fiander*.

33. Second, Mr Bradley said that fire safety at the Cart Lodge was inadequate, given the availability of parking and storage within the car port, which could increase the risk of fire. He pointed to the lack of fire certificate available either at the Effective Date or subsequently.

34. Mrs Wise submitted that the existence of a fire certificate was an administrative consideration and that not all properties would need one. She submitted that the lack of a fire certificate did not outweigh the strengths of other factors pointing towards the Cart Lodge being suitable for use as a single dwelling. She repeated that any items stored in the car port, underneath the Cart Lodge, could be cleared away if somebody was in occupation.

Utilities

35. As the Cart Lodge does not have its own hot water supply and relies on the combi-boiler located within the Main House, Mr Bradley argued that access to hot water would be at the discretion of the resident of the Main House and submitted that this indicated that the Cart Lodge would not be suitable for use as a single dwelling. In the absence of any agreement as to hot water usage, Mr Bradley said that an occupier of the Cart Lodge would be free to use excessive water. In the case of a dispute, water could be cut off.

36. Mrs Wise acknowledged that the shared hot water did represent a weakness in considering the Cart Lodge a separate dwelling, but submitted that the arrangements provided an occupier sufficient access to hot water and independent control of (electrical) heating and that fair usage of these utilities could be set out in an agreement between the occupier of the Cart Lodge and the owner.

37. Although there is no central heating in the Cart Lodge, we were told, and we accept, that there were sufficient sockets to plug in portable electric heaters, and we saw photographic evidence of one such heater plugged into an upstairs socket.

Other Considerations

38. Mr Bradley contended that the lack of any agreement regarding utilities and access to the Cart Lodge as at the Effective Date would lead the objective observer to conclude that the Main House and the Cart Lodge were not two separate dwellings. He argued that arrangements should be suitable for any occupier, not just a known tenant or where a specific agreement was reached.

39. Mr Bradley argued that the restricted headroom in the upstairs area of the Cart Lodge and the absence of a permanent heating system indicated that the Cart Lodge was not suitable for occupation with a degree of permanence.

40. Mrs Wise submitted that these factors cannot be determinative in considering Cart Lodge as a separate dwelling. She gave an example of low ceilings in the Main House and submitted that many properties have low ceiling height, though she did accept that a higher proportion of the upstairs area had a height restriction when compared to the Main House.

41. Finally, Mr Bradley said there were other indicators that Cart Lodge was not a separate dwelling, such as the lack of independent postal address, separate land registry number and council tax registration, though he accepted that these considerations were not individually determinative of the independent dwelling status of Cart Lodge. Mrs Wise agreed with this position.

The Objective Observer

42. It was agreed that, following *Fiander*, suitability for use should be determined using the objective observer test on the basis of the physical attributes of the property at the Effective Date as viewed from the perspective of a reasonable person. It would not be sufficient for the property to satisfy the test for a particular type of occupant only.

43. It was also agreed that the occupants of the Main House would have a different relationship with known parties, such as friends or family, compared to an arm's length third party. Mr Bradley submitted that it would be restrictive to consider whether a property would be suitable only for friends or family or under a specific landlord / tenant relationship, as this approach would refer to a specific, rather than general, occupier.

44. Mrs Wise argued that different occupiers may be satisfied with different levels of privacy and security, for example, but that any occupier would be in occupation under some kind of formal agreement which would provide for appropriate access, privacy and utility usage. She said that this would be the case for shorter-term arrangements, such as holiday lets and Air BnB-type arrangements, in addition to longer-term arrangements.

45. Referring to *Dower* v *HMRC [2022] UKFTT 170*, Mr Bradley submitted that there must be a degree of settled permanence for the Cart Lodge to be considered suitable for use as a single dwelling. He said that the consideration must go beyond restricting its possible use for short-term visits by friends and family, and for use as holiday or Air BnB-style accommodation. He contended that the Tribunal should not consider particular groups of occupants, such as students or itinerant workers, but willing and informed observers. In this case, Mr Bradley argued that the Cart Lodge would not be suitable for longer-term occupation.

DISCUSSION

46. In accordance with *Fiander*, in determining whether the Cart Lodge was suitable for use as a single dwelling as at the Effective Date, we have undertaken a multi-factorial assessment of the facts and circumstances of this case.

47. As agreed between the parties, the Cart Lodge is not suitable for every type of occupant, such as those with mobility challenges or those with young children given the access to the upstairs living area is by way of a ladder-style staircase. As such, we have considered with great care whether the property can be considered to be suitable for use as a single dwelling for occupants generally.

48. As set out in *Fiander*, there is not a "one size fits all" test, and we are satisfied that the Cart Lodge offers accommodation which would satisfy the basic living needs of those who

would accept its particular attributes and so choose to be in occupation, and that it does provide a degree of privacy, self-sufficiency and security consistent with the concept of a single dwelling.

49. We accept that some renovations may be needed to ensure the safety of access to the upper living area, perhaps by the addition of a handrail, depending on the owner's desire to overcome this limitation for some occupants and broaden its appeal. Viewed objectively, we do not consider the addition of a handrail to be so extensive or essential that its absence rendered the Cart Lodge unsuitable for use as a single dwelling as at the Effective Date. Indeed, small tweaks and adjustments can always be made to ensure and improve the safety and comfort of particular occupants without calling into question a property's suitability for use as a single dwelling without them.

50. We heard that there may be instances where cooperation or agreement would be required between the occupier of the Cart Lodge and the resident of the Main House to ensure suitable access and privacy and appropriate utility usage. For example, if a problem arose with the shared combi boiler, the parties would need to cooperate to find a resolution. We consider this to be no different to any other arrangement under which property or accommodation is rented or sub-let. This aspect is not, by itself, a barrier to classifying a property as suitable for use as a single dwelling: it is to be expected that there would be some reliance on a property owner to look after, and resolve problems relating to, the property and services and utilities relied upon. Similarly, if the Cart Lodge were to be used as a separate dwelling, access rights would need to be negotiated, and arrangements regarding storage within the car port would need to be reached.

51. We do not agree that the lack of a formal arrangement relating to independent utility supplies and access as at the Effective Date would lead the objective observer to conclude that the Main House and the Cart Lodge were not two separate dwellings. The Cart Lodge has not been used as a separate dwelling, so there has been no need for such arrangements to be in place. There is no barrier to that being possible at some future date. Similarly, we find that the lack of fire certificate as at the Effective Date is an administrative matter and does not determine whether the Cart Lodge may be considered a separate dwelling.

52. For the reasons given above, we are satisfied that the Cart Lodge does offer accommodation which meets the basic living needs of an occupant generally with an appropriate degree of privacy, self-sufficiency and security consistent with the concept of a single dwelling.

53. It follows that we have decided that this appeal should be ALLOWED and the Transaction should benefit from MDR.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

54. 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.

Release date: 19th JUNE 2025