Neutral Citation: [2025] UKFTT 00403 (TC)

Case Number: TC09477

FIRST-TIER TRIBUNAL
TAX CHAMBER

Taylor House, London

Appeal reference: TC/2024/01660

SDLT – claim for multiple dwellings relief – appeal allowed

Heard on: 8 January 2025
Judgment date: 3 April 2025

Before

TRIBUNAL JUDGE MICHAELA SNELDERS
GILL HUNTER

Between

NICOLE BEHENNA-RENTON

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Louise Wise of Relatus Limited

For the Respondents: Shiobhan Brown litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. This appeal concerns Stamp Duty Land Tax (SDLT) and in particular whether the Appellant is entitled to claim Multiple Dwellings Relief (MDR) on the acquisition of a property at Oakridge Farm, Nuffield Lane, Oxfordshire (the Property) for £1,200,000 on 19 August 2021 (the Purchase).

2. The Appellant asserts that the Property was comprised of two dwellings on the 19 August 2021, the effective date of the transaction (EDT) and therefore qualified for MDR. The Respondents (HMRC) assert that the Property was comprised of a single dwelling on the EDT and so did not qualify for MDR.

3. The Appellant is appealing against a closure notice issued by HMRC on 21 September 2023 pursuant to paragraph 23 of Schedule 10 to the Finance Act 2003 ("FA 2003") for the tax year 2019/20 in the amount of £26,250. This amount is the additional SDLT due from the Appellant as a consequence of HMRC denying the Appellant's claim for MDR on the Purchase.

4. We had the benefit of clear submissions, both written and oral, from Mrs Wise on behalf of the Appellant and Ms Brown on behalf of HMRC.

BACKGROUND

5. On 19 August 2021, the Appellant purchased the Property which included, what we refer to neutrally as, the Main Dwelling and the Annex.

6. On 20 August 2021, the Appellant submitted a Stamp Duty Land Tax (SDLT) return to HMRC which did not include a claim for MDR. This SDLT return showed that the amount of SDLT payable by the Appellant was £61,250.

7. On 20 July 2022, Relatus Limited (Relatus) submitted an amendment to the SDLT return on behalf of the Appellant which included a claim for MDR and reduced the SDLT payable to £35,000, a reduction of £26,250 from the original SDLT return submitted the previous August.

8. On 31 March 2023, HMRC notified the Appellant that they were opening an enquiry into the amended SDLT return under paragraph 12 of Schedule 10 to the FA 2003 and requested a schedule of information and documents from the Appellant.

9. Relatus provided the requested information and documents on 24 April 2023.

10. HMRC issued a pre-decision letter on 11 July 2023 stating that the Annex was not suitable for use as a single dwelling on the EDT and that the Appellant was therefore not entitled to claim MDR on the Purchase.

11. On 19 July 2023 and 3 August 2023 Relatus provided further information and documentation to HMRC.

12. On 21 September 2023 HMRC issued the closure notice rejecting the MDR claim and amending the Appellant's SDLT return making an additional £26,250 of SDLT due. On 2 October 2023 the Appellant appealed to HMRC against the closure notice. HMRC issued their View of the Matter letter on 26 October 2023 upholding the closure notice and offering a review. The Appellant accepted the offer of a review on 20 November 2023 and HMRC provided their Review Conclusion Letter on 2 February 2024 upholding the closure notice.

13. On 1 March 2024 the Appellant submitted her Notice of Appeal to the Tribunal.

THE LAW

14. The legislation governing SDLT is set out in Part 4 of the FA 2003. Unless otherwise stated, references to sections and schedules in this decision are to sections and schedules of the FA 2003.

15. Section 42 makes SDLT chargeable on land transactions and section 55 sets out the applicable rates of SDLT payable by reference to the amount of consideration paid and whether the relevant land consists of entirely residential property or includes non-residential property. SDLT is chargeable on the EDT of a land transaction which in this case means the date of completion (s.119).

16. On the EDT the applicable rates of SDLT payable on a residential land transaction were as follows:

> So much as does not exceed £250,000 - 0%
>
> So much as exceeds £250,000 but does not exceed £925,000 - 5%
>
> So much as exceeds £925,000 but does not exceed £1,500,000 - 10%
>
> The remainder (if any) 12%

17. Section 58D introduces Schedule 6B which provides for MDR, the effect of which, as set out in paragraph 4 of Schedule 6B, is to lower the effective rate of SDLT by dividing the chargeable consideration by the number of dwellings which are the subject matter of a land transaction, applying the applicable rates in section 55 to that amount to establish the SDLT charge in relation to each dwelling and then multiplying that amount by the number of dwellings to calculate the total SDLT chargeable on the residential land transaction.

18. Paragraph 2 of Schedule 6B identifies the transactions to which MDR applies which includes a land transaction if its main subject-matter consists of an interest in at least two dwellings (paragraph 2(1)(a) and 2(2)(a)). A reference in Schedule 6B to an interest in a dwelling is to any chargeable interest in or over a dwelling (paragraph 2(5)).

19. Paragraph 7 of Schedule 6B contains rules for determining what counts as a dwelling for the purposes of Schedule 6B, the relevant part of which for the purpose of this appeal provides at sub-paragraph (2) that:

> "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."

20. The key issue for us to determine is therefore whether the Property was made up of two dwellings at the EDT which in turn will require us to determine whether the Property comprised of one or more buildings or parts of a building that are suitable for use as a single dwelling.

21. What counts as being suitable for use as a single dwelling is not defined in the legislation but the leading authority on what constitutes a single dwelling for the purpose of SDLT is the decision of the Upper Tribunal in the case of *Fiander and Bower v HMRC* [2021 UKUT 0156 (*Fiander*) which binds us. At paragraphs [47] – [48] of that decision the Upper Tribunal stated 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."

EVIDENCE AND FACTS

22. The documents to which we were referred are contained in a bundle of documents of 196 pages, HMRC's amended skeleton argument of 11 pages and an authorities bundle of 310 pages, which included the Appellant's skeleton argument of 15 pages. The Appellant provided a witness statement of 26 pages (including exhibits with a helpful floor plan and photos). The Appellant also provided oral evidence at the hearing via video, was cross examined by Ms Brown for HMRC and answered questions from the panel. We found the Appellant to be a credible witness and accept her evidence as to matters of fact.

23. At the time of the Purchase the Appellant was not aware that she might be entitled to claim MDR and so did not take photos as evidence of all the relevant parts of the Property on the EDT. Her evidence was therefore made up of photos included in the marketing material for the property and photos taken by her when she became aware of her potential claim to MDR, by which time she had carried out some decoration and alterations to the Property. These alterations were explained by the Appellant in her witness statement and oral evidence at the hearing.

24. From all the above evidence we make the following findings of fact as at the EDT:

(1) The Property is a detached property which comprises the Main Dwelling, Annex, a garage with studio and four outbuildings.

(2) The Main Dwelling is accessed via a front door and comprises a living room, kitchen/breakfast room, dining room, utility room, five bedrooms, a bathroom and a shower room.

(3) The main external entrance to the Main Dwelling is through a door two steps up from the footpath to the right of the driveway at the front of the Property. To one side at least of the front door to the Main Dwelling there is a full length glass panel through which it is possible to see into the Main Dwelling. There is also an external door into the utility room of the main dwelling from the garden at the rear of the Property as well as French doors into the kitchen/breakfast room and living room of the Main Dwelling from the garden to the right of the Property.

(4) The Annex is separated from the Main Dwelling by a lockable fireproof and soundproof door. The lock is a thumb-turn lock, lockable from the Annex side by a key and from the Main Dwelling side by the thumb-turn lock. On completion this door was locked on the Annex side and the key was not provided by the seller to the Appellant. After completion the Appellant changed the lock, like for like, but with the necessary key. The Appellant also added an additional hook and eye latch higher up on the Main Dwelling side of the internal door to prevent her two year old child getting into the Annex.

(5) The external entrance to the Annex is through French doors at the left hand side of the Property. This external entrance is accessed by taking a pathway that runs along the left hand side of the Property. The pathway leads off from the driveway. The French doors have full length glass panels so it is possible to see into the Annex from the outside.

(6) The Annex comprises a living room/bedroom, kitchenette which consists of a sink, food preparation surfaces, cupboards and a cooker, and a shower room with a shower, sink and toilet.

(7) The Annex has electric heating which is independently controlled. There is a shared boiler which supplies the Main Dwelling and one radiator in the Annex. The heat coming out of the one radiator in the Annex that is supplied by the boiler can be

turned up and down or off using the valve on the radiator. It is also connected to a heating app which performs the same function. The Annex can be heated sufficiently using only the electric heating.

(8) The boiler is located externally on the outside of the wall of the Main Dwelling utility/kitchen, next to the back door to the Main Dwelling.

(9) There are valves on the water pipes of the Annex allowing the water to be shut off in the Annex if necessary. The water stop tap for the Property is located externally and so could be accessed by the occupant of both the Main Dwelling and the Annex if necessary.

(10) The Annex has a separate fuse box for the electricity to the Annex.

(11) The Property was marketed as comprising a self-contained annex.

(12) The Property as a whole is registered with a single title number at HM Land Registry.

(13) The Annex is not currently separately occupied.

(14) There are no separate utility meters or bills for the Annex and it is not possible to determine the utility usage of the Annex. The Annex does not have a separate council tax bill. The Annex does not have a separate postal address. There is a post box at the beginning of the driveway to the Property where post for the Property is delivered.

DISCUSSION

25. The burden of proof is on the Appellant to establish that on a balance of probabilities the Property is comprised of two dwellings. The Appellant must therefore establish that the Annex was suitable for use as a single dwelling on the EDT.

Appellant's submissions

26. Mrs Wise made the following submissions on behalf of the Appellant:

(1) It is not necessary for the Appellant to establish that the Annex is suitable for separate sale, only that it is suitable for separate occupation and *Fiander* does not require that there is complete privacy, self-sufficiency and security, only that there is a degree of privacy, self-sufficiency and security. The required level of privacy, self-sufficiency and security for a rental property is lower than that of a property that is capable of being sold separately.

(2) The Annex was private and secure from the Main Dwelling on the EDT by virtue of the fact that it had a separate external entrance accessed from the path leading from the driveway and was separated from the Main Dwelling by an internal lockable door.

(3) If the Annex was occupied it would be locked on the Annex side and the key held by the Appellant so that the occupier of the Annex could not access the Main Dwelling. It is normal for a landlord to retain a key to access the rented property under the terms of the tenancy agreement, irrespective of where the rented property is situated. The level of security should be assessed on the basis that the Annex would only be accessed by the key holder in accordance with a tenancy agreement and the law. If a landlord has criminal intent then it can use the key to carry out that criminal intent, irrespective of the proximity of the landlord's property to the rented property.

(4) In any event the lock on the internal door could be changed to make it lockable with a key from both sides. Such a change would be de minimis as it would not change the function or nature of the door or be classed as a new feature for the purpose of MDR.

(5) An Occupier of the Annex would not need to access the Main Dwelling for any basic day to day needs.

(6) The Annex has complete control over its own heating. The valves on the water pipes in the Annex can isolate the water supply to the Annex if necessary but in any event this is not a basic day to day need. It is usual for water cut off to properties to be at street level. An internal water cut off is not a requirement of a single dwelling.

(7) It is not uncommon for a tenant to pay rent inclusive of utility bills.

(8) A separate postal address is an administrative task which could easily be completed were the Appellant to rent out the Annex and this was considered necessary.

(9) The marketing material for the property shows that the external entrance to the Annex had curtains on the inside of the French doors prior to the EDT which shows that the curtains were removed as furnishings and could easily be replaced if this was a concern for an occupier of the Annex.

(10) There are no restrictive covenants or planning restrictions that would prevent the Annex being separately occupied.

(11) It is necessary to look at all the factors, some weakness is permitted in some factors, it is necessary to weigh up all the factors to take a multi-factorial view.

Respondents' submissions

27. Ms Brown made the following submissions on behalf of HMRC:

(1) Given the rural setting, there would be an expectation of seclusion but this would be lost for the Main Dwelling if the Annex were separately occupied.

(2) The Annex is not separately registered for council tax purposes.

(3) There are no photos of the internal door as it was on completion and so the Appellant has not met the burden of proof to establish that there was a lockable internal door on the EDT.

(4) The fact that the Appellant added the hook and eye latch on the internal door after the EDT for security purposes, suggests that security was an issue on the EDT.

(5) The Appellant's explanation of the changes that she has made to the internal door since the EDT make it difficult to understand what the state of the door was on completion.

(6) The Appellant has not provided any evidence to support her contention that the internal door was sound and fire proof on the EDT.

(7) Because the access from the Main Dwelling to the Annex is through an internal door the occupier of the Main Dwelling could access the Annex at night or while the occupier of the Annex was out without any risk of being detected by a passer-by.

(8) The fact that there were no curtains or blinds left in the property on the EDT creates more privacy issues as there is nothing to stop the occupier of the Annex or Main dwelling going up to any of the windows or glass doors and looking in.

(9) If there was an issue that meant that the water supply to the Main Dwelling needed to be turned off there is no way of doing this without also turning off the water supply to the Annex.

(10) It is not normal for a tenancy agreement to be inclusive of utility bills.

(11) To an objective observer the Property is one single dwelling.

Our view

28. The Annex has the necessary physical configuration and facilities to meet its occupier's basic needs, as described in *Fiander,* namely the need to sleep and to attend to personal hygiene. In addition, the Annex has a kitchenette so that the occupant can store and prepare their own food, which the UT in *Fiander* considered might, on the facts of a particular case, not be a basic need.

29. All of the Annex's utilities can be controlled from the Annex, including controlling its own heating, access to its own fuse box and the ability to turn off the water supply to the Annex, either from the valves inside the Annex or by turning off the water supply to the Property as a whole from outside the Property in the case of an emergency. As such the occupier of the Annex can meet their basic needs without any reliance on the Main Dwelling, making the Annex clearly self-sufficient.

30. It is not unusual for the cost of utilities to be included as part of the rent and so we do not consider that the lack of separate utility meters or bills (including council tax) for the Annex would diminish the Annex's level of self-sufficiency below that of a single dwelling.

31. Turning then to the question of whether the Annex and Main Dwelling afford their respective occupiers sufficient privacy and security, we note that it is not necessary for there to be complete privacy and security, only that there is "a degree of privacy, self-sufficiency and security consistent with the concept of a single dwelling." (*Fiander* [48](6)).

32. We find that the existence of windows (including those in French doors) in the Main Dwelling and Annex does not compromise the privacy of either dwelling below the degree required of a single dwelling, particularly as this can be easily remedied by putting up curtains or blinds, if the occupant of either dwelling considered this necessary.

33. We note that the Annex does not have a separate postal address. We note also that the post box for the Property is at the end of the drive to the Property, meaning that the occupier of each dwelling can collect their own post from that box and it would not be necessary for the occupier of the Annex to go to the Main Dwelling to collect their post. In these circumstances we do not consider that the lack of a separate postal address for the Annex is sufficient to diminish the degree of privacy, self-sufficiency and security below the level consistent with the concept of a single dwelling.

34. On the EDT the interconnecting door between the Annex and the Main Dwelling was lockable from the Annex side and indeed, on completion it was locked and the key was not provided to the Appellant, so it could not be unlocked from the Annex side. Had the key been provided, and in the circumstances of this case where the lock was replaced like for like with the necessary key, we accept the Appellant's submission that if the Annex was separately occupied, the door would be locked and the key retained by the Appellant so that the occupier of the Annex could not access the Main Dwelling.

35. From the Main Dwelling side, the door is lockable with a thumb lock which the Appellant could unlock from the Main Dwelling side. We agree with the Appellant's submission however that it is standard for the landlord of a property to retain a key to that property to be used for access to the property under the terms of the tenancy agreement. It follows therefore that we consider that the mere fact that the Appellant would have the means of unlocking the interconnecting door, would not reduce the degree of security enjoyed by the Annex below the necessary level required for a single dwelling.

36. We do not consider that the fact that the Appellant added an additional hook and eye latch lock to the Main Dwelling side of the door after the EDT is evidence that the level of security afforded to the Annex on the EDT was below the necessary level required for a

single dwelling. The Appellant considered this minor addition necessary in her own particular circumstances, to prevent her young child accessing the Annex, but it would not have made the Annex any more secure generally, because anyone tall enough could open the hook and eye latch lock.

37. At the EDT the interconnecting door was fireproof and soundproof, locked and unlockable from the Annex side and lockable from the Main Dwelling side. In our view this afforded both the Annex and the Main Dwelling the degree of security consistent with he concept of each being a single dwelling.

CONCLUSION

38. For all the reasons set out above and making a multi-factorial assessment as we are required to do, we find that the Annex and the Main Dwelling are each individually capable of satisfying their occupant's basic living needs with the degree of privacy, self-sufficiency and security consistent with the concept of each being a single dwelling.

39. We therefore allow the appeal.

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.

Release date: 03rd APRIL 2025