



Neutral Citation: [2025] UKFTT 01067 (TC)

Case Number: TC09626

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2024/01506

*Stamp duty land tax —multiple dwellings relief — whether open to Tribunal to envisage
terms of occupancy — yes — appeal allowed*

Heard on: 12 June 2025

Judgment date: 4 September 2025

Before

**TRIBUNAL JUDGE IAN HYDE
JENNIFER THOMAS**

Between

MICHELLE JACQUELINE BERRELL AND RORY JAMES THOMAS

Appellants

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellants: Louise Wise, Relatus Ltd

For the Respondents: Fiona Man, litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. This appeal concerns the availability of multiple dwellings relief (“MDR”) for Stamp Duty Land Tax (“SDLT”) purposes on the purchase of a property consisting of a house and annexe.
2. All statutory references are to the Finance Act 2003 unless specified otherwise.

THE FACTS

3. We were referred in the hearing to a hearing bundle and an authorities bundle. Michelle Berrell, one of the Appellants, provided a witness statement and gave oral evidence at the hearing and we accept her evidence.
4. The facts relevant to this appeal are agreed between the parties, save as highlighted below, and we find the facts as set out below.

The purchase of the Property and the appeal

5. On 15 December 2021 the Appellants completed the purchase of a residential property in Aylesbury for £492,000 (“the Property” and “Completion”). They filed an SDLT return in respect of the purchase without claiming MDR and paid SDLT of £14,600.
6. On 12 July 2022 the Appellants filed an amendment to the original SDLT return reclaiming SDLT of £9,680 on the basis that MDR applied.
7. On 22 March 2023 HMRC opened an enquiry into the Appellants’ SDLT reclaim.
8. On 13 October 2023 HMRC issued a closure notice rejecting the MDR claim.
9. On 10 November 2023 the Appellants appealed the closure notice to HMRC.
10. On 21 February 2024, following the outcome of an internal review upholding HMRC’s closure notice, the Appellants appealed to this Tribunal.

The Property

11. We were provided with extensive photographs, lay out plans and other documents and reproduce in the Appendix to this decision a layout of the ground floor of the Property. Ms Berrell also provided helpful evidence. In this decision we describe the main accommodation at the Property neutrally as “the Main House” and the secondary accommodation, again neutrally, as “the Annexe”. The Property, and particularly the Annexe, was the subject of alteration works after Completion but the description that follows and our decision are based on the Property as at Completion.
12. The Property is a modern detached red brick three-bedroom house. At the front of the Property are hedges and a driveway with parking for several cars. Looking from the driveway the Main House is two stories high. On the left of the ground floor there is a large window and to the right a double-glazed porch. On the first floor of the Main House are two bedroom windows. To the right of the porch and attached to the Main House is the Annexe, an additional single storey structure with a flat roof and a single large window to the front which was previously a garage.
13. The front door in the porch is a full-length double-glazed door with a letter box. Within the porch there are two further lockable double-glazed doors, this time both with frosted glass. The door straight ahead gives access to the Main House. The door to the right in the porch gives access to the Annexe.

14. The rear garden is a conventional part paved rear garden with access from the rear hallway of the Property and at the side of the house.

15. Excluding the rear hallway from these descriptions, the Main House comprises an open plan living and dining room, a kitchen, a conservatory, three bedrooms, and a bathroom. At the time of Completion the Annexe consisted of what was described as a studio room and which HMRC accepted was suitable as a living and bedroom. The studio room has a window overlooking the front driveway. The Annexe also includes a toilet and shower room and a room variously described as a utility room and kitchen, but which we will for convenience but, again, neutrally call “the Utility” as that was the term adopted by the parties and to distinguish it from the kitchen in the Main House.

16. The Utility is a small room at the rear of the Annexe with a window overlooking the garden to the rear with a door to the studio room and to the rear hallway. It has a work surface and a sink. In addition to the normal electric sockets, we find that there is the necessary dedicated high voltage wall connection for connecting an electric cooker. There was no mechanical ventilation in the Utility as might be used for cooking.

17. The rear hallway was a significant issue in this appeal and so requires a detailed description. The hallway is a relatively narrow corridor at the rear of the house situated between the kitchen of the Main House and the Utility in the Annexe with one door from each of those rooms and a door out to the rear garden. Neither party suggested that the hallway had any particular features or usefulness (for example for storage or for siting washing machines) except as a means of access either to the other part of the Property or the garden and we will take it as such. The doors in the hallway are as follows:

(1) The door between the Utility and the hallway is a wooden door with a bolt on the Utility side, that is lockable from the Utility side but not the hallway side;

(2) The door between the kitchen and the hallway is a wooden door with six panes of glass in the top half with a Chubb style lock, lockable with a key from either side. The bottom four panes of glass are of coloured frosted glass. HMRC accepted that these glass panels were opaque. The top two glass panels, broadly at head height, were of clear glass but with glazing film applied to them. HMRC argued these were not opaque and would allow anyone in the hallway to see into the kitchen. The Appellants disagreed and argued that the frosting amounted to the same commonly seen on bathroom windows. We find that overall, whilst there was some loss of privacy it was limited; and

(3) The door from the hallway to the garden is double glazed and lockable.

18. Other features of the Property at the time of Completion are:

(1) It was marketed as a “three/four bed home” and the particulars set out:

“To the side, the garage has been converted to provide a highly useful ground floor room. Currently laid out as a fourth bedroom with en-suite shower room, this space has its own access from the front porch and leads to a utility room at the rear. This could easily be utilised as a self-contained space for family requiring privacy”

(2) At the time of Completion the Annexe had electric heaters.

(3) The Annexe had running water. There is a stop tap outside the Property but the evidence was unclear as to whether there was one in the Annexe and Ms Burrell was also unclear. We find based on the photographic evidence that there was a stop tap in both the Main House and the Annexe;

- (4) The Annexe relied upon the boiler in the Main House for hot water.
- (5) The Main House and the Annexe are not listed separately for council tax purposes.
- (6) The Main House and the Annexe do have separate postal addresses.
- (7) The Main House and the Annexe do not have separate meters for utilities purposes
- (8) There was evidence that there was a separate fuse box in the Annexe at the time of Completion and we accept that evidence.

19. In April 2022 the Appellants made a planning application to make alterations to the Property and particularly the layout of the Annexe, to enable it to be suitable for occupation by Ms Burrell's mother who was confined to a wheelchair. HMRC highlighted a comment in the planning officer's notes:

“The proposed annex would be internally linked to the host dwelling and with the access to it solely via the existing front entrance would **ensure it remains ancillary to the host dwelling...**” (emphasis added)

20. The planning consent then then imposed a condition:

“The annex hereby permitted shall not be used or occupied for any purposes other than as **ancillary to the residential use of the property on the site...**”(emphasis added)

RELEVANT LEGISLATION

21. SDLT is a tax on ‘chargeable transactions’, that is ‘land transactions’ being the acquisition of a ‘chargeable interest’ which is not exempt (sections 42(1), 43(1), 48(1) and section 49(1)).

22. Except as otherwise provided, the effective date of a land transaction for SDLT purposes is the date of completion (section 119).

23. Section 55 governs the amount of SDLT chargeable in respect of chargeable transactions.

24. Schedule 6B provides for multiple dwellings relief – MDR – reducing the SDLT payable on chargeable transactions if the main subject-matter consists of an interest in at least two dwellings. Paragraph 2 of Schedule 6B provides so far as relevant:

“2(1) This Schedule applies to a chargeable transaction that is–

- (a) within sub-paragraph (2) or sub-paragraph (3), and
- (b) not excluded by sub-paragraph (4).

2(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.

2(3) ...”

25. Paragraph 7 defines what amounts to a dwelling for the purposes of schedule 6B:

“(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”.

26. Ms Wise took us to the background notes to the Finance Act 2003 as a guide to interpretation:

“18. Clause 83 and Schedule 22 are designed to strengthen demand for residential property. They will reduce a barrier to investment in residential property, promoting the supply of private rented housing. They do so by reducing the amount of SDLT payable on a purchase of multiple dwellings, so that it is closer to that charged when purchasing those properties singly.”

27. However, we did not derive any assistance from these notes.

28. Similarly, we did not find any assistance in Ms Man’s brief suggestion that the reason for the abolition of MDR was due to abuse of the relief and the legislation should be applied accordingly. We must apply the legislation to the facts in this appeal.

CASE LAW

29. The Upper Tribunal in *Fiander and Brower v HMRC* [2021] UKUT 0156 (TCC) conveniently set out the principles to be applied in determining whether MDR applies. Insofar as relevant those principles are:

“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...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...

(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.”

30. Consideration must be given as to how many dwellings an objective observer would consider there to be and ‘objective observer’ was defined at [51] of this Tribunal’s decision in *Fiander*:

“51. We approach “suitability for use” as an objective determination to be made on the basis of the physical attributes of the property at the relevant time. Suitability for a given use is to be adjudged from the perspective of a reasonable person observing the physical attributes of the property at the time of the transaction”.

31. This summary of the test was endorsed by the Upper Tribunal in *Fiander*:

“62. We agree with the FTT’s statement at [51] of its decision that suitability for use as single dwelling is an objective determination to be made on the basis of the physical attributes of the property at the relevant time, namely completion. It therefore follows that the property’s past history - which is the subject-matter of the additional evidence - is of limited relevance to suitability for use as at completion”

32. We were also taken to a number of decision of this Tribunal, particularly by the Appellants but, as is recognised by the parties and in these decisions (for example *Packman v HMRC* TC/2023/08890 at [22] and [23]) that whilst illustrative, these decisions are very fact specific and referring to prior decisions of this Tribunal and attempting to derive principles from them is unhelpful. The test is the multifactorial test as laid out in *Fiander*.

THE ISSUES IN THIS APPEAL

33. This appeal concerns the applicability of MDR to the Appellants’ acquisition of the Property as at the effective date being the date of Completion, 15 December 2021.

34. MDR is available if the main subject-matter of the chargeable transaction consists of at least two “dwellings”, that is they are “used or suitable for use as a single dwelling” within paragraph 7(2)(a).

35. HMRC raised a number of objections in this appeal which merit separate consideration:

(1) Privacy, security and the hallway: HMRC argued that the layout and nature of the doors to the rear hallway mean that the Main House and the Annexe lack both the necessary privacy and security to be separate dwellings.

(2) Other issues:

(a) Other privacy and security issues: HMRC raised a number of other privacy and security issues.

(b) The preparation of food: HMRC argued that the Utility did not contain sufficient facilities for the preparation of food.

(c) Hot water: HMRC argued that occupants of the Annexe would have no control over the supply of mains water nor access to the boiler.

(d) Utilities, council tax and postal address: HMRC argued that the lack of separation points towards the Main House and the Annexe not being separate dwellings.

(e) The 2022 planning permission: HMRC sought to argue that the planning offer report and the condition shed light on the use of the Annexe.

36. The Appellants disagreed.

37. The burden of proof is on the Appellants in this appeal.

PRELIMINARY POINT ON TERMS OF OCCUPATION

38. In the course of discussion in the hearing a point arose as to how to apply the test in *Fiander*. HMRC accepted by implication that the test was not whether the properties could be bought separately by independent purchasers but whether they could be occupied by arm's length parties (*Fiander* at [48(5)], *Winfield* [2024] UKFTT 00734), *Yeomans* [2024] UKFTT 00955). However, Ms Man, and those attending the hearing having considered the point with colleagues over lunch, strongly resisted our suggestion that, in determining whether there was sufficient security and privacy, the Tribunal was able to speculate as to the terms of any tenancy or other rights of occupation that might be granted. Here the obvious uncertainty, discussed below, was as to whether the hallway was part of the Annexe, part of the Main House or communal, as is assumed to be the case for the front porch. The point also arose in the context of whether utility bills could be envisaged as being included in rent. Ms Man insisted under instructions that as *Fiander* required the test to be applied as at the effective date, that is Completion, there was no room to create terms of occupancy after that date.

39. With respect to HMRC's position, this cannot be the case. It is not an issue in this appeal that occupiers of both properties would have access to the driveway and the porch. Both parties are therefore making assumptions about what the terms of occupation might be that cannot be said to have been decided or in some way established at Completion. Further, this Tribunal has previously considered and made assumptions about how any property might be occupied without apparently such a fundamental objection by HMRC (see for example *Winfield* [2024] UKFTT 00734 at [21] and [22]).

40. The requirement in *Fiander* is to look at the physical characteristics of the property at the time of completion but that does not in our view prevent, as part of applying the multifactorial test, some consideration of the realistic legal terms on which such occupancy could be granted. Indeed, in many cases without doing so the task seems impossible. For example, if we have to assume there would be no right for an occupant of the Annexe to have access over the driveway because it had never been previously granted, then any claim for MDR in these annexe type circumstances would necessarily fail unless there happened to have been a pre-existing tenancy of some kind.

PRIVACY, SECURITY AND THE HALLWAY

41. Ms Man argued that the layout of the rear hallway and its doors meant that neither the Main House nor the Annexe would enjoy the privacy and security required for each property to be suitable for occupants generally. Suitability for a relative was not the test (*Fiander* at [48(5)]). The Upper Tribunal in *Fiander* at [48(6)] emphasised the need for both as part of the key requirement that a dwelling satisfied the occupants basic living needs:

“(6)...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...”

42. The importance of privacy was emphasised by the Tribunal in *James and Barbara Mobey* [2021] UKFTT 122:

“106. In the context of SDLT, a person buying a property would want and expect that property to contain all the facilities for them to live a separate and independent life, including facilities for the preparation of food, and they would expect to be able to prevent others from entering their property.”

43. The Appellants stressed that the Upper Tribunal in *Fiander* only required there to be a “degree” of privacy sufficient for the occupant’s basic needs, it need not be absolute.

44. HMRC argued that the hallway and its doors failed the test *Fiander* for four reasons:

- (1) The kitchen door lacked privacy and security because of the see-through glass panes.
- (2) The Utility door only had a bolt on the Annexe side of the door.
- (3) The kitchen door lock mechanism could be used by both occupants.
- (4) Neither door was proven to be soundproof or fireproof.

45. There was a discussion in the hearing as to whether the claim made by the Appellants was on the basis of the hallway being within the area occupied with the Annexe, part of the Main House or communal.

46. The SDLT reclaim made by the Appellants originally specified that the hallway would not be part of the Annexe but different positions were taken by the Appellants in correspondence during the dispute. Ms Wise suggested that the Appellants in taking different positions in correspondence were simply making suggestions as to how separate occupation might work. HMRC did not argue that the Appellants were constrained in their appeal to a particular position and so we have proceeded on the basis that we should consider whether any of these permutations could satisfy the test in *Fiander*.

Part of the Main House

47. HMRC argued that if the hallway was occupied as part of the Main House then the occupants of the Annexe could gain access to the hallway and the rest of the Main House because the door to the Utility is only lockable from inside the Annexe. This did not exclude the occupiers of the Annexe and so did not provide the occupiers to the Main House with sufficient privacy and security.

48. The Appellant’s main case was that the occupier of the Annexe would not have access to the hallway due to the Utility door and, in any event, the kitchen door giving access to the Main House was lockable from the inside and so ensuring security.

Part of the Annexe

49. HMRC argued that if the hallway was occupied as part of the Annexe then the occupants of the Main House would lack the necessary privacy because occupants of the Annexe could look through the semi-transparent glass panels in the top of the kitchen door, which had only partially been obscured by the film. HMRC also argued that as the kitchen door could be opened from both sides there was a lack of security. Accordingly, the Annexe was only suitable for occupation by family members.

50. The Appellants argued that the film on the glass sufficiently obscured the view.

51. The Appellants pointed out that the occupants of the Annexe need not be provided with a key to the kitchen door.

Communal

52. HMRC object to any suggestion the hallway might be communal to both properties, on the basis that there is no evidence it ever had been. Nevertheless, the same security and privacy arguments arose particularly as to the lack of privacy due to the glass panels in the kitchen door. Further, making it communal would impact on the Main House occupants being able to enjoy the garden as they would have to access the garden through the communal hallway.

53. The Appellants argue a communal hallway would satisfy the requirements for privacy. Again, the kitchen door was lockable and the film on the glass obscures the view into the kitchen.

Soundproof and fireproof doors

54. HMRC raised a point on the doors connecting to the hallways, that there was no evidence that they were sound proofed or fireproof, which would impact on privacy and security.

Access to the garden

55. HMRC also noted that were the occupant of the Annexe to have access to the garden it would enable them to see into the kitchen and conservatory and so impacting on the privacy and security for the Main House.

56. The Appellants argued that occupiers of the Annexe need not have access to the garden.

Discussion

57. As we have decided, it is open to the Tribunal, in determining whether an objective observer would consider a property to be suitable for use as a dwelling, to consider the terms on which any occupancy would take. There are three main options for the occupation of the hallway:

(1) If the hallway as part of the Main House: this option would have advantages in that it would resolve the issues around access to the garden but in our view the fact that the bolt for the Utility door in the Annexe was only lockable from the Annexe side means that the occupier in the Annexe would have access to the Main House. In our view this would not be acceptable to an occupier of the Main House.

(2) If the hallway were communal: the kitchen door would provide sufficient security for the Main House. We do not accept HMRC's argument that the ability to unlock the kitchen door from both sides is an issue as the occupants of the Annexe need not be given a key. However, we do agree that there is some loss of privacy if the door between the two properties is the kitchen door as the top panes of glass are not entirely opaque. Further, in order to prevent occupiers of the Annexe looking into the conservatory from the garden the occupants of the Annexe could not have access to the garden. However, this would cause difficulties in denying the Annexe access to the garden as the back door would need to be locked and then unlocked by occupants of the Main House when they wanted access to the garden.

(3) If the hallway were part of the Annexe: the kitchen door would provide sufficient security for the Main House but similar issues arise as to impact on privacy as with a communal hallway. Furthermore, in this situation it is difficult to see how access to the garden for the Main House would work.

58. There are other permutations and there would need to be provision as to who had access the garden. We agree but do not think it necessary for the occupant of the Annexe to be granted access to the garden. A property such as the Annexe, which in many ways resembles a studio flat, need not be granted rights to access a garden to amount to a dwelling. However, resolving those privacy and security concerns by denying the occupant of the Annexe access to the garden is difficult to do if the hallway were part of the Annexe or communal.

59. The occupants of the Annexe could have access to the garden either jointly with the occupiers of the Main House or exclusively. We find it unlikely the occupiers of the Main House would grant exclusive access rights to the garden. Even if shared this would create

privacy and security issues for the Main House as it would enable them to see into the kitchen and conservatory.

60. We accept that note that having soundproof and fireproof doors, whilst not a discrete condition in *Fiander*, is a factor that enhances security and privacy.

61. We note the reference to a “degree of privacy, self-sufficiency and security...” (*Fiander* at [48(6)]) but it is not absolute (*Packman* TC/2023/08890 at [51], *Renton* TC/2024/01660 at [27]). It is the Appellants’ case that as the Annexe sits in the grounds of another property there can never be absolute security but that is not the test.

62. Overall, we have real difficulties envisaging how the rights of occupation and access to the rear hallway could be managed as between third party occupiers and this must be a factor in applying *Fiander*. The most practical option would be to provide that the hallway was communal and that the Main House had exclusive use of the garden, recognising that this caused practical difficulties to the occupiers of the Main House.

OTHER ISSUES

63. A number of other issues were raised by HMRC and are in brief as set out below.

Privacy and security at the front of the house

64. HMRC also argued that the fact that the occupant of and visitors to the Annexe would use the driveway and communal porch which impacts on the security and privacy of the Main House.

65. The Appellants pointed out that the access route to the porch for occupiers of the Annexe did not require them to pass the windows for the Main House.

66. In our view the common driveway must impact on the privacy of both the Annexe and the Main House. However, that is no different from properties that abut public roads and pavements, where the passing public can see into the properties.

The preparation of food

67. HMRC argued that the Utility did not have sufficient facilities to attend to the occupants’ personal needs in that they could not cook. This point was not pursued with any vigour in the hearing but centred on two points, the lack of a cooker and any mechanical ventilation.

68. As we have found there were the necessary high voltage for connecting a cooker and the absence of a cooker at completion is not, in our view, relevant. Any occupant could install one without carrying out physical alterations to the property.

69. We were not told that the lack of mechanical ventilation would contravene any health and safety regulations. We note that there was a window in the utility which we take to be openable and do not find the lack of mechanical ventilation to be of any significance.

70. Accordingly, when added to the sink, we find that the Annexe has sufficient facilities for the preparation of food, which points towards the Annexe being suitable as a dwelling.

Hot water

71. HMRC argued that any occupants of the Annexe would not have control over the supply of hot water. Any remedial work carried out in either property would affect the other. Further, as the boiler was in the Main House and so the occupier of the Main House could deny the Annexe hot water and repair work would require permission from the occupier of the Main House.

72. The fact that the Annexe relies on the Main House for hot water points against the Annexe being suitable as a dwelling but we do not consider it to be material as access is a matter that could be covered in any tenancy agreement.

Utilities, council tax, Land Registry title and postal address

73. HMRC argued that the lack of separate water meters, electricity meters, council tax registration Land Registry title and postal address, whilst not determinative, point towards the Main House and the Annexe not being separate dwellings.

74. The Appellants argued that the postal address was not an issue because the post would be delivered to a communal porch and, in any event, it is a minor factor in the multifactorial test. We agree that the lack of separate postal address was not an issue because the post would be delivered to the communal porch.

75. As to the lack of utility meters, the Appellants argued this was another administrative matter and could be accommodated in the terms of a rental agreement where it is not uncommon for the rent to include utility costs (*Renton* TC/2024/01660 at [27]). We agree.

76. We do not find the lack of separate title at the Land Registry to be material.

The 2022 planning permission

77. HMRC sought to draw an inference from the planning offer's report and the condition in the planning consent that the Annexe "remains ancillary" to the Main House as signalling that that was how the Annexe was used prior to 2022 and so at the time of Completion.

78. The Appellants pointed out that the planning application was after Completion and in any event the reason and wording of the condition was to prevent anything other than residential use and did not prevent the Annexe being occupied as rental accommodation.

79. We reject HMRC's argument that the 2022 planning permission and associated offer's report sheds light on the position. No evidence was produced to us as to the planning conditions, if any, imposed when the garage was originally converted in 1999 or as at Completion. Further, we have heard no argument as to the meaning of "ancillary" for planning purposes, for example as to whether that term might encompass suitability for some uses that might pass the separate dwelling test for MDR purposes. We have to decide matters based on the Property as at Completion and nothing material can be inferred from the 2022 planning position. We reject this argument.

Marketing materials

80. HMRC noted that the property was marketed as a single dwelling and that that would be the objective observer's impression.

81. We do not find the marketing materials to be significant.

DISCUSSION

82. In determining whether the Main House and the Annexe are separate dwellings and each "suitable for use as a single dwelling" within paragraph 7(2)(a) we take as a starting point the principles set out by the Upper Tribunal in *Fiander*. Thus, the test must be determined from the perspective of a reasonable objective observer and is to be applied as at the effective date. Each case is to be determined on its facts, applying the multi-factorial test of weighing all the facts and circumstances (decision of this Tribunal in *Fiander* at [51] endorsed by the Upper Tribunal at [62]).

83. In our view considering and applying the multifactorial test in *Fiander*, a reasonable objective observer would identify the following principal features of the Annexe as pointing towards their being suitable for use as separate dwellings:

- (1) A studio room suitable for use as a bedroom and living room:
- (2) A separate shower, toilet and handbasin:
- (3) A room, the Utility, suitable for cooking and washing:
- (4) A separate lockable front door, albeit through a communal porch:
- (5) Independent electrical heating:
- (6) Separate fuse box and stop tap; and
- (7) Running water and mains electricity

84. Factors pointing towards the properties not being suitable for use as separate dwellings were:

- (1) Privacy and security issues concerning the rear hallway:
- (2) Privacy and security at the front of the house:
- (3) Hot water: and
- (4) Utilities, council tax, Land Registry entry and postal address.

85. We find the use and sharing of the hallway the most difficult aspect of this appeal, all other negative issues being relatively minor and many of those factors pointing towards there being two dwellings being in our view strong factors.

86. As we have found, the most practical option would be to provide that the hallway was communal and that the Main House had exclusive use of the garden. Even then it is entirely possible that the fact the occupier of the Annexe would have access to the hallway due to the one-way bolt on the door between the Annexe and the hallway and the need to lock the back door prevent access to the garden would cause occupants of the Main House real concerns.

87. DECISION

88. Applying the multi-factorial test in *Fiander*, and taking into account all the features described above, we find that the Main House and the Annexe are suitable for use as single dwellings within the meaning of paragraph 7(2)(a) on the basis of the rear hallway being communal. Whilst the rear hallway cases difficulties we find that a number of other factors point strongly towards the House and the Annexe both being suitable for use as a single dwelling.

89. We therefore find that the purchase of the Property is within Schedule 6B Finance Act 2003 as the main subject-matter consists of an interest in at least two dwellings.

90. Accordingly, we allow the Appellant's appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

91. 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.

IAN HYDE

TRIBUNAL JUDGE

Release date: 02nd SEPTEMBER 2025

Appendix

