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First-tier Tribunal (Tax)

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Neutral Citation: [↗2025]↗ UKFTT 1443 (TC)

Case Number: TC09700

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

In public by remote video hearing

Appeal reference: TC/2024/03716

↗**SDLT**↗ - *claim for MDR - denied by HMRC - appeal allowed*

Heard on: 19 November ↗2025

Judgment date: 26 November ↗2025

Before

**TRIBUNAL JUDGE NIGEL POPPLEWELL
MR MOHAMMED FAROOQ**

Between

**NICHOLAS ROWE
Appellant**

and

**THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS
Respondents**

Representation:

For the Appellant: In person

For the Respondents: Miss Gemma Truelove litigator of HM Revenue and Customs'
Solicitor's Office

DECISION

INTRODUCTION

1. This appeal concerns Stamp Duty Land Tax ("**SDLT**") and whether the appellant benefits from Multiple Dwellings Relief ("**MDR**") on the acquisition of a residential property known as Deer Park House ("**the property**") which he bought on 3 November 2022 for £2,067,000 ("**the transaction**").
2. The effect of MDR is to lower the effective rate of **SDLT** by splitting the chargeable consideration among the number of dwellings which are the subject matter of a land transaction.
3. It is the appellant's assertion that the property comprises two dwellings and MDR is available.
4. He had initially filed his **SDLT** return on the basis that no MDR was available and paid **SDLT** of £221,300. Having taken professional advice, on 20 February 2023 the appellant applied to amend his return and requested a repayment of **SDLT** of £70,090, which was paid by HMRC to the appellant on 27 February 2023.
5. HMRC opened an enquiry into that return and by virtue of a closure notice issued to the appellant on 15 January 2024, concluded that **SDLT** of £221,300 was due on the transaction as MDR was not available, and thus the appellant needed to pay an additional £74,980.98 (including interest).
6. For the reasons given later in this decision, it is our view that the appellant benefits from MDR and we allow his appeal.
7. We are grateful for the clear submissions, both written and oral, provided by the appellant and Miss Truelove on behalf of HMRC. However, we have not found it necessary to refer to each and every argument advanced or all of the authorities cited in reaching our conclusions.

THE LEGISLATION

8. The legislative framework for **SDLT** is largely contained in the Finance Act 2003 ("**FA 2003**"). Unless otherwise stated, references to sections and schedules are to FA 2003, and of which the following are directly relevant to this appeal.

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

(2) Section 58D provides for the claim of relief in relation to transfers involving multiple dwellings to be in a land transaction return, or an amendment of such a return.

(3) Schedule 6B contains the provisions for MDR, and sub-para 2(2) states as follows:

"(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".
- (4) Schedule 6B para 4 provides for the calculation of the relief. There is no dispute between the parties in terms of the quantification of the relief.
- (5) Schedule 6B para 7 defines '*What counts as a dwelling*', and sub-para 7(2) states:
 - "(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".

9. Section 83 provides HMRC with the power in relation to the formal requirements as to assessments, penalty determinations etc, with further provisions in this respect being contained in Schedule 10. Paragraph 12 in relation to the 'Notice of enquiry' provides, inter alia, for the time limit for opening an enquiry being nine months of the 'relevant date' of: (a) the filing date, (b) the date of return being delivered if after the filing date, or (c) the date amendment made to a filed return. Paragraph 23 provides for the completion of enquiry by the issue of a closure notice.

CASE LAW

10. The essential enquiry in this case is whether the property comprises an interest in at least two dwellings, and that in turn depends on whether dwelling 1 and dwelling 2 are (or rather were at the date of the transaction) used or suitable for use as a single dwelling.

11. The leading authority on this is the case of *Fiander and Brower v HMRC* [2021] UKUT 156 ("*Fiander*") in which the Upper Tribunal at [47- 48] said 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

12. We were provided with a substantial bundle of documents which included many helpful photographs and plans. Mr Rowe tendered a witness statement and gave oral evidence on which he was cross examined. From this evidence we find as follows:

(1) The Estate Agent's particulars describe the property as an attractive four bedroom family house situated in a sensational secluded garden plot of some 2.5 acres in a sought-after location.

(2) The accommodation is described as four bedrooms, a dining room, drawing room, kitchen/breakfast room, sitting room, garage.

(3) This accommodation is located in two parts of the building. The larger part (we shall call this "**the main house**") comprises three upstairs bedrooms (one with an ensuite bathroom), a drawing room, dining room, kitchen/breakfast room, larder, store, a bathroom, and two separate toilets. There is also a garage.

(4) The smaller part of the property we shall call "**the annex**". The accommodation here comprises a downstairs toilet, a sitting room, and kitchen (all downstairs) and stairs

from the sitting room leading to a single bedroom upstairs.

(5) The main house and the annex are connected by two connecting doors one downstairs and one upstairs. The door upstairs leads from a corridor in the main house into the bedroom in the annex. The door downstairs leads from the kitchen in the main house into a small area adjacent to the sitting room in the annex.

(6) Both the main house and the annex have their own separate doors leading to the outside.

(7) We were provided with pictures of the annex. The interconnecting door on the first floor (we had no pictures of the interconnecting door on the ground floor) is a wooden door painted white which is lockable using a key. It has no Yale locks or bolts. It appears to be of substantial construction.

(8) The pictures also show (and these were taken around the time that the property was purchased when the annex was in a state of considerable disrepair) that there is a shower in the kitchen located at the end of the kitchen units. The actual shower unit is enclosed in a perspex box and is accessed by the door in this box. It runs from floor to ceiling and appears to be attached (or runs right up to) the ceiling.

(9) The annex benefits from its own water supply. It has night storage heating. There are two fuse boxes in the garage, one for the annex and one for the main house. The annex has its own fuse board.

(10) The annex and the main house share the same address and title number. There is no separate council tax banding for the annex.

(11) We were shown a picture of the outside door of the annex in which there is a key in the lock. The key fob has the words "Flat only" written on it. The appellant's evidence, which we accept, was that he inherited those keys and had not written those words on the fob.

(12) The appellant provided a small bundle of documents in which were contained photographs of modest accommodation where shower units, similar to the one in the annex, were located within a kitchen. The bundle also included comments about this accommodation which were not wholly complimentary.

(13) The appellant's oral evidence was that he had recently had a conversation with the vendor's agent. The vendor was in fact a trustee, and the gist of the conversation was that the trustee had told the agent that the previous owner had let the annex to students.

13. At the hearing the appellant also told us that he had an email from that agent confirming the contents of this conversation, and held up a key, in front of the camera, on which the label read "students kitchen". At our suggestion he made an application that this evidence be admitted into the hearing albeit very late. This was opposed by Miss Truelove. Having considered the application, and applied the three stage *Martland* test, we rejected the application and did not permit the appellant to introduce this evidence into the hearing. It was a very late application and no good reasons were given for that tardiness. HMRC have been ambushed. The balance of prejudice favoured them. The appellant had been given professional help in preparing his case could have asked, when he found the key at a relatively late stage in the proceedings, how it might affect his case. He didn't.

DISCUSSION

Submissions

14. In summary, Miss Truelove submitted as follows:

(1) The question of whether the annex is suitable for use as a single dwelling falls to be determined by the physical attributes of the annex as they existed at the effective date (*Fiander* at [48(1)]) And on that date the annex was not suitable for use as a single dwelling.

(2) The statement that previous use as a dwelling suggests that a building has been suitable for use as a dwelling in *Mudan* [2024] UKUT 307 should be disregarded.

(3) Although the annex contains the accommodation one would expect from a single dwelling, the shower is located in the kitchen and the toilet is in a separate room. This configuration does not afford a user of the property to accommodate that person's attendance to personal hygiene with a reasonable degree of privacy. It would also create condensation and there is no specific ventilation in the kitchen. The comments in the articles provided by Mr Rowe show that the general public do not think that having a shower in the kitchen is socially acceptable.

(4) Suitability of occupation needs to be assessed objectively. The occupants' 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. That is not achieved in this case as the interconnecting doors, although lockable, could be opened from both sides.

(5) The estate agent particulars describe the property as a single detached four bedroom dwelling. The annex and the main house form a single continuous plot. The true description of the property is that it is a single dwelling with the potential to create an annex. There was no such separate annex in place at the point of completion.

(6) The annex has the same postal address, title number, and is on the same council tax bill as the main house. This compromises the security and privacy of the owners of both the main house and the annex.

15. In summary Mr Rowe submitted as follows:

(1) The marketing materials do not present the correct picture. It is clear from the evidence that at the time of purchase, the property included an annex which was suitable for use as a separate dwelling. This can be seen from the pictures as well as from the key fob to the external door which reads "Flat only".

(2) *Mudan* is authority for the proposition that "actual use as a dwelling is a very strong indication that the building has possessed the fundamental characteristics of a dwelling and has previously been suitable for use as a dwelling". This proposition is set out at [58 (1)] of the decision which was specifically approved by the Court of Appeal ([2025] EWCA Civ 799).

(3) That fob and the conversation he had with the vendor's agent is evidence that the annex had previously been let to students. It was therefore suitable for use as a separate dwelling.

(4) Whilst it might not be conventional to have a shower in the kitchen, there is no legal impediment which prevents it being taken into account when considering whether the annex has the essentials for separate living.

(5) A shower creates steam wherever it is located. Condensation is common in kitchens. Ventilation can be provided by opening a window.

(6) The interconnecting doors were lockable. A bolt could readily be added if needs be. If the owner of the main house had a key, then privacy could be secured by the owner of the annex locking the door and leaving the key in the lock.

(7) Although there was no separate postal address, this could readily be accommodated by telling the post office that the address was "the annex".

(8) Case law suggests that simply because there is no separate council tax bill, that is not an impediment to the annex being treated as a separate dwelling.

Our view

General

16. It is for Mr Rowe to establish, on the balance of probabilities, that he is entitled to MDR. In essence, this requires him to establish that the main house and the annex were, on the effective date of the transaction both either used or suitable for use as single dwellings.

17. The statutory test requires us to consider whether each of these was, at the effective date, used or was suitable for use as a single dwelling. *Fiander* tells us that this must be assessed by reference to suitability for occupants generally and that the test is objective. It is a multifactorial assessment which requires us to take into account all the facts and circumstances. 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.

18. It is equally clear that the facts and circumstances, and weight which is to be attached to the facts and circumstances vary considerably, and we should be very cautious of deriving principles from other cases which have very different fact patterns.

19. We need to consider the facts and circumstances in this appeal and apply the relevant principles to those.

20. There is no dispute that the main house was used as a single dwelling. The issue is whether the annex was used or was suitable for use as a single dwelling.

21. Mr Rowe does not argue that it was actually used as a single dwelling, separate from the main house, on the effective date. He argues that it was suitable for use as a single dwelling on that date.

The relevance of Mudan

22. We start by considering the difference of opinion between Mr Rowe and Miss Truelove regarding the relevance of *Mudan*. In essence, Miss Truelove says that the relevant test is set out in *Fiander* and that we can only consider whether a property is suitable for use as a single dwelling on the basis of the "physical attributes of the property as they exist at the effective date, not as they might or could be".

23. So in her view, how the annex has been used in the past is not relevant. We must consider the situation, in isolation, at the effective date, based on the physical attributes of the property.

24. But in *Mudan* the UT expressed the view that when considering suitability for use, actual previous use of the property is "a very strong indication that the building has possessed the fundamental characteristics of a dwelling and has previously been suitable for use as a dwelling".

25. As submitted by Mr Rowe, this principle was approved by the Court of Appeal.

26. We note that the court went on to say "...the court is not restricted to taking a snapshot on a particular day but is entitled to consider the past history of the building and whether it retained its identity...".

27. In our view we can take into account these principles when considering suitability for use in the context of MDR. Whilst it is true that *Fiander* and *Mudan* come at this enquiry from different ends of the spectrum (in *Fiander* the appellant was arguing that the property was suitable for use since he wanted to get MDR, whilst in *Mudan* the appellant was arguing that the property was not suitable for use in order to get into the mixed-use regime), both decisions consider suitability for use. And the Court of Appeal in *Mudan* did so having specifically considered the principles set out in *Fiander* (see [23] the Court of Appeal's decision).

28. In this case, the admissible evidence that the annex has been used as a separate dwelling comes from two things. Firstly, Mr Rowe's oral evidence that he had been told by the vendor's agent that the annex had been previously let to students. Secondly, the key fob which reads "flat only". This latter evidence suggests to us that the annex had indeed been treated as a separate flat at some time in the past.

29. We also accept Mr Rowe's oral evidence that this is what he had been told, and although this is very much second-hand hearsay, we have no reason to doubt the veracity of what he told us nor the veracity of the information provided by the vendor's agent.

30. We therefore infer that the annex had previously been used as a separate dwelling from the main house. And this is a strong indication that it had the fundamental characteristics of being suitable for use as a single dwelling.

31. In truth this seems to us nothing more than the application of the presumption of continuity. A state of affairs is deemed to continue unless there is evidence that that is not the case. Here the annex had been used as separate accommodation and there is no evidence that the configuration of the annex had changed between that use and the effective date. *Mudan* says that previous use can influence our analysis of suitability for use at that date.

32. We now turn to the two contentious issues.

The shower in the kitchen

33. Firstly, that the location of the shower in the kitchen means that any occupier cannot attend to their personal hygiene needs with a reasonable degree of privacy.

34. We do not attach much weight to this. We say this for a number of reasons. Firstly, because suitability for use does not depend on the number of occupiers. A dwelling can be suitable for use if it is suitable for use by a single occupier. A single occupier would not have to worry about privacy from other occupants when having a shower.

35. Secondly, if the shower was located, more conventionally, in a separate room, (perhaps with a toilet) there is still the issue of privacy. There is no reason why someone having a shower in the kitchen and someone having a shower in a bathroom cannot in both cases secure their privacy either by telling people they are going to be showering; hanging a notice on the door; locking the door (if such facility exists).

36. Thirdly, the generation of condensation point. Again, there is no distinction between a shower located in kitchen generating steam which can be readily ventilated by opening a window, and that shower generating steam in a bathroom which can be ventilated by opening a window.

37. Nor do we think that having a shower in the kitchen is intrinsically unhygienic.

38. We do not, therefore, think that the configuration of the shower in the kitchen militates in favour of HMRC.

The interconnecting doors

39. The second contentious issue concerns the interconnecting doors. There is no doubt that there were two of these and it is agreed that these were lockable. The issue as far as HMRC is concerned is that if someone in the main house had a key, they could open those doors, and thus the privacy and security expected in a separate dwelling would be compromised.

40. We wonder here whether HMRC are applying the right test. The doors are clearly of substantial construction and capable of being locked. Whether they were so locked at the point of completion is something we do not know and is not a point which HMRC are taking.

41. HMRC are positing a situation where the owner of the main house has a key. In other words, somebody other than the owner of the annex can access the house.

42. Clearly, however, any occupier of a dwelling is going to have their privacy compromised if someone else has a key which enables them to access that dwelling. A detached house in the wilds of Dartmoor would suffer from this failing if someone had a key to their door. And this would be the case even if there was a Yale lock (which had been deadlocked).

43. However we do not think that the test is whether there is adequate privacy, provided by a lockable door, where someone else has a key. It seems to us the correct test is whether the lockable door, if locked, is sufficient to keep the outside world at bay, and not on the assumption that someone in that outside world has a key to access the dwelling.

44. We would observe that [48(6)] of Fiander states that the occupants "basic living needs must be *capable of being satisfied* with a degree of privacy, self-sufficiency and security...". (Emphasis added).

45. The emphasis on capability is presumably the reason why HMRC do not (in our experience) seek to challenge suitability if an appellant cannot prove that at the time of completion, a lockable door was not actually locked, or a bolt was not shot home. The fact that the lockable door was capable of being locked and the bolt capable of being shot home is sufficient.

46. Capability is also referred to in HMRC's **SDLT** manual at 00425 (see the extract at [50] below). The question is whether the door can be locked. It is not qualified by reference to keyholders.

47. We must consider the physical attributes of the property. These physical attributes include lockable doors. Those lockable doors are capable of providing the requisite degree of privacy. We do not need to consider whether that is compromised if someone other than the owner has a key which would provide unfettered access.

48. Secondly, if (contrary to our view) it is right that one does consider the fact that the owner of the main house does have a key to the annex, then the efficacy of the lockable door can be secured by the owner of the annex locking the door, and leaving the key in the lock. This of course applies equally to secure the privacy and security of the main house.

49. Finally, it is worth observing that HMRC's manual at **SDLTM00425** accepts that it is relevant "whether the door between the parts can be locked or is readily capable of being made secure from both sides". It would have been a matter of moments for the owner of the annex to attach bolts to the door to make it secure for greater privacy if that were required. The same is true for the owner of the main house.

The multifactorial test

50. We now consider the multifactorial assessment taking into account the principles of *Fiander* as summarised at [17] above.

51. It is clear that the physical configuration and facilities of the respective dwellings, which HMRC accept in their manual as being "very important" and "of great importance" militate very strongly in favour of there being two dwellings. Both the main house and the annex benefit from all of the facilities (kitchen, living quarters, bedroom) required for occupation on a permanent basis.

52. The only issue that HMRC has with this concerns the location of the shower in the kitchen. And for the reasons given above, we do not think this carries any significant weight when considering whether the annex benefits from the facilities required for such separate occupation.

53. We have already said that the privacy and security provided by the lockable interconnecting doors should be considered on the basis of their intrinsic qualities rather than on the basis that someone (in this case either the owner of the main house or the owner of the annex), who had a key to those doors, would have unfettered access. And that these lockable interconnecting doors provide the degree of privacy and security which is consistent with there being two separate dwellings. And if we are wrong on this, then the privacy and security can be secured by leaving the keys and locks and/or attaching bolts.

54. It is our conclusion that the interconnecting doors provide an effective barrier between the two dwellings and provide effective security and privacy for both.

55. So in the multifactorial test, these two factors weigh in favour of the appellant.

56. We do not attach any significant weight to the description of the property in the marketing material. We prefer to consider the attributes of the property at the effective date as set out in the floor plan, photographs, and oral evidence.

57. Whilst we take into account the fact that the annex and the main house do not have separate council tax accounts or postal addresses, we do not consider that the weight which attaches to these is anywhere near sufficient to outweigh the facts of the physical attributes and facilities of those dwellings, nor the privacy and security provided by the interconnecting doors.

58. So, standing back and considering things in the round and applying the multifactorial test set out in *Fiander* when interpreting the statutory provisions of whether the annex and the main house are used or suitable for use as single dwellings, we have no hesitation that the factors weigh heavily in favour of there being two dwellings. We say this for the reasons outlined above. The physical configuration and attributes of each of those dwellings carries very considerable weight, and that is not, in our opinion, diminished by the marketing material, the interconnecting doors or the postal address etc. factors.

59. Notwithstanding these, there is still a sufficient degree of privacy, self-sufficiency and security for the annex and the main house to be consistent with the concept of each being a single dwelling.

60. Finally, we have found as a fact that the annex has previously been used as separate accommodation by students. On the authority of *Mudan*, this is an indication that the annex is suitable for use as a separate dwelling.

DECISION

61. For the foregoing reasons we allow this appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

62. 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: 26th NOVEMBER 🇬🇧2025

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