



[2021] UKFTT 122 (TC)

TC08103

STAMP DUTY LAND TAX-Multiple Dwellings Relief-main house and annexe-whether one dwelling or two dwellings-whether annexe and main house each suitable for use as a dwelling

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2019/09180

BETWEEN

JAMES AND BARBARA MOBEY

Appellant

-and-

**THE COMMISSIONERS FOR
HER MAJESTY'S REVENUE AND CUSTOMS**

Respondents

TRIBUNAL: JUDGE MARILYN MCKEEVER

The hearing took place on 8 March 2021. The form of the hearing was V (video) held on the Tribunal's VHS platform. All parties, being the judge, the Appellants, their representatives, HMRC's representatives and observers from HMRC attended remotely. A face to face hearing was not held because of the Covid-19 pandemic and it was considered appropriate and in the interests of justice for the hearing to be held remotely. The documents to which I was referred are a Documents Bundle of 186 pages, an Authorities Bundle of 216 pages, the Skeleton Arguments of both the Appellants and the Respondents and a video, shot by Mrs Mobey, of the accommodation in the annexe which was viewed by all participants.

Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

Mr Julian Hickey, Counsel, instructed by Magma Partners Ltd., Chartered Accountants, for the Appellant

Dr Jeremy Schryber, litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents

DECISION

INTRODUCTION

1. This appeal concerns a claim for Multiple Dwellings Relief (“MDR”) in relation to Stamp Duty Land Tax (“SDLT”). The Appellants filed the original SDLT return, and paid SDLT, on the basis that the property purchased was a single dwelling. They submitted an in-time amended return, which claimed MDR on the footing that they had purchased two dwellings, and requested repayment of the £84,950 SDLT said to have been overpaid.

THE LAW

2. On a notifiable transaction taking place, section 73 Finance Act 2003 (“FA03”) requires the purchaser to submit a land transaction return within 14 days of the effective date of the transaction (“EDT”). Section 119 FA03 provides that the EDT is normally the date of completion.

3. Section 55 FA03 sets out the amount of SDLT which is chargeable on a transaction.

4. Section 58D and Schedule 6B FA03 make provision for Multiple Dwellings Relief. The relief must be claimed in a land transaction return or in an amendment to such a return.

5. Where MDR is available, essentially, the total consideration for all the dwellings is averaged, the SDLT payable on the average consideration is calculated and that amount of SDLT is charged on each dwelling. This usually produces a lower amount of SDLT than if normal rates were applied to the total consideration.

6. Schedule 6B, so far as material, provides:

“Transactions to which this Schedule applies

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) 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...

Key terms

3 (1) A chargeable transaction to which this Schedule applies is referred to in this Schedule as a “relevant transaction”.

(2) ...

(4) A relevant transaction is a “multiple dwelling transaction” 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.

(5) In relation to such a transaction, those dwellings are referred to as “the dwellings”.

What counts as a dwelling

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

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

- (a) it is used or suitable for use as a single dwelling, or
- (b) it is in the process of being constructed or adapted for such use.
- (3) Land that is, or is to be, occupied or enjoyed with a dwelling as a garden or grounds (including any building or structure on such land) is taken to be part of that dwelling ...”

7. Stamp duty is charged by reference to the circumstances pertaining at the EDT, so the question whether the relief applied must be determined as at that date.

8. In the present case, the issue is whether, at the EDT, the property known as 9A Haig Avenue, Poole comprised one dwelling or two and that turns on whether the parts of the property which I refer to below as the “annexe” and the “main house” were each “suitable for use as a single dwelling”.

THE FACTS

9. Mr and Mrs Mobey purchased the property Glenmore, 9A Haig Avenue, Poole (“Glenmore”) on 30 November 2016 for a price of £2,935,000. The EDT was 30 November 2016. On the date of completion the Appellants completed and submitted their SDLT return and paid SDLT of £265,950 which was the correct amount on the basis that the property was a single dwelling and MDR did not apply.

10. On 20 September 2017, within the time limit for amending a return, the Appellants’ agent, Magma Partners Ltd (“Magma”), amended the SDLT return to include a claim for MDR and claimed a refund of £84,950 which was the difference between the SDLT which had been paid and the SDLT which would be due if MDR applied.

11. HMRC opened an in time enquiry into the amended return on 12 June 2018.

12. There followed extensive correspondence between HMRC and Magma which ended with HMRC issuing a closure notice on 12 August 2019 refusing the claim to MDR. A view of the matter letter was issued on 12 September 2019 and following a review, HMRC’s review conclusion letter of 6 November 2019 upheld the original decision that the relief was not due. The Appellants appealed to this Tribunal on 5 December 2019.

13. The estate agent’s particulars describe Glenmore as “one of the largest and most opulent houses constructed in Canford Cliffs in recent years.” The accommodation is summarised as follows:

“Lower Ground Floor

Indoor Swimming Pool complex with shower/changing room

WC, Reception Room, Snug

Two guest bedrooms with en-suite facilities

Integral garage for up to seven cars.

Ground Floor

Palatial Reception Hall

Magnificent Drawing Room

Formal Dining Room

Bespoke hand-made Kitchen/Breakfast Room

Utility Room, Family Room /Bar

Study, Guest Cloakroom.

First Floor

Master Bedroom with 'his & hers' walk in dressing rooms and sumptuous en-suite bathroom

3 further bedroom suites (one with private balcony) and luxurious en-suite facilities."

14. The particulars included floor plans for each of the floors. The footprint of the house was more or less L-shaped with the "heel" of the L cut off.
15. Starting from the left hand side, the lower ground floor consisted of the following. The rooms are referred to by the labels in the particulars:
 - (1) Guest bedroom and separate bathroom, both opening onto a small lobby;
 - (2) A door from the small lobby opened onto a windowless space labelled "inner hall", off which were two doors;
 - (3) On the left was bedroom 5 and an en-suite bathroom;
 - (4) Straight ahead was a door to a lobby ("the Lobby"). From the lobby a door on the left led to the garage. The Appellants described it as a "shared garage" although there was no evidence about whose vehicles were kept there.
 - (5) On the right, a flight of stairs led up to a door to the main house, opening into the reception hall.
 - (6) Straight ahead was a room described as a "snug" which had no windows.
 - (7) On the other side of the garage, in the "foot" of the L, was an indoor swimming pool with changing rooms and so on. A staircase led from the pool complex to the main house.
16. The original planning permission for Glenmore, dated 20 October 2009, described the development, rather less effusively, as "part two storey, part three storey dwelling with basement level and integral garage".
17. The floor plans which accompanied the planning permission showed the area described above. The snug and the Lobby were shown separately and the rest of the area was an undivided space, with a door shown leading to the Lobby. It was labelled "Flexible space: office, gym, [illegible], cinema, self-contained annexe, workshop".
18. Glenmore was unoccupied when Mr and Mrs Mobey moved in and it is not known how the space was used before then.
19. Mr and Mrs Mobey used it as accommodation for two of their adult sons, both of whom had learning difficulties. The intention was to provide them with a degree of independence whilst allowing care to be provided as needed.
20. The "guest bedroom" was used as a living room. "Bedroom 5" was used as a bedroom for one of the sons and the snug was used as a second bedroom, for the other son. The Lobby provided access from the second bedroom, through the "inner hall" to the bathroom and living room. I will refer to the whole of this area, including the staircase as far as the door to the reception hall, as the "annexe" and to the rest of Glenmore as "the main house".
21. The area which the estate agent called the inner hall was described by the Appellants as the "kitchen area". It was not suggested that the kitchen area was used as a kitchen or that there were any facilities for storing or preparing food either when Mr and Mrs Mobey moved in or during their period of occupation. We saw photographs and a video which showed that the kitchen area was a bare space with a tiled floor. Mrs Mobey estimated its dimensions as

approximately seven feet wide by 15-18 feet long. On one wall was a hatch, behind which was a water supply, and the photographs also showed that there was a double electrical point on one wall.

22. Mrs Mobey gave evidence that she had asked a builder about the possibility of installing a kitchen in the kitchen area and was told that it would be very easy to do so. Dr Schryber queried whether there had been any consideration of building regulations or fire safety rules, given that this was a windowless area without ventilation. No consideration had been given to this, although Mrs Mobey emphasised the builder was a reputable tradesman and had also suggested the alternative of converting the bathroom which did have a window. I note that this would have required a further reconfiguration of the annexe as the other bathroom was en-suite and would need to be made available to both sons.

23. The sons did not and could not cook. Mrs Mobey took their meals to them.

24. The rooms in the annexe were all of a good size and were of a sufficient size to use as a home.

25. The annexe had its own separate, lockable entrance. Steps led down from the front of the house and round the side to a pair of French doors which opened into the living room. Access to the annexe was from the long drive which led to the front of the property.

26. The annexe did not have a separate postal address. Post for all the occupants was delivered to a post box at the end of the drive.

27. The annexe was not assessed separately for Council Tax.

28. The annexe and the main house each had their own fuse boxes and electricity meters. They had their own water supply and sewage pipes.

29. The annexe had its own underfloor heating system operated by a control unit located in the annexe and separate from the heating system of the main house.

30. Magma stated in correspondence that the sons did not use the facilities in the main house. The garage was described as "shared" although there was no evidence that the sons kept any vehicles there. It is perhaps also surprising that the sons did not use the swimming pool, bar or other facilities in the main house, but I did not have any evidence about their use and make no findings about it. In any event, the actual use of the property after the EDT is not relevant to the availability of MDR which must be tested at the time of completion.

31. The entrance to the annexe via the French doors was lockable and both the sons and the Appellants held a key. Mr Hickey pointed out that a third party landlord would also be expected to hold a key to the annexe, so this was not significant.

32. The door from the Lobby to the garage could be locked on both sides.

33. The sons did not have access from the garage to the swimming pool complex (and thence to the main house) as they did not have a key to the lockable door from the garage to the pool complex.

34. The door at the top of the stairs from the Lobby of the annexe which led into the reception hall of the main house had a "push and twist" lock. That means that the door could be locked from the annexe side to prevent entry by the occupants of the main house. The lock could be released on the annexe side by pulling the handle down. The door could not be locked on the main house side. So the occupants of the main house could not enter the annexe if the door was locked, but the occupants of the annexe could enter the main house.

SUBMISSIONS

35. Mr Hickey, for the Appellants submits that each of the annexe and the main house are, and were at the EDT, “suitable for use as a single dwelling”.
36. Each is self-contained and affords the occupants the necessary degree of privacy.
37. The annexe has the necessary facilities to be suitable for use as a single dwelling, as does the main house.
38. Each property has the separate facilities set out in the “facts” section of this decision.
39. The main house and annexe are divided by a secure barrier (a lockable door).
40. The main house and annexe were occupied and used independently as single dwellings from the time the Appellants purchased Glenmore.
41. Dr Schryber, for HMRC, submits that Glenmore was a single dwelling of which the purported annexe formed part, and not two dwellings. The annexe was not a separate single dwelling for the purposes of MDR.
42. The annexe did not have any kitchen facilities that would make it suitable for independent day to day living. It did not therefore contain all the required facilities to make it suitable for use as a single dwelling.
43. Viewed realistically, the annexe just provided additional bedrooms consistent with the generous accommodation offered by Glenmore.
44. Given the arrangement of the annexe within Glenmore, there were not two separate, coherent living areas offering private and secure day-to-day living. HMRC submit that there was a lack of privacy and security between the annexe and the main house.
45. The annexe can only be accessed from the outside by way of a circuitous route around the house.
46. Glenmore is laid out as a single dwelling with access to the whole of the property through the front door.
47. There was no separate Council Tax.
48. There was no separate postal address.
49. The Appellants have suggested that the inner hall could be used as a kitchen. At the EDT it was just a bare hallway. HMRC contend that the Tribunal should consider the condition and layout of the property at the EDT.
50. Mr Hickey objected to Dr Schryber raising the issue of whether each purported dwelling had sufficient privacy as a factor in determining whether there were two separate dwellings.
51. In HMRC’s view of the matter letter of 12 September 2019, HMRC stated:
 - “...there is independent, external access into the annexe and the occupants of the annexe have the power and ability to exclude anyone else from entering that part of the building if they so wished, so HMRC accept that the privacy criteria are fulfilled.”
52. [Mr Hickey submitted that as HMRC had conceded the privacy point, it was not open to Dr Schryber to reopen the issue at the hearing.
53. Dr Schryber contended that the conclusion in the closure notice that MDR was not available entitled him to raise all relevant issues, even if the privacy issue had not been specifically mentioned in the Statement of Case. There had been several relevant cases on the issue which were published after the review conclusion letter and HMRC was entitled to review

its approach in the light of those cases. The central question was essentially one of fact: were there one or two dwellings and the Tribunal should take into account all the relevant factors. Nor was there a “litigation ambush”. HMRC’s Skeleton Argument had been produced on 22 January 2021, well in advance of the hearing and the Skeleton Argument made it clear that HMRC intended to raise the privacy issue.

54. Having heard the submissions from both sides I decided to allow Dr Schryber to make submissions on the privacy point. The question whether there was one dwelling or two is essentially a question of fact and it is right that the Tribunal should be able to consider all the evidence and factors. It was also relevant that the decision maker had agreed that the privacy condition was met without the benefit of the photographs, video and witness evidence which had subsequently been prepared. Nor had he the benefit of the guidance provided by the cases which were decided after he had written the decision letter (and after the review) but before the hearing.

55. I was satisfied that the Appellants had had adequate notice that HMRC proposed to raise the privacy issue.

56. In all the circumstances, and taking into account Rule 5 of the Tribunal Rules and the overriding objective in Rule 2, I considered it to be in the interests of justice to allow the Respondents to make submissions on the privacy point.

DISCUSSION

57. The question I must answer is whether Mr and Mrs Mobey’s purchase of Glenmore was a purchase of “an interest in at least two dwellings” and to answer that question I must decide whether each of the annexe and the main house was, at the EDT, “suitable for use as a single dwelling”. As the property was empty when purchased, it is not a question of whether it was actually used as one or two dwellings, but of the suitability for use.

58. The term “dwelling” is not defined in the SDLT legislation and, in principle, it therefore has its ordinary meaning. The definition in the Shorter Oxford English Dictionary is “a place of residence, a habitation, a house”, which does not take us very much further.

59. The test is a multi-factorial test to be applied on an objective basis and some factors will have more weight than others.

60. I was taken to a number of cases by both Mr Hickey and Dr Schryber, which considered the meaning of the word “dwelling” in various contexts.

61. Mr Hickey relied on the House of Lords decision in *Uratemp Ventures Ltd v Collins* [2001] UKHL 43 for the proposition that cooking facilities were not essential for a property to be considered a dwelling. In that case, the term to be construed was “dwelling house” which could be “a house or part of a house”.

62. Lord Millett said at [31]:

“In both ordinary and literary usage, residential accommodation is ‘a dwelling’ if it is the occupier’s home (or one of his homes). It is the place where he lives and to which he returns and which forms the centre of his existence.”

63. The Court did indeed hold, in that case, that the hotel room occupied by Mr Collins was a dwelling house, even though there were no cooking facilities. However, as Dr Schryber pointed out, the context in which the word is used is important. Lord Bingham of Cornhill said at [10]:

“In deciding in any given case whether the subject matter of a letting falls within that description it is proper to have regard to the object of the

legislation, directed as it is to giving a measure of security to those who make their homes in rented accommodation at the lower end of the housing market. It is not to be expected that such accommodation will necessarily offer all the amenities to be found in more expensive accommodation.”

64. And at [12]:

“...the courts should be very wary of laying down inflexible rules which come to be mistaken for rules of law even though they are very largely conclusions of fact based on particular cases.”

65. *Uratemp* says that the word “dwelling” has its ordinary meaning, but in deciding what it means in a statute, one has to consider the meaning in the context of the legislation and on the basis of the facts in each case.

66. *Carson Contractors Ltd v HMRC* [2015] UKFTT 530 (TC) was a VAT case which concerned a main house and a renovated barn. The issue here was whether the main house and barn were “designed as a dwelling” and the appellant in that case argued there was a single dwelling. The Tribunal said at [45]

“In our judgement a dwelling will, as a minimum, contain facilities for personal hygiene, the consumption of food and drink, the storage of personal belongings, and a place for an individual to rest and sleep.”

67. Mr Hickey placed emphasis on the reference to “consumption” as opposed to cooking of food, although the barn in this case did in fact have a kitchen.

68. Again, the case turns on its particular facts, and the specific requirements of the legislation in issue, which was different from that in our case.

69. A further VAT case, *Agudas Israel Housing Association Limited (18798)* [2005] BVC 4029 concerned whether an additional storey built on to an existing care home for the elderly was eligible for zero-rating. The question was whether the eight additional units were “a building designed as a dwelling”. To qualify, each dwelling had to satisfy the condition that “the dwelling consists of self-contained living accommodation”.

70. Each unit had its own lockable front door, en-suite bathing facilities and access to communal areas including the care home’s dining room. The units had only limited cooking facilities consisting of a fridge, kettle and microwave oven. The issue in the case was whether the fact that the units had limited cooking facilities meant that they were not “self-contained living accommodation”. The VAT Tribunal considered *Uratemp* and commented at [32]:

“We have approached this authority with some caution because the legislation which applied in that appeal is different from the legislation which applies in this. ... Having said that, however, ... we find in this appeal that each residential unit was a dwelling because it was where the resident lived, regarding it and treating it as home and it did not cease to be a dwelling solely because the resident's meals were eaten elsewhere or were brought in.”

71. The real issue, as mentioned was whether the “dwelling” was self-contained living accommodation (which the Tribunal held it was). I also note that the units did, in fact, have some cooking facilities even if some of the residents did not use them. As with *Carson*, the legislative test and context of the use of the word “dwelling” is different from that for SDLT and these cases are of limited assistance.

72. Mr Hickey also took me to two Council Tax decisions where the issue was whether there was a “chargeable dwelling” which depended on whether the properties in question were each a “self-contained unit” which in turn is “a building or part of a building which has been constructed or adapted for use as separate living accommodation”.

73. In *McCull v Sabacci* (LO) [2001] EWHC Admin 72 there was a flat within a larger house. The flat had a lockable front door, cooking and bathing facilities and sleeping and living areas. The “main house” had similar facilities and the Court held that both were “separate living accommodation” even though the tenant of the flat had to pass through the main house to get to the flat.

74. The Tribunal listed the “usual features” of a self-contained unit as being “cooking and bathing facilities, sleeping and a living area”.

75. In the High Court case of *James P Ramdhun v Valuation Tribunal of England* [2014] EWHC 946, the Court held that a lockable door was not a pre-requisite for a self-contained unit and that physical separation, for example, by stairs can provide a sufficient degree of separateness and privacy.

76. All of these cases relate in some way to the meaning of “dwelling” but the actual test to be applied, and the legislative context in which it is applied, is different in the case of the different taxes and, like the Tribunal in the *Agudas Israel Housing Association* case, I must exercise caution in taking too much from authorities dealing with taxes other than SDLT.

77. What I do take from the cases is that a dwelling is a person’s home, that the usual facilities one would expect to find in a separate dwelling are sleeping and living accommodation, bathing/hygiene facilities and cooking facilities. Having said that, the question as to whether a property is a “dwelling” is a multi-factorial question and one must weigh all the facts and circumstances in the context of the particular legislation to determine whether a property is a dwelling for the relevant purpose.

78. The question whether a property is “suitable for use as a single dwelling” has been considered in several recent cases before this Tribunal starting with *Fiander & Anor v HMRC* [2020] UKFTT 190 (TC). The approach in *Fiander* was applied in *Merchant and another v Revenue and Customs Commissioners* [2020] UKFTT 299 (TC) and in *Partridge v Revenue & Customs* [2021] UKFTT 6 (TC).

79. In *Fiander*, there was a house with an annexe. The annexe comprised a sitting room kitchen/utility room, a bedroom and a shower room. It could be accessed by French doors into the sitting room. The main house had all those facilities plus some additional rooms. There was a short, open corridor between the main house and the annexe. There was a door jamb at one end of the corridor, but at the time of completion, no door was attached to it.

80. The Tribunal in *Fiander* said, starting at [51]:

“[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.

[52] A dwelling is the place where a person (or a group of persons) lives. A building or part can be suitable for use as a dwelling only if it accommodates all of a person’s basic domestic living needs: to sleep, to eat, to attend to one’s personal and hygiene needs; and to do so with a reasonable degree of privacy and security. By requiring that the building or part be suitable for use as a ‘single’ dwelling, the statutory language emphasises suitability for self-sufficient and stand-alone use as a dwelling. Use as a ‘single’ dwelling excludes, in our view, use as a dwelling joined to another dwelling.”

81. Pausing there, I interpret the last sentence as meaning that a dwelling cannot be a single dwelling if it is joined to another dwelling and there is no physical barrier between them. A

single dwelling can be “part of a building”, eg a flat in a block of flats. Although they are “joined” they are physically separated by walls and lockable doors.

82. The Tribunal considered the *Ramdhun* case where the lack of a lockable door was held not to be essential to provide the necessary degree of privacy in the context of Council Tax. It considered that in the MDR context, the property had to be *generally* suitable for use as a separate dwelling and that if it would only be suitable where there was a special relationship between the occupants of both “dwellings” that was insufficient in this context. The open corridor between the main house and annexe meant that there was insufficient privacy and security for each. The Tribunal said:

“[57] We now turn to the main physical attribute of the property that points towards the main house and annex not being individually suitable for use as a single dwelling: the short, open corridor connecting them. The questions raised by the corridor are (i) whether either the main house or the annex were suitable for use as a ‘dwelling’, when occupants of one would have unimpeded access to the other; and (ii) even if the answer to the first question is ‘yes’, were either suitable for use as a ‘single’ dwelling?”

[58] On the first (‘dwelling’) question, our starting point is that some degree of privacy and security is required for a building (or part) to be used as a dwelling. One cannot carry on the activities of every domestic living in a place where strangers can enter at will. We note that, on the whole, the way this is provided in dwellings is via lockable doors at the entry points to the dwelling. We also note, however – and here we have an eye to the judgement of the High Court in *Ramdhun* – that a lockable door is not the only way to provide privacy and security. ...

The legal test in *Ramdhun* was whether the part of the building concerned [had] been adapted for use as ‘separate living accommodation’. The test we are dealing with here is different: it is a test of ‘suitability’ for use, rather than adaptation for use; and it is a test of use as a ‘single dwelling’, rather than of use as separate living accommodation.

[61] In our view, a building (or part) is ‘suitable’ for a use if it can generally be so used. So, if one has a situation where a building (or part) is suitable for a use only in quite specific circumstances, this inclines against determining that the building is ‘suitable’ for that use. ...where the occupant of the annex was a member of the general public – the main house and the annex would not be individually suitable for use as dwellings, due to the insufficiency of privacy and security for occupants of both parts. ...

83. The appellant in that case also sought to argue that the necessary degree of privacy could be achieved by putting a lockable door in the door jamb that was already there.

[63]...Mr Cannon argued that a building (or part) was suitable for a use at a point in time if, on the assumption of a relatively minor physical adjustment being carried out, it could be so used. In this case, the relatively minor adjustment would be erecting a barrier between main house and annex. Mr Cannon suggested a door could be relatively easily installed in the door jamb in the corridor (we note that to give occupants of both parts of the property sufficient privacy and security as per our analysis above, the door would somehow need to be lockable from both sides (or two doors would be required)). ...

These considerations incline us to conclude that it would be wrong to determine ‘suitability for use’ at the time of completion on the assumption that a door, or doors, or some other physical barrier, would be introduced to the corridor. This is because the suitability test in para 7 is an objective one based

on the physical features of the property as at completion – it cannot be performed on the assumption that new physical features will be introduced to enable a new and different kind of use. This is the case even if the new physical features are relatively easy or quick to install.

[67] Our inclination is strengthened by the point we make at the end of [62] above – that in the eyes of an objective observer at completion, the main house and annex were eminently suitable for use as one joined dwelling.”

84. I respectfully agree with the approach in *Fiander*. In order to be suitable for use as a “single dwelling” a property must be capable of providing, on a self-sufficient and stand alone basis, all the facilities for normal living. Further, it must provide them at the point of completion, so that the fact that facilities could be added does not make a property which is not a single dwelling at the EDT into a single dwelling.

85. Turning to the present case, I now consider how the reasonable person might view the accommodation at Glenmore at the EDT. It is not relevant how the property was actually used following the purchase. I am required to consider whether each of the annexe and the main house were suitable for use as a single dwelling at the point of completion.

86. The factors pointing to the main house and annexe being two single dwellings are as follows.

87. The Annexe is a good size and more than adequate as a home for two people.

88. There is independent external access through the French doors.

89. There are two bedrooms, one with en-suite facilities and a separate bathroom.

90. There is a large sitting room.

91. The occupants of the annexe can deny entry to the occupants of the main house as they can lock the door at the top of the stairs which leads to the reception hall.

92. The annexe has its own utilities, fuse box and underfloor heating controlled from within the annexe.

93. The main house is very large and includes all the basic facilities required for a dwelling and much more. It has its own front door as well as other point of access.

94. The factors indicating that Glenmore is one dwelling not two are as follows.

95. The annexe had no kitchen nor any other facilities for the storage or preparation of food. We heard that Mr and Mrs Mobey’s sons did not and could not cook and Mrs Mobey provided all their meals to them in the annexe. The video tour of the property was comprehensive and I did not see even a kettle or microwave oven.

96. The occupants of the main house could not deny entry to the occupants of the annexe. The door between the annexe and the reception hall could not be locked on the main house side, compromising the privacy and security of the occupants of the main house.

97. The occupants of the annexe could enter the garage. It was described in the Appellant’s Skeleton Argument as a “shared garage” but there was no evidence to indicate that this was part of or occupied with the annexe.

98. As set out at [6] above, the definition of a dwelling includes as part of the dwelling “land that is... occupied or enjoyed with a dwelling as a garden or grounds ...”. Glenmore stands in substantial grounds and is reached by a long drive. The access to the annexe was along the drive and through the grounds of Glenmore. There was no suggestion that any of the grounds were occupied with the annexe, but the occupants of the annexe could not be prevented from

using the grounds of the main house, again compromising the privacy of the occupants of the main house.

99. The annexe did not have a separate Council Tax liability.

100. The annexe did not have a separate postal address.

101. The planning permission was for a “part two storey and part three storey dwelling with basement level and integral garage”. Although the floor plan attached to the permission suggested that the “flexible space” might be used as a “self-contained annexe” (among other uses), as we have seen, “self-contained” is not the same as “suitable for use as a single dwelling”.

102. The estate agent’s particulars presented Glenmore as a single property with a lower ground floor which comprised a swimming pool, snug, two guest bedrooms and an integral garage.

103. Not all of these factors have equal weight. The most important factors seem to me to be the lack of privacy and security for the main house and the lack of food preparation facilities in the annexe. I also consider the description of the building for which planning permission was granted and the way in which the advertising materials presented the property to be important. Both strongly suggest that Glenmore was a single dwelling and the whole of Glenmore was certainly suitable for use as a single dwelling.

104. In order for two properties to be separately suitable for use as single dwellings, they must each be suitable for use as a separate home by unconnected occupants. Each of the dwellings must have the facilities to enable the occupants to live an independent life and each of the dwellings must have adequate privacy and security vis-à-vis the other. That suitability must be tested at completion. It is not relevant that additional facilities could be added later.

105. SDLT is a tax on the buying and selling of properties. The considerations which might be relevant in the protection of tenants or for VAT zero-rating or in determining whether accommodation is self-contained for the purposes of Council Tax are not necessarily relevant.

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.

107. In assessing whether this test is satisfied, one might ask whether an owner of what was said to be two dwellings was reasonably likely to be able to sell them to unconnected purchasers, assuming that the properties would remain as they were at the EDT. It seems to me that an average purchaser would not buy the annexe, on this basis, because it has no kitchen facilities and an average purchaser would not buy the main house because it lacks privacy and security.

108. When one considers Glenmore as a whole, its layout, attributes and accommodation, including its grounds, it looks like, and is suitable for use as, a single dwelling.

109. Having weighed all the facts and circumstances I have come to the conclusion that Glenmore is a single dwelling and that neither the annexe nor the main house is, on its own, suitable for use as a single dwelling. Accordingly, HMRC were correct to deny the claim for MDR.

DECISION

110. For the reasons set out above, I have decided that neither the annexe nor the main house was “suitable for use as a single dwelling” at the EDT and the Appellants are not entitled to claim MDR.

111. Accordingly, I dismiss the appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

112. 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.

**MARILYN MCKEEVER
TRIBUNAL JUDGE**

RELEASE DATE: 27 APRIL 2021