



Neutral Citation: [2023] UKFTT 992 (TC)

Case Number: TC09003

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2021/03055

SDLT – whether leasehold property formed part of the grounds of adjacent leasehold property acquired in the same transaction – yes – appeal dismissed

Heard on: 25 May 2023

Judgment date: 21 November 2023

Before

TRIBUNAL JUDGE ANNE FAIRPO

Between

STEVEN BOWEN

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

The Appellant appeared in person

For the Respondents: Ms McDonald, litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

Background

1. The appellant (MR Bowen) appeals against a review conclusion letter in respect of a closure notice which increased the SDLT due on the acquisition of two leaseholds in a single transaction. The issue for this Tribunal was whether The Granary, which formed part of the transaction, was part of the grounds of Old Valley Farmhouse, the other part of the transaction. There was no dispute that Old Valley Farmhouse was residential property.
2. The appellants also originally contended that the purchase of the leases of The Granary and Old Valley Farmhouse and argued that multiple dwellings relief should apply. These grounds of appeal were no longer maintained by the date of the hearing.

Introduction

3. On 17 January 2019, Mr Bowen and his wife purchased the leaseholds of Old Valley Farm and The Granary. The two properties were advertised together in a single set of sales particulars as a sale of two lots, and there is no suggestion in the sales particulars that the two lots might be separated.
4. Old Valley Farm and The Granary are separate leaseholds, registered under two title numbers at the Land Registry. They were purchased together at the same time, under a single contract for a single purchase price of £1,625,000, from the same vendors. The purchase price was a single amount for the two titles and was not allocated between those titles. The Old Valley Farm leasehold consists of a farmhouse, outbuildings and over 14 acres of land. The Granary leasehold consists of the granary building and land of less than an acre.
5. The buildings in the two leaseholds form the four sides of a rectangle, with The Granary on the western side and the buildings of Old Valley Farm along the other three sides. The Granary is not physically connected to any of the Old Valley Farm buildings. The Granary sits on a small triangular plot of land which is bordered on two sides by Old Valley Farm and land belonging to Old Valley Farm. There is a single approach from the public highway to the buildings' area. In 1997 planning permission had been granted over The Granary, to convert it to residential use and the title was sold with the benefit of this planning permission.
6. The vendors in this transaction (the Cowpers) had purchased and been granted the leasehold titles to both Old Valley Farm and The Granary from the National Trust on the same date in 1998. The National Trust had sold leaseholds over various other pieces of land from the same estate in that area at that time.
7. A single TR1 was completed for the transfer of the two leaseholds from the Cowpers to the Bowens. The TR1 describes the property sold as being Old Valley Farm and land and buildings. The contract for sale similarly describes the property as Old Valley Farm and land and buildings.
8. A single SDLT return was submitted for the purchase. The return stated that two properties had been purchased in a single transaction and described the transaction type as mixed use. The SDLT was calculated as £70,750.
9. HMRC enquired into the SDLT return and, following correspondence, issued a closure notice under paragraph 23, Schedule 10, Finance Act 2003. This calculated the SDLT due at £108,750 on the basis that the transaction was of entirely residential property. Following a review of the closure notice, the appellant appealed to this Tribunal on 21 August 2021.

Relevant law

10. s116(1) Finance Act 2003 defines 'residential property' as:

(a) a building that is used or suitable for use as a dwelling, or is in the process of being constructed or adapted for such use, and

(b) land that is or forms part of the garden or grounds of a building within paragraph (a) (including any building or structure on such land), or

(c) an interest in or right over land that subsists for the benefit of a building within paragraph (a) or of land within paragraph (b);

11. The same section defines 'non-residential property' as any property that is not residential property.

12. A higher rate of SDLT applies to purchases of entirely residential property; a lower rate applies to purchases which include land which is not residential property.

Discussion

Relevance of capital gains tax guidelines

13. The appellant contended that the combined purchase of Old Valley Farm and The Granary should be regarded as mixed use on the basis that The Granary was non-residential property. He contended that The Granary was separate to Old Valley Farm, not being enclosed with Old Valley Farm, and that The Granary land was commercially farmed by a third party. He further contended that it did not form part of the garden and grounds of Old Valley Farm under the HMRC guidelines that existed at the effective date of the transaction.

14. Mr Bowen stated that The Granary was fenced off from the Old Valley Farm and had been marketed and sold as a separate sale with full planning permission for development. He contended that this meant that it should not be regarded as forming part of the garden and grounds of Old Valley Farm, according to HMRC's guidelines at the effective date of the transaction.

15. Mr Bowen's statement that The Granary was marketed and sold as a separate sale to Old Valley Farm is not supported by the documentary evidence. There is a single set of sales particulars, describing the two leaseholds, with a single price for the purchase of both. The sales particulars do not suggest that the two lots can be separated for sales purposes. There was also a single contract for sale, with a single price for the two titles sold, and a single TR1 for the transaction was submitted.

16. The guidelines referred to by Mr Bowen in this context are contained in HS283. This guidance relates to Private Residence Relief, a capital gains tax relief, and has no application to SDLT as the legislation relating to capital gains tax is distinct from SDLT legislation. Mr Bowen contended that the capital gains tax guidance should be used to determine the meaning for SDLT purposes as, at the effective date of the transaction, as the term used to define a piece of land was the very similar or same in both forms of legislation. The published guidelines indicated that there was therefore a restriction on the size of the garden and grounds that would be regarded as residential for SDLT purposes (SDLTM20070, as at the effective date).

17. However, HMRC guidelines are not law in this context; they are HMRC's interpretation of the law and are not binding on the courts. In contrast to the capital gains tax legislation, the SDLT legislation does not place any restriction on the size of land which

forms part of the garden and grounds of residential property. The Court of Appeal held (*Hyman & Ors* [2022] EWCA Civ 185 at [32]) that there is no objective quantitative limit on the extent of the garden or grounds falling within the definition of ‘residential property’ for SDLT purposes and that the capital gains tax size restriction cannot be implied into the SDLT legislation.

18. The Court of Appeal in that decision also held that capital gains tax guidance is not relevant to determining SDLT matters (at [31]). That decision is binding on this Tribunal and so Mr Bowen’s argument that The Granary cannot be residential property because of the contents of HMRC guidelines at the relevant time cannot succeed. Accordingly, the existence of a fence or boundary between Old Valley Farm and The Granary does not mean that The Granary cannot form part of the grounds of Old Valley Farm for SDLT purposes.

19. Mr Bowen referred to various tests in the guidelines having changed after the effective date of the transaction; as noted above, HMRC guidelines are not law in this context. The Court of Appeal decision did not change the law, it confirmed the state of the law. Subsequent changes to HMRC guidelines to correct their misinterpretation of the law do not mean (in this context) that the law had changed after the effective date of the transaction.

Legitimate expectation

20. Mr Bowen considered that he had a legitimate expectation that SDLT should be assessed on the basis of the HMRC guidelines as at the effective date of the transaction, as he argued that it would be only fair and reasonable to follow the guidelines as they stood at that date. As noted above, the Court of Appeal have held that capital gains tax guidance is not relevant to determining SDLT matters and so this argument cannot succeed in any case. Further, this Tribunal has no freestanding jurisdiction to consider the fairness of HMRC decisions (see, for example, the Upper Tribunal decision in *Hok v HMRC* [2012] UKUT 363).

Multi-factorial approach

21. This Tribunal therefore needs to consider whether, within the scope of the SDLT legislation, The Granary is part of the grounds of Old Valley Farm. If it is part of those grounds then it will be residential property.

22. HMRC submitted, and we agree, that the relevant case law is that set out in the Upper Tribunal decision in *Hyman* [2021] UKUT 68 (TCC). We note that the later Court of Appeal decision referred to above considered only the question of whether there was an objective limit to the extent of garden and grounds; it did not consider the decision of the Upper Tribunal in respect of the following and so this Upper Tribunal decision is binding on us. The decision of the Upper Tribunal in *Hyman* draws on similar analyses set out in cases such as *Myles-Till* [2020] UKFTT 0217 (TC)

23. The Upper Tribunal agreed that (at [49]) the term “grounds” is an ordinary English word and that:

“when considering whether land forms part of the ... grounds of a building, a wide range of factors come into consideration; no single factor is likely to be determinative by itself; not all factors are of equal weight and one strong factor can outweigh several weaker contrary indicators; where a number of contrasting factors exist, it is necessary to weigh up all the factors in order to come to a balanced judgment of whether the land in question constitutes ‘garden or grounds’. This part of the guidance also refers to a number of factors which are individually discussed in other parts of the Manual but states that the list of other factors will not necessarily be comprehensive and other factors which are not mentioned there might be relevant.”

24. Each case of course needs to be considered on its own facts. The relevant factors put forward by the parties in this case can be summarised under the following headings:

- (1) historic use;
- (2) use at the time of the transaction;
- (3) legal constraints;
- (4) geographical factors such as proximity and nature of the land.

Historic use

25. The Granary was built as part of the farm outbuildings of Old Valley Farm approximately a century ago. The farm (and so The Granary) was part of the Wimpole Estate, acquired by the National Trust in 1979. The Granary was acquired from the National Trust together with Old Valley Farm, each on a 120 year lease, by the Cowpers, who were also the vendors in the transaction which is the subject of this appeal. The Granary has therefore been in common ownership with Old Valley Farmhouse since the leases were granted. Before the leases were granted, the two had been in common ownership since The Granary was constructed.

26. At the date of acquisition by the Cowpers from the National Trust The Granary was not in residential use as it was derelict. Old Valley Farmhouse was also derelict at that time. Planning permission had been sought and granted in January 1997 to bring The Granary into residential use; that planning permission had been obtained by the Cowpers before they acquired the leasehold. No development of The Granary was in fact undertaken by the Cowpers and the property remained derelict when it was purchased by the Bowens. Old Valley Farmhouse was renovated before it was acquired by the Bowens.

27. Mr Bowen's evidence was that the field which formed the land connected to the Granary had been used for sheep grazing since 2016. The grazing was undertaken by a third party farmer under a verbal agreement. No fee was paid for the grazing rights. Before the farmer began using the field, Mr Bowen stated that it had been used for grazing by the National Trust.

28. Mr Bowen also argued that The Granary should be regarded as having been separated from Old Valley Farmhouse when the National Trust granted separate leases over Old Valley Farmhouse and The Granary and that the two properties had therefore been separate for over twenty years. Separate ground rents were paid for each of the properties.

Use at the time of the transaction

29. Mr Bowen confirmed that no sheep were kept on the land at the effective date of the transaction. Mr Bowen's evidence was that the farmer who grazed the land had requested, and received, permission to use the land from the Bowens at some point after they acquired The Granary and Old Valley Farmhouse. The farmer had previously had permission from the Cowpers to use the land for grazing.

30. The Granary buildings are, and have been since at least the transaction, used for storage. Mr Bowen confirmed that he had acquired The Granary so that no-one else purchased the property as it was very close to Old Valley Farmhouse.

31. The Tribunal also considered the documentation available. There is no written agreement relating to grazing rights or, indeed, any other use of The Granary and its land. The sales particulars make no mention of any grazing rights which might bind a purchaser. The lease of The Granary contains a covenant by the lessee not to carry on or permit to be carried on any trade business or occupation on the premises (clause 3.16). The same clause

requires that the property be used only for storage until the conversion to residential use permitted by the planning permission has been completed. Mr Bowen submitted that the grazing agreement did not breach this clause as no fee was paid by the farmer to use the land.

32. HMRC contended that there was no grazing on the land at the effective date of the transaction and that the subsequent use by the farmer did not amount to a restriction on the purchasers use of the land, as there was no binding agreement in place regarding the use of the land. They submitted that this was a different scenario to that in *Withers* [2022] UKFTT 433 (TC) where there had been a written grazing agreement in place at the effective date of the transaction which was binding on the purchasers. Mr Bowen contended that the written agreement in *Withers* had only been put in place because of the changes in HMRC guidance and that there was no requirement for a formal lease before those changes.

Legal constraints

33. Mr Bowen contended that the sheep grazing which took place on the land attached to The Granary restricted his use of the land as he could not, for example, walk the dog on that land and his children could not drive their GoKart on the land.

34. The lease of The Granary contains lessee covenants which prohibit the use of The Granary and its land for any trade, business, manufacture or occupation. The permitted use of The Granary and land in those covenants is as a single private dwelling house following the building works. Prior to completion of building works, the only permitted use of The Granary is for storage. The lessee covenants in respect of the field (and other ‘unbuilt land’ attached to the Granary) require that it be used only as amenity land for recreational purposes in connection with the use of the buildings as a private residence. The lease also contains a prohibition on assigning or underletting or selling part only of The Granary. The permission of the National Trust is required to underlet or sell the whole of The Granary before the building works to convert it to residential use had been completed.

35. The lease also requires the owner to put in place a hedge on the boundary between The Granary and Old Valley Farmhouse but only once the lessee of The Granary is no longer also the lessee of Old Valley Farmhouse.

36. HMRC contended that none of these provisions prevented The Granary from forming part of the grounds of Old Valley Farm. Further, the contended that the covenants regarding the hedge requirements showed a clear connection between The Granary and Old Valley Farmhouse when the two leases were held by the same lessee and further that the permitted use of The Granary was restricted to private residence or for non-commercial storage.

Geographical factors

37. As noted above, The Granary is next to Old Valley Farmhouse, with the building itself forming one side of a square or rectangle with the Old Valley Farmhouse buildings (albeit with a hedge between them). There are pathways between the two areas which allow for access from one to the other. As noted above, Mr Bowen confirmed that his purpose in acquiring The Granary was so that no-one else purchased the property as it was very close to Old Valley Farmhouse and he did not want someone else to buy it and develop it.

38. HMRC contended that the extent of the land, amounting to less than an acre, was appropriate to form part of the grounds of Old Valley Farmhouse. Mr Bowen’s submissions with regard to the size of the land related to his submissions as to the guidelines on the amount of land needed for reasonable enjoyment of a dwelling house. As noted above, these guidelines relate to a capital gains tax test that does not apply to SDLT.

Decision

39. As set out above, the conclusion of the Court of Appeal in *Hyman* that the capital gains tax guidelines are not (and were not prior to the date of that decision) relevant in determining SDLT matters is binding on this Tribunal and so any contention as to the application of those guidelines are not considered further. As also noted above, this tribunal has no jurisdiction to consider Mr Bowen's contention that it is not fair that the guidelines in place at the date of the transaction should not be taken into account simply because the Court of Appeal later rejected their application. Finally, Mr Bowen's contention that terms should be interpreted in the same way for different taxes is not supported by the legislation or case law.

40. Mr Bowen also made various contentions that he and his wife should not be regarded as legal owners of the properties, that the correct legal owner was the National Trust, and so the SDLT should be based on the acquisition of two leases as chargeable interests and that those leases should be assessed on their own merits and taxed separately. However, the Bowens are the legal owners of the leasehold interests which were the subject of the purchase and thus the SDLT charge. This was the purchase of two chargeable interests, which are held in common ownership and have been since grant. I do not agree with Mr Bowen's contention that The Granary should be regarded as having been separated from Old Valley Farmhouse when the leases were granted: I consider that the grant of the lease had the potential to separate The Granary from Old Valley Farmhouse but, as the leases were granted to the same people (the Cowpers) and subsequent sold together to Mr and Mrs Bowen, I find that the leases were and remain in common ownership and so, potentially, The Granary may form part of the grounds of Old Valley Farmhouse.

41. The proper approach to the question of whether The Granary and its land form part of the grounds of Old Valley Farm is therefore the multi-factorial approach which was set out by the Upper Tribunal in *Hyman*. Considering each of the factors discussed by the parties, I conclude that The Granary and its land are part of the grounds of Old Valley Farmhouse for the following reasons.

42. The test of whether adjoining land forms part of the grounds is considered as at the effective date of the transaction. As at that date The Granary building was agreed to be derelict; I find that the land had been used for grazing at times prior to sale under an informal agreement between a farmer and the vendors but there was no agreement in place at the effective date of the transaction which was binding upon the purchasers. There is no mention of any grazing rights in the sale particulars or the contract, and Mr Bowen's evidence was that he and his wife had given permission to the farmer to use the land for grazing, without a fee, some time after they had acquired the property.

43. Mr Bowen's contention that there was no requirement for a formal agreement to be in place before the guidance changes does not assist; the evidence is that there was no agreement (formal or informal) in place at the effective date of the transaction. The later agreement between the Bowens and the farmer does not mean that there was any grazing agreement which continued in place at the date of the transaction.

44. Given this, I find that The Granary and its land were not in agricultural or other commercial use at the effective date of the transaction.

45. The lease of The Granary also prohibits the use of the property for commercial purposes and does not permit subletting of part only of the property; various provisions of the lease clearly indicate a link between The Granary and Old Valley Farmhouse, notably the suspension of the requirement to plant a hedge between the properties whilst they remain in common ownership. To the extent that Mr Bowen contended that the leaseholds should be treated separately because they were granted separately by the National Trust, I find that

terms of the lease such as this make it clear that the grant of the two leaseholds by the National Trust to the Cowpers in 1998 were related and not entirely separate transactions.

46. Mr Bowen’s submissions that he could not freely use the field attached to the Granary is not a constraint that existed at the effective date of the transaction and, in the absence of a formal agreement with the farmer, those restrictions could be overcome at any time at the Bowens’ choice.

47. The Granary is also adjacent to Old Valley Farmhouse, sharing two out of its three boundaries with Old Valley Farmhouse and it is clearly sufficiently close to Old Valley Farmhouse to be capable of being grounds of Old Valley Farmhouse. Its land area is relatively small compared to the land otherwise attached to Old Valley Farmhouse such that it would not be disproportionate to consider it part of the grounds.

48. Noting the Upper Tribunal points in *Hyman* as to the approach to be taken to considering whether land forms part of the grounds of a building and the comment in that decision at [33] that there must be a connection between the grounds and the relevant dwelling, I also consider that it is useful to bear in mind a comment of Judge Citron in his decision in *Myles-Till* [2020] UKFTT 127 (TC) at [44] that:

“Common ownership is a necessary condition for the adjacent land to become part of the grounds of the dwelling building – but not, in my view, a sufficient one ... One must, in addition, look at the use or function of the adjoining land to decide if its character answers to the statutory wording in s116(1) – in particular, is the land grounds ‘of’ a building whose defining characteristic is its ‘use’ as a dwelling? The emphasised words indicate that that the use or function of adjoining land itself must support the use of the building concerned as a dwelling. For the commonly owned adjoining land to be ‘grounds’, it must be, functionally, an appendage to the dwelling, rather than having a self-standing function”.

49. Mr Bowen’s evidence was that he acquired The Granary to prevent someone else from purchasing it, given its proximity to Old Valley Farmhouse. I consider that this makes it clear that the use or function of that property, at the effective date of the transaction, was to support the use of Old Valley Farmhouse as a dwelling.

Conclusion

50. For the reasons given above, I conclude that The Granary formed part of the grounds of Old Valley Farmhouse for SDLT purposes at the effective date of the transaction. As such the purchase was one of residential property and not mixed-use property. The appeal is therefore dismissed, and the closure notices upheld in full.

Right to apply for permission to appeal

51. 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.

**ANNE FAIRPO
TRIBUNAL JUDGE**

Release date: 21st NOVEMBER 2023