



Neutral Citation: [2024] UKFTT 00540 (TC)

Case Number: TC09210

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Plymouth

Appeal reference: TC/2022/14219

STAMP DUTY LAND TAX – whether residential or non-residential rates apply – whether previous owners used property as “hotel or inn or similar establishment – yes – whether grounds used for commercial agricultural purposes – no – appeal allowed.

Heard on: 20 and 21 May 2024

Judgment date: 19 June 2024

Before

**TRIBUNAL JUDGE AMANDA BROWN KC
JULIAN SIMS**

Between

ANNE-MARIE HURST

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mrs Hurst

For the Respondents: Mr C Thompson-Jones litigator of HM Revenue and Customs’
Solicitor’s Office

DECISION

INTRODUCTION

1. This is an appeal brought by Mrs Anne-Marie Hurst (**Appellant**) in respect of a closure notice dated 17 August 2022, issued by HM Revenue & Customs (**HMRC**) pursuant to paragraph 23, Schedule 10 to Finance Act 2003 (all statutory references are to Finance Act 2003 unless otherwise indicated), in which they concluded that the residential rate of stamp duty land tax (**SDLT**) was due on the purchase of Sortridge Manor (**Property**). The Appellant had declared SDLT on the purchase at the non-resident rates. The closure notice increased the Appellant's assessment to SDLT by £47,750.

BACKGROUND

2. The Property is a 16th century Grade II listed manor house in Devon. On 27 July 2021 a contract for sale was agreed between the Appellant and the previous owners and the freehold was transferred for £1,800,000 on 12 August 2021.

3. On 12 August 2021 the SDLT return for the transaction was completed and filed on the basis that, on 12 August 2021 (the effective date of the transaction (**EDT**)) only part of the Property was used for residential purposes such that the rate at which SDLT was due was to be determined in accordance with Table B of section 55 and not Table A. The Appellant considered that the non-residential rate under Table B was appropriate because the Property did not meet the definition contained in section 116 of a residential property because either: a) the Property had been used as a hotel or inn or similar establishment; or b) by reason of an agricultural agreement pursuant to which a farmer used part of the grounds for grazing and hay harvesting and to provide ready access to other land tenanted/used by the farmer.

4. HMRC opened an enquiry into the return on 26 April 2022 and following correspondence with and the provision of information by the Appellant, on 17 August 2022 HMRC issued the closure notice.

5. The Appellant made an in-time appeal to HMRC who, following the issue of a view of the matter letter, upheld the decision on review. The Appellant notified her appeal to the Tribunal 9 days late. Whilst her appeal was strictly out of time HMRC did not object to the appeal being heard. As the delay was short, in the context of a 30 day time limit, we did not consider the delay to be serious (though a failure to adhere to a statutory time limit will always be significant) and applying the relevant test in respect of accepting a late appeal we determined that the appeal would be admitted.

THE LAW

6. Section 42 charges SDLT on "land transactions". Land transactions are defined in section 43 as being the acquisition of a chargeable interest in the main subject matter together with any interest or right appurtenant or pertaining to the interest so acquired (section 43(6)). Section 48 defines a chargeable interest as "an estate, interest, right or power over any land in England."

7. The rate at which SDLT is charged in respect of any particular land transaction depends on whether the interest acquired is an interest in residential property or not. Section 116 provides the definition of residential property:

"(1) In this Part "residential property" means:

(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)

And “non-residential property” means any property that is not residential property.

(2) For the purposes of subsection (1) a building used for any of the following purposes is used as a dwelling:

(a) residential accommodation for school pupils

(b) residential accommodation for students other than accommodation falling within section (3)(b);

(c) residential accommodation for members of the armed forces;

(d) an institution that is the sole or main residence of at least 90% of its residents and does not fall within any of the paragraphs (a) to (f) of subsection (3).

(3) for the purposes of subsection (1) a building used for any of the following purposes is not used as a dwelling:

(a) a home or other institution providing residential accommodation for children;

(b) a hall of residence for students in further or higher education;

(c) a home or other institution providing residential accommodation with personal care ...

(d) hospital or Hospice;

(e) a prison or similar establishment;

(f) a hotel or in or similar establishment.

(4) Where a building is used for a purpose specified in subsection (3) no account shall be taken for the purposes of subsection (1)(a) of its suitability for any other use.

8. Section 55(1B) provides that the rates of SDLT applicable to a transaction consisting entirely of residential property shall be taxed at the rates specified in “Table A” and if the transaction “consists of or includes land that is not residential property” that the rates in Table B shall apply.

THE ISSUE TO BE DETERMINED

9. In the present appeal there are two narrow issues to be determined.

10. The parties are agreed that the Property is suitable for use as a dwelling meeting the provisions of section 116(1). However, and by virtue of section 116(3)(f) and (4) the Appellant contends that as, on the EDT, the Property had been used as a “hotel or inn or similar establishment” (**HISE**) no account is to be taken of its suitability for use and collateral use as a dwelling. HMRC contend that the Property was not used and/or there is insufficient evidence of it being used as an HISE. We must determine the meaning of HISE and whether, on the facts of this case, the Property was used as an HISE by the previous owners.

11. The Appellant also contends that she is entitled to pay SDLT by reference to the rates in Table B because part of the Property, the meadow, does not constitute its grounds within

section 116(1)(b) as it was used by a farmer under a commercial lease/licence and the price was therefore paid for the dwelling and non-residential property. HMRC say that any arrangement with the farmer was a barter of convenience and that the meadow is part of the grounds of the dwelling. We must determine, on the facts whether the meadow is part of the grounds of the dwelling or used for commercial purposes.

12. After the issue of the closure notice the Appellant also raised an alternative contention that of the £1,800,000 paid to the vendors £100,000 had been paid for assets associated with the business and not paid as consideration for the Property. That is not a matter which we have the jurisdiction to determine. Our jurisdiction is limited to “the matter in question” as defined in section 49I Taxes Management Act 1970. As confirmed most recently by the Upper Tribunal in the matter of *Shinlock Ltd v HMRC* [2023] UKUT 107 (TCC) the matter in question in relation to an appeal against a closure notice is the conclusion notified in the closure notice (albeit not limited to a stated reason for that conclusion) and the associated amendment arising from such conclusion. As HMRC have never considered whether the consideration paid under the contract for purchase of the Property included any other assets there can have been no conclusion as to the correct valuation of the Property for SDLT purposes. We informed the Appellant at the hearing that we could not therefore consider this argument.

LEGAL TEST FOR “HOTEL OR INN OR SIMILAR ESTABLISHMENT”

13. There is no dispute between the parties that at the EDT the Property was a building suitable for use and in fact used as a dwelling and thus meets the description of a residential building as provided in section 116(1) unless excluded by virtue of subsections 116(3) and (4). They agree that if it can be shown, by reference to a multifactorial assessment, that the Property was “used as a hotel or inn or similar establishment” at or immediately before the EDT then it is not a residential building for SDLT purposes and is therefore chargeable to SDLT at the non-residential rate in Table B.

14. However, there is a dispute as to how the section 116(3)(f) is to be interpreted (which we deal with here) and as to the facts (which we address below from paragraph 47.).

Appellant’s submissions

15. The Appellant’s case is simply put: she contends that whether the Property was used as a HISE is purely a question of fact. She contends that the statutory provision uses language bearing its ordinary meaning as explained by HMRC is the guidance issued in connection with VAT: VATLP13360 which sets out the factors to be considered when determining when a property owner is granting the right to occupy a “hotel, inn, boarding house or similar establishment”.

16. The Appellant also relies on the judgment of this Tribunal in *Goode Cuisine Company Limited v HMRC* 2018] UKFTT 163 (TC). That case did not concern whether SDLT was due under Table A or Table B but whether alternative provisions requiring a higher rate of SDLT applied. The question for determination was whether the taxpayer in that case acquired the property in question with the intention that it be exploited as a source of income in the course of a qualifying trade defined to involve “in its normal course, offering the public the opportunity to make use of, stay in or otherwise enjoy the dwelling as customers of the trade on or at least 28 days in any calendar year” and was thereby relieved from the higher SDLT rate. HMRC had denied Goode Cuisine the relief sought on the basis that once the taxpayer had converted the property as intended for the provision of bed and breakfast accommodation the property would cease to be a dwelling with the consequence that the property would no longer be a dwelling used for a qualifying purpose as defined. In determining that question Judge Beare considered the provisions of section 116(3)(f), concluding that as the property

was to be used for bed and breakfast accommodation it was thereby excluded from the definition of dwelling by virtue of that provision. In so doing, and not without some difficulty, the sought after relief was denied on the basis that the property in question would cease to be a dwelling once it had been converted into a bed and breakfast.

HMRC's submissions

17. Relying on the judgment of Upper Tribunal in *Ladson Preston Limited and another v HMRC* [2022] UKUT 00301 (TCC) (**Ladson**) at paragraph 30 HMRC contend that the charge to SDLT is intended to be “capable of straightforward application without the need for a detailed factual enquiry into matters that might be uncertain, such as relevant persons’ subjective intentions as to the future use of the land.”

18. Reliant on the Court of Appeal judgement in *Fanning v HMRC* [2023] EWCA Civ 263 (**Fanning**) at paragraph 30 (quoting from the Court of Appeal judgment in *Pollen Estate Trustee Co Ltd v HMRC* [2013] EWCA Civ 753) HMRC contend that we are to apply a purposive interpretation to the language of the provision i.e. we are to have regard to the purpose of the provision and interpret its language, so far as possible to give effect to its purpose. We are to determine the nature of the transaction to which the taxing provision is intended to apply and then to decide whether the actual transaction answers the statutory description. In doing so we should seek to avoid an absurd result (see *Fanning* paragraph 31 quoting from the Court of Appeal judgment in *Eynsham Crickey Club v HMRC* [2921] EWCA Civ 225).

19. In this context it was submitted that the word “used” could not be given a meaning which permitted any use of the Property for the provision of accommodation for paying guests, however small, so as to escape the higher residential SDLT rate. They contend that the use of a property as a dwelling is not one which can easily be changed and should not be fluid. A definite and clear change of use to a HISE should be objectively determined, definite and continuous.

20. We are invited to consider the multifactorial exercise we must undertake from the standpoint of the “objective observer” by reference to the following factors:

- (1) Whether the property is a commercial establishment by reference to the following:
 - (a) The location and nature of use
 - (b) Availability of the accommodation offered and level of turnover achieved
 - (c) Whether the accommodation was in regular and continuous use as short term accommodation
 - (d) The branding marketing and advertisement of the property
 - (e) If there is accommodation for multiple guests
 - (f) The amount of the property used.
- (2) Whether furnished sleeping accommodation is supplied and the quality, number and type of rooms offered.
- (3) Whether there is a level of business administration provided typical to that in the hotel sector including but not limited to the level of supervision, employment of staff and accounting and reservation systems.
- (4) Whether non-resident facilities are provided including restaurant, bar, gym, swimming pool, car parking and public access to reception.

- (5) Whether services are supplied for guest use i.e. laundry, communal TVs, public toilets, concierge.
- (6) Whether adaptations were carried out specifically for the benefit of guests including installation of en-suite facilities, fire precautions etc.
- (7) Whether the property is registered as a business with appropriate certifications for operation including licencing food standards and rated for business rates.
- (8) Whether the property is the sole or main residence of the proprietor.

21. HMRC accepted that the above list was not derived from any particular source and, to an extent, reflected the matters with which they take issue in the present case. However, they contended it was a sensible framework to be used to determine whether the use of the Property was as an HISE or solely as a dwelling.

22. During the hearing we invited Mr Thompson-Jones to address us on the appropriateness of referring to VATLP11360 in light of the judgement of the Court of Justice of the European Union in *Elisabeth Blasi v Finanzamt Munchen I* C-346/95 and the Court of Appeal in *HMRC v FortySeven Park Street Ltd* [2019] EWCA Civ 849 (**47PS**). We did so in part because of the Appellant's reliance on VATLP11360 but also on the basis that we considered that Parliament's adoption of an all but identical statutory phrase was unlikely to have been coincidental. We were concerned to understand how the same words should be construed within a broad context of two transaction taxes. We note that under Item 1 Group 1 Schedule 9 Value Added Taxes Act 1994 (**VATA**) the granting of an interest in land is exempt from VAT unless the grant is of a type excluded from exemption. One of the exclusions is for an interest granted in a "hotel, inn, boarding house or similar establishment, of sleeping accommodation or of accommodation in rooms which are provided in conjunction with sleeping accommodation or for the purpose of a supply of catering". Note 9 to Group 1 describes a similar establishment as including "premises in which there is provided furnished sleeping accommodation, whether with or without the provision of board or facilities for the preparation of food, which are used by or held out as being suitable for use by visitors or travellers". For SDLT the transaction in question is not the right to sleeping accommodation but the more substantive rights of ownership in the whole property but the HISE exclusion is by reference to having used the property in a way which would fall outside the exemption for VAT purposes and, in our view, there was at least some read across.

23. In *Blasi* the CJEU concluded that the provision of accommodation in fully furnished rooms with cooking facilities and in respect of which bedlinen and communal (but not room) cleaning facilities were provided by the property owner was accommodation which was taxable under the exclusion from exemption in respect of "hotel, inn, boarding house or similar establishment". In **47PS** the Court of Appeal determined that supplies of fractional interests in a property with the services and amenities of a hotel were excluded from exemption because they represented an active rather than passive exploitation of property and that the property a similar establishment to a hotel, inn or boarding house.

24. Mr Thompson-Jones accepted that VATLP11360 could appropriately be used as a starting point when considering what a HISE was. He noted that the phrase chosen by Parliament in 2003 was not identical to that used in Group 1 Schedule 9. In particular, that "boarding house" had not been included and the more expansive description requiring the provision of sleeping accommodation was absent.

25. He also submitted that the nature of the taxes and thereby the purpose of the legislative provisions would drive different conclusions as to the correct interpretation of the respective provisions. It was contended that as a tax on transactions in which the default position was

taxation and to which exemption under Group 1 was therefore an exception it was appropriate to construe “hotel, inn, boarding house or similar establishment” expansively but that was not the case for SDLT.

26. Relying on *47PS* and its reference to *Régie communale autonome du stade Luc Varenne v Belgium* C-55/14 HMRC accepted that both for VAT and SDLT purposes it was relevant to consider whether the exploitation of the property was passive or active. The greater the enhancement of a guest’s stay with services provided by the property owner/operator, the more likely a conclusion that there was a business operation akin to a hotel, inn or similar establishment. However, it was submitted that for VAT the identification of active exploitation was critical as what was being assessed was the activity of exploitation (i.e. the services provided by the supplier) whereas for SDLT there was a more fundamental assessment of the nature and extent of the use of the Property.

27. HMRC challenged a conclusion that satisfying the tests listed in VATLP11360 could be sufficient to establish that the Property had been used in the sense required for section 116(3)(f) to apply. Particularly as subsection (4) permitted any other use or suitability of use to be disregarded and the property to be treated as non-residential. HMRC contended that it was entirely inappropriate to consider the subjective purpose of the previous owners and any evidenced intention to run a boutique hotel or B&B. What was required to be established was whether, objectively, the Property had been so used in a substantive sense preceding the EDT and that such use had not ended.

28. Mr Thompson-Jones considered *Goode Cuisine* to be of no material assistance to us as it concerned relief for a qualifying trade carried on from a dwelling.

Discussion

29. We accept HMRC’s submission that we are to interpret the provisions of section 116 including the interaction between subsections (1), (3) and (4) purposively. We understand that the intention of Parliament in enacting the higher residential rate for SDLT is to tax residential property at the rates prescribed in section 55 Table A and non-residential property at the rates specified in table B by reference to the nature of the property which is acquired as a result of the relevant land transaction. Unlike VAT there is no presumption of taxation under Table A requiring a wide interpretation of residential property and a narrow construction of what is to be included within non-residential. However, consistently with the judgment in *Hyman and Goodfellow v HMRC* [2022] EWCA Civ 185 we are not to interpret the broad language of the definition of residential property in a way which narrows its application.

30. We start with considering the structure of section 116. Section 116(1) provides that a building that is used or suitable for use as a dwelling (including the land representing grounds or garden and any rights benefiting the building) is residential property. Pausing there, if it looks like a dwelling and is used or suitable for use as a dwelling it will meet the terms of section 116(1).

31. That definition is then extended by the provisions of section 116(2) to include buildings used to provide residential accommodation for school pupils, students (other than halls of residence) and the armed forces. We consider that these provisions ensure that a building that may not have the most common characteristics of a dwelling in the ordinary sense of the word are nevertheless expressly scoped into residential property. Thus, they may not have the objective characteristics of a dwelling but will nevertheless be treated as such for SDLT purposes.

32. However, the definition of residential property is then narrowed by reference to the provisions of subsection (3). Buildings meeting the characteristics of a dwelling which are used for any of the listed purposes, including as a HISE, are scoped out of residential property.

33. During the hearing we discussed with the parties how, for example, the provisions of section 116 would apply to a particular hotel in Plymouth. That hotel is a comparatively newly constructed/redeveloped property which has none of the usual characteristics of a dwelling externally or internally. But it provides sleeping accommodation to those visiting Plymouth. The rooms provide ensuite accommodation and there is a bar/reception that provides breakfast and food and drink throughout the day and the facility to play board games. There is also a gym. Rooms are cleaned daily.

34. In light of that discussion, it is our view that a hotel of this type would be determined as non-residential applying section 116(1) alone as it is not a building, and the rooms are not part of a building, used or suitable for use as a dwelling in the ordinary sense. In this context we have regard to the House of Lords judgment in *Uratemp Ventures Ltd v Collins* [2001] UKHL 43. That case concerned whether a hotel room was “let as a separate dwelling” for the purpose of determining whether the occupant was a protected tenant. The House of Lords determined that for the purposes of section 1(1) Housing Act 1988 “dwelling” was not a term of art, but a familiar word ordinarily used to connote a place where someone lives, regarding and treating it as home with the associated amenities. Whilst a hotel, of the type we discussed, might offer the facilities associated with a dwelling (a place to sleep, facilities for personal hygiene, and a place to eat, though not necessarily cook) they would objectively be more likely to be considered to be a place where someone stayed rather than where they lived or saw as home.

35. In our view subsection 116(3) applies to scope out of the definition of residential property a building which has all the ordinary characteristics of a dwelling, but which is nevertheless used as a HISE.

36. The HMRC guidance on section 116(3)(f) as contained in SDLTM00375 “Scope: what is chargeable: land transactions: residential property – special types of accommodation” provides:

“Hotels, Inns, Bed and Breakfast or similar establishments

Cases involving bed and breakfast establishments or guest houses will be treated on their own merits. However, a bed and breakfast (B&B) establishment which has bathing facilities, telephone lines etc. installed in each room and is available all year round would be considered non-residential, in line with s.116(3)(f) which states that “a hotel or inn or similar establishment” is not used a dwelling.”

37. As indicated, there is more substantive guidance in VATLP11360 setting out HMRC’s position on “What is a ‘similar establishment’ to a hotel, inn or boarding house?: characteristics and functions associated with hotels, inns and boarding houses.” This guidance concerns how HMRC will determine the VAT liability of supplies from such establishments ensuring the taxation of services involving the active (as distinct from passive) exploitation of land and property.

38. VATLP11360 sets out a list of characteristics and functions often associated with hotels, inns and boarding houses:

(1) The accommodation is provided on a temporary basis generally to those who are away from home.

- (2) The provision of accommodation is the main purpose/commercial exploitation of the property by the owner.
- (3) Accommodation is generally provided on a non-selective basis i.e. “persons who turn up and can pay”.
- (4) Usually but not necessarily provide breakfast.
- (5) Sleeping accommodation is provided with a range of services and facilities including cleaning, laundry, etc.
- (6) Residents normally enjoy a degree of privacy with lockable rooms.
- (7) Normally a resident manager or proprietor on the premise at all time.
- (8) There will normally be a booking service.

39. After careful reflection we consider that Parliament’s use of the phrase “hotel, inn or similar establishment” in section 116(3)(f) was intended to exclude from the definition of residential property a commercial enterprise involving the provision of sleeping accommodation to paying guests together with the provision of additional amenity over and above the pure sleeping accommodation and that there is a significant overlap between the test to be applied under section 116(3)(f) and Item 1 Group 1 Schedule 9 VATA though they are not synonymous. As HMRC accept it is therefore not inappropriate to consider the range of factors identified in VATLP11360 in determining whether a supply associated with the provision of sleeping accommodation would be subject to VAT when considering whether the property from which such supplies are made is operated as a HISE at least as a starting point. We anticipate that where the supplier of such services has sufficient turnover to be registered for VAT it is unlikely that HMRC would even dispute that for SDLT purposes a property offering such services was non-residential. Where the business is not of sufficient size to be VAT registered that does not, in our view, preclude a conclusion that the property is an HISE, if appropriate services are provided. However, plainly, where there is a level of use/operation which is sufficiently insignificant it may well preclude a conclusion that the property in question is used as a HISE.

40. Where that line is drawn is not to be determined by way of a fixed test with any particular factor being conclusive but whether a particular property has been used as a HISE will be determined by an objective assessment of all the facts and circumstances to determine in an ordinary sense, whether the property was used to provide sleeping accommodation with additional amenities commonly provided by hotels, inns and similar establishments which we would consider plainly includes bed and breakfasts (as apparently accepted by HMRC by reference to their guidance SDLTM00375).

41. Given that it is the purchaser who is liable to SDLT and, in accordance with the guidance/direction provided in *Ladson*, the task for us is not to undertake a detailed factual enquiry into matters that might be uncertain or difficult to ascertain but to assess the evidence available to us objectively determine how the previous owners actually used the Property. In the context of a HISE which offers services to the public that should be ascertainable from publicly available information and without recourse to the previous owners. However, it will be open to any Appellant to supplement such publicly available evidence with such other evidence as they have in their possession.

42. Once it is determined that the property in question has been relevantly used as a HISE then, the consequence of section 116(4), is that its suitability and/or partial use as a dwelling is ignored. We consider that the effect of section 116(4) requires us to be cautious to ensure that the commercial use as a HISE is sufficient to justify that consequence. However, such

caution is part of the overall assessment and challenge in the multifactorial exercise as, by reference to cases such as *Sloss v Revenue Scotland* [2021] FTSTC 1 and *Withers v HMRC* [2022] UKFTT 433 (TC) it has been held that Table B rates can apply even when, certainly by reference to the property as a whole and the value of it, commercial use is not significant.

43. Once a HISE the property is excluded from the definition of dwelling until it is no longer so used but is nevertheless suitable for use and/or used as a dwelling. This conclusion is consistent with that reached in *Goode Cuisine*. We therefore agree with HMRC that there will be some degree of permanence necessary for the use of a property to move from exclusively residential to used as an HISE but that requirement does not, in our view, preclude it ceasing to be so used or require the level of permanence intimated by HMRC.

RELEVANT TEST TO BE APPLIED TO THE AGREEMENT WITH THE FARMER

44. The test to be applied in determining whether the Property is non-residential by virtue of the arrangements for use of the meadow by a farmer is comparatively settled.

45. A summary of the test to be applied is set out in *Faiers v HMRC* [2023] UKFTT 212 (TC) (at paragraph 44). Where a property has significant grounds, they will be considered to be “of” the dwelling (and thereby treated as residential property) where, having carried out a multi factorial assessment of all the evidence it is established that the grounds are in common ownership and continuous with the dwelling and are not used for a purpose separate from and unconnected with the dwelling, usually for a commercial purpose.

46. As I determined in *Modha v HMRC* [2023] UKFTT 783 (TC) where the owner of a dwelling with grounds enters into arrangements for the management of pasture in circumstances which represent a barter of convenience i.e. it suits the owner of the dwelling to permit someone else to manage the pasture thereby avoiding the need to pay someone to do it, in return for a small payment from the farmer who also benefits from having a low cost place to graze animals or access to grass/hay the arrangements will not represent a separate and unconnected use of the land/grounds.

EVIDENCE

47. We were provided with a substantial bundle of documents in a hearing bundle, a supplementary bundle and some additional loose documents handed up at the hearing. The Appellant also provided a witness statement and “statement of case” in which she explained the use to which she understood the previous owners had put the Property.

48. HMRC did not ask the Appellant to give sworn testimony. Mr Thompson-Jones was reminded that he should ensure that any evidence contained in the Appellant’s witness statement or in the oral narrative provided to the Tribunal and which was not accepted by HMRC was to be challenged by questions put to the Appellant and that otherwise we would accept what was in the statement and said as unchallenged evidence. Though the hearing was conducted relatively informally and in a more discursive way than might have been the case had the Appellant been sworn and formally cross examined we were careful to ensure that Mr Thompson-Jones was given full opportunity to challenge evidence as necessary. In the main he did not choose to do so.

49. We did not have evidence or a statement from the previous owners. As indicated we do not consider this to be necessary. We did however, have indirect evidence of conversations between the Appellant and the previous owner and we had contemporaneous online reviews provided by customers of the previous owner. Under the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 we have wide powers to admit evidence which might be excluded in other court proceedings. As such, we are entitled to admit hearsay evidence without the formalities required for its admission in other courts. We are entitled to place

such weight on hearsay evidence as we consider appropriate in accordance with the overriding objective to deal with matters justly and fairly.

50. We note that in light of our conclusion on the test to be applied in determining whether the subject matter of a chargeable interest meets the requirements of section 116(3)(f) it will almost inevitably be the case that the Tribunal will need to determine the use to which a property is put by reference to circumstantial (i.e. public sources of evidence) and/or hearsay evidence. Sometimes the circumstantial evidence will lead to an obvious answer as to the use to which a property was put. But where it is not clear the Tribunal will need to assess the evidence in the round as best it is able and it is likely that in doing so will need to give weight to hearsay evidence.

Appellant's evidence

51. The Appellant has a range of experience and qualifications. Relevantly, her career history includes time spent working as the entrepreneur in residence at Oxford Innovations and with the big four accountants where she acted as an advisor to small and medium sized businesses. As a consequence, she has a strong familiarity with how to assess the viability of a business and did not therefore need to appoint advisors to assist her in assessing the commercial viability of the purchase of the Property, she could use her own knowledge and assessment of the Property as it was presented and the information she was provided.

52. Prior to the purchase of the Property the Appellant had lived in a manor house in Cornwall which she operated as a wedding venue and from where holiday accommodation was provided. She also has a business making herbal sparkling wine.

53. She was approached by the estate agent selling the Property before the marketing material was complete and prior to any formal steps to market it were taken because the agent was aware of her interest in purchasing premises of the type offered at the Property from which she could live and continue to operate a similar business to that operated in Cornwall. She was told that the previous owners wanted to sell quickly for family reasons.

54. The Appellant first visited the Property on 27 May 2021. On viewing the Property the Appellant considered that it was a highly attractive business opportunity. She subsequently visited for a longer meeting with the former owners on 1 June 2021 at which the former owners explained that they had purchased the property in 2019 intending to invest and upgrade the building so as to operate it as a bed and breakfast/boutique hotel.

55. In the period in which they had owned the Property (approximately 18 months) the improvements made included the installation of a fire alarm system of the standard required to operate such a business, the upgrade of the heating and hot water system so as to provide operational resilience, redecoration, refurbishment of doors and windows, the installation of appropriate internal locks, TVs in each bedroom, the installation of facilities to provide a commercial kitchen and the conversion of two rooms to add two bathrooms. Some of the works required listed buildings consent and so could not be carried out immediately but the works were progressively undertaken in the early part of the covid lockdown.

56. The Appellant explained that the aesthetic of the fire detection system installed impacted on the Property. Fire exits have large lit green signs above them and there is internal floor level light guides to the fire exists.

57. The previous owners told the Appellant that they had maximised the opportunity for operating the business through the summer of 2020 when covid restrictions were eased though they only offered accommodation to one group of people at a time by reference to the then constraints of the property as investments were made to upgrade it and so as to comply with what they understood to be the relevant covid restrictions applying to them at the time.

58. They explained that their vision was to provide high quality sleeping accommodation with access to home comforts, provision of breakfast and dinner cooked from home grown ingredients to a high standard. This was facilitated as one of the previous owners was a trained chef.

59. The Appellant explained that as a consequence of the works undertaken the Property was suitable for use for bed and breakfast accommodation by three groups of people, in her view most probably families. As there were six luxury bedrooms located in pairs with each pair having access to a bathroom.

60. At the meeting the Appellant discussed the rates achieved and what services were offered by the previous owners in addition to the letting of sleeping accommodation. The Appellant explained that she was surprised at the rates that had been achieved which were comparable to those charged by another local high-end hotel in a listed building. The previous owners put this down to the setting and the quality of experience including the food provided by them.

61. The previous owners informed her, and she confirmed, that the company of which the previous owners were shareholders and directors was registered with a business categorisation of providing holiday accommodation and was registered for VAT.

62. The Appellant made an offer on the Property on 2 June 2021.

63. The Appellant met with the previous owners on two further occasions prior to exchange of contracts. On these visits the parties agreed what fixtures and fittings could and would remain to give the Appellant the opportunity to ensure that pre-booked guests could continue to be accommodated. Included within the purchase of the property was some furniture (wardrobe, chest of draws, sofa bed, coffee tables, mirrors) and some soft furnishings including cushions.

64. She also met with the staff who provided full time/daily cleaning and managed the garden.

65. On 19 July 2021, shortly before exchange of contracts, the Appellant captured 27 reviews posted by customers of the business operated by the previous owners. The Appellant's view (based on her experience in the hospitality industry) was that these reviews were quite exceptional as the previous owners had achieved a google 5/5 and booking.com 10/10 rating across all reviews in the period of ownership.

66. On the basis of these reviews and the information otherwise obtained the Appellant was satisfied that the Property represented a suitable place from which to operate a hospitality business. However, she did not make a commercial acquisition of the business because by July 2021 she considered that the principal value of the business was in the fixtures and fittings which came with the Property. She considered that any goodwill (the asset most commonly giving value to a business) was, in any event, likely to be linked to the previous owners' personal reputation and therefore not transferrable.

67. She also agreed with the previous owners that she would like to take ownership of the web domain names used to advertise the Property.

68. After purchasing the Property the Appellant considered perpetuating the business offered by the previous owners but concluded that she could not do so as she did not have the skills to provide in-house catering and was not confident at that time that she could commercially justify the employment of a chef/cook.

69. Rather, she determined to continue a business more reflective of that provided from the Cornwall property. She negotiated her mortgage on the basis that the Property would be used

to provide holiday accommodation and she annexed approx. 30% of the Property to offer self-catering accommodation. The holiday accommodation is let under the name Leat House which offers its own external access, 3 bedrooms, living and dining room, kitchen and bathroom. The bedrooms and bathroom were ones which were redesigned/installed as part of the permitted development. She removed the commercial kitchen that had been installed by the previous owners and replaced it with a domestic kitchen more suitable for self-catering holiday accommodation.

70. Having so decided she continued to engage the gardener on a self-employed basis, but the cleaner found alternative employment. The Appellant found an outsourced cleaning company. She also decided that she did not need booking management software previously used by the owners and which enabled them to take bookings directly and interface with the booking agents.

71. In August 2021 the previous owners had already taken a small number of forward bookings from those wanting to stay at the Property. Having decided not to offer a bed and breakfast/dinner service the Appellant contacted those with bookings and offered accommodation only services. Three of the bookings proceeded on that basis but the others (at least two) cancelled.

72. The Appellant explained she applied to North Devon Council to split the property for rating purposes such that business rates were paid on Leat House and council tax on the rest of the Property. She explained that as she understood it there was no need for either for herself or the previous owners to have made such an application as business rates are not payable on guest accommodation unless more than 50% of the building is used for that purpose and/or there are more than 6 paying guests at any one time. She said that paying business rates might be commercially attractive in some situations but with regard to the Property it was assessable to council tax in band H irrespective of the business rates. Thus, she anticipated that particularly during covid when, as she understood it from her conversations with the previous owners, they were only able to have one couple or family in the Property at any one time there was no need to apply for business rates. She considered that any decision not to do so (whether passively or actively taken) did not suggest that the previous owners were not running a business. She did not explain her reasons for making the application but we note that for our purposes it is not relevant.

73. The holiday letting business has been successful generating over £23,000 of income in the first 12 months after purchase.

74. With the holiday accommodation business running alongside the sparkling wine business the Appellant did not need to establish the Property as a wedding venue but has run a small number of conferences and events including photo shoots from the Property.

75. After taking over the Property the Appellant established that a farmer had used the meadow for a period of at least 8 years prior to the purchase on an informal basis. The Appellant formalised the arrangement from 1 September 2022 pursuant to which the tenant paid £500 annually.

Review of documents

76. In the paragraphs below we review the documents available to us which assist us in determining the use of the Property at the EDT. We note that when reaching the conclusion communicated in the closure notice and on review HMRC excluded some documents produced by the Appellant on the basis that they related to the use to which she put the property but also justified their decision that the property was a residential property by reference to other documents which similarly related to the post EDT ownership. The

Appellant was concerned that HMRC had not fairly considered all documents provided by her.

77. As we are exercising a full appellate jurisdiction in this appeal we must determine for ourselves, on the evidence, whether the Property is residential or non-residential on 12 August 2021. In this regard therefore we have not considered documentation which relates to the Appellant's ownership i.e. we have not considered as relevant the Appellant's insurance cover, the agreement put in place between the Appellant and the farmer, the Appellant's mortgage application, reviews of the accommodation provided at the Property after EDT or her application for business rates. We have however, considered the mortgage valuation document as it reasonably represents the valuers' assessment of the Property at the EDT.

78. We had access to the office copy entries and other title documents which demonstrate the size and nature of the plot and that John Isitt and Gary Nolan purchased the Property 15 November 2019.

79. There is evidence from the planning register that on 24 July 1975 Devon County Council granted planning permission for the change of use of the Property to from residential to residential and guest house. The permission was conditional on the carrying out of certain works including the construction of a recessed and splayed access. There was nothing before us which indicated that the relevant works were not undertaken.

80. By reference to a Design/Access and Heritage Statement prepared in support of a listed buildings consent application date 12 March 2020 the previous owners applied for works to be carried out to the property. Consent was required for "reopening a former internal doorway using/not modifying existing structural elements to create an ensuite bathroom and addition of a downpipe to the side of the front porch.". The Statement describes the "current use" of the property as:

"a detached 11 bedroom, private residential dwelling consisting of 2 bedrooms on the third floor, 9 bedrooms, three bathrooms, a darkroom, workshop and landings on the second floor. Kitchen, study, living room, dining room, library, utility space and refectory on the ground floor."

81. The works were described as including 1) creating an ensuite bathroom for bedroom A and 2) change of use of the small room above the front porch to a bathroom for a high status bedroom (B) at the front of the house. Planning consent was granted for the works on 13 October 2020.

82. We were provided with extensive documentation concerning the fire alarm system as the parties disputed whether it was a domestic or commercial system.

(1) The quotation for installation identified the system as designed as LD1 BS5839 part 1 pursuant to which smoke and heat detection apparatus was to be installed in all circulation space and in almost every room. The plan attached to the quote noted that three bedrooms were private bedrooms and in occupation by the previous owners. The commissioning certificate dated 29 July 2020 confirms that the system installed was a part 1 system.

(2) In correspondence, and in response to a question from the Appellant regarding suitability for commercial use, but contrary to the commissioning certificate, the alarm fitter stated that the system was a BS5839 part 6 LD2 system. However, when further questions were raised, he confirmed that the system was LD1 and suitable for commercial premises.

(3) The BSI Standards Publication for fire detection and fire alarm systems for buildings (BS5839) states that part 1 systems are for non-domestic premises and part 6

for domestic premises. Part 6 is stated to apply to self-catering holiday accommodation occupied by not more than 10 persons and premises with short-term paying guests in the home of the resident operator with not more than eight guests.

83. We had access to plans of the first two floors of the Property which were attached to the Design/Access and Heritage Statement, the fire alarm installation quote and a page of property particulars on the sale of the Property to the Appellant. The copies were not all clear, but it is apparent that following the works for which planning consent was obtained there were three pairs of rooms with en-suite or exclusive bathroom use plus three bedrooms marked as private and for the use of the previous owners with separate bathroom access. We note that Leat House, was annexed from the remainder of the house by the Appellant using what had been referred to as bedroom A in the design and access statement together with its bathroom which was accessible directly from bedroom A and from the corridor thus giving access from the associated bedroom. The kitchen that had been used by the previous owners and referred to as the commercial/second kitchen became part of the Leat House along with two reception rooms one of which, at sale, was described as the library/tv room.

84. On 19 July 2021 the Appellant captured information from a number of websites. These websites listed facilities provided at the Property including on-site parking, wifi, TVs, and, during covid, the ability to choose not to have the room cleaned daily, thereby at least inferring that daily cleaning was standard.

85. The websites also showed 27 reviews relating to stays at the Property prior to that date and in the period in which it was owned by the previous owners. The overall google rating arising from these reviewed is 5/5 and on booking.com the score was 10 (out of 10). For 2021 the Property was awarded a Traveller Review Award.

86. All the reviews were effusive and complementary of the experience. Some provided particularisation of the property and experience. We set out below relevant extracts from these reviews:

“A Kot - Fabulous place with wonderful hosts. Beautifully decorated bedroom suite with a luxurious bath scrumptious breakfast - all served up with warm hospitality.

Matt Coley – Our stay was not just one of the best from a bed and breakfast we've experienced, but the room was also of a quality that wouldn't have been out of place in a 5 star hotel. ... the hosting was spot on, John and Gary were there when you needed them but never felt as though they intruded at anytime. Upon arrival we were offered some homemade lemon drizzle cake and a cup of tea in an immaculately presented lounge. John recommended walk that we could start directly from the Manor that afternoon which gave us a first taste of Dartmoor. The just cooked by jaune perfectly set up our long days walking on Dartmoor. High quality local ingredients and some great touches in the form of homemade jams and marmalades finished off with a side of blueberries from the garden. On our second morning we went for kippers and the mushrooms on toast, a breakfast we would expect to pay a premium for if eating out. A special mention to the evening meal cooked by host jaune on the second evening. Food all restaurant quality and highlighted with garden produce an innovative side plates. The desert [sic] of shortbread crumble with garden fruits was “home cooking” at its best. We loved the location. The house and gardens surrounded by beautiful views and set amongst 7 acres of beautifully presented gardens. The rooms were decorated with great taste and have been recently furnished, The Super king bed was a luxury and the roll top bath perfect to relaxing after a long day out. The extra touches around the Tudor Manor were highly appreciated

and we felt we weren't wanting for anything. I would 100% recommend booking Sortridge Manor for a relaxing retreat in the country. We will definitely be returning.

David Redbond – My wife and I have stayed in many boutique and small hotels/B&Bs the world over. For me this was the best so far in the UK. Admittedly we were the only guests at the time during the opening year which coincided with COVID-19 but the hosts, room, house, gardens, service, breakfast and nature were all superb. ... We rarely return but shall definitely be returning to see John and Gary and experience their wonderful home again.

Rod Wafer – Our four night stay at tranquil Sortridge Manor was excellent in all ways! Nothing was too much trouble for our delightful hosts. Our suite was huge and beautiful with an enormous comfortable bed and sumptuous bedding, and a roll-top bath was a treat! The extensive gardens are stunning and in addition to a feast for the eye the walled vegetable garden provides a feast of organic fruit and vegetables which we enjoyed at breakfast and with add delicious home cooked evening meals. I was delighted to know this included gluten free options the ancient Manor house has delightful twists of modern decor and art a wonderful way to keep this historic building alive to be enjoyed by many.

Tristan - a wonderful stay with a warm welcome on arrival from our hosts who went above and beyond to make our stay very memorable. We will definitely be staying again when we can. Beautiful buildings, rooms, bathroom and garden. We really enjoyed our veggie breakfast too, with fruit from the garden.

Ann – Excellent Breakfast choice. Fresh produce from the garden. Attractively served.

Hollandish – The lovely hosts and excellent welcome. We received fresh homemade cake and tea on our arrival. Throughout our stay hosts John and Gary made us feel very relaxed and welcome.

87. Included within the bundle was also publicly available information concerning the various covid restrictions in place between 26 March 2020 and the EDT. From these we record that from 26 March 2020 – 3 July 2020 no one was permitted to be away from home overnight. From 4 July 2020 hospitality businesses were permitted to reopen subject to safety guidance and the government advised against gatherings larger than 6. On 5 November 2020 the second national lockdown was brought into force. It was briefly eased over Christmas and reintroduced on 6 January 2021. The stay-at-home order ended on 29 March 2021 and occupation of self-catering accommodation in single family groups was permitted from 12 April 2021. The rule of six or two households allowed for indoor social gathering and indoor venues were permitted from 17 May 2021. Until 17 May 2021 hotels and bed and breakfast accommodation were required to close unless providing accommodation to those unable to return to their main residence, those who needed accommodation whilst moving house, attending a funeral, self-isolating or needed accommodation for work, education etc.

88. We were provided with email correspondence between the Appellant and the previous owners regarding the transfer of web domain names. As sortridgemanor.co.uk and sortridgemanor.uk were due to expire on 9 September 2021 they were not transferred but the Appellant was informed that from that date she would be able to register the domains in her name. Sortridgemanor.com was, however, transferred.

89. As recorded in the contract for sale incorporating standard conditions of sale 5th edition 2018 revision the Appellant contracted to purchase the property on 27 July 2021 and completed the transaction on 12 August 2021.

90. Prior to the EDT the previous owners had taken bookings. There was evidence of communications between the parties who had booked and the Appellant regarding the change of ownership and a willingness to honour the bookings. There is evidence that due to change of dates required in consequence of completion one family who had apparently made two previous bookings which had been cancelled (presumably because of covid restrictions) again cancelled. It is apparent from the email exchanges that the family in question had previously successfully stayed at the property as the email states “we love the place”.

91. The Appellant purchased the Property with the proceeds of sale from her previous property in Cornwall and a lifetime mortgage. The offer and associated valuation are dated 12 July 2021. The valuation report describes the property as over 3 floors with 10 bedrooms, 5 parking spaces and approx. 8 acres of land. No evidence of agricultural use is noted and no commercial use.

92. The Property was described by the estate agents who marketed it in 2021 as “A house that blends five centuries worth of architecture, set on the shore of a famous salmon river in Devon”, “Set in over seven acres within the Dartmoor National Park ... a beautiful period property that comes with its own woodland and wildflower meadow.” The accommodation is detailed as a 6 bedroom, 5 bathroom property and notes “the present owners, who bought in 2019, have added two new bathrooms and generally refurbished”.

93. There is evidence in a review in October 2021 from “Sarah” that the Appellant replaced the kitchen in Leat House. The review references the “brand new sparkling kitchen” that they were the first to use.

94. We were provided with a “to whom it may concern” letter from Mr S Gliddon which states:

“I confirm that I have rented the meadows at Sortridge Manor for the last six years from the two previous owners. I have also rented the same Meadow from Anne-Marie Hurst in 2021 and will do this again in 2022.

I use the meadows to produce hay and to graze my sheep”.

95. In correspondence with HMRC the Appellant repeatedly stated that the garden and the grounds were an integral feature of the business operated from the Property, both by the previous owners and herself, (see emails of 16 May 2022 and 10 October 2022).

96. We were provided with guidance issued by the Valuation Office Agency entitled “A basic guide to the rating of guest houses and bed and breakfast accommodation”. It poses the question “when is a bed and breakfast property domestic?”. The answer provided is:

“the property will be domestic and therefore subject to council tax rather than business rates if:

- you intend not to provide short stay accommodation for more than six people at any one time within the coming year and
- the property is your sole or main residence and the bed and breakfast use is subsidiary to private use”

97. The guidance then provides an explanation of the “subsidiary use test”. The test is stated to draw a distinction between the provision of limited short stay accommodation in a person’s own home and a significant business enterprise. The Valuation Office Agency considers that a significant business enterprise, requiring to be registered for business rates, is

evidenced where: half or more of the property is used for guests, the property is adapted for the benefits of guests which alters the property beyond that of a private house including the installation of ensuite facilities and fire precautions (including alarms). Also considered will be whether the property is open all year round, serves evening meals or has a licence to serve alcohol.

98. We were provided with evidence that the previous owners were directors of a company. The registered office of the company was recorded as at the Property in the period 18 September 2019 to 14 September 2021. The nature of the business of the company was originally market research and public opinion polling and advertising services but was extended to include “other holiday and other collective accommodation” by way of the confirmation statement served on 2 September 2019.

99. Information captured by HMRC from publicly available sources indicates that the company is (or at the relevant time was) “a specialist co-creation and qualitative research consultancy” in the health and wellbeing sector.

100. The accounts of the company were also included in the bundle. These indicated that in 2019 the company was loss making. The original accounts prepared for the year to 31 December 2020 also indicated that the company was loss making but appear to have been restated as those to 31 December 2021 show not only a profit to that year but the comparator year to 2020 also show a profit. We were not provided with the restated accounts for 2020 themselves.

SUBMISSIONS ON THE EVIDENCE

101. The parties’ submissions on the evidence followed what they each proposed as the relevant factors in determining whether the Property was used as a hotel or inn or similar establishment.

Appellants submissions

102. By reference to VATLP11360 the Appellant contended:

(1) The previous owners had provided temporary accommodation to travellers/those away from home. This was, she said, demonstrated by the listings on accommodation booking websites including booking.com.

(2) The only commercial exploitation of the Property was the provision of bed and breakfast accommodation and the previous owners intended to make a profit from the services they offered albeit in the early stages and heavily impacted by Covid. Such use was consistent with the permitted use of the Property. She pointed to the company business classification and its VAT registration to demonstrate that there was a business carried on. By reference to the parts of the building shown as for private use on the fire detection quotation she contended that the main use of the building was, or at least was intended to be, a commercial one; this conclusion was supported by reference to the heating and water capacity. Given the level of service provided to guests it was also contended that it could be argued that the entire Property was devoted to the business as the previous owners needed to live on site to offer the full service provided, a level of service evidenced by the reviews. The absence of registration for business rates was entirely explicable as the business was within the tolerance not requiring such registration but that did not diminish the commerciality of the operations.

(3) The accommodation was provided on a non-selective basis as it was advertised across a range of websites and anyone willing to pay could do so.

(4) Whilst the guidance did not require the provision of breakfast to be considered to meet the VAT test of hotel, inn, boarding house or similar establishment the previous owners demonstrably did provide breakfast on an inclusive basis.

(5) There were a range of services provided alongside the sleeping accommodation including wifi, in room TVs, free parking, and cleaning (which was cancellable during covid). Further, and going above and beyond, produce was grown in the garden to enhance the food options.

(6) Bedrooms all had individual locks.

(7) The previous owners lived on site ensuring the quality of service of the stay as recognised in the reviews.

(8) The previous owners used accommodation booking websites but also had their own advanced booking system which interfaced with the booking websites.

103. With regards to the agricultural agreement the Appellant contended that the arrangements with Mr Giddon had pre-existed her ownership though they had been formalised and there was evidence of that on which we should be entitled to found, a decision that the Property was non-residential.

HMRC's submissions

104. HMRC's principal submission was that viewed objectively the Property was a dwelling and had been used as a dwelling and, as such, should therefore be subject to SDLT on that basis. The position might well have been otherwise had the Appellant made a commercial acquisition of a business enterprise of which the Property was an asset.

105. HMRC contended that the nature of the venture pursued by the previous owners was insufficient in terms of commercial enterprise to represent use as a HISE.

106. They discounted entirely the evidence regarding the previous owner's company as they said that it did not demonstrate that it had operated a business in connection with the Property. The fact that it had registered a business activity concerning holiday accommodation and was registered for VAT was not sufficient, in their view, to indicate that there was a business carried on which used the Property in a relevant regard particularly as the Property had been purchased and registered in the owner's names and not in the name of the company which was, in any event, loss making.

107. HMRC accepted that the Property was marketed on a number of websites associated with the provision of holiday accommodation, including hotel and B&B accommodation. However, HMRC asserted, by reference to the limited number of reviews, that bookings had been too infrequent and sporadic through the year to represent a commercial endeavour generating insufficient turnover to properly represent commercial use of the Property.

108. Rather, HMRC hypothesised that the previous owner's corporate business had suffered and that in order to generate additional income for they had opened their home to paying guests contributing to the mortgage and running costs of the Property.

109. Applying their list of criteria for a HISE HMRC contended:

(1) The character of the Property was wholly residential. It was an Elizabethan manor house designed as a dwelling and with a permitted residential use; it was used as the previous owner's dwelling; it was not business rated and the Appellant's mortgage valuer had noted no commercial use, there was no commercial sale transaction as would have been expected if there had been a transfer of a business and there were no guests staying on the EDT. It was contended that any intention of the previous owners

to have established a business providing bed and breakfast accommodation was insufficient, it had to have become an ongoing reality.

(2) As a corollary to (1) the Appellant had failed to establish that there had been commercial use by the previous owners. The registered nature of the business and VAT registration of the company of which the previous owners were shareholders and directors was not evidence that the Property had been used as a HISE. This was so despite the listings on accommodation booking websites, the reviews and the carried over bookings.

(3) HMRC's submissions on the available accommodation were founded on the accommodation offered by the Appellant from Leat House rather than that which was offered by the previous owners. HMRC contended that the accommodation was too limited in comparison to the building as a whole for it to be sufficient to represent a HISE. However, that submission would also apply to the accommodation actually used in 2020 by paying guests.

(4) In HMRC's view there was insufficient business administration evidenced to have been used by the previous owners; entirely, in HMRC's view, explicable and supporting their view that the operations were a stop gap means of making money in covid.

(5) It was contended that there was no evidence of non-resident facilities being provided i.e. restaurant services to non-residents and the evidence of services to residents was purely anecdotal in the reviews. The Property was not advertised as providing anything other than bed and breakfast accommodation.

(6) HMRC did not consider that any of the adaptations made to the Property compelled a conclusion that they had been undertaken for commercial reasons rather than simply being in keeping and necessary for an 11 bedroom Elizabethan manor house.

110. It was submitted that there was no evidence of commercial agricultural use of the property.

FINDINGS OF FACT

111. We start by noting that having reviewed all the correspondence between the parties it is apparent to us that much of the focus of the Appellant's argument and the evidence she presented to HMRC during the enquiry was on the business she decided to operate from the property rather than that operated by the previous owners. This undoubtedly led to some confusion, and we consider that the operations of the previous owners were not clearly explained to HMRC in correspondence. As indicated above what the Appellant did with the Property is not the relevant focus of enquiry in determining whether at the EDT the Property was a residential property assessable to SDLT under Table A or non-residential assessable under Table B.

112. We accept the Appellant's statement and the verbal narrative provided during the hearing regarding what she observed in terms of the facilities at the Property when she visited in May – July 2021. We accept that the Appellant was honest in her recitation of the facilities she observed and she was not challenged on that evidence.

113. We also accept her evidence as to what she was told by the previous owners as to how they had used the Property. We do so because the narrative provided is substantially corroborated and not contradicted by the online reviews provided by those staying at the Property prior to the EDT.

Use as a HISE

114. From the evidence before us we find the following facts:

- (1) The previous owners purchased the Property on 15 November 2019. At the date of purchase whilst it had planning consent to be used as a guest house and for residential purposes we infer that it had not been so used in the recent past.
- (2) By reference to the planning consent and the layout of the Property prior to completion of the permitted works there was only one room/pair of rooms suited for use for bed and breakfast accommodation. The room/pair of rooms was situated on the first floor to the far right of the Property and was served by a bathroom with a roll top bath. There is evidence from the reviews that this room was used by paying guests.
- (3) Within 4 months of purchasing the Property the previous owners had started the process of refurbishing it and had applied for listed building planning consent to install two new bathrooms. We do not know when the works were completed, other than that they had been completed by May 2021 when the Appellant visited. We do not know if the rooms associated with the refurbished bathrooms were used by paying guests of the previous owners but we infer not as the Appellant was told that only one group were accommodated at any one time.
- (4) In July 2020 a commercial fire detection system was introduced which could have facilitated use of the Property as a HISE, such system would have been required in order for the facilities provided to paying guests to be scaled up. It is not evidence, in and of itself, of the scale of use in the period from installation until the EDT.
- (5) Similarly regarding the boiler and hot water system.
- (6) The Property had a commercial kitchen used to prepare the food provided to guests. That food was prepared by John who told the Appellant that he had some professional qualifications. However, there is no evidence that the kitchen was inspected for food safety etc.
- (7) There were 3 bedrooms noted as used by the previous owners and 6 bedrooms (in two pairs) which could have been used for paying guests. There were also two attic rooms which, it appears, only the valuer considered to be bedrooms. It is apparent that when marketed not all of the rooms which were identified for use as bedrooms when the fire alarm system was installed were considered by the estate agent to be bedrooms. All but one of the bedrooms which were “ancillary” to the bedrooms with en-suite bedrooms were not treated as bedrooms by the estate agent.
- (8) All bedrooms were fitted with individual locks as would be expected from accommodation provided in a bed and breakfast property.
- (9) The previous owners undertook marketing of the accommodation through a number of on-line booking platforms and had their own software to allow automatic interface between these and their own records.
- (10) In the period of ownership of the Property the previous owners were precluded from offering bed and breakfast accommodation generally to travellers (because of Covid restrictions) for the period from 23 March 2020 to 4 July 2020 and from 5 November 2020 to 17 May 2021. As such, the Property would have been available for a maximum of 18 weeks in 2020.
- (11) There were 27 reviews of stays at the Property. From those reviews we find:

- (a) There were no reviewed stays prior to July 2020 as the dates on the reviews preclude a conclusion that there were stays prior to that time.
- (b) We take judicial notice of the fact that not everyone writes a review when staying at accommodation even where booked through a booking website and we are thus entitled to find that there were at least 27 groups of guests who paid to stay at the Property in the period post July 2020 though no evidence that there were any paying guests between 17 May 2021 and when the reviews were captured on 19 July 2021.
- (c) Guests were provided with high quality accommodation with all the usual room amenities of a small hotel, attentive service from the previous owners, including welcome cake/tea, home cooked breakfast with ingredients grown in the garden and evening meals were provided on request.
- (d) Guests had use of a wider range of rooms than simply the bedroom/bathroom booked and access to the dining room.
- (12) A cleaner was employed daily and the website listings confirm that when occupied rooms were serviced, this conclusion is also consistent with the booking.com scores which have a rating for cleanliness which, by virtue of the overall rating, must have been highly rated.
- (13) Usual facilities such as free wifi, TVs etc were provided.
- (14) There is a conflict of evidence as between the correspondence and that provided in the hearing as to whether the previous owners let Leat House as holiday accommodation. As indicated above in correspondence, the Appellant focused on what she had done with the Property. She told us that she had annexed Leat House and used it as holiday accommodation. In correspondence it appeared to HMRC (not unreasonably) that the previous owners had used the annexe and let Leat House. We prefer the narrative given in the hearing on the basis that when the photographs of Leat House, the photographs of the accommodation at the Property as advertised by the previous owners and the design and access statement plans are considered it is clear that Leat House includes one of the new bathrooms and could not therefore have been available for use by the previous owners in the period from 4 July 2020 to 5 November 2020 as planning permission was not given until 20 October 2020.
- (15) Though we find there was no evidence of any bookings or stays in the period between 17 May 2021 and the EDT there were 5 bookings in the subsequent period which had been taken by the previous owners. Of those two bookings cancelled due to the Appellant offering only holiday accommodation and not bed and breakfast accommodation.
- (16) No commercial use was noted on the mortgage valuation undertaken by the lender to the Appellant.
- (17) However, the rates achieved by the previous owners and discussed with the Appellant were comparable to boutique hotel accommodation in a nearby property.
- (18) At the EDT the Property was only assessed to council tax and not business rates.
- (19) There is insufficient evidence available to us regarding whether it was the previous owners as individuals or as directors of a company who provided the services to paying guests and it is not therefore established that the activities were part of a business which was registered for VAT.

(20) The Property was not registered for business rates. On the basis that we assume that the previous owners were aware of the requirements on them (which we consider it reasonable to assume because they installed a commercial fire detection system which diminished the internal aesthetic of the Property) we conclude that the previous owners did not expect to be let to more than 6 people at any one time in the following 12 months and considered that less than 50% of the Property was dedicated, at least at that time, to the provision of accommodation and services to paying guests.

Agricultural use

115. From the evidence we make the following findings as regards the use by the farmer:

- (1) The meadow is listed on www.moormeadows.org.uk as having rare herbs and orchids. It is therefore of some scientific interest and likely to be of value to the amenity of the Property.
- (2) It is reasonably well known that meadows, particularly flower meadows require maintenance, in particular mowing.
- (3) The amenity of the meadow was referenced in the guest reviews and repeatedly stated as important by the Appellant.
- (4) There was no formal agreement between the previous owner and Mr Gliddon. Mr Gliddon confirmed that he “rented” the meadow from the previous owners but provides no detail as to the rental or other terms.

MULTI FACTORIAL EXERCISE

116. In respect of each of the issues we have to determine we must undertake a multifactorial assessment taking account of all the relevant circumstances in this case.

117. Dealing firstly with the purported agricultural use. As communicated in the hearing we do not consider that there was any relevant commercial use by the previous owners of the meadow. Mr Gliddon had somewhere to cut hay and graze his sheep. The previous owners had someone to maintain their meadow which offered amenity to the Property. As contended by HMRC there was a barter of convenience.

118. We have found the exercise regarding HISE significantly more difficult.

119. It is quite plain to us that the ad hoc provision of accommodation to paying guests even with the provision of breakfast is not enough to conclude that the property in which such accommodation is provided can be considered a HISE. Such use, would, in our view, simply be ancillary to the use of the property as a dwelling. An HISE requires there to be a commercial enterprise rather than a “hobby” and the provision of services with the accommodation which would not normally be provided with holiday accommodation i.e. there must be more than just accommodation provided.

120. The facts we have found in the present case are highly marginal.

121. On the one hand (and indicating that the use was ancillary) we have the following factors:

- (1) There is little evidence of any business infrastructure, except the booking system interfacing to multiple on-line sites.
- (2) The Property was not sold with the benefit of the business operations (even such as they were).
- (3) Any commercial use was not explained to the valuer who also did not consider, for instance, the reduced aesthetic of lit fire escape signs to indicate commercial use.

(4) Business rates were not paid. By reference to the guidance on when business rates must be paid that confirms that the previous owners were not using more than 50% of the building for the business (though they may ultimately have intended to) such that, at least for business rates purposes, the provision of serviced accommodation was subsidiary to its private use and did not have more than 6 guests at any one time.

(5) There is no evidence of food safety ratings.

(6) Most significantly, throughout 2020, there was only one suite of bedrooms available for letting.

(7) Plans for commercial use which might be implicit in the installation of a commercial fire detection system, modifications to add and improve en-suite facilities do not demonstrate actual commercial use.

(8) There is no evidence that there were any lets in the period between 17 May 2021 and the EDT.

(9) It is apparent from the evidence that food was provided only to guests though that is not dissimilar to bed and breakfast accommodation but in contrast to many hotels/inns.

122. On the other hand:

(1) The previous owners had registered three domain names in respect of the property thereby ensuring the broadest scope for an internet search of the property.

(2) The Property was available to be booked through three accommodation websites most commonly associated with the HISE sector and had a software to link these. There is no evidence that it was registered with on AirNnB or sites more commonly associated with unserviced/lower serviced holiday accommodation.

(3) In 2020 there were only 18 weeks when the Property could have been booked, in that period there were at least 27 bookings we can identify by reference to the reviews and we accept that not all those who stayed are likely to have written reviews.

(4) Bookings had been taken for the Property over the summer of 2021 even despite the previous owner's decision to sell which appears to have been taken mid-late May 2021 as covid restrictions were being lifted.

(5) The standard amenities to be expected of HISE accommodation were provided including, in particular, daily room cleaning.

(6) The ratings on the reviews indicate that the quality of the experience for those staying was outstanding.

(7) The reviews describe a level of service which indicated that the previous owners were dedicated to ensuring that paying guests received the highest level of service and consistent with that provided in a small hotel.

(8) A commercial kitchen had been installed and there is evidence that food was provided to guests including, breakfast, dinner.

(9) The fire detection system and heating/water plumbing were adaptations which were strictly unnecessary for a dwelling and the aesthetic of the fire detection system reduced the amenity of the Property as a dwelling.

123. We do not consider that HMRC's hypothesis that the previous owners were letting out their home to make ends meet is a reasonable hypothesis. We reflect that there is no evidence of financial pressure on them and sums appear to have been paid to make adaptations and

relevant reports and consents. Whilst the accounts for a company of which they were directors originally showed a loss for 2020 the apparently restated accounts did not and we have no evidence of any other sources of income. But even if there was a financial difficulty, we consider that it was most unlikely, as the country was gripped by the fear of transmission of the covid virus and in light of a direction from the government to limit socialising, that the go to answer would have been to open one's home to paying guests. Admitting strangers into one's home, feeding them and providing them with the service and welcome offered was, in our view, intended as the start of a commercial enterprise.

124. The critical question is: was the scale of the activities associated with the provision of accommodation to paying guests enough to have reached the threshold necessary to represent commercial use with sufficient permanence and continuity to qualify as having used the property as an HISE and not simply as a dwelling?

125. On balance, and by the finest of margins, we have decided that it was. We do so because we think it reasonable to consider the activity in the broader context of a country in the grip of a global pandemic. In those circumstances we consider that the previous owners were operating to the maximum capacity possible in that period with a concerned and coherent effort to attract customers. Paying guests were accommodated with frequency given the number of rooms available and subject to covid restrictions. As we have found paying guests were not simply provided with accommodation, they were provided with fully serviced accommodation, high quality breakfasts and wider amenity which cannot be regarded as passive use of the property.

126. In reaching our conclusion we have given particular thought to the absence of registration for business rates which are required unless the business use is "subsidiary" to private use. Had subsidiarity not been defined for business rates purposes we may well have concluded that the absence of business rates registration tipped the balance against the Appellant. However, we do not consider that there is a requirement for a HISE to use more than 50% of a Property in order to take it outside the definition of a residential property. This is so despite the caution we note at paragraph 42. above for the reasons stated in that paragraph.

127. We note that we consider that the facts of this case are likely to be almost unique.

DISPOSITION

128. For the reasons stated we conclude:

(1) The Property was used as an establishment similar to a hotel or inn meeting the description in section 116(3)(f) such that no account is to be taken of its suitability for use as a dwelling with the consequence that the Property is not residential property as defined in section 116(1) and the appropriate rate of SDLT is as set out in Table B in section 55. The Appellants self-assessment to SDLT was correct and no further SDLT is due.

(2) The use of the meadow by Mr Gliddon does not represent commercial use of the grounds of the Property. Thus, had we not concluded that the Property was used as a HISE, there would have been no alternative basis of concluding that the non-residential rates in Table B were applicable.

129. Accordingly, we allow the appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

130. 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.

**AMANDA BROWN KC
TRIBUNAL JUDGE**

Release date: 19th JUNE 2024