



Neutral Citation: [2024] UKFTT 955 (TC)

Case Number: TC09336

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2023/10935

*Stamp duty land tax—multiple dwellings relief—whether arm’s length purchaser is a relevant test – no - whether suitable for use as separate dwellings – yes — appeal allowed*

**Heard on:** 4 October 2024

**Judgment date:** 24 October 2024

**Before**

**TRIBUNAL JUDGE IAN HYDE  
GILL HUNTER**

**Between**

**THOMAS YEOMANS**

**Appellant**

**and**

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

**Respondents**

**Representation:**

For the Appellant: Thomas Yeomans appeared in person

For the Respondents: Varuna Jeewon, litigator of HM Revenue and Customs’ Solicitor’s Office

## DECISION

### INTRODUCTION

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

### THE FACTS

3. We were referred in the hearing to a hearing bundle, authorities bundle, a skeleton argument from HMRC and three additional authorities. The Appellant did not provide a witness statement but gave oral evidence at the hearing and we accept his evidence.
4. The facts relevant to this appeal are agreed between the parties and we find the facts as set out below.

### The purchase of the Property and the appeal

5. On 31 March 2022 the Appellant and his wife jointly purchased a residential property in Sittingbourne in Kent for £895,000 (“the Property”).
6. On 6 April 2022 the Appellant filed an SDLT return in respect of the purchase without claiming MDR and paid SDLT of £34,750.
7. On 9 May 2022 the Appellant made an SDLT reclaim for £10,000 on the basis that MDR applied.
8. HMRC opened an enquiry into the Appellant’s SDLT reclaim which resulted in HMRC issuing a closure notice rejecting the MDR claim.
9. On 10 October 2023, following an internal review, HMRC issued a view of the matter letter rejecting the MDR claim.
10. On 18 October 2023 the Appellant appealed to this Tribunal.

### The Property

11. We were provided with extensive photographs and other documents allowing us to understand the Property and its layout. The Appellant also provided helpful evidence in the hearing.
12. The Property is a detached and extended dormer style bungalow with front and rear gardens. There are neighbours either side. At the front there is a gated access drive for vehicles and a separate pedestrian gate. Looking from the pavement outside the front of the house, to the left of the house is a standalone single garage. There are two doors at the front of the Property.
13. The door on the left gives access to the main accommodation on the Property (which we describe neutrally as “the Main House”). On the ground floor of the Main House there is an open plan living area, dining area and kitchen, utility room and toilet and on the first floor three bedrooms, an ensuite shower room and bathroom.
14. The door on the right of the front of the Property gives access to the living room of what can conveniently and again neutrally be referred to as “the Annexe”. The Annexe consists of a narrow series of rooms being in sequence from the front door, a living room, bathroom, bedroom and kitchen. The rear half of the Annexe was originally a garage in line with the half of the Main House but previous owners extended it forwards to the front of the property and created the Annexe. Based on the measurements in the sale particulars, the Annexe is some 2.8m wide and 12.2m long. The first floor of the House extends over the front half of Annexe

with a balcony over the rear half, accessible through French doors in the main bedroom of the Main House.

15. The pitched roof of the Property extends the full width of the Property over both the Main House and the Annexe. The design of the Annexe is such that the front of the Annexe including a short, pitched roof at right angles to the main pitched roof, mirrors the detailing around the main door to the House, providing a symmetry to the overall design. Overall, the impression from the front of the Property is of a single house with two wings, each with separate and similar (but not identical) doors, one to the Main House and one to the Annexe.

16. The rear of the property consists of a conventionally sized garden – the Appellant estimated it at some 40 feet long – laid to lawn with a patio and various trees. At the back of the Main House is the kitchen diner which has windows and sliding full length glass doors looking over the garden. The kitchen at the back of the Annexe has a door leading onto the garden and a large window overlooking the garden. The boundary at the end of the garden is a stock fence consisting of posts and chicken wire. On the other side of the fence is the village green. Whilst there are some trees and a wooden summer house which blocks most of the view, anyone using the green can look into the garden and at the back of the Property.

17. Other features of the Property are:

- (1) It was marketed as a single dwelling with a “self-contained granny annexe”
- (2) There is no interconnecting door or other way for occupants of either the Main House or the Annexe to access the other property except using the external doors
- (3) The Main House and the Annexe are listed separately for Council Tax purposes
- (4) The Annexe has separate electric heating
- (5) The Main House has oil fired central heating;
  - (a) the boiler for which is in the Annexe kitchen,
  - (b) the controls for the heating are in the Main House
  - (c) there are two isolation valves outside the Property which could be used to stop the oil flow to the boiler
- (6) There are two electric fuse boards, one for each property but both are in the Annexe
- (7) On the basis that the Appellant did not produce any evidence that there were separate meters for the any utilities at completion, we find there were none

#### **RELEVANT LEGISLATION**

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

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

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

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

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

- (a) within sub-paragraph (2) or sub-paragraph (3), and

(b) not excluded by sub-paragraph (4).

2(2) A transaction is within this sub-paragraph if its main subject-matter consists of–

(a) an interest in at least two dwellings, or

(b) an interest in at least two dwellings and other property.

2(3) ...”

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

“(2) A building or part of a building counts as a dwelling, if–

(a) It is used or suitable for use as a single dwelling, or

(b) It is in the process of being constructed or adapted for such use”.

#### CASE LAW

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

“48. We must therefore interpret the phrase giving the language used its normal meaning and taking into account its context. Adopting that approach, we make the following observations as to the meaning of “suitable for use as a single dwelling”:

(1) The word “suitable” implies that the property must be appropriate or fit for use as a single dwelling. It is not enough if it is capable of being made appropriate or fit for such use by adaptations or alterations...the question of whether the property is suitable for use as a single dwelling falls to be determined by the physical attributes of the property as they exist at the effective date, not as they might or could be...

(2) The word “dwelling” describes a place suitable for residential accommodation which can provide the occupant with facilities for basic domestic living needs. Those basic needs include the need to sleep and to attend to personal and hygiene needs. The question of the extent to which they necessarily include the need to prepare food should be dealt with in an appeal where that issue is material.

(3) The word “single” emphasises that the dwelling must comprise a separate self-contained living unit.

(4) The test is objective. The motives or intentions of particular buyers or occupants of the property are not relevant.

(5) Suitability for use as a single dwelling is to be assessed by reference to suitability for occupants generally. It is not sufficient if the property would satisfy the test only for a particular type of occupant such as a relative or squatter.

(6) The test is not “one size fits all”: a development of flats in a city centre may raise different issues to an annex of a country property. What matters is that the occupant’s basic living needs must be capable of being satisfied with a degree of privacy, self-sufficiency and security consistent with the concept of a single dwelling. How that is achieved in terms of bricks and mortar may vary.

(7) The question of whether or not a property satisfies the above criteria is a multi-factorial assessment, which should take into account all the facts and circumstances. Relevant facts and circumstances will obviously include the

physical attributes of and access to the property, but there is no exhaustive list which can be reliably laid out of relevant factors. Ultimately, the assessment must be made by the FTT as the fact-finding tribunal, applying the principles set out above”

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

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

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

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

#### THE UNCONNECTED BUYER ISSUE

26. Ms Jeewon took a point on the test to be applied and argued that the relevant test was whether an unconnected buyer would purchase one of the properties separately from the other, relying on the decision of Judge McKeever this Tribunal in *Mobey v Revenue and Customs* [2021] UKFTT 122 (TC) at [107]:

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

27. Further, HMRC sought to distinguish this Tribunal’s decision in *Winfield v HMRC* [2024] UKFTT 734 (TC), where the Tribunal found the properties to be dwellings on the basis that they could be let under an assured shorthold tenancy, on the basis that the Appellant in this appeal had expressed no intention to let the properties.

28. In considering the test in paragraph 7(2)(a) as to whether a building is “suitable for use as a single dwelling” we note as a starting point that paragraph 7(2)(a) expressly refers to “use”. Further, the test is not found in the guidance set out by the Upper Tribunal in *Fiander* and had the ability to sell the property been the relevant test we would have expected it would have been included. Indeed, the guidance focuses on occupants, not buyers, thus at [48]:

“(2) The word “dwelling” describes a place suitable for residential accommodation which can provide the **occupant** with facilities for basic domestic living needs...

48(4)...The motives or intentions of particular **buyers or occupants** of the property are not relevant.

48(5) Suitability for use as a single dwelling is to be assessed by reference to suitability for **occupants** generally.” (emphasis added)

29. Further an arm's length purchase test has not been adopted in other decisions such as *Winfield*. We do not think the decision in *Winfield* is distinguishable simply because the Appellant in this appeal does not intend to let. The test is an objective one about the nature of the property not the taxpayer's intentions.

30. We also note that the point was not taken in *Dower v HMRC* [2022] UKFTT 170 at [55]:

“54. In other decided MDR appeal cases, the argument has been advanced on the premise that if the purported second dwelling is suitable for use by Airbnb users, then it meets the suitability test for use as a dwelling. It is for this reason that I have considered the merits of such premise by deliberating over the purposive construction of the term ‘dwelling’ in the SDLT context.

55. I do not doubt that the Annexe in question has been found to be suitable accommodation by Airbnb users. However, the relevant comparator of suitability for Airbnb usage is hotel accommodation, which falls to be categorised as non-residential property. The commonality between hotel and Airbnb is the temporary nature of the accommodation in terms of days, or a week or two at a time, rather than months. In contrast, a place suitable for use as a dwelling is a place where ‘one lives, regarding and treating it as home’. Whilst a place suitable for use as a dwelling is undoubtedly suitable for Airbnb usage, the converse is not self-evident, as illustrated by the factual matrix in the present case.”

31. We agree that the test as to whether unconnected purchasers would buy only one of the properties may be a useful one to take into account and in many ways has its attractions, but we do not take Judge McKeever's comment as setting out a minimum threshold or condition for whether a property is a dwelling or not.

32. The test in paragraph 7(2)(a) as to whether a building is “suitable for use as a single dwelling” is to be construed in accordance with the guidance set out by the Upper Tribunal in *Fiander*. Without repeating the guidance, in order for a property to satisfy the test in paragraph 7(2)(a), the occupant's basic living needs must be capable of being satisfied with a degree of privacy, self-sufficiency and security consistent with the concept of a single dwelling. Each case must be judged on its facts but there is no necessary requirement that the property should be such that an arm's length purchaser would buy it.

#### **THE ISSUES IN THIS APPEAL**

33. This appeal concerns the applicability of MDR to the Appellant's acquisition of the Property as at the effective date being the date of completion, 31 March 2022.

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

35. HMRC accepts that the Main House and the Annexe are dwellings for MDR purposes except in two respects:

(1) The privacy argument: HMRC argue that the lack of privacy both at the front of the Property with the single drive and at the rear with the undivided garden means that the two properties could not be sold separately.

(2) The utilities argument: HMRC argue that the location of the electrical fuse boxes and the central heating boiler was such that an occupier of the Main House would not be able to control the electrics and the heating sufficiently.

36. The Appellant disagrees.

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

### THE PRIVACY ARGUMENT

38. Ms Jeewon argued that the closeness of the two properties meant that neither would enjoy the privacy required for each property to be suitable for occupants generally. Ms Jeewon accepted the Annexe might be suitable for a relative but that was not the test (*Fiander* at [48(5)]). Privacy was one of the factors to be taken into account, *Fiander* at [48(6)]:

“(6)...What matters is that the occupant’s basic living needs must be capable of being satisfied with a degree of privacy, self-sufficiency and security consistent with the concept of a single dwelling...”

39. Further, privacy was a matter which carried considerable weight (*Dower*).

40. The access to the Annexe was through the Main House’s drive. In the hearing Ms Jeewon accepted that the position was no different to shared driveways but maintained that occupants of both properties could look into each others’ windows.

41. The garden was not separated between the two properties and the Annexe had a door at the back that gave access to the garden. Accordingly, occupants of the Annexe could walk up to the back windows of the Main House and look into the kitchen diner.

42. Ms Jeewon accepted that access to a shared garden was common in properties with multiple dwellings but the garden in this case was a single garden for the main dwelling. The shared space at the front and at the back of the Property would only be acceptable to the occupiers of the Main House if the occupiers of the Annexe were known to them.

43. The Appellant argued that as regards the front drive this was no different to houses with no front garden where passersby could look into their windows. As regards the rear garden, he said that anyone on the village green could look into the garden and the windows in the Property but accepted that doing so was not as intrusive as standing in the garden next to the windows.

### THE UTILITIES ARGUMENT

44. Ms Jeewon referred to HMRC’s guidance at SDLTM00430:

“a single dwelling should be able to control all or most of the utility services supplied to it”.

45. Ms Jeewon accepted that as at completion the Annexe had control of its own utilities in that it had its own electricity supply, electric heating and water supply. The electrical fuse box for the Annexe was within the Annexe. Ms Jeewon also noted that the Appellant had not produced any evidence that there were separate meters for any of the utilities at completion.

46. However, the Main House was dependent on the Annexe in two respects in that, its electrical fuse box and the boiler for the oil-fired heating were in the Annexe. Accordingly, if the occupant of the Main House needed to repair or make changes to the electrics in the Main House they would have to have access to the Annexe. Further, whilst the controls for the heating were in the Main House, if the occupants needed access to the boiler whether for maintenance or in an emergency then, again, they would need access to the Annexe. In both cases this limited the independence of the Main House and the privacy of the Annexe. A reasonable person would find that these physical attributes of the properties would make them unsuitable to be seen as separate dwellings (decision of this Tribunal in *Fiander* at [51] endorsed on appeal by the Upper Tribunal at [62]).

47. The Appellant argued that anyone living in the Main House did not really need access to the boiler. The controls for setting the heating were in the Main House and in an emergency the oil supply could be cut off from outside. HMRC’s guidance at SDLTM00430 required access to “all or most of the utility services” and an occupant in the Main House had that. An

occupant of the Annexe had control of all of the utilities. The Appellant accepted that access would be required to maintain the boiler but suggested it was rarely if ever serviced.

#### **DISCUSSION**

48. In our view nearly all the features of the Property point towards there being separate dwellings. Indeed, HMRC accept that is the case and would allow MDR but for the privacy and utilities issues in this appeal.

49. We do not think that the privacy is particularly telling when weighed against the other features of the Property. Whilst we must consider the nature of the property as at completion (*Ladson Preston Ltd and another v HMRC* [2022] UKUT 301 (TCC)) and cannot speculate about partitioning the garden, the Annexe could be sold with no rights to the back garden, effectively as a flat.

50. However, we have more difficulty with the lack of access to the boiler and fuse box for any occupant of the Main House and the effect of that on the privacy of the Annexe. We accept that rights of access might be granted but there would also need to be arrangements such as spare keys to deal with emergencies, for example if the occupants of the Annexe are on holiday. This would in our view affect whether the properties could be sold separately but as we have decided above, that is not the test to be applied. For a property to be considered a dwelling it must be suitable for use with a degree of permanence. In *Winfield* at [21] the Tribunal took the ability to let for 6 months as sufficient and, without suggesting that is a minimum, we would apply the same as a broad yardstick in this appeal. We also agree with Judge Popplewell in *Winfield* that arrangements to provide access could be included in such a short-term letting, whether of the Main House or the Annexe.

51. On that basis we find that the access to utilities issue to be a factor that points against the properties being separate dwellings. However, we find that, whilst this might be an issue for purchasers, it does not prevent the properties from being let on a short-term letting which made provision for access to the fuse box and boiler and with a sufficient degree of permanence for the purposes of MDR.

#### **DECISION**

52. Applying the multi-factorial test in *Fiander*, and taking into account all the features described above, we find that the Main House and the Annexe are suitable for use as single dwellings within the meaning of paragraph 7(2)(a).

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

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

#### **RIGHT TO APPLY FOR PERMISSION TO APPEAL**

55. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**IAN HYDE**  
**TRIBUNAL JUDGE**

**Release date: 24<sup>th</sup> OCTOBER 2024**