



[2021] UKFTT 0271 (TC)

TC08216

SDLT – multiple dwellings relief – whether acquisition of property involved an interest in at least two dwellings – held that main subject-matter consisted of an interest in a single dwelling – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2020/03066

BETWEEN

JOHN MASON

Appellant

-and-

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

Respondents

TRIBUNAL: JUDGE JEANETTE ZAMAN

The hearing took place on 24 June 2021. With the consent of the parties, the form of the hearing was a video hearing on Kinly’s cloud video platform. A face to face hearing was not held because of the ongoing restrictions resulting from the COVID-19 pandemic. The documents to which I was referred are set out in this decision notice. I had a hearing bundle of 324 pages, a bundle of authorities, an additional bundle of 60 pages and skeleton arguments from both parties.

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

The Appellant in person

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

DECISION

INTRODUCTION

1. Mr and Mrs Mason purchased a property, Greenacres (the “Property”), for £1,900,000. The effective date of the transaction (“EDT”), ie the date of completion, was 28 February 2019. They completed the stamp duty land tax return and self-assessed the stamp duty land tax (“SDLT”) due as £77,500, this amount being calculated on the basis that the purchase was a transaction that consisted of an interest in “at least two dwellings” within paragraph 2(2) of Schedule 6B Finance Act 2003 (“FA 2003”) and qualified for multiple dwellings relief (“MDR”).

2. HMRC concluded that the Property as a whole was a single dwelling and that the purchase did not qualify for MDR. They issued a closure notice to Mr and Mrs Mason, amending the SDLT return and assessing additional tax of £64,250.

3. Mr Mason has appealed to the Tribunal against those amendments. Mrs Mason did not notify an appeal to the Tribunal. However, on 19 November 2020 the Tribunal directed that the decision in Mr Mason’s appeal would be binding in respect of both purchasers.

4. Having considered the evidence and submissions of both parties, I concluded that the purchase did not qualify for MDR. My decision was released to the parties as a summary decision on 30 June 2021. HMRC have applied for full written reasons and findings and this is that full decision.

5. The Upper Tribunal released its decision in *Fiander and Brower v HMRC* [2021] UKUT 156 (TCC) on 7 July 2021, ie after the hearing of this appeal and the release of my summary decision. Given that this decision notice provides full written findings and reasons rather than the summary previously released to the parties, I have continued to refer in this decision notice to the decision of the First-tier Tribunal in that appeal. However, I would note that I have read the decision of the Upper Tribunal, and neither the reasoning nor the decision reached by the Upper Tribunal in that case has led me to conclude that I would wish to re-visit my reasoning or my conclusions in any event.

BACKGROUND

6. The facts set out by way of background below were common ground between the parties.

7. Having purchased the Property, with an EDT of 28 February 2019, on 21 March 2019, Mr and Mrs Mason completed and sent an SDLT return, self-assessing the tax due as £77,500. (HMRC agree that this would be the correct amount of SDLT if the Property did qualify for MDR.)

8. On 2 December 2019, HMRC sent a notice of enquiry to Mr and Mrs Mason, with a copy sent to Mr Mason’s agent, Laytons LLP, stating that HMRC would be enquiring in to the SDLT return.

9. On 2 January 2020, Mr Mason wrote to HMRC stating that the Property contained two dwellings; the main house and an annex. He attached an annotated floor plan, copies of the contract of sale, completion statement and TR1 form. Mr Mason also attached some photos.

10. There was then further correspondence between the parties and on 27 February 2020 HMRC sent a closure notice to Mr and Mrs Mason, stating that they had completed their check and confirmed that the transaction did not qualify for MDR. The closure notice was issued in accordance with paragraph 23 of Schedule 10 FA 2003. HMRC amended the SDLT return accordingly and concluded that the self-assessment should be increased by £64,250 from £77,500 to £141,750.

11. Mr Mason appealed to HMRC against that closure notice, and on 24 June 2020 HMRC responded with their “view of the matter” letter to Mr and Mrs Mason informing them that HMRC’s original decision had not changed. This letter also offered an internal review. Mr Mason requested such a review and on 12 August 2020 HMRC sent a review conclusion letter upholding the original decision.

12. Mr Mason gave notice of appeal to the Tribunal on 24 August 2020.

13. On 19 November 2020, further to email correspondence between HMRC and Mr Mason, HMRC enquired whether the appeal was being brought jointly in the name of him and his wife. On the same day, the Tribunal directed that the statement of case should only be addressed to Mr Mason and that a Tribunal decision will be binding on Mr and Mrs Mason as joint purchasers.

ISSUE

14. The appeal concerned whether the purchase of the Property qualified for MDR. MDR applies where the subject-matter of a land transaction is an interest in at least two dwellings, and paragraph 7 of Schedule 6B FA 2003 sets out the meaning of “dwelling” and states at 7(2) that “a building or part of a building counts as a dwelling if (a) it is used or suitable for use as a single dwelling”.

APPELLANT’S SUBMISSIONS

15. Mr Mason submitted that the Property comprised two dwellings, the main house and an annex, and that each was “suitable for use” as a single dwelling at the EDT. It was not his argument that the annex was used as a single dwelling. He accepted that that suitability for use needed to be assessed as at the EDT.

16. Mr Mason referred to HMRC’s guidance (at SDLTM00410) which states that “...evidence will be needed to show that each ‘dwelling’ in question is sufficiently independent to count as a separate dwelling in its own right.” It further goes on to state that “...a wide range of factors come into consideration...” and “...no single factor is likely to be determinative by itself.” Notwithstanding the above statements, Mr Mason submitted that it is clear that the physical configuration of the property on the EDT is very important in the determination of the number of dwellings. SDLTM00410 goes on to state that “‘physical configuration’ in this context relates to the facilities of the dwelling, independent access to the dwelling and privacy from other dwellings.”

17. Mr Mason relied on the following in support of his submission that the Property comprised two dwellings:

- (1) The annex has characteristics associated with being suitable for use as a separate dwelling where occupants can live independently of the occupants of the main residence.
- (2) It is a separate alarmed standalone structure (not connected in any way with the main house) with multiple lockable entrances, and therefore is separate from the main residence and would provide any occupier with a degree of privacy and security.
- (3) The annex has over 600 square foot of floor space and is thus 73% larger than the minimum stipulated for a one person one bed flat under UK housing standards
- (4) There is ample area for living, including as a place to sleep, with the previous owner having bedroom facilities in the annex. There are facilities for hygiene, including a shower and toilet. There is also ample space for the preparation of food and its consumption.

(5) The annex has independent access and privacy from other dwellings. It is not possible to see the annex from the main house and vice-versa. This screening is provided by mature beech hedges approximately four metres tall.

(6) The annex does not need to be accessed via the terrace/swimming pool area close to the main house; it can be reached by a separate gate which is to the side of one of the garages, or through an ungated gap on the other side of the garage.

(7) It has its own plumbing, hot water and cold, and is serviced by ten electrical wall points suitable to plug in a cooker and fridge.

(8) It did meet the criteria and does have the necessary facilities for independent day-to-day living and is an option for future use, including as accommodation for elderly parents.

18. Mr Mason provided further explanation in relation to some of the matters relied upon by HMRC as follows.

19. As regards the lack of kitchen facilities relied upon by HMRC, their guidance (SDLTM00425) states: "Kitchen – A dwelling would be expected to have an area where a meal can be prepared and somewhere suitable to eat it (not necessarily in the same place). It is not necessary for a kitchen to have a cooker or white goods such as a fridge or dishwasher present at the effective date of the transaction, because these are sometimes removed on a house sale. However, there should be space and infrastructure in place e.g. plumbing for sink, power source for cooker etc." Mr Mason submitted that:

(1) There is plenty of space in the annex where a meal can be prepared and somewhere suitable to eat it.

(2) On the EDT, there was infrastructure in place for a kitchen adequate for everyday use. Mr Mason was not suggesting that any adaptation or modification is required. On the EDT, the following freestanding kitchen facilities could have been put in place without any adaptation required and which together would allow the occupant to prepare and consume food in a manner consistent with what would be expected of a single dwelling.

(a) Electric oven, electric hob, microwave oven and/or similar - all of these items would be operational after being plugged into a conventional socket. Most electric ovens can use a standard 13A plug and no specific adaptations or specialist connections are required.

(b) Kitchen sink – there are various options for kitchen sinks including those that do not require plumbing. Notwithstanding they do not require plumbing, they are designed to be permanent and are suitable for the home. One such example is the 'Smart Sink'. In order to use this sink, all that is required is a conventional plug socket and the ability to fill up the 20 litre fresh water tank in a convenient way. The annex has an outdoor tap located very close to main entrance of the annex which would allow this to be done without any need to use the facilities in the main house.

(c) Food storage – cold food storage could be provided through a conventional plug-in fridge/freezer. Dry food storage could be provided by a freestanding pantry or larder cupboard.

(d) Other – storage of crockery, utensils and other items could be achieved using a freestanding kitchen dresser and/or sets of drawers. Food preparation and consumption would simply require a freestanding kitchen work bench of some kind and a table and chairs, respectively.

(3) Mr Mason submitted that, together, the above items would constitute what a reasonable person would consider is required for the preparation and consumption of food. No adaption or modification of any sort is required to put any of this in place, relative to what existed in the annex at the EDT.

20. As to the marketing of the Property, it was marketed as a five-bedroom house with a “detached annex/studio”. The floor plan did describe part of the annex as a gym/games room but this was not an accurate representation of its actual use, as the previous owner used the space as additional accommodation. The brochure elsewhere described the annex as suitable “for a variety of uses”. In any event, as HMRC guidance SDLTM00425 makes clear, “...the estate agents’ main objective is...not in providing legislatively accurate definitions of dwellings, so this information [estate agents’ marketing materials] is not determinative”.

HMRC’S SUBMISSIONS

21. HMRC’s position was that at the EDT the Property was a single dwelling and not two separate dwellings within the meaning of paragraph 7(2)(a) of Schedule 6B FA 2003.

22. Whilst noting that it is not binding, Dr Schryber submitted that HMRC’s published guidance provided some assistance as to the meaning of a single dwelling:

(1) the meaning of a “single dwelling” is more stringent than that of a self-contained part of a larger dwelling – see SDLTM00410:

“It must be sufficiently self-contained to be considered a ‘single dwelling.’ The test of whether a property is “suitable for use” as a single dwelling is a more stringent test than whether it forms a self-contained part of a larger dwelling. Furthermore, whether or not it is suitable for use as a single dwelling requires consideration of whether it is sufficiently independent to be considered a dwelling on its own. In the case where a building is considered to contain more than one dwelling, evidence will be needed to show that each ‘dwelling’ in question is sufficiently independent to count as a separate dwelling in its own right. In the absence of sufficient evidence, it may be decided that it is more appropriate to consider that there is one dwelling, not two or more.”

(2) SDLTM00425 provides assistance of the meaning of “kitchen facilities”:

“Kitchen – A dwelling would be expected to have an area where a meal can be prepared and somewhere suitable to eat it (not necessarily in the same place). It is not necessary for a kitchen to have a cooker or white goods such as a fridge or dishwasher present at the effective date of the transaction, because these are sometimes removed on a house sale. However, there should be space and infrastructure in place e.g. plumbing for sink, power source for cooker etc.”

(3) SDLTM00420, provides assistance in determining the significance of certain aspects of the physical configuration of the Property on the EDT. It states:

“The physical configuration of the property on the EDT is very important in determining how many dwellings there are. [...] ‘Physical configuration’ in this context relates to the facilities of the dwelling, independent access to the dwelling and privacy from other dwellings. These aspects are considered to be of great importance and the lack of one of them would normally cast significant doubt on whether the area in question could be considered suitable for use as a separate ‘single dwelling.’”

23. The physical configuration of the Property on the EDT must be considered, including the domestic facilities, access and privacy. Dr Schryber submitted that there are several factors that indicate that there were not two dwellings for MDR purposes:

- (1) At the EDT the annex was not being used as a separate dwelling.
- (2) There were no kitchen facilities in the annex at the EDT. The annex did not have a separate sink for the preparation of food, and no kitchen units and worktops for the preparation and storage of food. Therefore, the annex was not suitable for independent day-to-day living.
- (3) HMRC submits that it is neither realistic nor practical for the sink in the bathroom to be used for the preparation of food. There is no separate sink the annex for the preparation of food. There was a well-appointed kitchen (and a utility room) in the main house but no such facility in the annex. This indicates that, at the EDT, the annex was part of a single dwelling taken together with the rest of the Property.
- (4) The Property was marketed as a single, five-bedroom detached dwelling.
- (5) Access to the annex either involves an occupant having access across the terrace area at the back of the main house, or the side gate or gap (as suggested by Mr Mason) but the latter still involves the occupant needing to walk alongside the main house and then across the garden, with there being no clear physical demarcation of permitted routes.
- (6) A realistic view of the floor plan indicates that there was only one dwelling, rather than two. Indeed, the Property as a whole was suitable for use as a single dwelling since that is the use to which Mr Mason has put it.
- (7) There was no separate Council Tax.
- (8) There was no separate postal address.

24. Dr Schryber noted that Mr Mason had contended that kitchen facilities would be straightforward to add. HMRC submitted that this does not assist his case:

- (1) He has not provided any evidence demonstrating that a kitchen could be installed. There is no evidence that there is planning permission for the installation of a kitchen and the consequent change of use of the Property from one dwelling to two, nor is there any evidence that such works would comply with building or fire safety regulations.
- (2) The Tribunal should make its determination based on the physical characteristics of the Property at the EDT. Any possible future alterations are not relevant.

FINDINGS OF FACT

25. On the basis of the evidence (including both the papers in the bundles and having heard evidence from Mr Mason) I make the following findings of fact.

26. The Property includes a main house, a detached annex and a large garden, as well as two garages.

27. The main house is a large, detached building with five bedrooms, living space, a large kitchen and various bathrooms. The main house can be accessed from the road by a carriage driveway.

28. There is a large, well-established garden, with several large hedges. There is a swimming pool with a terrace close to the main house.

29. The annex is a separate and standalone structure from the main house. The annex:

- (1) is located in the garden or grounds of the main house, about 30 metres from the swimming pool;
- (2) provides about 64 square metres of accommodation, and has its own toilet, wash basin and shower;
- (3) has lockable entrances, which are operated by different keys to those which can be used to gain entrance to the main house;
- (4) has hot and cold water running to the bathroom, and there is an additional tap outside which is close to the entrance to the annex;
- (5) has its own electrical system, providing ten wall sockets, which are on a separate fusebox to the main house; and
- (6) has an immersion heater, with its own independent controls.

30. At the EDT the annex did not contain any kitchen appliances, and nor were there any fitted kitchen units.

31. There is no direct line of sight between the main house and the annex as there are tall hedges close to the annex.

32. To access the annex, the same carriage driveway needs to be used as for access to the main house. Unlike the main house, the annex is not visible from that driveway. There is a gate on each side of the main house (as well as an additional ungated gap). The gate on the right-hand side of the main house leads to the terrace/swimming pool area. Someone using that gate could, having reached the terrace area, walk around the swimming pool, across the garden and to the annex. However, the annex could also be accessed without needing to use this terrace area. There is a gate to the left of the main house from the carriage driveway, between the house and a garage, and an additional ungated gap on the other side of the garage, between the garage and the boundary of the Property. Taking either of those routes would enable a person to walk next to the side of the house, across the garden and can then reach the annex. There is no marked path across the garden for this purpose.

33. At the EDT the Property formed a single title with the Land Registry, with one postal address and one council tax registration.

DISCUSSION

34. The burden of proof is on Mr Mason to show that he was entitled to MDR and that he was overcharged by the amendments made to the SDLT return by the closure notice. The standard of proof is the balance of probabilities.

35. I have concluded that the main house and the annex together constitute a single dwelling and that MDR is not available.

36. In *Fiander and Brower v HMRC* [2020] UKFTT 190 (TC) the Tribunal considered how to approach a claim for MDR. Although that decision is not binding on me, I respectfully agree with the approach adopted as set out below:

“50. As the property was unoccupied at the time of acquisition, this issue is to be addressed, applying the words of sub-paragraph 7(2)(a) of the Schedule, by asking whether main house and annex were, at that time, each suitable for use as a single dwelling.

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

reasonable person observing the physical attributes of the property at the time of the transaction.

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

37. The facts found by the Tribunal in *Fiander and Brower* were different to those before me – notably, in that case the annex was connected with the main house by a corridor (whereas here the annex is a separate and standalone building), and that corridor was open, in that there was no lockable door albeit that counsel for the appellants submitted that one could readily be added.

38. Mr Mason submitted that at the EDT no modifications were required for the annex to be suitable for use as a dwelling separate from the main house. He submitted that:

(1) in terms of its facilities, there were already hygiene facilities installed in the annex, and no modifications were needed to provide kitchen facilities – there were sockets for, eg, an oven and fridge to be plugged in, sink units are available (eg a Smart Sink) which do not need to be plumbed in but which have their own tanks, and storage and food preparation areas could be provided by free-standing units;

(2) the annex is a standalone structure which provides privacy and is independent from the main house; and

(3) the annex can be accessed via the driveway using either the side gate to the left of the main house or along a gap which runs behind the garage (such garage being next to the main house).

39. However, there are two significant features on the facts before me which lead me to conclude that the main house and the annex were not each a single dwelling, and these are the lack of a kitchen in the annex and the location of the annex in relation to the main house and the means of access thereto.

(1) I accept that there is sufficient space in the annex for kitchen facilities to be installed. However, at the EDT there were no cupboards or white goods in the annex. Whilst Mr Mason did adduce evidence that sink units could be purchased that would not require plumbing, I was not satisfied that a reasonable person viewing the annex would regard the annex as suitable for use as a dwelling separate from the main house given the complete absence of anything that would usually be associated with a kitchen. Mr Mason submitted that the additions or changes he was proposing were not modifications to the building, but were akin to the addition of chattels (eg free-standing cupboards) but I do not consider this sufficient to render the annex suitable for use as a dwelling separate from the main house. In addition, I was not satisfied that the changes proposed would comply with fire safety, electrical safety or building regulations.

(2) The annex is a standalone building located in the garden of the Property. Whilst I accept that there are hedges which provide a degree of privacy between the main house and the annex, nevertheless an occupant of the annex, or those seeking to visit an occupier of the annex, would have to gain access from the main road via the driveway (from which the main house is also accessed) but then, more importantly, from either a gate or gap either side of the garage, alongside the main house and across the garden of the Property.

This means of access may well be acceptable to occupiers of both the main house and the annex where they are known to each other, particularly if the annex were used by family members, but I consider that it is not consistent with the annex being suitable for use by persons who were not known to the occupants of the main house. I regard this as a significant indicator that a reasonable person viewing the annex would not regard it as suitable for use as a dwelling separate from the main house.

40. Dr Schryber referred to there being no separate postal address or council tax registration for the annex, albeit that he acknowledged that other Tribunals had not placed significant weight on such matters. I consider that these facts were consistent with the annex not having been used as a separate dwelling, a fact which was not in dispute. I do not place any weight on these facts when considering whether the main house and the annex were each suitable for use as a single dwelling.

41. Similarly, I have not placed any weight on the description in the marketing materials for the Property.

42. For the reasons set out above, the purchase of the Property did not qualify for MDR and the appeal is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

43. 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.

**JEANETTE ZAMAN
TRIBUNAL JUDGE**

RELEASE DATE: 26 JULY 2021