Neutral Citation: [2022] UKFTT 00433 (TC)

Case Number: TC08649

FIRST-TIER TRIBUNAL
TAX CHAMBER

[By remote video/telephone hearing]

Appeal reference: TC/2021/11690

Stamp Duty Land Tax - purchase of house and land - whether the house and land were wholly residential property – no – whether part of the land was non-residential -yes -definition of grounds - Finance Act 2003, sections 55 and 116. Appeal allowed

Heard on: 21 October 2022
Judgment date: 25 November 2022

Before

TRIBUNAL JUDGE RUHVEN GEMMELL WS

Between

GARY WITHERS

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: The Appellant represented himself

For the Respondents: Caitlin McDonald, Litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. The form of the hearing was by video, all parties attended remotely and the remote platform used was the Tribunal video hearing system. The documents which were referred to comprised of a Hearing Bundle of 344 pages, skeleton arguments for both parties and a series of photographs.

2. 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.

BACKGROUND TO THE APPEAL

3. The Appellant, Gary Withers ("GW"), appealed against a closure notice issued by the Respondents ("HMRC"). The closure notice increased the Stamp Duty Land Tax (SDLT") due from £114,500 (the amount self-assessed by GW) to £212,500, an increase of £98,000.

4. The closure notice was issued to GW pursuant to an enquiry into his SDLT return for the acquisition on 31 July 2019 of certain buildings and land located at the property known as Lake Farm, in Kent ("the Property").

5. HMRC allowed GW's claim for Multiple Dwellings Relief ("MDR") but concluded that the acquisition was of "wholly residential property" and calculated the increased amount of SDLT in accordance with "Table A" of Section 55 of the Finance Act 2003, as amended by paragraph 1, Schedule 4ZA 2003 for Higher Rates for Additional Dwellings ("HRAD")

6. GW contends that the Property includes non-residential property and, therefore, it should be classed as mixed-use. HMRC contends that the Property is wholly residential and that the residential SDLT rates apply.

FINDINGS OF FACT AND EVIDENCE

7. The Property consists of a dwelling-house ("the dwelling") and an independent annexe ("the annexe"), surrounded by approximately 39 acres of gardens, fields, and woodlands.

8. On 28 May 2019, an agreement was signed by Mr John Foley, the previous owner, and Messrs. H G Tompsett & Sons Ltd ("the Grazer"), allowing the Grazer to occupy approximately 20 acres of land forming part of the Property for grazing sheep, and approximately a further 5 acres of land for cutting hay, for a period of one year, in return for consideration of £800 per annum.

9. The property called "Lake Farm" was a barn conversion and had never been a farm. It had been part of an estate called Great Maytham Hall. It was previously called Lake Barn and the annexe was called Meadow Barn; the names had been changed by a previous owner.

10. Lake Farm was advertised as sitting in landscaped gardens. The fields and woodlands were mentioned separately. The land where the fields were was hidden from the house. The public rooms of the dwelling faced south and the extended view was over land not belonging to Lake Farm.

11. The historic grounds of the dwelling were the driveway, extending to approximately 500m, the land around the dwelling and the land to the south extending to 10 -12 acres. The remaining acres to the north of the dwelling were separated by stock proof fencing and had been acquired in 3 transactions in 1994, 2004 and 2007. It was all agricultural land when purchased and had remained in agricultural usage ever since. This land had never been used for residential purposes.

12. Approximately 8.5 acres of woodland had been developed by the Woodland Trust in 2009. At the northern boundary there was a public footway. The northern boundary marked the farthest point from the dwelling.

13. On 31 July 2019, GW and his wife completed the transaction purchasing the Property for consideration of £2,500,000.

14. On the same date, HMRC received an SDLT return from GW. The Property was classified using the code "02" meaning "mixed-use", and the amount of tax self-assessed was £114,500.

15. On 13 February 2020, HMRC wrote to GW and his agent Cripps Pemberton Greenish ("the Agent"), stating that a check was being conducted into the return under paragraph 12, Schedule 10 FA 2003. Information and documentary evidence were then requested to support the check.

16. On 4 March 2020, the Agent responded to HMRC stating that the Property was purchased subject to an existing grazing agreement dated 28 May 2019 and that, at the time of completion, GW owned another farm, May Farm, Chicks Lane, Kilndown, Kent and a flat in London. The Agent enclosed documents including a copy of the contract dated 27 June 2019 in relation to the acquisition of the Property; the grazing agreement dated 28 May 2019; replies to agricultural enquiries; and a transfer of registered titles with HM Land Registry.

17. On 16 September 2020, HMRC wrote to the Agent requesting further information regarding the Property being classified as "mixed-use" on the SDLT return and regarding the MDR claim.

18. On 13 and 14 October 2020, the Agent responded stating that, in respect of the "mixed-use" query, the Grazer had been grazing land at the Property since 2001 on an informal basis until 2006, with a formal agreement being signed in 2019. In respect of the MDR claim, the Agent stated that there was a dwelling and an independent annexe, to which two gas bills were received. The Agent also stated that the annexe had its own address of Meadow Barn, Thornden Lane, Rolvenden Lane, TN17 4PR. The Agent attached copies of gas bills and post sent to the annexe's separate address.

19. On 20 October 2020, HMRC wrote to the Agent with further queries regarding the Property being classified as "mixed-use", specifically regarding the grazing said to have been occurring on the Property since 2001.

20. On 10 November 2020, the Agent responded stating that: the Grazer had occupied the land continuously since 2001 with no periods of absence; the original agreement was a "handshake agreement" before 2006, whereby the Grazer looked after fencing, hedges and other maintenance work in exchange for grazing the sheep; in 2006, it was decided to have

a more formal arrangement, with a fee of £200, reduced to £160 in 2007 and £1 per annum thereafter; and no formal written grazing agreement existed prior to 2019.

21. The grazing lease allowed GW to use the land subject to the grazing agreement conditions. GW stated that he could not for instance walk his dog on the property as this would be detrimental to the grazing sheep and he did not shoot on the grazing land for similar reasons.

22. Reference was made to the sales particulars which included a plan of Lake Farm ("the plan") which showed the distribution of the dwelling, the annexe, the land surrounding them, the fields and also the lake. It was unclear from the plan whether the body of water extended to more than one acre, being one definition of differentiating between a pond and a lake, nor whether this description had been used to "improve" the marketability of the property.

23. On 20 January 2021, HMRC wrote to the Agent setting out their position that the acquisition of the Property should be classed as wholly residential and that HRAD applied, due to GW owning additional properties at the time of purchase of Lake Farm. HMRC accepted that the acquisition of the Property qualified for MDR.

24. On 17 February 2021, the Agent responded stating that; GW owned their previous main residence when they purchased the Property, however, they had subsequently sold this in October 2020 and it was pointless for the GW to pay HRAD only to later reclaim it; the Property should be classed as "mixed-use"; and a refund of £4,100 was due to GW.

25. On 14 April 2021, HMRC issued the Closure Notice to GW and his Agent under paragraph 23, Schedule 10 FA 2003 increasing the SDLT due to £212,500, a difference of £98,000 to the amount self-assessed. HMRC allowed the claim for MDR under Schedule 6B FA 2003 but stated that, as this was an acquisition of residential property, HRAD applied as per Schedule 4ZA FA 2003.

26. HMRC stated that, as GW owned multiple dwellings at the date of the purchase of the Property, HRAD was applicable at that time. HMRC advised that GW could reclaim HRAD following the normal process to do so.

27. On 7 August 2021, GW wrote to HMRC appealing the Closure Notice issued on 14 April 2021 and requesting a statutory review of the decision, on the grounds that the fields and paddocks did not form the grounds of the Property; the grazing agreement and grazing at the time of the purchase of the Property was sufficient to show it was "mixed-use; the Property was not a farm but rather a house in the countryside; and that charging a full commercial rate to the Grazer would have a detrimental impact on the farming community and would be socially divisive.

28. On 6 September 2021, HMRC issued their statutory review to GW, upholding the Closure Notice issued on 14 April 2021.

29. On 17 November 2021, GW submitted an appeal to the Tribunal against the Closure Notice issued on 14 April 2021.

30. GW also claimed that he felt bullied by HMRC during their interactions but was advised that such matters were not within the jurisdiction of the Tribunal.

31. It was clear from the Plan that the views from the principal public rooms faced south and the view before them was extensively over land not owned by GW. The driveway to house of approximately 500m was similarly surrounded on the east by land which did not belong to GW.

32. In HMRC's Statement of Case dated 28 February 2022, they differentiated the land owned under the Woodland Trust scheme from the land surrounding the dwelling and annexe, as the latter "surrounds a residential dwelling, and that dwelling is enhanced by the land. HMRC contended that "this will likely not be the case with the land owned under the Woodland Trust scheme". At the hearing HMRC contradicted this statement and contended that it formed part of the 'garden and grounds' of the dwelling.

33. The issues before the Tribunal were whether the property is wholly residential in terms of Section 116 (1) Finance Act 2003 or whether part of the Property is non-residential and whether the conclusions stated within the Closure Notice issued on 14 April 2021 are correct.

34. GW gave evidence and was a credible witness, in addition to representing himself.

BURDEN AND STANDARD OF PROOF

35. The Burden of proof is on GW to establish on the balance of probabilities that the conclusion in the Closure Notice is incorrect.

LEGISLATION

36. Finance Act 2003

Section 42 – The Tax
Section 43 – Land Transactions
Section 48 – Chargeable Interests
Section 55 – Amount of Tax Chargeable: General
Section 116 – Meaning of "Residential Property"
Schedule 4ZA – Higher Rates for Additional Dwellings
Schedule 6B – Transfers Involving Multiple Dwellings
Schedule 10 – Stamp Duty Land Tax: Returns

CASES REFERRED TO

Goodfellow & Anor v HMRC [2019] UKFTT 0750 (TC)
Hyman & Anor v HMRC [2019] UKFTT 0469 (TC)
Myles-Till v HMRC [2020] UKFTT 0127
Pensfold v HMRC [2020] UKFTT 0116 (TC)
Hyman & Ors v HMRC [2021] UKUT 0068 (TCC)
Hyman and Goodfellow v HMRC [2022] EWCA Civ 185

HMRC'S SUBMISSIONS

Use of land

37. HMRC contend that the property is wholly residential as per section 116(1) FA 2003 and that it is correct to calculate the SDLT due using "Table A" of Section 55 FA 2003 as amended by Schedule 4ZA FA 2003 for HRAD.

38. Section 55(1B) FA 2003 sets out the steps to determine the amount of tax chargeable in respect of a chargeable transaction to which that section applies:

> *"Step 1 Apply the rates specified in the second column of the appropriate table below to the parts of the relevant consideration specified in the first column of the appropriate table. The* ***"****appropriate table****"*** *is –*
>
> *(a) Table A, if the relevant land consists entirely of residential property, and (b)Table B, if the relevant land consists of or includes land that is not residential property.*
>
> *Step 2 add together the amounts calculated at Step 1 (if there are two or more such amounts)...."*

Section 116(1) FA 2003 sets out the meaning of 'residential property':

"I*n 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*
>
> *This is subject to the rule in subsection (7) in the case of a transaction involving six or more dwellings".*

39. HMRC understand that there is no dispute that the dwelling and the annexe purchased as part of the Property are used or are suitable for use as a dwelling and that section 116(1)(a) FA 2003 is satisfied.

40. It is disputed as to whether the land that surrounds the building within sub-section 1(a) forms parts of its garden or grounds as per section 116(1)(b) FA 2003

41. HMRC say that the leading definition of "garden or grounds" is set out in the First-tier Tribunal decision in *Hyman v HMRC* [2019] UKFTT 469, which was subsequently appealed to the Upper Tribunal (*Hyman and Others v HMRC* [2021] UKUT 68 (TCC)) and to the Court of Appeal (*Hyman and Goodfellow v HMRC* [2022] EWCA Civ 185), which states at paragraph 62:

> "In my view "grounds" has, and is intended to have, a wide meaning. It is an ordinary word and its ordinary meaning is land attached to or

> surrounding a house which is occupied with the house and is available to the owners of the house for them to use. I use the expression "occupied with the house" to mean that the land is available to the owners to use as they wish. It does not imply a requirement for active use. "Grounds" is clearly a term which is more extensive than "garden" which connotes some degree of cultivation. It is not a necessary feature of grounds that they are used for ornamental or recreational purposes. Grounds need not be used for any particular purpose and can, as in this case, be allowed to grow wild. I do not consider it relevant that the grounds and gardens are separated from each other by hedges or fences. This may simply be ornamental or may serve the purpose of delineating different areas of land as being for different uses. Nor is it fatal that other people have rights over the land. The fact that there is a right of way over grounds might impinge on the owners' enjoyment of the grounds and even impose burdensome obligations on them, but such rights to not make the grounds any the less the grounds of that person's residence. Land would not constitute grounds to the extent that it is used for a separate, e.g. commercial, purpose. It would not then be occupied with the residence but would be the premises on which a business is conducted."

42. HMRC contend that an important factor to assist in determining whether the land forms the 'garden or grounds' of the dwelling is whether the land was in use for a separate purpose.

43. GW contends that the land surrounding Lake Farm is used for a separate purpose and in a commercial sense, as it has been grazed by a farmer continuously for twenty years. GW charges a nominal rent to the farmer to provide him with the benefit of using the farmland. GW states that many in the farming community struggle to make a living, and that it would be irresponsible to charge a high rent to a farmer for revenue which would be immaterial to his own income.

44. HMRC refer to the case of *Goodfellow & Anor v HMRC* [2019] UKFTT 0750 (TC) in which stables, a stable-yard and paddocks were held not to be in use for a separate purpose as there was no evidence that any business had been in operation at the time of the purchase. The fact that the neighbour was permitted to graze horses in the paddocks for a "peppercorn rent" was not held to amount to them being in use for a separate purpose.

45. The above situation is analogous to that of GW's, as a local farmer is permitted to graze sheep and cut hay in his fields for what HMRC argue can be termed a 'peppercorn' rent, being in the amount of £1 per annum from 2008 and £800 per annum from 28 May 2019.

46. Therefore, HMRC contend that grazing of the land surrounding Lake Farm by a farmer for a nominal rent does not result in the land being used for a separate purpose.

47. GW contends that part of the land falls under a Woodland Trust scheme which he derives no income from, and questions whether this is uncommercial.

48. HMRC respectfully contend that this does not change their position. The fact that the Woodland Trust are permitted to use part of the land surrounding Lake Farm to "create a new woodland...comprising of native trees for the benefit of people, wildlife and landscape" does not mean that this land is used for a separate purpose.

Layout of land and buildings

49. A further factor when considering whether the land forms the 'garden or grounds' of the dwelling is the layout of the land and outbuildings.

50. In the present case, the land surrounding the property is suitable for leisure use and HMRC say that there is no commercial farming, building, or other commercial use on the land.

51. When considering the proximity of the land surrounding the property, the land in question surrounds the dwelling and its gardens, being both physically close and easily accessible to it. The fences and gates, as shown in the photographs submitted by GW on 16 September 2022, do not separate the land from the dwelling.

52. In respect of the extent of the land, HMRC contend that it is entirely appropriate for such a large countryside property to include extensive gardens or grounds. As confirmed in *Hyman and Goodfellow v HMRC* [2022] EWCA Civ 185, there is no acreage limit on the land that could be classed as residential property for SDLT purposes.

53. The property is called 'Lake Farm'. HMRC contend that it is reasonable to expect a significant area of land to surround the property to uphold the image of a large country house in a traditional rural setting, in addition to the presence of livestock. Therefore, the amount of land is fitting with the type of dwelling in question.

54. This view was supported by the First-tier Tribunal in *Goodfellow & Anor v HMRC* [2019] UKFTT 0750 (TC) whereby it was determined at [17] that the land surrounding the house was "very much essential to its character, to protect its privacy, peace and sense of space, and to enable the enjoyment of typical country pursuits".

55. When considering any possible legal factors and constraints, HMRC are not aware of any legal constraints that would prevent the land from being the 'garden or grounds' of the dwelling. No lease has been granted to a third party for exclusive occupation of the land, and the existence of a grazing agreement does not prevent GW from accessing or using the land.

56. Indeed, HMRC contend that the grazing agreement serves to reduce GW's requirement to personally maintain the land and referred to *Goodfellow* FTT at [20] whereby: "the presence of the horses helps keep the land in good heart and saves on mowing, as well as providing an agreeable view in keeping with the rural scene".

Other factors

57. The land was described within the *"gardens and outbuildings"* section of the sales brochure for the property. HMRC contend that this supports the land forming the garden or grounds of Lake Farm

58. The sales brochure also specifically states that the property occupies "an idyllic rural Area of Outstanding Natural Beauty, surrounded by its own rolling pasture and indigenous woodland..." as well as "professionally landscaped gardens..." which "provide a superb backdrop with panoramic views to the south..."

59. HMRC contend that the land surrounding the property has a value as providing a 'treasured view' from the dwelling.

GW contends that the case of *Goodfellow* FTT can be distinguished from his own, as in that case, the relevant property had 4.5 acres of land, whereas in the present case, Lake Farm is surrounded by 39 acres of land.

60. As stated above, *Hyman and Goodfellow v HMRC* [2022] EWCA Civ 185 confirms that there is no acreage limit on the land that could be classed as residential property for SDLT purposes.

61. In terms of the Upper Tribunal decision *Hyman & Ors v HMRC* [2021] UKUT 0068 (TCC), the full range of factors needs to be considered in order to take a balanced view. The size of the land in this case is only one factor; HMRC contend that, when considering all the factors, the land in question forms the garden or grounds of the property and is, therefore, residential.

62. For the reasons set out above and following a balanced assessment of all the facts in this case, HMRC contend that the land surrounding Lake Farm forms its garden or grounds as per section 116(1)(b) FA 2003 and, therefore, the property should be treated as wholly residential for the purposes of SDLT and the conclusions stated in the closure notice issued on 14 April 2021 are correct.

GW'S SUBMISSIONS

63. GW says that HMRC have failed in their submissions to refer to their SDLT Tax Manual, and in particular; (1) SDLTM00460 - Scope: what is chargeable: land transactions: garden or grounds – use;(2) SDLTM00465 - Scope: what is chargeable: land transactions: garden or grounds – layout of land and outbuildings; and (3) SDLTM00470 - Scope: what is chargeable: land transactions: garden or grounds – geographical factors, extent of the land

Commercial Purpose

64. GW believes that Lake Farm is a substantial property with gardens and grounds of about 10-12 acres, and in addition it has grazing land of about 20 acres. The property was initially built and subsequently expanded in this way.

65. On this basis GW appealed against the initial assessment and subsequently received a number of complex arguments from HMRC about why that was incorrect, all of which seemed to fall away when analysed in detail by GW or by HMRC on review.

66. There are two substantive issues which GW believes are relevant.

67. The main issue is the interpretation of "commercial purpose" and GW understands that the definition referred to by HMRC is the most recent and relevant clause :

> "*Land would not constitute grounds to the extent that it is used for a separate, e.g. commercial purpose. It would not then be occupied with the residence but would be the premises on which a business is conducted".*

68. The secondary issue is that there are three sections of the SDLT manual which substantially support the case for Lake Farm being assessed as mixed use.

69. The grazing land at Lake Farm is managed by a local farmer and has been for many years on a continuous basis

70. The local farmer manages a farm and this is his commercial business from which he derives his livelihood. He operates the grazing land entirely independently from Lake Farm. He provides the water tanks, the feeding station and the stock fencing. He has access to the land without any disturbance to the occupants at Lake Farm.

71. GW says this meets the test of a separate purpose on the grazing land as a business is being conducted on the land.

72. GW's commercial benefit which he may or may not derive from the arrangement with the farmer is material to the test of separate purpose. GW has a contract with a farmer who runs a commercial business in either circumstance.

73. GW could derive a profit from this arrangement (say £1,000), or a loss from this arrangement (say £1,000), but in either case, his commercial benefit from the contract does not change the nature of the farmers' business on his grazing land. The farmer is still operating a separate, commercial business on the land.

74. There is then a separate question of GW's commercial benefit as the owner of Lake Farm. GW is unclear if he has derived a commercial benefit from the grazing agreement for two reasons. Firstly, he does not know the annual commercial value of this grazing land as he has not investigated it. Secondly, he has not costed the ancillary services which the farmer provides at Lake Farm (on GW's request). GW believes that the sums involved are quite modest, probably less than £1,000 per year, and both would be difficult to assess.

75. GW derives a significant benefit from this arrangement in terms of savings on land management equipment as he does not need hedge cutters, large chainsaws, stock fence construction implements and the associated tractors and farm vehicles to operate these.

76. GW says that this sort of 'mutual benefit' contract is quite normal in the countryside. It is how people live and operate in a local rural community and costing out every individual service on a contract basis would fail a 'reasonableness' test.

77. As the owner of the grazing land, GW would also be in a very weak negotiating position. There is only one sheep farmer in the local village so there is no effective 'market' for his grazing land. Again, the concept of a commercial contract envisaged by HMRC seems unreasonable on the basis of his commercial options for this land and the traditional practices of rural communities.

78. Although the sums of money involved are modest, GW is content for the farmer to benefit from these arrangements (if that is indeed the case). GW says this arrangement is essentially an act of modest charity but believes it is entirely reasonable and normal behaviour for many landowners, and it would seem perverse if this benevolent approach in some way invalidates the commercial contract with the farmer.

SDLT Manual

79. GW believes that the SDLT manual should be relevant to assessing this case and was surprised that this was not referenced by HMRC in their initial assessment.

80. SDLTM00460 - Scope: what is chargeable: land transactions: garden or grounds – use

"Although all factors must be taken into account and weighed against each other, the use of the land is potentially the most significant indicator of whether the land is 'garden or grounds'. The aim of the legislation is to distinguish between residential and non-residential status, so it is logical that where land is in use for a commercial rather than purely domestic purpose, the commercial use would be a strong indicator that the land is not the 'garden or grounds' of the relevant building. It would be expected that the land had been actively and substantively exploited on a regular basis for this to be the case."

81. GW contends that a significant portion of the land at Lake Farm is used commercially. H G Tompsett & Sons is a commercial farming business and they have been grazing the land continuously for over 20 years, so it is reasonable to conclude that the land has been actively and substantively exploited on a regular basis. GW says that that Lake Farm meets on these grounds this test for mixed-use.

82. SDLTM00465 - Scope: what is chargeable: land transactions: garden or grounds – layout of land and outbuildings

The layout of the land and outbuildings will be significant.

If the land is laid out so as to be suitable for day to day domestic enjoyment by the occupiers of the dwelling, this will be indicative that the land is likely to be 'garden or grounds'. The presence of:

- *domestic outbuildings;*
- *areas laid out for leisure use or carrying out hobbies;*
- *small orchards; or*
- *stables and paddocks suitable for leisure use*

Would all indicate that the land is 'garden or grounds'.

If the land is laid out so as to be suitable for use for a business on a commercial basis, this will be indicative that the land is unlikely to be 'garden or grounds'.

The presence of:

- *commercial farming/horticulture;*
- *commercial woodland;*
- *commercial equestrian use; or*
- *some other commercial use*

Would all indicate that the land may not be 'garden or grounds'.

83. Lake Farm does have domestic outbuildings, an orchard, stables, and a paddock. These are all part of the 12 acres which GW claims are the substantial garden and grounds of the house. Quite separately, there are 20 acres of grazing land which has feeding and water troughs on the land, and internal fencing for stock consistent with commercial sheep grazing. Lake Farm has substantial 'garden and grounds' to the south of the property and significant grazing land and Woodland Trust land to the north of the property. These are quite distinct areas of the property, and the sheep are managed by HG Thompsett & Sons

without any disturbance or disruption to the day-to-day life at Lake Farm. GW contends that Lake Farm on these grounds meets this test for mixed-use.

84. SDLTM00470 - Scope: what is chargeable: land transactions: garden or grounds – geographical factors. Extent of the land

> *"The extent/size of the land in question will also be relevant in relation to the building. A small country cottage is unlikely to command dozens of acres of grounds but a stately home may do. Large tracts of fells/moorland etc. (even if purchased with a dwelling) are unlikely to be residential in nature. The test is not simply whether the land comprises gardens and grounds, but whether it comprises the gardens and grounds of a dwelling."*

85. GW contends that Lake Farm is not a small country cottage, however it is also not a large manor house. It is two modest barn buildings with the first floor bedrooms built into the eaves. The 12 acres of gardens and grounds are more than adequate for the property. Within these 12 acres there is a large lake, stables and paddocks, an orchard and a substantial garden. If the 20 acres of farmland were disposed of then the property would have perfectly adequate garden and grounds

86. GW says that to put the land at Lake Farm into some form of context, at 39 acres it is the same amount of land as Buckingham Palace. Accordingly, there is a direct comparison with a stately home, in this case one with 775 rooms and 30,000 square feet. GW says this a spurious example, but it makes a point. The extent of the land is identified in the SDLT tax manual as a factor to consider and a recognition that the scale of the property to the land matters and should be considered in an assessment of mixed-use.

87. The photographs detailed in the submission on 16th September 2022 illustrate the extent of the separation between the grazing land quite clearly (photos 1-8). At the entrance to Lake Farm there is a long driveway down to a 5 bar gate. There are no views of the house, and with a code-controlled gate at the end of the driveway, it would be consistent with a house which had access across the paddocks to the property beyond the 5 bar gate.

88. The land which can be seen from the driveway is in fact owned by numerous people, including Lake Farm, the Thompsett farm and Hole Park Estate. None of this would be clear to someone coming to Lake Farm, and on arrival at the property through the 5-bar gate there is then ample grounds and garden for Lake Farm to be seen as a very significant property with a lake, orchard, barn, stables and a paddock all to the south of the property, within the 12 acres.

89. In the case of *Hyman* the land under consideration was 3.5 acres and in the case of *Goodfellow* the land was 4.5 acres. At Lake Farm there is about 12 acres (more than twice the land of these cases) which has been part of the garden and grounds since the property was built. This is not in dispute and provides significant gardens and grounds in a magnificent setting for Lake Farm. It is the 20 acres of separately purchased grazing land to the north which is in dispute.

On this basis GW believes the Tribunal needs to take the extent of land into account and as per the SDLT manual, at clause SDLTM00470, and consider if 39 acres set out in the way

described, and illustrated by the photographs, can really be considered as garden and grounds.

Woodland Trust land

90. The Woodland Trust land is clearly not commercial; indeed, it represents an investment by the landowner. However, GW says that there is a question of what purpose this land now serves. He believes that it serves an ecological purpose to provide a habitat for numerous British animal and plant species which are under threat. In this sense it does meet a test of serving a different purpose from the garden and grounds. It is deliberately left wild to enable natural species to flourish.

91. There are numerous government schemes to encourage commercial farming land to become ecological, so as a distinct category it is probably more closely associated with commercial purpose than with garden and grounds.

92. GW contends that the Tribunal should assess if this purpose is sufficiently differentiated to represent separate use for the purposes of SDLT. He recognises that the Tribunal has little guidance or previous case law in making this assessment but thinks there is a reasonable case for environmental protection such as Woodland Trust to be a distinct and separate purpose for the land. There are significant environmental policy implications if this is not the case.

BURDEN AND STANDARDS OF PROOF

93. The burden of proof was on GW to show, on the balance of probabilities, that the SDLT return, which treated all the property at Lake Farm as residential property was incorrect.

DECISION OF TRIBUNAL

94. The principal issue, before the Tribunal is whether the property at Lake Farm includes any land that is not residential property as defined in section 116 (1) of the Finance Act 2003.

95. It was common ground that the dwelling and annexe were residential property, and that section 116 (1) (c) was not in point here. The issue was whether all the land surrounding the dwelling and annexe were "part of the garden and grounds" of the residential property for the purposes of section 116 (1) (b)

96. As Judge Citron succinctly noted in *Myles-Till,*

> *"*a source of difficulty is the draughtsman's choice of a word that is not only legally imprecise but is also somewhat archaic; "the "grounds" of a dwelling building. Few people nowadays would describe the land surrounding their homes as the "grounds"- the word "grounds" was not used in the estate agent's particulars, yet the statute here requires a line to be drawn between the "garden or grounds" of the dwelling building and any other land acquired as part of the same transaction-and provides no definitional assistance."

Case Law

97. The "Cases Referred To" were analysed by the HMRC review officer in the review letter dated 20 October 2021. A number of these cases were decisions of this Tribunal on the application of section 116 which although they are not binding are persuasive authority.

98. *In Myles -Till v HMRC* [2020] UKFTT 0217, the land comprised of a house, garage, garden to the rear of the house and a paddock with a total area of approximately 3 acres. The paddock was a grass covered field of about 1.1 acres which had previously formed part of a neighbouring farm. It was potentially usable for pasture. The Tribunal found that there was insufficient evidence to prove that the paddock had a self-standing function as opposed to being a functional appendage to the house. There was no grazing agreement in place at the time of purchase.

99. Three other First-tier Tribunal cases, *Hyman* (a house and 3.5 acres), *Pensfold* (a farmhouse and 27 acres) and *Goodfellow* (a house and 4.5 acres) were appealed to the Upper Tribunal, as one appeal, but were not argued on the same grounds as those submitted at the First-tier Tribunal hearings and all the taxpayers were represented by the same counsel. *Hyman* and *Goodfellow* but not *Pensfold* then appealed the Upper Tribunal decision to the Court of Appeal.

100. In *Hyman v HMRC* [2019] UKFTT 469, the property known as "The Farmhouse" comprised of a house and 3.5 acres of land. The house and land formed a roughly rectangular piece of land. The house was situated within a rectangular cultivated garden. Outside this garden was a large barn in a poor state of repair and there was a further garden referred to as a "secondary garden". Most of the remainder of the property was a meadow. On one side of the property was a bridleway which was separated from the garden and the meadow by hedges.

101. The taxpayers claimed that the barn, meadow and bridleway were not part of the garden or grounds of the house. The Tribunal found that the barn, meadow and bridleway were all "grounds" of the dwelling building as they were "all occupied with the house" to the extent that it was available to the owners of the dwelling to use as they wished, but not used for a separate (e.g. commercial) purpose.

102. In *Goodfellow & Anor. v HMRC* [2019] UKFTT 750, the property known as Heather Moore House in Hampshire comprised of a house in 4.5 acres. The land comprised gardens, a swimming pool, garages, a stable yard and paddocks. The taxpayers contended the stable yard and paddocks were not residential property

103. The Tribunal adopted the analysis in *Hyman* and dismissed the appeal finding the paddocks and stables we use for recreational (not commercial) activity.

104. In *Pensfold v HMRC* [2020] UKFTT 0116 (TC), the property known as Pensfold Farm in Surrey comprised of a farmhouse and 27 acres of land. The taxpayer argued that the house and only part of the land was residential property and the remaining land have been subject to a long-term grazing agreement under which land had been grazed every year for several years. At the time of purchase, however, the land was not actually been grazed and there was no grazing agreement in place. Neither the sale advertising nor the sale and purchase contract made any mention of the properties being subject to grazing rights. The Tribunal concluded that the use of property at the time of purchase was wholly residential.

105. The decisions in *Hyman, Pensfold* and G*oodfellow* were appealed to the Upper Tribunal [2021] UKUT 0068 (TCC) on the permitted ground of appeal of whether the land can only be part of "the garden and grounds of" the house if the land is "needed for the reasonable enjoyment of the [house] having regard to the size and nature of the [house]"

106. The same counsel appeared for all three appellants and submitted that the use of the word "forms part" showed that not all the grounds of the house were necessarily "residential property" and that section 116 (1) (b) imposed a requirement that the land in question must be needed for the reasonable enjoyment of the dwelling.

107. The Upper Tribunal did not attempt to define a "garden or ground" as that was not the issue before it and upheld the decisions of the FTT which in each case and found that the entirety of the land fell within section 116 (1) (b)

108. The taxpayers in *Hyman*, and *Goodfellow* appealed to the Court of Appeal Civil division. The judgement at paragraph 1 states that the issue on appeal was whether there was an objective quantitative limit on the extent of the garden or grounds that fell within the definition of "residential property".

109. The Court of Appeal heard, counsel for the taxpayers suggesting the desirability of a workmanlike and coherent test; such a test being whether the land was required for the reasonable enjoyment of the dwelling having regard to its size and nature.

110. It was argued that in order for garden or ground to amount to residential property, they must be needed for the reasonable enjoyment of the dwelling having regard to its size and nature.

111. In each case it was argued that the extent of the garden or grounds exceeded what was needed for the reasonable enjoyment of the relevant dwelling.

112. The court held, at paragraph 12, "it is not uncommon for Parliament, even in a taxation context, to use coarse-grained words whose outer limits are left of the Courts and Tribunal to work out; "plant", emolument" and "resident" are but three examples."

113. The court then considered the issue of "reasonable enjoyment"; the principles of statutory interpretation and a comparison of the legislation as it related to capital gains tax relief for main residences.

114. The court, at paragraph 30, stated that section 116 was concerned with characterising property as residential property on the one hand or non-residential property on the other: "That characterisation of property applies generally for the purposes of SDLT; not merely to the availability of one form of relief against tax. Land does not cease to be residential property merely because the occupier of a dwelling house could do without it."

115. The Court of Appeal rejected the limitation that section 116 required the reasonable enjoyment of land in order to fall within the definition of residential property.

HMRC's Guidance - SDLT manual

116. GW referred to what he considered to be relevant parts of HMRC's manual guidance (notably, HMRC's case did not). HMRC make this manual available to the public including taxpayers for the assumed purpose of attempting to assist taxpayers.

117. The guidance is relevant only to the extent that it reflects the views of the body with considerable experience in tax and has no binding authority in law. The Tribunal, nevertheless, consider it useful in considering this case and noted that understandably HMRC appeared to regularly follow its own guidance.

118. The relevant extracts from the SDLT manual were set out in detail in GW's submissions.

Oxford English Dictionary

119. The Oxford English Dictionary defines "grounds" as "an enclosed portion of land of considerable extent surrounding or attached to a dwelling house or other building, serving chiefly for ornament or decoration".

Application and conclusion

120. This case is about whether the grounds of Lake Farm comprising of the dwelling and annexe and the land and water surrounding it are all residential property.

121. GW identified an area of 10 to 12 acres surrounding his house which he considered to be the "garden or grounds" which was clearly visible from dwelling.

122. The land subject to the grazing agreement and the Woodland Trust agreement were separate from Farm Barn and Meadow Barn before they were renamed by the previous owner. As given in evidence, these areas of land were acquired in stages before coming under common ownership.

123. This Tribunal adopts the reasoning of Judge Citron in Myles- Till as follows: at [44] :

> *"what indicates that a piece of adjoining land has become part of the "grounds" of a dwelling building? Technically, fact that a dwelling building is sold together with adjoining land, as a single chargeable transaction for SDLT purposes, does not make that adjoining land, necessarily, part of the grounds of the dwelling building: section 55 clearly envisages the possibility that the subject matter of a single chargeable transaction will include both residential and nonresidential land. Common ownership is a necessary condition for the adjacent land to become part of the grounds of the dwelling building – but not, in my view, a sufficient one."*

124. In respect of HMRC's submissions relating to the "use of land" the Tribunal does not accept their submission that it is sufficient that the adjacent land is available to the GW to use as he wishes. The Grazing agreement does contain restrictions on his use of the land as set out in his submissions.

125. It is also necessary to look at the use or function of the adjoining land to decide if its character answers to the statutory wording in s116(1). Adopting Judge Citron's analysis: -

> *"is the land grounds "of" a building whose defining characteristic is its "use" as a dwelling? The emphasised words indicate that that the use or function of adjoining land itself must support the use of the building concerned as a dwelling. For the commonly owned adjoining*

> land to be "grounds", it must be, functionally, an appendage to the dwelling, rather than having a self-standing function."

126. This formulation, Judge Citron believed, was consistent with the analysis in *Hyman* at [92], "provided one reads that paragraph to the end which he read as land under common ownership and control with the dwelling building – "would not constitute grounds to the extent it is used for a separate e.g. commercial purpose". I read this as a very similar understanding of the meaning of "grounds" to mine here, in that use for a "commercial" purpose is a good and (perhaps the only) practical example of commonly owned adjoining land that does not function as an appendage but has a self-standing function."

127. The Tribunal considers that the grazing land has been used for a self-standing function, namely a commercial purpose being the grazing of land.

128. The Tribunal accepts GW's submissions that the grazing land and Woodland Trust land can be accessed and operated independently from Lake Farm, being principally the dwelling, the annexe and the grounds surrounding it of 12 acres, given its layout and geographic location and that the grazing is a business carried on by the local farmer.

129. Much of the grazing land cannot be seen from the dwelling and the Tribunal considers, given the areas involved at Lake Farm and the layout of the property, that the land is not "very much essential [emphasis added] to its character", nor does it "protect privacy, peace and sense of space nor necessarily enable the enjoyment of typical country pursuits", in the sense of the FTT decision in *Goodfellow*.

130. The grazing of sheep at Lake Farm is not considered by the Tribunal to be the same as the presence of grazing of horses keeping the land "in good heart and saving on mowing as well as providing an agreeable view in keeping with the rural scene". The scale and quantity of grazing sheep is considerably different.

131. The Tribunal considers that the farmer by providing the water tanks, the feeding station and the stock fencing runs a commercial business notwithstanding that GW derives a possibly small rental payment in return. It is, therefore, land used for a "commercial purpose".

132. The Tribunal accepted in any event that is there is only one sheep farmer in the local village there may be no effective market or competition to take on the grazing of this land. Taking all these circumstances into account the Tribunal considers that the rental payment is commercial.

133. In addition, GW receives ancillary services because of the grazing agreement, although he has not quantified what these are.

134. The Tribunal considers that by having this agreement in place, GW does not require to incur capital expenditure in obtaining the equipment needed to deal with cutting hedges, dealing with forestry and tree operations and fence construction and repair, and so receives benefits in excess of the cash payment he receives.

135. The Tribunal also considered that the Woodland Trust land does not function as an appendage but has a self-standing function".

136. The Tribunal does not accept that because there is a contribution to the cost of maintenance rather than a monetary consideration payable this fails to meet the test of a

commercial purpose. Even if it does, the Tribunal consider that it has a self-standing function and accordingly should not be classified as residential property. This self-standing function and separate use is improving the environment and rewilding under strict and controlled conditions and obligations.

137. The agreement with the Woodland Trust requires the trust to pay no more than 50% of the cost of agreed works and 50% of the cost of their maintenance work. The Trust commits itself to make payment of no more than £2700 plus VAT for their contribution to the works. GW at no time receives any cash payment from the trust.

138. Similar to GW's arrangement with the farmer in relation to the grazing land, he receives a commercial benefit to the extent that he does not need to pay 100% of the costs of maintenance.

139. The aim of the agreement is to ensure that at least 80% of the trees planted are established well within usual forestry standards. GW is required to allow unfettered access to the site by workmen, agents and invitees of the trust and he is specifically prohibited from carrying out any activities which would lead to loss of or damage to the works.

140. GW is required to control rabbits and other pests and not to allow any grazing of stock.

141. HMRC's SDLT Manual at 00460 states that the aim of the legislation is to distinguish between residential and non-residential status and that it is logical that where land is in use for a commercial rather than purely domestic purpose the commercial use would be a strong indicator that the land is not the "garden or grounds" of the relevant building.

142. This is qualified by a statement that "it would be expected that the land had been actively and substantially exploited on a regular basis for this to be the case". Although at one stage the grazing agreement was on a low rental often referred to as a "peppercorn rent" it has been the subject of a grazing business continuously for over 20 years.

Layout

143. The Tribunal does not accept HMRC's submission that the land surrounding the dwelling is suitable for leisure use where there is no commercial farming, building or other commercial use on the land; nor accepts that the separate purpose has to be necessarily for commercial use although the latter is a good example of such use.

144. HMRC say that the extent of the land which they consider to be physically close and easily accessible is entirely appropriate for "such a large countryside property" and say there is no acreage limit on the land that could be classified as residential property for SDLT purposes.

145. HMRC's manual, SDLT 00470-extent of land and geographic factors states that the extent/size of land in question will also be relevant in relation to a building and that the test is not simply whether the land comprises garden or grounds but whether it comprises the gardens or grounds of the dwelling.

146. The Tribunal considered that Lake Farm is not a farm but a barn conversion (where the first-floor bedrooms are built into the eaves) and is not a large manor house. GW accepts that 12 acres of gardens and grounds are more than adequate for the property. Within those 12 acres there is a large lake, stables and paddocks, a orchard and a substantial garden.

147. GW stated that if the grazing lands and the Woodland Trust land where disposed of, then the property would have a perfectly adequate garden and grounds. The property would, however, require the driveway through the grazing lands in order to obtain access.

148. The Tribunal considered that the extent of land the grazing land and Woodland Trust land do not form part of the garden or grounds of the dwelling.

149. The Tribunal make this finding whilst accepting that the fencing and gates do not create any differentiation between residential and non-residential property and that there is no acreage limit on the land that can be classified as residential property for SDLT purposes.

150. HMRC referred to the name of the property being "Lake Farm" and contend it is reasonable to expect a significant area of land to surround the property to uphold the image of "a large country house and a traditional rural setting, in addition to the presence of livestock. Consequently, they submit that the amount of land is fitting for the type of dwelling in question.

151. HMRC referred to the sales brochure for the property and in particular that the house was sold with "gardens and outbuildings" occupying "an idyllic rural area of outstanding natural beauty, surrounded by its own rolling pasture and indigenous woodland" as well as "professionally landscaped gardens" which provide a superb backdrop with panoramic views to the south."

152. As was established in evidence, not all the "panoramic views" are over land belonging to GW, and it is perhaps somewhat hyperbolic to say that the dwelling is surrounded by its own rolling pasture and an indigenous woodland. Whereas this is true as a matter-of-fact this does not in itself support the view that the areas of land are in the grounds "of" a building whose defining characteristic is it "use" as a dwelling.

153. The Tribunal again adopts the approach of Judge Citron in *Myles-Till* that "the words "of" and "use" indicate that the use or function of adjoining land itself must support the use of the building concerned as a dwelling. The grazing land and Woodland Trust land do not provide that support.

154. HMRC's SDLT Manual at 00465- refers to the layout of the land and buildings and suggest that the presence of commercial farming/horticulture; commercial woodland; or some other commercial use would all indicate that the land may not be garden or grounds.

155. The Tribunal accepted that the farm, has domestic outbuildings, an orchard, stables and a paddock within 12 acres and that separately there are 20 acres of grazing land with feeding and water troughs in the land and internal fencing which are consistent with the commercial grazing of sheep and the Woodland Trust land.

156. The Tribunal accepted GW's submission that the grazing land to the north of the property comprising approximately 20 acres is a distinct area of property where sheep are managed by farmers without any disturbance or disruption to the day-to-day life of Lake Farm.

157. The Upper Tribunal decision of *Hyman and Others* requires the full range of factors to be considered in order to take a balanced view. The size of the land is only one factor and it is not relevant whether or not there is reasonable enjoyment of the land connected to the dwelling.

158. The Tribunal, in following a balanced assessment of all the facts, considers that the land surrounding Lake Farm to the extent that it is occupied for grazing and by the Woodland Trust does not constitute garden or grounds as defined in section 116 of the Finance Act 2003 and, therefore, should not be treated as residential property for the purposes of SDLT.

159. There were, importantly, grazing and Woodland Trust agreements in place at the time purchase and the Tribunal consider that the relevant areas of land were used for a separate purposes and self standing functions and failed to meet the tests as residential property. Their use or function does not support the use of the dwelling/building concerned as a dwelling.

160. Accordingly, the appeal is allowed.

Right to apply for permission to appeal

161. 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.

WILLIAM RUTHVEN GEMMELL WS
TRIBUNAL JUDGE

Release date: 25th NOVEMBER 2022