Neutral Citation: [2024] UKFTT 00337 (TC)

Case Number: TC09141

FIRST-TIER TRIBUNAL
TAX CHAMBER

Tribunal Centre
Alexandra House
14-22 Parsonage
Manchester

Appeal reference: TC/2020/02201

Stamp Duty Land Tax – residential property – section 116(1)(b) Finance Act 2003 – whether all the land sold with a house formed part of the grounds – appeal dismissed

Heard on: 22 January 2024
Judgment date: 19 April 2024

Before

TRIBUNAL JUDGE JONATHAN CANNAN

Between

SIMON AND JOANNE HOLDING

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Patrick Cannon of counsel, instructed by Excello Law

For the Respondents: Loretta McLaughlin, litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. This appeal concerns the appellants' liability to stamp duty land tax ("SDLT") on the purchase of a property known as Hall Farm, near Congleton, Cheshire ("the Property"). The sole issue is whether the Property was wholly residential property for the purposes of SDLT. If so, SDLT was chargeable at the residential rate of tax. The appellants contend that several fields included in the Property were non-residential property. If that is right, SDLT was chargeable at the lower, non-residential rate of tax.

2. The appellants purchased the Property on 29 August 2018 for £4.6m. At that time, the sales brochure described the Property as follows:

> An impressive and beautifully presented five bedroom Georgian country house with two bedroom cottage, staff flat and extensive equestrian facilities, all nestled in approximately 40.6 acres.

3. Section 116(1) Finance Act 2003 ("FA 2003") defines "residential property" for the purposes of SDLT:

> **116 Meaning of "residential property"**
>
> (1) In this Part "residential property" means —
>
> (a) a building that is used or suitable for use as a dwelling, or is in the process of being constructed or adapted for such use, and
>
> (b) land that is or forms part of the garden or grounds of a building within paragraph (a) (including any building or structure on such land), or
>
> (c) an interest in or right over land that subsists for the benefit of a building within paragraph (a) or of land within paragraph (b);
>
> and "non-residential property" means any property that is not residential property…

4. By virtue of section 55 FA 2003, SDLT is charged a rates of tax set out in Table A and Table B of that section. Table A applies to land which consists of entirely residential property. Table B applies to land which consists of or includes land that is not residential property. The rates of tax under Table A are greater than the rates under Table B.

5. Approximately 24 acres of the Property comprises fields ("the Fields"). The appellants' case is that the Fields do not form part of the "grounds" of the dwelling for the purposes of section 116(1)(b). As such, they are non-residential property. The Property therefore includes land which is non-residential property and the lower rate of tax under Table B is payable. HMRC's case is that the Fields do form part of the grounds of the dwelling. The Property is therefore entirely residential property and the higher rate of tax under Table A is payable.

6. The Property was the appellants' second property at the time of purchase which meant that an additional amount of SDLT was payable. I do not need to set out the detailed basis on which SDLT falls to be calculated, or the basis on which SDLT was calculated in the appellants' SDLT return or in a subsequent amendment to that return which was made by the appellants. For present purposes I simply note that following an enquiry into the appellants' SDLT return, HMRC issued a closure notice dated 24 January 2020 which amended the return to show £603,750 tax due. On this appeal, the appellants say that the SDLT due in relation to the transaction was £219,500.

7. The issue for determination is whether the Fields formed part of the grounds of the dwelling within section 116(1)(b) FA 2003 at the time of the land transaction.

8. There are a number of cases which address the meaning of grounds for the purposes of section 116(1)(b). I shall consider some of those cases and the parties' submissions in the light of my findings of fact, which follow. I make those findings of fact based on the oral evidence of Mr Holding and the documentary evidence. The documentary evidence included photographs of the Property taken shortly before the hearing. I am satisfied that the nature of the land and Property has not materially changed since August 2018 and that the photographs are relevant evidence as to the nature of the land at that time.

FINDINGS OF FACT

9. The appellants purchased the Property on 29 August 2018. It comprises a substantial Georgian farmhouse ("the Farmhouse"), U shaped traditional outbuildings which are used as stabling, a former piggery converted to residential use, 2 portal framed agricultural-type buildings, an outdoor menage and a horse walker. A separate building houses an indoor floodlit horse arena. There are 4 railed horse paddocks to the immediate south of the Farmhouse and 3 railed paddocks to the north of the Farmhouse along the main driveway. There are also gardens including a small swimming pool. The Fields run along the western boundary of the Property and there is another field with a lake on the north-eastern side of the Property. The Property comprises approximately 41 acres, of which the Fields comprise approximately 24 acres.

10. I attach a plan of the Property as an appendix to this decision ("the Plan"). The Farmhouse is the northern most building on the Plan marked by an arrow. The railed paddocks are marked 1 – 7 on the Plan and the Fields are marked 8 – 11. The field with the lake is marked 12. The main driveway runs from the north-eastern corner of the Property, next to paddocks 1-3. The swimming pool is between the Farmhouse and Field 9. The menage, which measures 20m x 40m, is a rectangular feature on the Plan adjacent to paddock 4.

11. The appellants were attracted to the Property by its location and its equestrian facilities. At the time of purchase, the appellants owned a 110 acre farm near Macclesfield which they farmed. It had similar railed paddocks but lacked an indoor arena or horse walker. The Property has stabling for 8 horses. When the appellants first moved to the property, Mr Holding recalled that they possibly kept 9 horses at the Property. This included 2 or 3 horses in livery owned by other people. Two of the liveried horses had moved with the appellants from their previous property, but subsequently left because the Property was not convenient for the owners.

12. The appellants accept that all the land with the Farmhouse, excluding the Fields, is the grounds of the Farmhouse because it enables the better enjoyment of the dwelling. The paddocks 1 – 7 are all used to graze horses and provide sufficient grazing for a small number of horses. Field 12 is poor ground and is only occasionally used to graze horses. The appellants also have a donkey and alpacas which are kept in Field 12. Field 8 is accessed through a gate in the fence with paddock 1. Fields 9 and 10 are accessed along a track between a small pond and the menage which leads to a gate. Field 11 is accessed through Field 10 and is close to a neighbouring cottage, called Park Cottage. The layout has not changed since August 2018.

13. In addition to the paddocks, Fields 9 and 10 are used to graze horses in the winter. The appellants' horses are grazed in Field 9 and two horses owned by "another equestrian team" are grazed in Field 10.

14. Fields 8 – 10 have water troughs which are used by the appellants as a means of providing water for horses grazing in those Fields. Field 11 does not have its own water

trough. It shares a trough in the fence with paddock 6 which is accessible from both sides. There was no evidence as to when or for what purpose the troughs were placed in the Fields.

15. There was no evidence as to how Field 8 is used in the winter, but I infer that it too is used by the appellants for grazing horses, at least occasionally. I make that inference because I was told that the trough in Field 8 was used by grazing horses.

16. The appellants have occasionally put show jumping practice jumps on Field 10. An area slightly smaller than the menage has been fenced off from the rest of Field 10 for that purpose and it appears on the Plan. The appellants do not use Field 11 for equestrian purposes.

17. In the first year after purchasing the Property, Mr Holding mowed and baled the grass on the Fields and sold it to a local dairy farmer. Since then, the appellants have had an agreement with a local farmer who kills the weeds, fertilises the Fields and takes haylage from the Fields. This saves the appellants from having to maintain the necessary equipment, pay for diesel and do the work.

18. The topography of the land means that the Fields are only partially visible from the Farmhouse. This was confirmed by a plan drawn up by the appellants showing the sightlines, and by photographs taken from the top windows of the Farmhouse. The Farmhouse is on three floors. The top floor of the Farmhouse gives the best vantage point, but the majority of the land in the Fields cannot be seen from the Farmhouse. Much of Field 8 and approximately one third of Field 9 can be seen from the Farmhouse. A small part of Field 10 can be seen up to the boundary at the southwestern tip. None of Field 11 can be seen. Similarly, the Farmhouse is barely visible from Field 11, the southern end of which is about ½ km from the Farmhouse.

19. There are hedges around each Field and even standing by the swimming pool it is not possible to see the Fields over the hedge. It is possible to see a small part of Field 10 from the menage, and possibly a small part of Field 9. From paddocks 1 – 3 it is possible to see Field 8 and half of Field 9 but it is not possible to see anything of Field 10 or Field 11. From paddocks 4 – 7 there would be good views of Field 10 and Field 11.

20. Mr Holding's evidence was that the land surrounding the Farmhouse was substantially in excess of what he considered a reasonable person would deem appropriate for the use of the Farmhouse as a dwelling. He considers that the Fields were not part of the grounds of the dwelling.

21. Satellite images from April 2018 show tractor marks across Fields 9 – 11 and it is likely that at the time of these images an agricultural contractor used by the vendors had been weedkilling prior to the first cut of silage in early May. In contrast, paddocks 1 – 7 were being grazed by horses at that time.

22. Mr Holding told me and I accept that the vendors of the Property were keen equestrians and their daughter competed in dressage for Great Britain. They had purchased the Property in 2009 and set about developing the equestrian facilities. They were not farmers and there is no reason to think that they were particularly concerned with any commercial opportunities the Fields might have provided. The vendors used the equestrian facilities and the paddocks to keep their daughter's horses and ponies. The Fields were cropped by a local agricultural contractor. This was on the basis of a 'handshake' agreement, whereby he used the Fields for the production of silage. The Fields were mowed and the grass was collected, baled and wrapped. Once the grass matured into fermented silage, it was sold by the contractor to a local dairy farmer.

23. An email from the agricultural contractor dated 15 August 2018 states:

> …[We] had a verbal agreement that we could take any excess grass away if [the Fields] were kept tidy. So we mowed the grass off, bailed and wrapped it then took it to one of our customers of which is a 300 cow dairy unit.

24. Mr Holding acknowledged that the Fields were not let by the vendors to the agricultural contractor by way of a formal written agreement. It was a verbal agreement, which is common in the countryside. The vendors did not receive a market rent for the Fields, and simply wanted the Fields to be kept weed free, cropped and looked after.

25. At the time of the purchase the appellants were concerned to be sure that the agricultural contractor did not have any right to stay on the land as it was their intention to farm the land themselves. They were assured by their solicitor that the arrangement was an agricultural contracting agreement and the contractor had no security of tenure. In the event, the appellants did not farm the land.

26. The appellants accept that the vendors entered into the agreement to ensure that the Fields were kept in a good state of husbandry. Indeed, the appellants themselves entered into a similar agreement with a different farmer for the same purpose. The appellants have no need for the grass on the Fields during the summer because there is sufficient grass for the horses in the paddocks.

27. Prior to purchasing the Property, the appellants' solicitors commissioned an environmental report from Argyll Environmental Limited. The report is dated 7 June 2018 and contained a contaminated land liability assessment and a flood risk summary. The report indicated the current use and proposed use of the Property as "agriculture", together with the following description:

> The farm is approximately 16 hectares and is formed of arable land and paddocks, with a small area of woodland in the north east. Hall farmyard is located in the east, formed of a residential property and commercial stables buildings and facilities. No redevelopment is proposed.
>
> According to trade directories, current operations at the Site include joinery manufacturers.
>
> The farm is almost entirely surrounded by arable land or grassland, with small areas of woodland. A nursery is located 20m north west. Farmyards are located 20m north and 25m north east.
>
> The area was extremely similar in the late 1800s and there have been no activities or alterations since that time that are likely to significantly affect the farm.

28. HMRC invited me to give little weight to this report because it was prepared for environmental purposes and not for the purposes of SDLT. I do not consider that affects the weight to be attached to the report. However, the report is a "desktop assessment" and it is not clear what knowledge, if any, the author had of the activities carried out on the Property. There is no evidence of any commercial activities at the Property in 2018, apart from the vendors' agreement with the agricultural contractor mentioned above. I shall consider in due course the nature of that activity. The appellants did not rely on references in the report to commercial stables or a joinery manufacturer operating from the Property.

DISCUSSION

29. The meaning of the term "grounds" in section 116(1(b) FA 2003 was considered by the Court of Appeal in *Hyman v HM Revenue & Customs* [2022] EWCA Civ 185. The Court of Appeal declined to apply a test by reference to what land is required for the reasonable enjoyment of the dwelling. It upheld the Upper Tribunal in that case which had said that the word "grounds" was an ordinary English word.

30. The Upper Tribunal in *The How Development 1 Limited v HM Revenue & Customs* [2023] UKUT 00084 (TCC) has since described the evaluative approach to be applied in determining whether land forms part of the grounds of a dwelling:

> 34. Neither the Upper Tribunal nor the Court of Appeal in *Hyman* attempted to give a definition of the word "grounds". Therefore, as the Upper Tribunal held, the correct approach to determining whether land forms part of the "grounds" of a property involves looking at all the relevant facts and circumstances and weighing up the competing factors and considerations, where they point in different directions, in order to reach a conclusion. This is, essentially, an evaluative exercise.

31. That approach has subsequently been adopted by the FTT in a number of cases in which the issue of what comprises the grounds of a dwelling for SDLT purposes has arisen. Cases such as *Faiers v HM Revenue & Customs* [2023] UKF 297 (TC) and *39 Fitzjohn's Avenue Limited v HM Revenue & Customs* [2024] UKFTT 28 (TC) have sought to describe the relevant factors. The facts are very different, but I have found the summary of factors at [37] of *39 Fitzjohn's Avenue* to be helpful:

> (1) Grounds is an ordinary English word.
>
> (2) HMRC's SDLT manual is a fair and balanced starting point (considering historic and future use, layout, proximity to the dwelling, extent, and legal factors/constraints).
>
> (3) Each case must be considered separately in the light of its own factors and the weight which should be attached to those factors in the particular case.
>
> (4) There must be a connection between the garden or grounds and the dwelling.
>
> (5) Common ownership is a necessary condition, but not a sufficient one.
>
> (6) Contiguity is important, grounds should be adjacent to or surround the dwelling.
>
> (7) It is not necessary that the garden or grounds be needed for "reasonable enjoyment" of the dwelling having regard to its size and nature.
>
> (8) Land will not form part of the "grounds" of a dwelling if it is used or occupied for a purpose separate from and unconnected with the dwelling.
>
> (9) Other people having rights over the land does not necessarily stop the land constituting grounds. This is so even where the rights of others impinge on the owners' enjoyment of the grounds and even where those rights impose burdensome obligations on the owner.
>
> (10) Some level of intrusion onto (or alternative use of) an area of land will be tolerated before the land in question no longer forms part of the grounds of a dwelling. There is a spectrum of intrusion/use ranging from rights of way (still generally grounds) to the use of a large tract of land, historically in separate ownership used by a third party for agricultural purposes under legal rights to do so (not generally grounds).
>
> (11) Accessibility is a relevant factor, but it is not necessary that the land be accessible from the dwelling. Land can be inaccessible and there is no requirement for land to be easily traversable or walkable.
>
> (12) Privacy and security are relevant factors.
>
> (13) The completion of the initial return by the solicitor on the basis the transaction was for residential property is irrelevant.
>
> (14) The land may perform a passive as well as an active function and still remain grounds.
>
> (15) A right of way may impinge an owner's enjoyment of the grounds or even impose burdensome obligations, but such rights do not make the grounds any less the grounds of that person's residence.

(16) Land does not cease to be residential property, merely because the occupier of a dwelling could do without it.

32. Whilst this summary is helpful, each case must be decided on its own facts. Not all of these factors will be relevant in any particular case and some factors will carry more weight than others depending on the circumstances. There may be other factors that are relevant in a particular case. It is an evaluative exercise and the overriding question is whether the land falls within the ordinary meaning of the word "grounds".

33. I should note at this stage that the appellants relied on a decision of the FTT in *Suterwalla v HM Revenue & Customs* [2023] UKFTT 00450 (TC). That was a decision involving a property sold with a paddock. The decision is on appeal to the Upper Tribunal and a hearing is imminent. Whilst the decision of the Upper Tribunal might provide helpful guidance in relation to the present appeal, both parties were content for me to make my decision based on the existing authorities. Given that cases such as this involve an evaluative judgment on the particular facts, it is not necessary for me to refer to the decision of the FTT in *Suterwalla*.

34. I must consider the nature of the land at the time of completion of the transaction on 29 August 2018, which the effective date of the transaction for SDLT purposes. Neither party suggested I should do otherwise. Neither party relied on the reference to future use at (2) of the summary above and in HMRC's SDLT manual. Indeed, the SDLT manual at 00450 says that future use is not relevant. That is consistent with the Upper Tribunal in *Ladson Preston Limited v HM Revenue & Customs* [2022] UKUT 00301 (TCC) which confirmed that in the context of multiple dwellings relief it is the land at the time of completion that is relevant. The same principle must apply in identifying whether the land was residential property at the time of the transaction. Having said that, in my view the use of the Property by the appellants since that date may shed some light on the question of whether the Fields were part of the grounds of the Farmhouse at the time of the transaction. In particular, such use may evidence the relationship between the Fields and the Farmhouse at the time of the transaction. To that extent only, Mr Holding's evidence of the appellants' actual use of the Fields may be relevant.

35. It is sufficient if the appellants can show that at least one of the Fields, or indeed part of one of the Fields did not form part of the grounds of the Farmhouse. If that is the case, then that land would fall to be treated as non-residential property and the lower rate of SDLT would be applicable. Indeed, by the time of closing submissions Mr Cannon's focus was on Field 11. He submitted that Field 11 was clearly not part of the grounds of the Farmhouse. It was not used for equestrian activities, even when there were 8 horses stabled at the Property. It could not be viewed from the Farmhouse and was used all year round for agricultural activities, namely the growing and cropping of grass for haylage.

36. HMRC relied on the fact that the Property including the Fields was held by the vendors under one registered title and that title was conveyed to the appellants. They say that this is a strong indicator that the Fields were part of the grounds of the Farmhouse. However, the Property has historically been a working farm. In the circumstances, I do not consider that the existence of a single title to the property has much if any significance in identifying the grounds.

37. More relevant is the fact that Fields 8 – 10 and part of Field 11 adjoin what are acknowledged to be the grounds of the Farmhouse, including the paddocks. There is also unhindered access to the Fields from the Farmhouse and the paddocks, and paddock 6 shares the facility of a water trough with Field 11. The fact that the Fields are fenced off from the

rest of the Property and indeed from each other carries little if any weight. The paddocks are also separately fenced off and the fencing of the Fields does not make them inaccessible.

38. In my view the most significant factor in identifying the grounds of a dwelling is the nature of the dwelling and the land, and the relationship between the dwelling and the land. At the time of the transaction, the Property had been developed so that it had extensive equestrian facilities including stabling for 8 horses. The Farmhouse is rightly described in the sales particulars as "*an impressive ... Georgian country house with ... extensive equestrian facilities"*. The extent of the Farmhouse and the equestrian facilities is a significant factor in determining whether the Fields form part of the grounds of the Farmhouse.

39. The Property had been a working farm since the 1800's, until the vendors purchased the Property in 2009. The vendors did not use the Property as a working farm, but developed and used the equestrian facilities. They did however enter in an agreement with an agricultural contractor to look after the Fields in return for taking haylage off the Fields. It was an informal agreement, and such agreements are common in the countryside. I do not consider that this in itself amounted to commercial use of the Fields. The Fields were not being actively and substantially exploited on a regular basis for any commercial advantage to the vendors. It was clearly beneficial for the vendors to enter into the agreement, but I do not regard the benefit as a commercial benefit. It seems likely and I find that the vendors simply wanted the Fields kept in a good and tidy state and weed-free during the summer months. That was a benefit to the vendors as owners of the Property and it was also a neighbourly thing to do. The taking of haylage off a field might be described as an agricultural operation, but I do not consider in the context of the Fields that this leads to a conclusion that the Fields were agricultural land or used for agricultural purposes as opposed to being part of the grounds of the Farmhouse.

40. Mr Cannon submitted that the Fields performed no function in relation to the Farmhouse. He emphasised that section 116(1)(b) refers to the garden or grounds "of" the dwelling, which indicates that the land must support the use of the dwelling as a dwelling. He submitted that the Fields, in particular Field 11, did not provide any amenity, benefit or other function in relation to the Farmhouse as a dwelling.

41. I agree that grounds must provide some amenity or benefit, or perform some function in relation to a dwelling. I do not agree that the Fields provided no such amenity, benefit or function in relation to the Farmhouse.

42. The Fields were available for use by the vendors as winter grazing for their horses, in the same way that Fields 8 – 10 were used by the appellant as winter grazing. Field 11 was available to the vendors for the same purpose. The Fields were also available for riding horses in the same way that the appellants used part of Field 10 to ride horses. There is no evidence as to how the vendors actually used the Fields apart from their agreement with the agricultural contractor. In any event I consider that the availability for use is significant. The Fields gave the vendors options for keeping other domestic animals, in the same way that the appellants kept a donkey and alpacas on Field 12. Indeed, it is not unusual in country properties for an owner to keep farm animals such as sheep, without seeking any commercial benefit but just for the love of the animals. The Fields provide those opportunities, albeit passively, and as such provide a benefit or amenity to the Farmhouse.

43. Whilst it is a relatively minor point in the context of this case, in my view the Fields add to the rural character of the Property. It is not suggested that they provide a "treasured view", but ownership of the Fields ensures control over the use of the Fields for the benefit of the Farmhouse as a dwelling. To this extent the Fields might be said to provide a degree of privacy from the sights and sounds of neighbouring land. Certainly in the case of Fields 8 –

10, which are closest to the Farmhouse, the gardens and the equestrian facilities on the Property. Again, this might be described as a passive connection between the Fields and the Farmhouse but in my view it is a relevant connection.

44. Mr Cannon invited me to place particular weight on the size and extent of the Fields. I acknowledge that the Fields are substantial, comprising some 24 acres. That is more than half the acreage of the Property. It is certainly a factor in favour of the appellants' case. However, the Farmhouse is a substantial property. It is not unusual for a substantial country property to have grounds extending to many acres. Nor is it unusual that part of the grounds of a substantial property cannot be seen from the dwelling, which is the case with part of the Fields, including Field 11.

45. Mr Holding said that there was more land than the appellants needed to keep their horses and other animals. I accept that is the case, but that relates to the appellant's use of the Property after 29 August 2018. The question is whether the Fields added any amenity or benefit to the Farmhouse at that time, or whether they performed a function in relation to the Farmhouse as a dwelling, such that they could properly be described as part of the grounds of the Farmhouse. Taking all the evidence into account, on balance I have come to the conclusion that the Fields, including Field 11, did provide amenity and benefit to the Farmhouse and as such performed a function in relation to the Farmhouse as a dwelling. I am satisfied that the Fields formed part of the grounds of the Farmhouse at the time of the transaction.

CONCLUSION

46. For the reasons given above I dismiss the appeal.

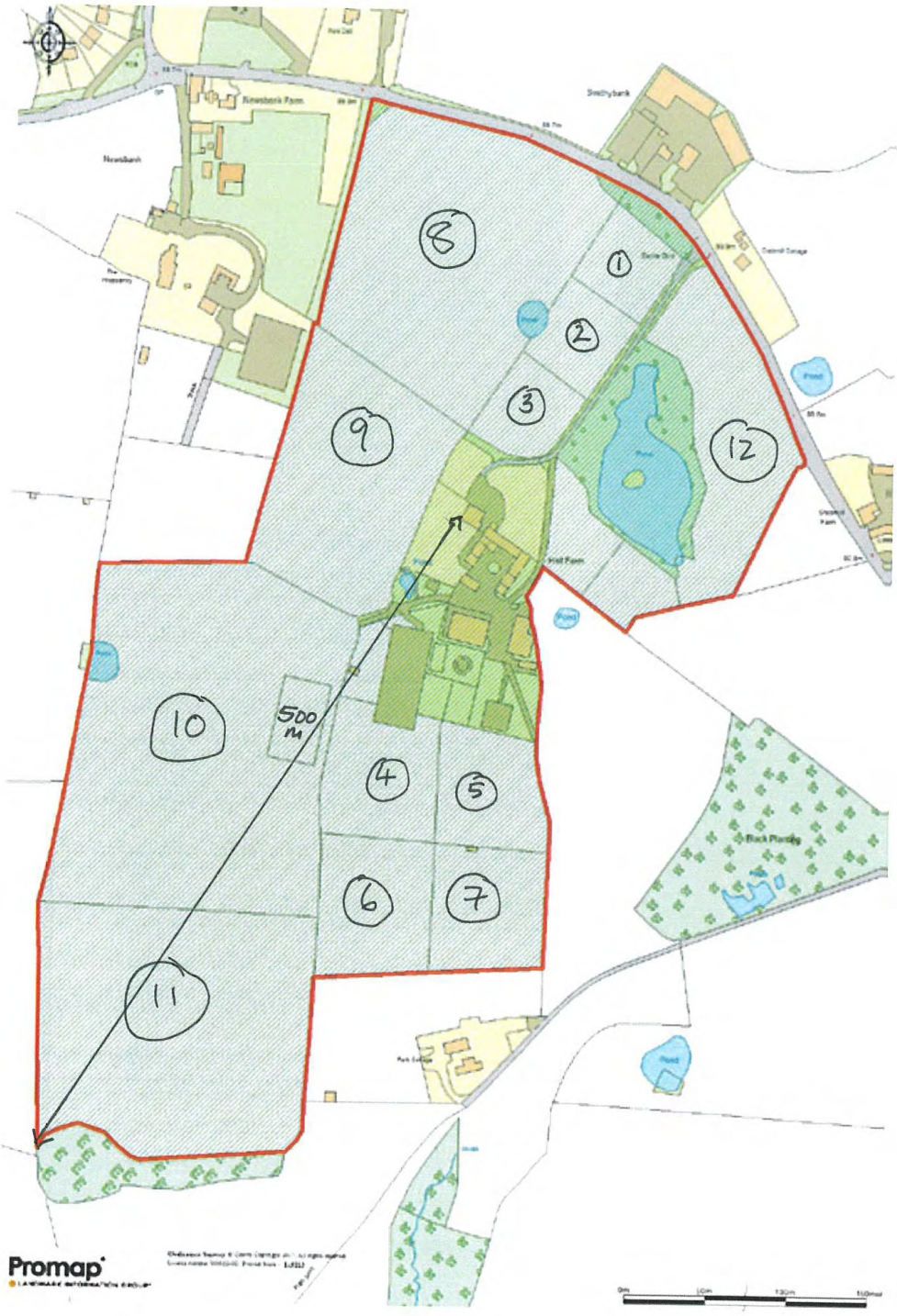
RIGHT TO APPLY FOR PERMISSION TO APPEAL

47. 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.

JONATHAN CANNAN
TRIBUNAL JUDGE

Release date: 19th APRIL 2024

APPENDIX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