[2020] UKFTT 00180 (TC)

TC07666

Appeal number: TC/2018/07629

SDLT – (1) whether flat with defective cladding a "dwelling" for purposes of (i)residential transaction charge and (ii)high-vale residential transaction charge in para 3 Sch4A FA 2003
(2) relief under para 5 from the high-value charge under para 3 Sch 4A FA 2003 –para 5G: withdrawal of relief – effect of s 81(1A)

FIRST-TIER TRIBUNAL
TAX CHAMBER

FISH HOMES LTD	**Appellant**
- and -	
THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS	**Respondents**

TRIBUNAL: JUDGE CHARLES HELLIER

Sitting in public at Taylor House on 11 March 2020

Mr and Mrs Fish for the Appellant
Paul Hunter for the Respondents

DECISION

Introduction

1. Mr and Mrs Fish are the directors and majority shareholders of Fish Homes Ltd, the appellant. Prior to the transactions described below Fish Homes owned a small number of residential properties which produced annual rental of some £26,000 per annum.

2. Mr and Mrs Fish's daughters had inherited some money sometime previously and had agreed that this would be lent to Fish Homes to enable it to increase its property portfolio, and that later they would be repaid to finance the purchase of their own homes. At the time of the transaction their eldest daughter had just finished university and was coming to the end of a stint in America.

3. In April 2017 Mr and Mrs Fish went to view a two-bedroom flat in a block in Greenwich, having in mind its acquisition by Fish Homes as part of its rental portfolio. It was a fairly new flat having been completed in 2014. It had the benefit of an NHBC guarantee.

4. Fish Homes exchanged contracts for its purchase in May 2017 and completed the purchase on 18 August 2017. It funded the purchase with the loans from Mr and Mrs Fish's daughters and a "buy to let" mortgage loan.

5. Unfortunately, and unbeknown to Mr and Mrs Fish, at the time and Fish Homes contracted for and completed the purchase, the flat was in a block which was covered in cladding which was similar to that used on the Grenfell tower block (in which there had been a disastrous fire exacerbated by the cladding) in June 2017. It was only hours after completion that they were told of the problems with the cladding.

6. After some research Mr and Mrs Fish came to the conclusion that Fish Homes could not let the flat out under a formal tenancy agreement. But, under an informal arrangement, one of their elder daughter's friends agreed to move in and to pay rent. She moved in on 27 August and on 26 September 2017 was joined by the elder Miss Fish who also paid rent.

7. There followed an anxious period in which Fish Homes received formal confirmation of the problems with the cladding and participated in claims made against NHBC (and later the developer of the block) for the cost of remedial work. The remedial work was eventually started in March 2019 and was completed in June or July of the same year.

8. Miss Fish and her friend remained living in the flat until July 2019 (some 18 months). When the remedial works had been finished, tenants were found who moved in on formal commercial tenancies (and, as I understood it, at rents greater than those paid in aggregate by Miss Fish and her friend).

9. The company sent an SDLT return to HMRC on 18 September 2017. The return was completed on the basis that the acquisition was a "residential transaction" and the higher rate of SDLT on "high-value residential transactions" imposed by schedule 4A Finance Act 2003, was not applicable because of the relief from that higher rate of SDLT afforded by paragraph 5 schedule 4A (which provided relief on the purchase of properties acquired for a rental business).

10. HMRC enquired into this return and concluded that the relief afforded by paragraph 5 did not apply. They amended the return changing the rates of SDLT payable by reference to the high-value residential transaction charge. An appeal against this decision was made, and after a review, the appeal was notified to the tribunal. The appeal was notified to the tribunal after the 30 days period following the letter of review. HMRC did not object to the late appeal and in the circumstances, I decided that permission should be given for the appeal to be heard.

11. HMRC also assessed penalties but by the time this appeal came to be heard they had withdrawn the penalty assessments.

12. After the appeal was notified to the tribunal the tribunal published its decision in *PN Bewley Ltd v HMRC* 2019 UK FTT 65 (TC). In that case the FTT held that a derelict bungalow affected/infused with asbestos was not a dwelling for the purposes of schedule 4**Z**A FA 2003 because it was not suitable for use as such. This case prompted Fish Homes to argue in this appeal that the acquisition of the flat was not a residential transaction (and was not be a "high-value residential transaction" for the purposes of schedule 4A) because the danger created by the cladding meant that the flat was not suitable for use as a dwelling.

13. Further between the notification of the appeal and the hearing: HMRC (a) accepted that notwithstanding that Miss Fish later resided in the flat, it had not been intended at the effective date that she should reside there so that paragraph 3 relief was potentially available but (b) argues that relief under paragraph 3 should be withdrawn pursuant to paragraph 5G schedule 4A because Mrs Fish's later residence in the flat triggered one of the conditions in that paragraph for the withdrawal of the relief given by paragraph 3,

The legislative provisions.

14. Section 42 FA 2003 provides for a charge to tax (SDLT) on land transactions. A land transaction is the acquisition of a "chargeable interest" (section 43) which means any estate in land (section 48). Subject to various exceptions not relevant to this appeal, the purchaser of a chargeable interest must deliver a "land transaction return" to HMRC within 30 days of the "effective date" of the transaction (section 76). Where the transaction consists of an ordinary exchange of contracts followed by completion, the "effective date" of the transaction is the date of completion (section 44).

15. Section 55 provides the rates of tax when the rules for higher rate transactions do not apply. It provides for rates between 0% and 12% on various slices of the consideration for the transaction if the land is "residential property", and for lower rates

if the land is not residential property. So far as relevant section 116 defines residential property to "mean

> (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 a non-residential property to mean land which is not residential property.

16. Schedule 4A imposes higher rates of SDLT for “high-value residential transactions”. A land transaction is a high-value residential transaction for this purpose if the subject matter of the transaction consists of a "higher threshold interest" which is defined by paragraph 1 schedule 4A thus:

> "(1) In this paragraph "interest in a single dwelling" means so much of the subject matter of a chargeable transaction as consists of a chargeable interest in or over a single dwelling (together with appurtenant rights)
>
> (2) An interest in a single dwelling is a higher threshold interest ... if chargeable consideration of more than £500,000 is attributable to that interest."

17. Paragraph 3 schedule 4A provides that if the purchaser under a high-value residential transaction is a company (such as Fish Homes) then SDLT is payable at 15% upon the whole of the consideration.

18. But paragraph 5 provides relief from this high-rate charge if the interest in the land-

> "is acquired exclusively for one or more of the following purposes [the relevant purposes] -
>
> (a) exploitation as a source of rents or other receipts ... in the course of a qualifying property rental business".

19. A qualifying property rental business is a property rental business run on a commercial basis with a view to profit (paragraph 5(3) and section 133 FA 2013). It was not disputed that Fish Homes conducted such a business.

20. But by paragraph 5 (2):

> "a chargeable interest does not count as being acquired exclusively for one or more of [the relevant purposes] if it is intended that a nonqualifying individual will be permitted to occupy a dwelling on the land".

21. A "nonqualifying individual" is defined by paragraph 5A to include a relative of an individual who was connected to the purchaser. Miss Fish was a relative of Mr and Mrs Fish, being their daughter (paragraph 5A (6)), and Mr and Mrs Fish, as the shareholders in Fish Homes were connected with Fish Homes. Thus Miss Fish was a nonqualifying individual.

22. Paragraph 5G schedule 4A provides for the withdrawal of the relief given by paragraph 5 from the high-value residential transaction charge:

> "(1) Subparagraph (2) applies where relief under paragraph 5 has been allowed ...
>
> (2) The relief is withdrawn if at any time in the period of three years beginning with the effective date of the chargeable transaction ... a requirement in subparagraph (3) is not met.
>
> (3) The requirements are that
>
> ... (c) ... no nonqualifying individual is permitted to occupy any dwelling on the land ..."

23. Section 81(1A) FA 2003 provides that where relief is withdrawn under paragraph 5G "the purchaser must deliver a further return before the end of 30 days after" the first day on which the relevant requirement was not met. Such a return must include a self-assessment of the tax payable (section 81 (2)).

24. Paragraph 7 schedule 4A deals with the meaning of "dwelling" for the purposes of schedule 4A. It provides so far is relevant:

> "(1) A building counts… as a dwelling if -
>
> (a) it is used or suitable for use as a single dwelling, or
>
> (b) it is in the process of being constructive or adapted for such use."

25. Thus: (1) if the flat was a dwelling, its purchase would be a 'residential transaction' and the residential transaction rates of tax in section 55 would apply. But if para 3 Sch 4A applied the higher 15% rate would apply. Para 5, however, relieved Fish Homes from the 15% rate so long as it was not intended at completion that Miss Fish could occupy the flat (which HMRC accepted). But the relief would be withdrawn because she lived there within three years after completion; and (2) if the flat was not a dwelling, sch4A would not apply and the non-residential rates of tax in section 55 would apply.

Findings of fact.

26. I heard oral evidence from Mr and Mrs Fish and I had a bundle of documents before me including various summaries of, and copies of, correspondence in in relation to the problems with the block of flats.

27. I have already set out a number of uncontentious factual findings in the introduction to this decision.

28. On 23 June 2017 the permanent secretary at the Department of Communities and Local Government wrote to councils setting out in an Annex the actions that an independent panel of experts had advised must be taken immediately if any insulation panels used in a building were made from Aluminium Composite Material ("ACM|") which was unlikely to be compliant with the then current building regulations.

29. The interim measures, she said, must be implemented immediately to ensure the safety of residents pending the replacement of the cladding. The measures included risk

assessment by the fire brigade, and in the case of a building without sprinklers, the provision of a fire watch. The Annex finished by saying “in the case of the most serious risk, consideration must be given to moving all the residents out of the block”.

30. Claims were made in relation to the flat and other flats in the block against NHBC. The basis of these claims was that the type of cladding on the outside of the building was such that the building when completed did not comply with the building regulations at the time of completion.

31. Tests on the cladding were conducted in October 2017 by the Building Research establishment which confirmed that it was made of ACM and that the material was “not in line with the requirements for a material of limited combustibility” and did not have fire retardant properties.

32. Between the date of completion and the dates the medial works were completed there was a considerable amount of correspondence between NHBC and other interested parties. Arrangements were recommended by the fire brigade and implemented for a walking fire watch of the buildings and changes in recommended procedure in the case of fire (from stay put to evacuate) were notified to flat owners.

33. In her witness statement Miss Fish speaks of occasions when she was at the flat when the fire brigade were called to put out small fires: two or three fire engines and a large number of fireman would arrive. She said, and I accept, that these occasions and the walking watch made the environment feel unsafe.

34. From the summary of the communications involving NHBC between August 2017 and February 2018 it appears that NHBC asked the block’s management company (which was fronting residents’ action) to demonstrate that there was a breach of the building regulations and that NHBC had indicated that "Section 4 Part E" of its Buildmark policy covered potential claims “where ACM cladding had been identified on buildings with a floor over 18m in height”. In what I took to be a note to flatowners written I think in 2018, NHBC explained that the requirement for compliance with building regulations and said that "establishing whether property as a whole complies with the relevant building regulations is complex and … it is important to note that the use of a particular product or material (e.g. cladding) will not on its own determine whether the building meets the regulations”.

35. However in a letter of 9 July 2018 NHBC referred to the claim made under the policy and say "the claim concerned the installation of ACM cladding throughout the development ... NHBC has investigated the claim in accordance with section 4 of your BuildMark policies and we are pleased to advise we will accept the claim.”

36. I conclude that it is likely that NHBC accepted that the cladding on the block in which the flat was located did not comply with the building regulations in force at the time it was completed. It seems likely therefore that by reason of matters involving the cladding the block did not comply with the Building Regulations applicable at the time it was built or those in force when Fish Homes bought the flat.

The arguments of the parties.

37. There was no dispute that *if* the flat was a dwelling, its purchase was a high-value residential transaction for the purposes of schedule 4A so that, absent relief under paragraph 5, the 15% rate would apply.

38. HMRC however accepted that the building had been acquired for the purposes of Fish Homes' property rental business and that at the time of acquisition it was not intended that Miss Fish would be permitted to occupy it. Thus they accepted that the conditions for the relief in paragraph 5 were satisfied at the effective date.

39. However HMRC contended that the relief would be withdrawn by paragraph 5G because Miss Fish (a nonqualifying person) had been permitted to occupy the flat within the three-year period after purchase.

40. Fish Homes accepted that Miss Fish's occupation of the premises of the flat was occupation by a nonqualifying individual, and therefore they accepted that if the flat was a dwelling, her occupation triggered a withdrawal of the relief; but they argued that the condition of the flat was such that it could not be called a dwelling. As a result they argued that the acquisition of the flat could not be a high-value residential transaction so that paragraph 3 schedule 4A could not apply and that the rate of tax applicable was that attributable to non-residential transactions.

41. This background raises two issues;

> (1) at the time of completion was the flat a dwelling? and
>
> (2) if it was a dwelling, how does the withdrawal of relief under paragraph 5G work?

42. Fish Homes also raised arguments relating to the Human Rights Act 1998, the Landlord and Tenant Act 1985 and the Housing Act 2004 which I shall address below.

A Dwelling?

43. *Uratemp Ventures Ltd v Collins* [2001] UK HL 13 concerned the meaning of the words "a dwelling-house…let as a separate dwelling|" in the Housing Act 1988. The Lord Chancellor said: "'dwelling' is not a term of art but a familiar word in the English language, which in my judgement and in this context connotes a place where one lives regarding and treating it as home".

44. In *Carson Contractors Ltd v HMRC* 2015 UK FTT 530 (TC) the FTT said in the context of the meaning of "dwelling" in group 6 schedule 8 VAT Act 1994,

> "in our judgement a dwelling will, as a minimum, contain facilities for personal hygiene, the consumption of food and drink, the storage of personal belongings, and a place for the individual to rest and sleep.

45. *Rendleshaw Estates v Barr* Ltd [2014] EW HC 3968 (TCC) concerned a claim under the Defective Premises Act 1972 that certain apartments were not fit for habitation. Section 1 of that Act provided that a person taking on work in connection with the provision of a dwelling owed a duty to owners of the dwelling to see that "the

dwelling [would] be fit for habitation and completed". Edwards-Stuart J [68] held that for a dwelling to be fit for habitation within the meaning of the Act it must on completion -

> a) be capable of occupation for a reasonable time without risk to the health or safety of the occupants, and
>
> b) be capable of occupation for a reasonable time without undue inconvenience, discomfort to the occupants.

46. She went on to hold that, it being well known that damp and mould posed a risk to health, its presence in the building rendered department unfit for habitation. At [82(viii)] she concluded that if the state of an apartment was such that the local authority would not have approved it under building regulations "it is probably unfit for habitation".

47. Fish Homes made a distinction between something being capable for use as a dwelling, and something being suitable for such use. In this regard Fish Homes relied upon the decision of the FTT in *Bewley*.

48. As I have said, that case concerned the application of schedule 4ZA (rather than schedule 4A) to the acquisition by a company of a bungalow which was derelict and described in some of the evidence as "not being habitable due to the removal of the heating, copper pipes and floorboards" and the presence of asbestos.

49. Schedule 4ZA imposed a set of higher rates of SDLC on a "higher rates transaction". It was argued by HMRC that the transaction was such a transaction because it was an acquisition by a single person which satisfied the condition in paragraph 4 that schedule which provided:

> " (1) A chargeable transaction falls within this paragraph if --
>
> > (a) the purchaser is not an individual,
> >
> > (b) the main subject matter of the transaction consists of a major interest in a single dwelling, …".

50. In that case HMRC argued that paragraph (b) was satisfied because the bungalow was a single dwelling. Schedule 4ZA has its own definition of "dwelling" which so far as material is identical to that in paragraph 7 schedule 4A providing, in particular, that a building "counted" as a dwelling if it -

> "it is used or suitable for use as a single dwelling".

51. The FTT said [52] that:

> "There could have been used other descriptions: e.g. whether it was capable of being used as a dwelling. It seems to us that the legislation contemplates that there must be and is a class of buildings that might not meet the test and the likely class is those which are capable of being a dwelling but which are unsuitable for that purpose. The question then is whether is where is the suitable/not suitable boundary."

52. The FTT said that no doubt a passing tramp or a group of squatters could have lived in the bungalow but given the state of the bungalow it had no hesitation in saying that it was not suitable for use as a dwelling

Discussion -- suitability for use as a dwelling.

53. It may be helpful to set out paragraph 7 schedule 4A again:

> "(1) A building counts… as a dwelling if -
>
> (a) it is used or suitable for use as a single dwelling, or
>
> (b) it is in the process of being constructive or adapted for such use."

54. The use of "if" rather than "only if", and "counts as" rather than "means" indicates that it is intended that these words expand on the meaning to be attributed to "dwelling" rather than define or restrict it. That is shown in particular by condition (b) which clearly extends the meaning of dwelling to something which is not yet fully built. That consideration suggests to me that condition (a) is potentially concerned with something which would not normally be regarded as a dwelling but nevertheless is used or is suitable for use as such: so for example a railway carriage on a piece of land might not in ordinary usage be a dwelling, but it might be used as a single dwelling and if so fall within the meaning of dwelling for the purposes of this schedule.

55. If this is the correct understanding of the provision then a building which is not in ordinary parlance a dwelling falls within one of the two subparagraphs it is to be treated as a dwelling, and a building which is a dwelling in ordinary parlance but nevertheless is not used or suitable for use as a single dwelling is to be treated as a dwelling all the same.

56. This is not the same construction as that adopted by the FTT in *Bewley* where the tribunal in effect regarded the provision as a definition. I therefore approach the question from both angles: was the flat a dwelling as that term is ordinarily understood, and was it suitable for use as such?

57. In relation to the conditions in para (a) I note first that it seems to me that the use of "is" rather than "was, is, or is to be" indicates that "is used" relates only to the time of the effective date of the chargeable transaction. I think it likely that Fish Homes completed with vacant possession so that at the effective date it could not be said that it was at that time a building which "is used" as a dwelling.

58. In the context of suitable for use I agree with Fish Homes that there is a difference between a building being capable for use as a dwelling and one which is suitable for use as such. But the difference in my view is a slim one and consists mainly in the flavour at which "capable" imports that some adjustment could be made which would render an otherwise unsuitable building fit for use as a dwelling whereas "suitable" indicates in evaluation of its present condition or facilities.

59. So when do defects in the building mean that it is not a dwelling or not suitable for use as a dwelling? Where a building has all the facilities the dwelling - facilities for rest, sleep, storage, hygiene and the preparation and consumption of food, what can render such a building not suitable for use as a dwelling or cause it not to be a dwelling?

60. It does not seem to me that the failure of a building to comply with building regulations by itself renders a building incapable of being, or being unsuitable for use as, a dwelling. That is demonstrated by the fact that building regulations change: many people live in houses built under earlier regimes (and at times when there were no relevant regulations at all) which do not comply with current regulations, yet no one would say that a Victorian, a Georgian or a 1930s house was not a dwelling or suitable as such because it did not comply with current regulations.

61. In this regard I have noted that in *Rendlesham* Edwards-Stuart J considered that if the state of an apartment was such that the local authority would not have approved it under the building regulations it was "probably not fit for habitation". But in that case she was dealing with the question of whether something which *was* a dwelling was fit for habitation, not whether it was a dwelling. It is not therefore authority that something which, on that approach to "fit for habitation,", is not so fit is not, or is not suitable as a dwelling.

62. But I accept that some defects in what could otherwise be a dwelling or suitable for use as such would mean that it is not so. Defects which make it dangerous to live in fall within that category but such danger must in my view be such that a reasonable person would say "it's too dangerous to live there". Some risks to health and safety may fall into this category: high radioactive pollution, the high probability of walls collapsing, and the kind of hazards which would spur a local authority to issue a prohibition notice restricting the use of the premises.

63. The risk which the cladding on the block created was a risk that if a fire started and if it spread to the cladding it would maim or kill the occupants of the flat. The contingency that the risk would fructify only if there was a fire and only if it spread to the cladding in my view reduced the level of danger, and it seems to me that: the fact that the local authority was not shown to have served a prohibition or enforcement notice, that Miss Fish's friend agreed to live in the flat and that Mr and Mrs Fish countenanced Miss Fish living there, meant that a reasonable person would not say that it was too dangerous to live there.

64. As a result I find that the risk imposed by the cladding was not such as to prevent the flat from being a dwelling or being suitable for use as a dwelling.

65. Mr and Mrs Fish also referred me to section 11 Landlord & Tenant Act which implies into a lease a covenant by the landlord to keep the structure, exterior and installation of a “dwelling house" in repair. Whilst I accept that this would have implied covenant into any letting agreement which may have extended the remediation of the cladding of the block, it does not create a statutory duty to ensure that the structure is safe. In the absence of the creation of such a duty or provision which would make it

unlawful to let the flat, these provisions do not to my mind affect whether or not the flat could be suitable for use as a dwelling.

66. I was also referred to the Housing Act 2004 which provides a "new system of assessing the condition of residential premises" and for that system to be used in the enforcement of housing standards. Section 5 provides that if a housing authority identifies a “category 1” hazard it must take enforcement action. That action can include the service of an improvement notice which will specify the remedial action required to be undertaken or a prohibition notice imposing restrictions on the use of premises. It is an offence to fail to comply with such a notice.

67. A ‘hazard’ is defined in the Act to mean any risk of harm to the health or safety of an occupier of the building or potential occupier of a building. A ‘category 1’ hazard is one which gives rise to a higher numerical score determined in accordance with regulations. Mr and Mrs Fish say that a dwelling cannot be a hazard and the block was a hazard because it was non-compliant.

68. I accept that if a notice were served prohibiting residence in the flat it could not be called a dwelling or suitable for use as such. I was, however, not shown any prohibition notice or enforcement notice and I conclude that none was imposed.

69. The bundle of legislation before me also included a copy of the Regulatory Reform (Fire Safety) Order 2005. This order imposed duties on persons having control of certain premises to take fire precautions and to made fire safety arrangements. It contained an authority (Reg 31) for the fire authority to issue notices prohibiting the use of premises if it was of the opinion that their use involved a risk “so serious that the use of the premises ought to be prohibited or restricted”. Given that Miss Fish and her friend had lived in the flat for some 18 months I concluded that the fire authority had not served such a notice.

70. Fish Homes also argues that the Human Rights Act 1998 requires public authorities to act in a manner compatible with the human rights convention and for legislation to be construed so far as possible consistently with convention rights. The government, they say, had put lives at risk (contrary to the right to life) by inefficient oversight of the building regulations; Fish Homes should not be penalised when the government had failed to restrain widespread compliance across the building sector.

71. I cannot see in the SDLT provisions at hand anything which mitigates against the right to life or which could be interpreted differently having regard to that right. I can see that there may be arguments that some provisions of the Landlord and Tenant Act or the Housing Act might be interpreted in a particular way having regard to that right, but I cannot see how such an interpretation would impinge on the question of whether or not the flat was a dwelling for the purposes of Schedule 4A.

72. I find that the flat was a dwelling at the effective date so that the ordinary rate of duty applicable to residential transactions applied at the time of acquisition of the flat. That was the rate of duty declared on the SDLT return and in fact paid by Fish Homes.

(b) How does the withdrawal of relief under paragraph 5G work?

73. Paragraph 5G (1) says that subparagraph (2) applies where relief under paragraph 5 "has been allowed". Sub paragraph (2) provides that the relief "is withdrawn" if, inter alia, a non qualifying person is permitted to occupy the property. Section 81 requires the delivery of a further SDLC return where the relief "is withdrawn".

74. These provisions indicate: (1) that the withdrawal of the relief is a requirement of the statute and not something which is done by or at the discretion of HMRC; (2) that the withdrawal of the relief does not affect the correctness of the initial return, and (3) the withdrawal is a separate event from the original purchase which requires a further return to be filed in 30 days after the date the nonqualifying person was permitted to occupy the property.

75. Fish Homes have not submitted a further return. HMRC, by amending the initial SDLT return, treated the withdrawal provisions of paragraph 5G as affecting the original return. Both therefore were to some extent wrong.

76. Paragraph 25 schedule 10 FA 2003 permits HMRC to make a 'determination' of the tax payable if no land transaction return delivered by the filing date so long as they do so within 4 years of the effective date. By section 81(5), schedule 10 applies to a further return under section 81 as it applies to a normal return but reading the date of disqualification as being the effective date. Thus HMRC could make or could have made a determination under paragraph 25 in respect of the withdrawal of the relief.

77. When I raised this issue with the parties at the hearing Mr Hunter and Mr and Mrs Fish agreed that what they wanted from the tribunal was at the decision on the issues of substance between them and not a decision which rested on matters of form, procedure and other technicalities.

78. HMRC remain in time to make a determination under paragraph 25. It therefore seems to me that it would not be unjust to treat the amendment they made to Fish Homes' return as a determination under paragraph 25, and to treat the appeal made by Fish Homes as an appeal against such a determination (as permitted by paragraph 35(1)(e) of Schedule 10). On that basis I would dismiss the appeal.

79. Unless a party writes the tribunal within 28 days of the date this decision is released arguing that this course of action is unjust or otherwise wrong I shall issue a second decision on that basis.

Conclusion

80. I allow the appeal against the amendments to the SDLT return, holding that the duty payable on that return was the amount shown in it.

81. I shall, subject to paragraph [79], above dismiss what I have treated as the appeal against what I have treated as the determination, with the result that the extra tax payable as reflected in HMRC's amendments to the original SDLT return is payable.

Rights of appeal

82. In relation to the appeal against the amendments to the SDLT return 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.

83. In relation to the withdrawal of relief and what I propose to treat as the appeal against a determination, a decision issued pursuant to [79] above will contain information as to the nature of the decision and rights of appeal.

CHARLES HELLIER

TRIBUNAL JUDGE

RELEASE DATE: 8 APRIL 2020