TC07676

STAMP DUTY LAND TAX – transactions involving multiple dwellings – purchase of property with main house and annex – did main house and annex each count as a dwelling? - corridor connecting annex with main house – property unoccupied at completion – were main house and annex both suitable for use as a single dwelling? – no – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2019/00071

BETWEEN

KEITH FIANDER AND SAMANTHA BROWER **Appellants**

-and-

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

TRIBUNAL: JUDGE ZACHARY CITRON
MRS JO NEILL

Sitting in public at Taylor House London EC1 on 28 January 2020

Mr P Cannon of counsel for the Appellant

Ms G Adams of HM Revenue and Customs for the Respondents

DECISION

INTRODUCTION

1. The issue in this appeal was whether a main house and an annex acquired as parts of a residential property, each with its own living accommodation, and connected by a short corridor, were both "suitable for use as a single dwelling", such that the acquisition qualified for multiple dwellings relief ("MDR") from stamp duty land tax ("SDLT").

THE APPEAL

2. HMRC issued a closure notice on 24 August 2018 amending the appellants' SDLT return to show that the acquisition by the appellants of Hemingford House, Geddington near Petersfield (the "property") on 27 April 2016 did not qualify for MDR, resulting in a further liability to SDLT of £10,000. The appellants' and HMRC's alternative SDLT calculations are summarised in the appendix to this decision.

3. The appellants notified their appeal to HMRC by letter dated 20 September 2018. The appellants requested a statutory review by HMRC; this was concluded by letter dated 30 November 2018, upholding HMRC's decision.

4. The appellants notified their appeal to the tribunal by notice dated 21 December 2018.

EVIDENCE

5. We had a hearing bundle and an authorities bundle.

6. We had a witness statement, and heard oral evidence, from one of the appellants, Ms Brower. Her witness statement included colour pictures of property.

7. We admitted a short witness statement of Ms L Wise, an employee of the appellants' representatives, attaching a copy of a review conclusion letter from HMRC to a third party in somewhat similar circumstances dated March 2019. The document carried no legal authority but we did take note of its general reasoning. Ms Wise was not called to give oral evidence and was not cross examined.

8. The hearing bundle included seven pages from the "rightmove" website about the property under the heading "House Price History," printed off in January 2020.

9. The hearing bundle included office copy entries about the property from the HM Land Registry. Following the hearing, HMRC sent the tribunal a copy of the title plan for the property kept by HM Land Registry – we admitted that, paying due regard to submissions made by the appellants by email.

FINDINGS OF FACT

10. The appellants purchased the property for £575,000 on 27 April 2016.

11. The property was a detached property consisting of: a main house; an annex situated to the rear of the main house and connected with it by a corridor; a garage; and a summer house. The main house was of post-war construction; the annex was a later addition.

12. The main house comprised a living room, a kitchen/breakfast room with an adjoining boot room, a bathroom, two bedrooms and two loft rooms. The main house was accessed from the outside via a front door leading to an entrance hallway, or via a side door into the boot room.

13. The annex comprised a sitting room, a kitchen/utility room, a bedroom and a shower room. It could be accessed from the outside via glass "French doors" separating an outside wood "decking" area from the sitting room. It had a flat roof (in contrast to the pitched roof of the main house).

14. A corridor connected the main house and the annex. To use it to walk from the main house to the annex, one had to step down a single step, turn left, walk a few steps (about equal to the length of one of the bedrooms), and then turn right and go up one step. There were door jambs in place at the point at which one stepped down from the main house into the corridor (but no door).

15. The property was unoccupied at the time of purchase and was in some degree of disrepair – the heating was not working (the boiler needed replacing); there were problems with damp such that some of the flooring needed replacing.

16. The annex did not have its own separate postbox, council tax bill or utility supply.

17. The "rightmove" website described the property as having three bedrooms ("bedroom 1" being in the annex) and two loft rooms. It did not mention the annex as such.

18. The local council had sent post addressed to "Geddington annex".

19. The following appears as "restrictive covenant" in the "charges register" section of the entry for the property in HM Land Registry (originating from a 1958 conveyance of landed shaded pink in the title plans (which appears to include the main house and annex)): "There shall not be erected on the land hereby conveyed any building other than one bungalow of brick with a tiled roof for the private residence of one family only and a garage to be used by the occupiers of the such bungalow and no buildings erected on the said land shall at any time be more than one storey in height".

LAW

20. SDLT law is largely set out in Finance Act 2003 (and references to sections and schedules in what follows are to sections and schedules of that Act). SDLT is a tax on "chargeable transactions" – under s49, these are "land transactions" which are not exempt. Under s43, "land transaction" means the acquisition of a "chargeable interest". Under s48, "chargeable interest" is (in this context) an estate or interest in or over land. The effective date for a land transaction for SDLT purposes is the date of completion (except as otherwise provided) (s119).

21. Section 55 deals with the amount of SDLT chargeable in respect of chargeable transactions. Different rates are applied to the different parts of the consideration; in this context, the relevant rates are: 0% for so much of consideration as does not exceed £125,000, 2% for so much as exceeds £125,000 but does not exceed £250,000, and 5% for so much as exceeds £250,000 but does not exceed £925,000.

22. Schedule 6B provides for relief in the case of transfers involving multiple dwellings (see s58D). References in what follows to the Schedule and to paragraphs and sub-paragraphs are to that schedule and its paragraphs and sub-paragraphs.

23. The Schedule applies, inter alia, to a chargeable transaction if its main subject-matter consists of an interest in at least two dwellings (see subparagraphs 2(1)(a) and 2(2)(a)).

24. A reference in the Schedule to an interest in a dwelling is to any chargeable interest in or over a dwelling.

25. The rules for determining what counts as a dwelling the purposes of the Schedule are set out in paragraph 7, the relevant part of which provides as follows:

> "(2) A building or part of a building counts as a dwelling if –
>
> (a) it is used or suitable for use as a single dwelling …"

26. If it were found in this case that there was an acquisition of two dwellings (the annex and the main house), then paragraphs 4 and 5 provide that SDLT is charged as follows (in simplified summary):

(1) Step 1: determine the tax that would be chargeable under s55 if the total consideration was divided by the number of dwellings

(2) Step 2: multiply the amount determined at step 1 by total dwellings

(3) But if the amount found at step 2 is less than 1% of the total consideration, then the tax is that 1% amount

The appendix to this decision shows this calculation under the heading "Revised SDLT calculation".

27. The explanatory notes to Finance (No 3) Bill 2011 on what is now the Schedule said this (page 316):

> "18. Clause 83 and Schedule 22 are designed to strengthen demand for residential property. They will reduce a barrier to investment in residential property, promoting the supply of private rented housing. They do so by reducing the amount of SDLT payable on a purchase of multiple dwellings, so that it is closer to that charged when purchasing those properties singly.
>
> 19. ….
>
> 20. The measure takes the form of a relief which must be claimed in a land transaction return (or an amendment to such a return). Where a transaction, or a scheme, arrangement or series of linked transactions, includes multiple dwellings, the rate of tax charged in respect of those dwellings is determined by the mean consideration: that is, the total consideration attributable to the dwellings, divided by the number of dwellings."

Council tax case: *Ramdhun*

28. We here briefly summarise the High Court case of *Ramdhun v Coll (LO)* [2014] EWHC 946, as we refer to it in our discussion below.

29. The government was defending an appeal against a decision of the valuation tribunal that a flat on the second floor of a "pleasant terraced house" in South West London was a "self contained unit" for council tax purposes even though it had no lockable door (it was physically separated from the rest of the house by the staircase and communal hallway).

30. A "self contained unit" was defined in the relevant council tax regulations to mean, inter alia, a building or part of a building which has been constructed or adapted for use as separate living accommodation. Under those regulations, where a single property contained more than one self contained unit, the property was to be treated for the purposes of the principal Act as comprising as many dwellings as there are such units included in it and each such unit shall be treated as a dwelling. The regulations were made under a power given to the Secretary of State in the Act to provide that in prescribed cases anything that would (apart from the order) be one dwelling shall be treated as two or more dwellings.

31. In his judgement, Haddon-Cave J declined to interfere with the decision of the valuation tribunal, holding that a lockable door was not a necessary precondition for a self contained unit. The case discussed the degree of privacy needed for a flat to be a "self contained unit"; the judge observed at [33]: "Common sense would suggest that there are many different ways in which separateness (and a sufficient degree of privacy) can be achieved so as to give rise to a rational conclusion that there are two or more self-contained units in a property, for instance by stairs or simply by geographical separation".

APPELLANTS' ARGUMENTS

32. Mr Cannon submitted that "dwelling" must take its ordinary everyday meaning; and so a self contained unit of residential accommodation that provides an occupier with the means for a private domestic existence by having its own means of lockable entry and exit, and living, sleeping, bathing and kitchen facilities, or which is suitable for doing so, will in principle qualify as a "dwelling" for MDR purposes. The definition should focus on the physical configuration of the annex and whether it is suitable for an occupier to live privately and separately from the residential accommodation in the main house.

33. Mr Cannon surveyed the case law, dealing with different legislative provisions from those for MDR, as follows:

(1) Cases on significance of a separating door:

(a) The VAT tribunal in *Agudas Israel Housing Association Ltd* [2005] BVC 4029 said: 'Premises with their own front door, en suite bathing facilities and the ability to cook with a microwave cooker and kettle are self-contained living accommodation.'

(b) In *McColl v Sabacchi (LO)* [2001] EWHC Admin 712 the High Court put some weight on the fact that a flat was separated from the main residence of a house by a lockable door when deciding that they were both 'self-contained units' for the purpose of council tax.

(c) However, in the context of council tax, following on from *Jorgensen (LO) v Gomperts* [2006] EWHC (Admin) 1885, in which Kenneth Parker QC held that a lockable door was not a necessary condition for there to be a self-contained unit, the High Court in *Ramdhun* came to the conclusion that it was 'plainly not the case' that 'a door separating the self-contained units is a necessary pre-condition of having self-contained units'. Haddon-Cave J concluded this because there was nothing in the council tax regulations that suggest any such precondition, there are many different ways in which separateness (and a sufficient degree of privacy) can be achieved for instance by stairs or simply by geographical separation and in *Jorgensen* the High Court had held that a lockable door was not necessary for there to be separate units. Mr Cannon submitted that the reasoning of Haddon-Cave J is equally applicable in the context of MDR. Therefore, the presence of a door or lockable door indicates a dwelling, but the absence of one is not fatal to such a classification.

(2) Cases on significance of shared utility meters

(a) In *Ramdhun* the valuation tribunal held that there was no requirement to have separate meters in place for there to be a dwelling for council tax purposes. On appeal, the High Court found no grounds on which to interfere with that decision, making it clear that shared utility meters were also not fatal to there being a self-contained unit.

(b) Similarly, in *Agudas Israel Housing Association Ltd* it was held that the fact that residential units did not have their own 'separately monitored electricity supply' was not fatal to them being self-contained living accommodation for the purpose of VAT.

34. Mr Cannon submitted that, although the presence of lockable doors and separate utility meters will certainly bolster the case for there being a single dwelling for MDR, on the basis of the above cases it is not necessarily fatal if these items are absent.

35. Mr Cannon submitted that the annex was a clearly distinct unit of accommodation albeit physically joined to the main dwelling by an enclosed corridor. It is apparent that the annex was physically suitable for affording an occupier with the means for a private domestic existence in terms of having its own external means of entry and exit with its own key plus living and sleeping accommodation, its own kitchen, shower room and toilet and kitchen facilities.

36. Mr Cannon submitted the following in response to HMRC's arguments:

(1) The fact that the annex was not actually used as a separate dwelling at the effective date of the land transaction by the taxpayers does not affect the legislative test of suitability for use of the annex as a separate dwelling; the actual use at the effective date is not conclusive and is not a reason to deny the claim for relief;

(2) The fact that there was no door in the corridor separating the house and the annex does not affect the legislative test of suitability for use of the annex as a separate dwelling, given that the annex had its own separate means of entry and exit via its own external door with its own key and remained physically capable of affording separate and independent habitation and, if desired, an internal lockable door could be re-hung in the door jamb in the corridor with no structural alteration and with minimal effort needed to do so. The fact that the main house could be accessed by an occupant of the annex does not affect the suitability of both dwellings for use as such given the ease with which an internal lockable door could be hung in the corridor;

(3) The fact that the annex did not have a separate utility supply and had no separate council tax liability or postal address is not relevant to the question of whether the annex was suitable for use as a separate dwelling because the statutory test is directed at physical suitability for separate use and not the intangible status of the accommodation in terms of separately metered utilities, council tax liability or postal registration;

(4) HMRC have accepted recently in another similar case on review that it is suitability for use rather than actual use at the effective date that is determinative and also that not having a lockable internal door at the time does not affect suitability for use as a separate dwelling on the ground that a lock could be fitted easily. The same point arises in relation to a lockable door that could be fitted easily to the door jamb in the corridor.

37. Mr Cannon sought to reinforce his arguments by reference to the following statements in HMRC internal manuals (SDLTM 00385) discussing suitability of a building (or part) for use as a "dwelling" (a requirement in the definition of "residential property" for SDLT purposes):

> "A residential property that is no longer habitable as a dwelling, due to dereliction for example, would not be residential property, on the basis that it is not suitable for use as a dwelling
>
> However, there is a clear distinction between derelict property and a dwelling that is essentially habitable, but in need of modernisation, renovation or repair, which can be addressed without materially changing the structural nature of the property. In this case, if the building was used as a dwelling at some point previously and permission to use as a dwelling continues to exist at the effective date of transaction, it will be considered suitable for use as a dwelling. Whether a property is derelict to the extent that it no longer comprises a dwelling is a question of fact and should only apply to a small minority of buildings.
>
> The removal of, for example, a bathroom or kitchen facilities before sale will not be regarded as making a building unsuitable for use as a dwelling. These are internal fittings and would not constitute structural changes to the dwelling that would mean the building is no longer suitable for use as a dwelling. A new kitchen or bathroom suite could be fitted relatively quickly and cheaply and is a common improvement to a dwelling. Likewise, substantial repairs required to windows or a roof would also not make the building unsuitable for use as a dwelling. Other

examples of issues which may be easily addressed in the short term include the need to switch services back on and dealing with an infestation of pests."

38. Mr Cannon submitted that installing a door in the door jambs in the corridor was similar to the internal fittings and quick and cheap improvements referred to in the HMRC internal manual above.

39. We note the following arguments in a letter from appellants' representatives to HMRC dated 19 October 2018 (requesting statutory review):

> "The existence of a door between the two dwellings is a practical matter which would be addressed from time to time in accordance with the security and privacy requirements of those who occupy the building.
>
> If the occupants did not place any importance on privacy and security, then there would be no need for a physical barrier to be in place e.g. dependent relative occupancy.
>
> If the occupants were separate family units and privacy and security were required, it would be a trivial task to rehang the door into its original opening and jambs. It would amount to a simple adaptation of a dwelling that is inherently suitable for use a single dwelling. Adaptations such as privacy, security, utility supply, letterboxes, parking and garage segregation, legal tenure, fire regulations, external locks and keys, alarm systems heating controls etc etc are facets of the occupation of the dwelling and not an assessment of suitability. They are relevant only to the choices and preferences of those who occupy the property from time to time."

40. We also note the reasoning in a statutory review letter from HMRC to a third party dated March 2019, being that the fact that "internal doors" between an annex and a main house (in an entirely different property) were not lockable did not render that annex unsuitable for use as a separate dwelling, as locks can easily be fitted to the doors if needs be.

HMRC'S ARGUMENTS

41. HMRC submitted that the annex was part of the single residential dwelling acquired, and not a separate dwelling. They said there are several factors that indicate that there are not two dwellings for MDR purposes: -

(1) The annex was not in fact being used as a separate dwelling at the effective date;

(2) There was no door fitting or any physical barrier in the doorway between the annex and the rest of the property, and therefore there is free access between the annex and the rest of the property;

(3) Consequently, there is a lack of privacy and security between the two areas;

(4) The material from "rightmove" described the property as a three bedroom detached house and the floor plan clearly indicates that there is only one property;

(5) There is no separate council tax; and

(6) There is no separate postal address.

42. HMRC said that the appellants' agent had argued that if an unrelated party were to live in the annex it would be a straightforward task to install a door so that the property and the annex could be physically partitioned making the annex a separate dwelling. HMRC submitted that this is an irrelevant conjecture. The Tribunal should have regard to the facts as they were at the effective date rather than hypotheticals.

43. HMRC submitted that whilst the annex has some features that are also present in self-contained living accommodation, that does not make the annex a dwelling separate from the rest of the property. The facilities do not provide a private and secure dwelling.

44. Although it is not binding, HMRC submitted that their manuals at SDLTM00410-415 and SDLT00425 provide assistance in determining what constitutes a single dwelling:

> "The test of whether a property is "suitable for use" as a single dwelling is a more stringent test than whether it forms a self-contained part of a larger dwelling. Furthermore, whether or not it is suitable for use as a single dwelling requires consideration of whether it is sufficiently independent to be considered a dwelling on its own. In the case where a building is considered to contain more than one dwelling, evidence will be needed to show that each 'dwelling' in question is sufficiently independent to count as a separate dwelling in its own right. In the absence of sufficient evidence, it may be decided that it is more appropriate to consider that there is one dwelling, not two or more.
>
> "In considering whether or not a property includes one or more dwellings (and if so, how many) a wide range of factors come into consideration. No single factor is likely to be determinative by itself. However, not all factors are of equal weight either, and one strong factor can outweigh several weaker contrary indicators. Where a number of contrasting indicators exist, it may be necessary to weigh up the factors to come to a balanced judgement."
>
> "A single dwelling requires a degree of privacy from other dwellings. It is unusual, but possible, for adjoining dwellings to have interconnecting doors. It is relevant whether the door between the parts can be locked, or is readily capable of being made secure from both sides".

45. HMRC submitted that on the effective date a single dwelling was purchased by the appellants. Whilst there was a part of the property which may have had the potential to be suitable for use as a single dwelling, adaptions would be required in order to make it suitable.

46. HMRC submitted that it is clear from paragraph 2 of the Schedule that MDR is intended to provide for relief for land transactions involving at least two dwellings. HMRC submitted that it cannot be right for relief to be given where, on a realistic view of the facts, only one dwelling has been acquired.

47. HMRC submitted that the Tribunal should find that it was one dwelling taking all the relevant background circumstances into account. These include:

(1) the property was arranged as a single dwelling with free access throughout;

(2) the evidence suggests that both before and after the acquisition, the property was occupied as a single dwelling;

(3) photographic evidence suggests that the annex is just an extension;

(4) the property was more like a single dwelling as a whole rather than two dwellings.

48. HMRC submitted that the lack of door or other physical separation between the annex and the rest of the house, and the resultant lack of privacy and security, is an important factor in this appeal. HMRC accepted that it is not by itself decisive and must be weighed up with all the other background circumstances. HMRC submitted that none of the statute or case law for other taxes provides any further assistance in this appeal.

DISCUSSION

49. This case is about whether the annex and the main house each counted as a "dwelling" for MDR purposes; or whether, as HMRC say, annex and main house together counted as a single "dwelling".

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

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

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

53. We begin with the physical characteristics of the property that point towards main house and annex each being suitable for use a single dwelling.

54. The physical attributes of both main house and annex were ample to accommodate the basic domestic living needs of occupants of either; the annex was obviously smaller than the main house, but it adequately accommodated sleeping, eating, cooking, and washing and sanitary needs, not to mention a place to sit and relax; and the main house provided these on a larger scale.

55. The main house and annex were also physically distinct parts of the property – an occupant of either could carry on daily living activities without the inconvenience (and lack of privacy) entailed in crossing through "common areas" that were not part of his or her own dwelling. Both could be entered from the outside via a lockable door – in the case of the annex, via the French doors into the sitting room.

56. We note that the property was in some degree of disrepair at the time of purchase (the heating was not working as the boiler needed replacing; there were damp problems such that some of the flooring needed replacing). We have considered if this meant it was not suitable for use as a dwelling as at completion. We are clear that "suitable for use" does not mean "ready for immediate occupation". It would have been obvious to a reasonable person observing the property on the completion date both that the property had been used for dwelling purposes in the relatively recent past and that the things that needed fixing – the boiler, replacement flooring – were not so fundamental as to render the property unsuitable as a place to live. Hence, in our view, the state of disrepair did not render the property unsuitable for use as a dwelling.

57. We now turn to the main physical attribute of the property that points towards the main house and annex not being individually suitable for use as a single dwelling: the short, open corridor connecting them. The questions raised by the corridor are (i) whether either the main house or the annex were suitable for use as a "dwelling", when occupants of one would have unimpeded access to the other; and (ii) even if the answer to the first question is "yes", were either suitable for use as a "single" dwelling?

58. On the first ("dwelling") question, our starting point is that some degree of privacy and security is required for a building (or part) to be used as a dwelling. One cannot carry on the activities of every domestic living in a place where strangers can enter at will. We note that, on the whole, the way this is provided in dwellings is via lockable doors at the entry points to the dwelling. We also note, however – and here we have an eye to the judgement of the High Court in *Ramdhun* – that a lockable door is not the only way to provide privacy and security. As Haddon-Cave J put it at [40], "questions of privacy are questions of degree and balance". *Ramdhun* itself showed that a second floor flat in a terraced house, physically separated from the other flats by being on a different floor, could be sufficiently "separate" so as to provide "separate living accommodation". This indicates that a degree of privacy and security can also

be obtained by physical separation, combined with a relationship of trust with a limited group of people who are not themselves occupants of the dwelling in question but who are not physically excluded from it by a locked door.

59. So, on our facts, one can imagine the annex being occupied by an older relative of the occupants of the main house (a "granny flat"), or by one of their grown-up children, and this arrangement providing adequate privacy and security to occupants of both parts of the property, given family bonds of trust. One can also imagine scenarios where a "lodger" could have sufficient ties of trust with the occupants of the main house for him or her to occupy the annex and satisfy everyone's need for privacy and security.

60. The legal test in *Ramdhun* was whether the part of the building concerned been adapted for use as "separate living accommodation". The test we are dealing with here is different: it is a test of "suitability" for use, rather than adaptation for use; and it is a test of use as a "single dwelling," rather than of use as separate living accommodation.

61. In our view, a building (or part) is "suitable" for a use if it can generally be so used. So, if one has a situation where a building (or part) is suitable for a use only in quite specific circumstances, this inclines against determining that the building is "suitable" for that use. That is our situation here: an objective observer of the property at completion could have envisaged circumstances where main house and annex could be used individually as dwellings (see [59] above), but only if a very particular kind of relationship were to subsist between the occupants of the two parts. Absent such a relationship – which would be the case where the occupant of the annex was a member of the general public – the main house and the annex would not be individually suitable for use as dwellings, due to the insufficiency of privacy and security for occupants of both parts. As we say, this inclines against a determination that both parts were suitable for use as dwellings.

62. This inclination is only strengthened when we turn to our second question, the effect of the corridor on the suitability of the main house and annex for use as "single" dwellings. The corridor as a physical feature compromised the stand-alone quality of both main house and annex as dwellings – and, in our view, the word "single" imports a requirement of suitability for use on a stand-alone basis. Due to the short, open corridor connecting them, the main house and annex were simply too closely physically connected for either to be suitable for use as a "single" dwelling. Rather – and this, indeed, is how the property was marketed, on the evidence of the "rightmove" materials – the property was eminently suitable for use as one joined dwelling.

63. We now turn to the appellants' alternative argument: even accepting that at the moment of acquisition, the annex and main house were not each usable as a single dwelling, the appellants point out that the test is not whether the two parts of the property were immediately ready for such use, but whether they were "suitable" for such use. Adopting the thinking in HMRC manuals SDLT 00385 (see [37] above), and in the HMRC review letter to a third party (see [40] above), Mr Cannon argued that a building (or part) was suitable for a use at a point in time if, on the assumption of a relatively minor physical adjustment being carried out, it could be so used. In this case, the relatively minor adjustment would be erecting a barrier between main house and annex. Mr Cannon suggested a door could be relatively easily installed in the door jamb in the corridor (we note that to give occupants of both parts of the property sufficient privacy and security as per our analysis above, the door would somehow need to be lockable from both sides (or two doors would be required)).

64. We agree (and state as much in our discussion of the property's state of disrepair at the time of completion at [56] above) that the test is not whether the building or part was ready for immediate occupation as a single dwelling at completion. As we observed, a building remains

suitable for a certain use at a certain time if, at that time, it is clear to an objective observer it was used for such purpose in the relatively recent past, and all that has happened is that it has fallen into relatively minor disrepair.

65. The absence of any physical barrier between the two parts of the property at the point of completion raises different considerations, however:

(1) In our view it is significant that nothing in the physical state of the property at completion would have indicated to an objective observer that there had ever been a physical barrier between the annex and the main house sufficient to enable occupation of the annex by a member of the general public and establish it as a stand-alone dwelling: there was a door jamb in the entrance to the corridor from the main house, but this in our view falls short of evidence of a meaningful barrier between the two parts of the property in the recent past; and, consequently

(2) Putting a lockable door, or some other kind of secure barrier between the two parts of the property, was not a matter of restoration or repair of physical features of the building to enable it to resume a use that would have been obvious to an objective observer of the property as at completion; rather, it was the addition of a new physical feature to enable it to serve a as a stand-alone (rather than a joined) dwelling.

66. These considerations incline us to conclude that it would be wrong to determine "suitability for use" at the time of completion on the assumption that a door, or doors, or some other physical barrier, would be introduced to the corridor. This is because the suitability test in paragraph 7 is an objective one based on the physical features of the property as at completion – it cannot be performed on the assumption that new physical features will be introduced to enable a new and different kind of use. This is the case even if the new physical features are relatively easy or quick to install.

67. Our inclination is strengthened by the point we make at the end of [62] above – that in the eyes of an objective observer at completion, the main house and annex were eminently suitable for use as one joined dwelling. In such circumstances it seems to us that such an observer would not reasonably conclude that they were suitable for a different sort of use on the basis of a new physical feature being added.

68. We therefore conclude that, applying paragraph 7, the annex and the main house did not each count as a dwelling for MDR purposes; rather, they together counted as a dwelling.

69. It will be seen from the foregoing discussion that we have not put a great deal of weight on the evidence that the annex had no separate utility meters or council tax status – this points in the same direction as our conclusion, but we did not place great weight on these factors. Similarly, we did not place great weight on the evidence of a separate postal address for the annex (we acknowledge that the sending of post to the annex was supportive of its "single" status, but do not consider this a very significant factor). We placed no weight on the evidence regarding the "restrictive covenant" in the land registry, which was unclear in itself and in its implications for the issues at hand.

70. The appeal is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

71. 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.

ZACHARY CITRON
TRIBUNAL JUDGE

RELEASE DATE: 9 APRIL 2020

APPENDIX

Original SDLT calculation

Purchase price	£575,000		
Number of dwellings	1		
SDLT calculation:			
	Layers of consideration	**Rate**	**Tax**
	First £125,000	0%	0
	Next £125,000	2%	£2,500
	Next £325,000	5%	£16,250
TOTAL	**£575,000**		**£18,750**

Revised SDLT calculation

Purchase price (A)	£575,000		
Number of dwellings (B)	2		
A/B	£287,500		
SDLT calculation:			
	Layers of consideration	**Rate**	**Tax**
	First £125,000	0%	0
	Next £125,000	2%	£2,500
	Next £37,500	5%	£1,875
Subtotal	£287,500		£4,375 (**C**)
C x B			£8,750 (**D**)
Minimum 1%			£5,750 (**E**)
TOTAL	Greater of D and E		**£8,750**