Neutral Citation: [2023] UKFTT 00648 (TC)

Case Number: TC08869

FIRST-TIER TRIBUNAL
TAX CHAMBER

[By remote video/telephone hearing]

Appeal reference: TC/2022/00804

Stamp Duty Land Tax-purchase of house and land - whether all of the land was or formed part of the garden or grounds of a dwelling – yes - whether a claim to multiple dwellings relief could be made-no - Finance Act 2003, sections 55, 58D,76 and 116 and Schedule 6B. Appeal dismissed.

Heard on: 14 June 2023
Judgment date: 12 July 2023

Before

TRIBUNAL JUDGE RUTHVEN GEMMELL WS

Between

JAMES GEORGE GIBSON

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: The Appellant represented himself.

For the Respondents: Christopher Thompson-Jones, litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. The form of the hearing was by video, all parties attended remotely and the remote platform used was the Tribunal video hearing system. The documents which were referred to comprised of a Hearing bundle of 268 pages, skeleton arguments for both parties, a series of plans and a copy of a Knight Frank sale particulars/brochure.

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

BACKGROUND

3. The Appellant, James George Gibson ("JG"), appealed against a closure notice issued by the Respondents ("HMRC") on 24 January 2022. The closure notice was in the sum of £83,000 of Stamp Duty Land Tax (SDLT").

4. The closure notice was issued to JG in relation to Doe Bank Manor, Lower End, Priors Hardwick, Warwickshire ("the Property") which was purchased for £1,595,000 on 10 January 2019.

5. At the hearing JG confirmed that he, and his wife and children, were in occupation of the Property on 27 November 2018 but for a number of reasons the Completion date was delayed to 10 January 2019.

6. The Property comprised of two Land Registry titles numbered WK425880 and WK426348 ("the Property"). The former comprised of (1) a six bedroom house over two storeys ; (2) a double garage with, an 'office/studio' above it, accessed by an external staircase; (3) a two bedroom self-contained barn with two bathrooms, open plan living, dining and kitchen area and a mezzanine level with a feature arch window allowing for views over the rear; (4) an outbuilding containing two stables and a tack room with an internal floor area of 93m² which could be moved on 'skids'; and (5) a garden in which JG had created a 'market garden'(all collectively " the 0.5 acre").

7. The latter title represented the field/paddock ("the Paddock") of approximately two acres.

8. HMRC concluded that the residential rate of SDLT applied to the Property acres in total and that the use of the property was wholly residential at the date of acquisition.

9. A SDLT return was filed on behalf of JG on 10 January 2019 on the basis that the property transaction was "mixed-use" and the total amount of tax due was calculated at £69,500. No claim for Multiple Dwellings Relief ("MDR") was made.

10. Based on the transaction date of 10 January 2019, the deadline for amending the SDLT return expired on 9 February 2020.

11. On 7 February 2020, JG confirmed that no consideration was received for sheep grazing on the Paddock and on 10 March 2020, he emailed HMRC to confirm that farmers had used the land for the previous four years.

12. On 6 July 2020, HMRC issued a letter concluding that the land consisted entirely of residential property and correspondence was then exchanged.

13. On 30 November 2020, HMRC issued a closure notice in terms of paragraph 23, Schedule 10 to the Finance Act 2003 concluding that the Property was residential and that higher rates of SDLT applied representing an increase of £83,500 to £153,000.

14. On 20 December 2020, JG emailed HMRC disagreeing with the decision and intimating that there was at least a claim for MDR.

15. On 01 March 2021, JG appealed against HMRC's decision and on 29 March 2021 HMRC provided their review of the matter concluding the property was residential. On 30 September 2021, HMRC issued its statutory review conclusion letter upholding the decision that the Property was residential.

16. This letter explained that HMRC would not object to a late appeal if it was made within three months of the end of the 30-day appeal period, by 30 January 2022.

17. On 24 January 2022 JG filed his notice of appeal with the First-tier Tribunal ("FTT").

LEGISLATION

18. See Appendix A

AUTHORITIES REFERRED TO.

19. See Appendix B

BURDEN AND STANDARD OF PROOF

20. The Burden of proof is on JG to demonstrate that the Property has been incorrectly classified as wholly residential and failure to discharge that burden will result in the Closure Notice standing good. The standard of proof is on the ordinary civil test on the balance of probabilities.

FINDINGS OF FACT AND EVIDENCE

21. The Property was marketed by two estate agents and their respective sale particulars/brochures were before the Tribunal.

22. The Property had some time previously contained a series of farm buildings and farmyard, but these had fallen into a state of disuse from a farming perspective and planning consents were obtained to create new buildings. Photographs were produced of the previous outbuildings that related to the farmland, that had since been demolished.

23. It was disputed whether the garage, accessed by an external set of steps, was part of the residential curtilage of the Property. JG advised that he had attempted to obtain planning permission to connect the garage to the house, but this had been refused because the garage was deemed to be on agricultural land for planning purposes.

24. The 0.5 acre which contained the buildings was separated from the Paddock by a ha-ha, and elsewhere by a fence. The Paddock is on a slope and JG said the Paddock could not be much seen from the house. The Knight Frank brochure suggested that there were views of the paddock from the house/its garden /the detached barn.

25. The Property is subject to an agricultural right-of-way that separates the 0.5 acre from the Paddock.

26. The outbuilding of timber construction of two stables and a tack room is set on skids so it could be moved across to land which is non-residential for planning purpose.

27. JG is a professional rugby player and whilst furthering his secondary career wished to purchase a small holding in which he and his wife could bring up their children in a more natural setting and also continue and expand all their food-based businesses including a company, he and his wife run, called Butter Wouldn't Melt Limited,

28. The attraction of the property was also therefore to provide a market garden, which was created on the 0.5 acres, with an intention to use the Paddock for rearing and grazing animals.

29. In addition, they ran another business, Pannacotta Ltd, in the studio/office area above the garage.

30. On visiting the property prior to purchase and also contained within the photographs in the Knight Frank brochure were grazing sheep which confirmed to JG that the Paddock was being used for grazing sheep, an activity he wished to continue.

31. On 07 November 2018, CHR Ventures Ltd and Mr Paul and Mrs Rosemary Hobday, adjoining proprietors of the Property, formalised an ad hoc grazing arrangement in relation to the Paddock. The agreement narrated that the land had been used for grazing for the previous four years. Prior to that it had been used by other local farmers. This agreement was to subsist until completion of the sale to JG.

32. The agreement further stipulated that if JG wished the agreement to continue then he and his wife would be precluded from using the land for their own purposes. When Mr and Mrs Hobday decided not to continue their grazing, JG had a separate agreement with another farmer to graze the paddock. None of these agreements provided for any monetary consideration but there was an understanding that joints of lamb would be given to JG. No written agreements were provided to the Tribunal.

33. On 26 November 2018, JG and his wife signed the contract to purchase the property from CHR Ventures Ltd and moved into the property unaware that the title of the property had not been transferred. The transfer happened on 10 January 2019.

34. On 20 December 2020 JG argued that the property was eligible for MDR as both the house and barn have their own kitchens, bathrooms and separate water and electricity supplies and also have their own separate addresses registered to the local council.

ISSUES BEFORE THE TRIBUNAL

35. The issues before the Tribunal were (1) whether the Property is wholly residential in terms of Section 116 (1) Finance Act 2003 or whether parts of the Property, the Paddock and Office/studio above the garage, are non-residential and whether the conclusions stated within the Closure Notice are correct and (2) if the Property is treated as wholly residential, whether JG is entitled to make a claim for MDR.

JG'S SUBMISSIONS

36. JG contends that, at the effective date of the transaction, the Property consisted of both residential property and non-residential property within the meaning of Section 116 of FA 2003.

37. On 23 October 2018 Deloitte LLP advised JG regarding a mixed-use application and should an enquiry be opened, then a MDR claim should be considered.

38. JG had a grazing agreement in relation to the Paddock that attached with it conditions restricting their use of the land.

39. The grazing of animals on the land was a major reason for JG's purchase of the land. The ha-ha provided a boundary for grazing livestock to prevent them accessing the formal gardens in the 0.5 acre.

Historic use of the land

40. The property was historically used as a farm and there was a farm steading/yard and buildings, since demolished.

41. The grazing on the land by the Hobdays was for approximately 4 years prior to the transaction date and during the Spring and Summer. Previously the land was grazed by other local farmers. There is no grazing of sheep for 12 months of the year and Spring and Summer grazing are customary in grazing agreements. In light of this, JG says his circumstances have similarities to the circumstances in *Withers v HMRC* [2022] UKFTT 00433 (TC).

A building or structure on the land: the garage

42. JG says that he currently runs one business and intends to run a second business from the property. Specifically, that he runs one business from the studio above the garage and that he also intends to run a second business.

Geographical factors: size, layout of land and outbuildings

43. The brochure from Howkins & Harrison in the bundle of documents outlining the property was not one JG had seen before his purchase and did not show details of the agricultural use of the land. The agent who JG worked with was Knight Frank whose brochure did show sheep grazing. JG had several conversations with the agent and vendor about the office and desire for agricultural land, leading to the purchase.

Legal factors and constraints: the right of way

44. The transfer of part of the registered title (TP1) dated 9 December 2005 showed an easement over the Property.

45. This easement is a right of way by foot or with vehicles over the land for agricultural and gardening purposes.

46. The photographs from the brochure show a field gate, located next to the garage, allowing access to the agricultural land through its own driveway.

Multiple Dwellings Relief

47. On 20 December 2020, JG e-mailed HMRC disagreeing with the closure notice and intimating that MDR should apply as within the deeds, at the date of the transaction, there were two separate properties, the house and the barn each with their own kitchens and bathrooms and on separate meters. Moreover, the council charged them both separate council tax and they had separate postal addresses with Royal Mail.

Conclusion

48. JG submits that this appeal should be upheld for the following reasons:

• The purchased involved two separate deeds. One for residential land and one for non-residential land.

• The Paddock had been grazed separately for another agricultural use. It was fully enclosed by sheep fencing and a ha-ha with water troughs set out at regular spaces and five bar farm gates.

• Planning ordered that the agricultural building that was on the non-residential land be put onto skids so that it would comply with non residentially curtilage.

• The Paddock had been historically used for a separate agricultural use. Planning had been very strict about making sure this distinction continued and protecting the non-residential land.

• The agricultural right of way divided the residential and non-residential land and as it could be used at any time. It made the right of way potentially dangerous to cross, especially for the young children of JG, so he removed the use of the land.

• The room above the garage was above non-residential land according to the planning authority and was marketed as an office by Knight Frank.

• JG purchased the Property because he wanted to continue the commercial grazing and further develop the agricultural use. Before purchasing, JG discussed putting cattle grids down with the vendor.

• The purchase contained two separate properties, with their own kitchens and bathrooms and on separate water and electricity meters. Moreover, the council charged them both separate council tax and they had separate postal addresses with Royal Mail, accordingly MDR should apply if a mixed-use application between residential and non-residential is not applicable.

HMRC'S Submissions

The legislative position

49. The law on SDLT is mainly set out in Part 4 of FA 2003 with SDLT charged on a 'land transaction' under Section 42 of FA 2003.

50. HMRC contend that, at the effective date of transaction, the Property was one that consisted entirely of residential property within the meaning of Section 116 of FA 2003:

"(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."

51. There is no dispute that Section 116(1)(a) is satisfied. The six-bedroom dwelling known as 'Doe Bank Manor' was a building used or suitable for use as a dwelling.

52. There is a dispute over whether the Paddock and the room above the garage are residential or non-residential property.

53. The definition of 'garden or grounds' was considered by the FTT in *Hyman v HMRC [2019] UKFTT 469 (TC)* with supporting comments from the Upper Tribunal in *Hyman & Ors v HMRC* [2021] UKUT 68 (TCC). It was considered that 'garden' and 'grounds' are ordinary English words.

54. Further, when considering whether the Property is wholly residential, HMRC contend that all relevant factors must be considered and weighed against each other; no single factor is likely to be determinative by itself (per *Hyman & Ors* at [49]). However, not all factors are of equal weight either, and one strong factor could outweigh several weaker or contrary indicators.

55. This balancing exercise must be based on the relevant factors at the effective date of transaction; per *Brandbros Ltd v HMRC* [2021] UKFTT 157 (TC) at [44].

Use of the land on or around the effective date of transaction

56. The two parcels of land were acquired by CHR Ventures Limited which sought planning permission to demolish the existing buildings and erect a replacement dwelling.

57. Stratford-on-Avon District Council confirmed the change of use of land from agriculture to residential curtilage.

58. . In *Myles-Till v HMRC* [2020] UKFTT 127 (TC), Judge Citron stated at [44] & [45]:

"[44.] … One must, in addition, look at the use or function of the adjoining land to decide if its character answers to the statutory wording in s116(1) - in particular, is the land grounds "of" a building whose defining characteristic is its "use" as a dwelling? The emphasised words indicate that that the use or function of adjoining land itself must support the use of the building concerned as a dwelling. For the commonly owned adjoining land to be "grounds", it must be, functionally, an appendage to the dwelling, rather than having a self-standing function.

[45.] … use for a "commercial" purpose is a good and (perhaps the only) practical example of commonly owned adjoining land that does not function as an appendage but has a self-standing function."

59. In the decision of *Goodfellow & Anor v HMRC* [2019] UKFTT 750 (TC) at [20], the Tribunal considered a grazing agreement of £1 per month and found that the agreement itself was not a commercial agreement which it described as a 'peppercorn rental'.

60. In the same paragraph, the Tribunal also stated that the presence of horses on the taxpayer's land helped to maintain the land in question and saved on mowing.

61. In *The How Development 1 Ltd v HMRC* [2021] UKFTT 248 (TC) at [83], Judge Connell stated that:

> "[83] ... Certain types of land can be expected to be garden or grounds, so paddocks and orchards will usually be residential, unless actively and substantially exploited on a regular basis. That logic applies equally to woodland. There is no suggestion of any previous commercial activity in the recent past and whatever may happen in the future

has no relevance in determining the current status of the woodland for the purposes of SDLT."

62. In *Pensfold v HMRC* [2020] UKFTT 0116 (TC), the company acquired a farm including 27 acres of land, for which it argued the land was non-residential because of a grazing agreement.

63. Judge Gillett considered at [54] & [55] that:

> "54. However, at the time of purchase, the land was not being grazed. The marketing brochure advertising the Farm for sale made no mention of the sale being subject to grazing rights, and the sale and purchase contract likewise made no mention of the property being subject to grazing rights. Indeed, had the land, all 27 acres of it, been subject to grazing rights that would have made the plans to develop a rare breeds farm rather difficult to implement.
>
> 55. We must therefore come to the conclusion that at the time of purchase the property was not mixed use but was wholly residential."

64. In *Withers v HMRC* [2022] UKFTT 00433 (TC), the taxpayer argued that 20 acres of land was for grazing sheep and subject to a grazing lease (with restrictions on the taxpayer's use of the land). It was argued that the grazing was carried out by a local farmer for many years on a continuous basis, independently of the dwelling.

65. HMRC say that whereas the taxpayer was successful in *Withers*, that case can be distinguished from the present appeal on the facts.

66. The taxpayer had a grazing agreement that attached with it conditions restricting their use of the land and Judge Gemmell made a specific point about the scale and quantity of grazing involved. By comparison, JG only had an informal arrangement which appears to be related to a Springtime use in exchange for lamb joints. There is no evidence displaying a history of active and substantial exploitation of the land on a regular basis.

67. HMRC submit that the informal grazing was not under an agreement, nor could it be described as a commercial arrangement and, consequently, the Paddock did not have a 'self-standing' function.

68. The grazing of animals was carried out informally and was of benefit to the JG, as it kept the land in a well-maintained state supporting the rural character of the premises.

69. The ha-ha provided JG with the illusion of an unbroken and continuous rolling lawn, whilst providing a boundary for grazing livestock to prevent them accessing the formal gardens.

Historic use of the land

70. A report from Stratford-on-Avon District Council displayed a summary of relevant planning decisions showing that the previous buildings that related to the farmland could be, and subsequently were, demolished.

71. Since the demolition, the developer had changed the Property from 'Doe Bank Farm' to 'Doe Bank Manor' incorporating a barn conversion and a new build stone country residence. The combining of the 0.5 acre and the Paddock enabled the high-quality landscape scheme, which was central to the architect's vision and a key marketing feature.

72. The Paddock had been used for grazing sheep by the local farmers (Mr and Mrs Hobday) which was only in the Spring.

73. HMRC submit that the two parcels of land were purchased together so that the Property would be an appealing countryside residence with views across the Warwickshire countryside.

74. It is only the post-development "history" that is relevant in the present appeal and is supported by the planning permission changing the use of the land to residential and the ha-ha allowing for a beautiful view over the Paddock and rolling countryside beyond.

75. Since the development of the property from 2003, the grazing on the land has only been for approximately four years prior to JG's acquisition and during the Springtime.

76. It is submitted that there has been limited grazing use which is reflected in the lack of commercial terms and size of the paddock. The main benefit for the Property is to reduce the maintenance or mowing of the paddock and the presence of livestock adds to the rural character and is integral to this country residence.

77. HMRC submit that the land has been transformed from a working farm into a family home with far reaching views.

Geographical factors: size, layout of land and outbuildings

78. The Property was outlined in the brochure from Howkins & Harrison and included an overview of the layout.

79. This displayed the six-bedroom building, Doe Bank Manor, along with the garage and converted barn, the two-acre Paddock located immediately to the rear of Doe Bank Manor, and which was visible from the residential building.

80. There is a reference to a stable block, however this cannot be seen in the images within the brochure nor is it within the site plan from HB Architects.

81. HMRC submit that there are no commercial outbuildings on the Property, including outbuildings related to farming and/or horticulture.

82. The Paddock, located immediately to the rear of the dwelling, contributed to the rural character of the Property by adding a pleasant view that is directly visible from the rear of Doe Bank Manor.

83. Lastly, the Property was designed and landscaped to take advantage of the view. The view from the rear of the Property is over the gardens, utilising the ha-ha to view beyond into the rolling countryside over the Paddock. The bedrooms, living room, kitchen and the purposely designed patio take advantage of this view.

Legal factors and constraints: the right of way

84. The easement over the Property is a right of way by foot or with vehicles over land for agricultural and gardening purposes.

85. Rights of way were considered in FTT decision in *Hyman* at [62] which stated as follows:

> "[62.] ... I do not consider it relevant that the grounds and gardens are separated from each other by hedges or fences. This may simply be ornamental or may serve the purpose of delineating different areas of land as being for different uses. Nor is it fatal that other people have rights over the land. The fact that there is a right of way over

grounds might impinge on the owners' enjoyment of the grounds and even impose burdensome obligations on them, but such rights do not make the grounds any less the grounds of that person's residence..."

86. This was supported by Judge Scott in Averdieck at [36] and, who further commented at [40] that this line of argument "strays into the question of 'reasonable enjoyment' which cannot be considered".

87. HMRC submit that the presence of the right of way and its obligation on JG does not prevent the land being part of the grounds of a dwelling house.

A building or structure on the land: the garage

88. The garage was described in the brochure from Howkins & Harrison as having an "office/playroom" over the garage.

89. The grant of planning permission from Stratford-on-Avon District Council required that the first floor of the detached garage should be used only ancillary to the use of the main dwelling.

90. In *Brandbros Ltd v HMRC* [2021] UKFTT 157 (TC), a commercial lease had been granted in relation to the garage in the grounds of a residential property and the Tribunal ruled against the taxpayer.

91. The Tribunal's decision was that the garage was within the grounds of the property and that was sufficient for it to be treated as residential property, regardless of the use to which it was put.

92. Judge Bowler considered this at [40]:

> [40.] We are satisfied that the garage should be treated as a building or structure in the grounds or garden of the Property**.** Therefore, as a matter of statutory interpretation, the garage is treated as residential property under section 116 regardless of the use to which it is put. Under section 116(1)(a) the house at the Property, which was and continues to be used as a residential property, is treated as "residential property". Section 116(1)(b) then extends that treatment to the garden and grounds of the house, including any buildings or structures and those areas. There is no limitation in section 116(1)(b) to areas which are used for residential purposes."

93. Judge Bowler sought support for this interpretation from *Goodfellow v HMRC* UT/2020/0027 (not published). Judge Raghavan refused an application for permission to appeal to the Upper Tribunal and considered at [13]:

> "The applicants' submission that the FTT's conclusion is not one that a tribunal could have reached applying the facts to the law is in my view unsustainable. This is because the terms of s116(1)(b) clearly necessitate a decision against the applicants despite all the factual features they emphasise. It was not suggested, and from the application appears to be accepted, that the garage building in which the office room was situated was a building on land which was land that formed part the grounds of the dwelling (the dwelling being the applicants' house – and which fell within s116(1)(a)). Thus, the garage building was prima facie within the scope of s116(1)(b). There is however nothing within subsection b) to indicate the applicants' submission, that the use or suitability

> of use of the room for non-residential purposes is contemplated as relevant, so as to extricate it from s116(1)(b). As far as the wording of s116(1)(b) is concerned, a building in the garden or grounds of a dwelling within subsection (a) such as the garage building including the office space in this case is residential irrespective of its use or suitability of use (in contrast to subsection a)). The HMRC guidance relied on by the applicants simply reflects HMRC's view of the law and cannot affect the interpretation of the law which is a matter of statutory interpretation. It is not an interpretative tool, but even if it were, the guidance referred to would seem to be relevant to whether a building was used or suitable for use as a dwelling for the purpose of s116(1)(a) not s116(1)(b). In the light of the relevant facts it is difficult to see how a tribunal could have reached any conclusion other than the one the FTT did."

94. JG also contends that he currently runs one business and intends to run a second business from the property. Specifically, that he runs one business from the studio above the garage and that he also intends to run a second business.

95. HMRC submit that any future intention or use after the time of completion would be irrelevant. The purpose of SDLT is that it is a tax on a transaction, therefore, the amount to be charged is on the basis of the land acquired at the time of competition and not thereafter.

96. HMRC submit that the use or suitability of use of the room above the garage is not relevant. The garage is a building or structure on the land that forms part of the garden or grounds of the residential property and is therefore wholly residential property.

97. However, if the Tribunal does not agree with the interpretation in the above caselaw, HMRC shall address the characteristics of the room above the garage below.

98. The "office/playroom" is in principle no different from working from a study, spare room or even a dining room. The room is suitable for domestic use and is capable be being furnished to fit a range of domestic uses: storage, playroom or a games room.

99. HMRC submit that the garage is wholly residential property and there is no evidence of any separate commercial use, and any such use would be contrary to planning permission.

Multiple Dwellings Relief: lack of jurisdiction and failure to claim MDR in the return.

100. On 10 January 2019, JG filed the SDLT return with the window for amending that return expiring on 9 February 2020. No amendment was made to the SDLT return.

101. On 13 November 2020, HMRC issued a closure notice solely considering whether the Property was wholly residential. JG had not raised MDR as an issue previously.

102. On 20 December 2020, JG e-mailed HMRC disagreeing with the closure notice and intimating that MDR would apply. No further information and/or documents were supplied in the context of an MDR claim.

103. In *Secure Services Ltd, v HMRC* [2020] UKFTT 0059 (TC), Judge Fairpo considered whether the Tribunal had jurisdiction to hear an appeal against the Respondents' refusal to accept a late claim for MDR at [39] to [48]. The Tribunal concluded that it did not have jurisdiction.

104. In *Smith Homes 9 Ltd v HMRC* [2022] UKFTT 00005 (TC), Judge McKeever considered at [66] and [67] that a claim for MDR can only be made in accordance with Section 58D FA 2003. The taxpayer did not make a claim within their return and was out of time to make a valid claim for MDR.

105. HMRC respectfully submit that as no decision has been made in relation to an MDR claim, JG does not have a right of appeal pursuant to Paragraph 35, Schedule 10 FA 2003.

106. Alternatively, even if the Tribunal do consider there is a right of appeal, Section 58D FA 2003 requires a claim for MDR to be made within the SDLT return or an amendment to the return. Paragraph 6, Schedule 10 FA 2003 states a return cannot be amended more than twelve months after the filing date.

107. As JG has not claimed MDR in his return and is out of time to amend his return, he is precluded from applying for MDR.

108. Lastly, a claim for overpayment relief would simply circumvent the purpose of the legislation in setting a twelve-month time limit to amend the SDLT return.

109. The Upper Tribunal in *HMRC v Christian Peter Candy* [2021] UKUT 0170 (TCC) confirmed at [112] that a claim for overpayment relief pursuant to Paragraph 34, Schedule 10 FA 2003 cannot be used to circumvent the requirement of Section 58D FA 2003. This line of reasoning was supported by the Court of Appeal.

110. Notwithstanding the above, JG has not supplied any information and/or documents to support a claim for MDR. The Respondents' position is that this transaction would not satisfy the requirements for MDR.

111. A multi-factorial assessment of the Property at the point of completion would indicate that there was only one dwelling and not two dwellings and, if there were multiple dwellings, this would be contrary to the planning permission granted by Stratford-On-Avon District Council.

Conclusion

112. HMRC respectfully submit that this appeal should be dismissed for the following reasons:

a. The building known as Doe Bank Manor, was a building used or suitable for use as a dwelling satisfying Section 116(1)(a) FA 2003.

b. The two-acre Paddock was an appendage of the dwelling, marketed as a high quality and bespoke country residence with excellent views, utilising livestock to add to the rural character. The Paddock was not actively and substantially exploited on a commercial basis or for another separate use. Therefore, the Paddock comes within Section 116(1)(b) FA 2003 as land forming part of the garden or grounds of a building with paragraph (a).

c. The room above the garage was a building or structure on the land and its use or suitability for use is not relevant. The garage is wholly residential property as it is a building on the garden or grounds of a residential property as set out at Section 116(1)(b) FA 2003.

d. Alternatively, the room above the garage was capable of domestic use and there was no commercial lease in place on completion. This demonstrated that the "office/playroom" was

not used for a separate purpose. Therefore, the room above the garage was wholly residential satisfying Section 116(1)(b) FA 2003.

e. JG has failed to amend their SDLT return to include a claim for MDR within the statutory time-limit. Therefore, JG is precluded from claiming MDR.

DECISION

113. It was common ground that the 0.5 acre was residential property apart from the disputed studio/office above the double garage. The other issue was whether the Paddock is or forms part of the garden and grounds of a building that is used or is suitable for use as a dwelling.

114. 'Residential property' and 'non-residential property' are defined pursuant to s.116(1) of the FA 2003, as is set out in HMRC's submissions.

115. As Judge Citron succinctly noted in *Myles-Till v HMRC* [2020] UKFTT 127 (TC),

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

116. In *Hyman & Ors v HMRC* [2022] EWCA Civ 185, in the Court of Appeal, the issue was whether there was an objective quantitative limit on the extent of the garden or grounds that fell within the definition of "residential property".

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

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

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

120. Accordingly, there is no quantitative limit on the extent of the garden or grounds and there is no requirement for it provide reasonable enjoyment.

121. Judge Mark Baldwin in the recent First-tier Tribunal case of *James Faiers v HMRC* [2023] UKFTT 212 (TC) helpfully set out principles derived from various SDLT case law, whether persuasive or binding on this Tribunal, relating to the interpretation of "the garden or grounds of a building" as set out in section 116 (1) (b) of the Finance Act 2003. At [44]:

> "The pointers I take from these cases are as follows:
>
> (1) "Grounds" is an ordinary (albeit a little archaic, at least in the view of some of my fellow judges) English word which has to be applied to different sets of facts. So, in deciding whether a particular piece of land comprises all or part of the "grounds" of a

dwelling, it is necessary to adopt an approach which involves identifying the factors relevant in that case and balancing them when they do not all point in the same direction.

(2) The discussion in HMRC's SDLT Manual is a fair and balanced starting point for this exercise, but each case needs to be considered separately in the light of its own factors and the weight to be attached to them. Listing them briefly, the factors addressed in the SDLT Manual are historic and future use; layout; proximity to the dwelling; extent; legal factors/constraints.

(3) Section 116(1)(b) refers to a garden or grounds "of" a dwelling. The word "of" shows that there must be a connection between the garden or grounds and the dwelling.

(4) Common ownership is a necessary condition for adjacent land to become part of the grounds of the dwelling, but it is clearly not a sufficient one.

(5) Contiguity is important; grounds should be adjacent to or surround the dwelling; *Hyman*.

6) One requirement (in addition to common ownership) might be thought to be that the use or function of the adjoining land must be to support the use of the building concerned as a dwelling (Myles-Till). That may be putting the test too high to the extent it suggests that unused land cannot form part of the "grounds" of a dwelling (cp *Hyman in the FTT* at [62]). Such a requirement must also contend with the decision of the *Court of Appeal in Hyman and Goodfellow* that it is not necessary, in order for garden or grounds to count as residential property, they must be needed for the reasonable enjoyment of the dwelling having regard to its size and nature.

(7) In that light, the "functionality" requirement might perhaps be put the other way round: adjoining land in common ownership will not form part of the "grounds" of a dwelling if it is used (*Hyman in the FTT* at [62]) or occupied (*Withers* at [158]) for a purpose separate from and unconnected with the dwelling. That purpose need not be (although it commonly will be) commercial (*Withers*). This is subject to the points discussed in (8) and (9) below.

(8) Other people having rights over the land does not necessarily stop the land constituting grounds. For example, the fact that there is a right of way over grounds might impinge on the owners' enjoyment of the grounds and even impose burdensome obligations on them, but such rights do not make the grounds any the less the grounds of that person's residence. As the recent decision of the Supreme Court in *Fearn and Others v Board of Trustees of the Tate Gallery*, [2023] UKSC 4, indicates, other people may have a range of rights that can impact on a landowner's use and enjoyment of their land and statute law intervenes in a range of fields (planning and environmental law being obvious examples). Indeed, once one accepts (as we are bound by authority to accept) that "grounds" extends beyond the land needed for the reasonable enjoyment of a dwelling, it seems almost inevitable, particularly in a rural context, that third parties (not the landowner) may have rights over or use parts of the "grounds" without that affecting the status of the land for these purposes. All of that together must mean that, whatever else "available to the owners to use as they wish" (*Hyman* at [62]) may mean, it cannot mean (and Judge McKeever, who herself referred to others' rights, clearly did

not intend it to refer to) untrammelled dominion unaffected by the presence or rights of others.

(9) 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. At one end of the spectrum, rights of way will generally not have this effect, even when the right is used for a commercial purpose and the existence and exercise of those rights is unconnected with the dwelling. At the other end of the spectrum, the use of a large, defined tract of land (which had historically been in separate ownership) for agricultural purposes by a third party who has rights enabling them to use that land in that way will result in that area of land not forming part of the grounds of a dwelling (*Withers*)."

Connection, Common Ownership and Contiguity

122. The Tribunal considered that the Paddock and the office/studio were continuous with the 0.5 acres and all the buildings and structures within it.

123. The sales particulars/brochures for the sale of Doe Bank Manor said: - "a beautiful family home with self-contained barn nestling on the edge of this sought-after village with beautiful far-reaching views. It included the buildings a garden and the paddock "in all about 2.44 acres" (Knight Frank) and "The property sits at the front of a plot approaching 2.5 acres which has been split into approximately 2 acres of paddock and 0.5 acre of beautifully formal gardens with extensive parking for many vehicles, separated by a feature Ha-ha. (Howkins & Harrison).

124. The property was not sold in lots, but the two parcels of land were sold and purchased together so as to provide an appealing country residence.

125. The development of the Property started in 2003.

Historic and Future Use

126. The Tribunal considered that there was no history of the Property used for agricultural use after 2003 other than that the paddock was used for grazing land for 4 years prior to the acquisition which was retrospectively documented.

127. It was only valid during the Summertime and Springtime when it would have provided reduced maintenance or mowing of the Paddock for the benefit of the Property.

128. What had once been a working farm had been converted into a family home with far reaching views.

129. The Tribunal did not consider it was relevant that JG did not use the paddock at this time but noted his future intention to graze and raise animals on it to support a possible future business venture. This area was also suitable for leisure use.

Layout and Proximity to the dwelling

130. The Tribunal considered that the layout and extent of the Property was appropriate for a countryside property with a six-bedroom house, a two-bedroom barn, a separate garage/studio, and stables and a tack room which could be used to support the equestrian use of the Paddock for grazing horses.

131. The studio/office above the garage was virtually adjacent to the dwelling house and JG had attempted to obtain planning permission to connect them which had been refused on the grounds that the garage was on non-residential land.

132. Whereas this may have been a planning requirement, the Tribunal considered that the studio and office as well as the garage qualified as structure on land that formed part of the grounds of dwelling for the purposes of section 116 (1) (b) of the Finance Act 2003.

133. The garage was on the 0.5 acre which was residential and the use to which the office/studio above the garage was put was not relevant, as set out clearly by Judge Bowler in *Brandbros Ltd* v *HMRC* at [40]:

> "As a matter of statutory interpretation, the garage is treated as residential property under section 116 regardless of the use to which it is put…there is no limitation to areas which are used for residential purposes".

Use or function to support, or use for a purpose separate and unconnected with, the dwelling.

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

> "Is the land grounds "of" a building whose defining characteristic is its "use" as a dwelling? The emphasised words indicate that that the use or function of adjoining land itself must support the use of the building concerned as a dwelling. For the commonly owned adjoining land to be "grounds", it must be, functionally, an appendage to the dwelling, rather than having a self-standing function."

135. This formulation, Judge Citron believed, was consistent with the analysis in *Hyman* at [92],

> "Provided one reads that paragraph to the end which he read as land under common ownership and control with the dwelling building – "would not constitute grounds to the extent it is used for a separate e.g., commercial purpose". I read this as a very similar understanding of the meaning of "grounds" to mine here, in that use for a "commercial" purpose is a good and (perhaps the only) practical example of commonly owned adjoining land that does not function as an appendage but has a self-standing function."

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

137. This is qualified by a statement that "it would be expected that the land had been actively and substantially exploited on a regular basis for this to be the case".

138. The Tribunal did not consider that the Paddock had a self-standing function, namely a commercial purpose being the provision of grazing or farming or horticulture and there was no evidence it was exploited on a regular basis.

139. The Tribunal did not accept HMRC's submission that there are no commercial buildings on the property relating to farming and/or horticulture in the Paddock as a building 'on skids' was advertised as stables and a tack room which could be used for equestrian activities. It was not so used at the date of acquisition nor had been since then.

140. The Tribunal did not accept that the informal grazing by farmers in exchange for joints of lamb constituted a commercial agreement and reinforced the view that the paddock did not have a "self standing function". The extent and quantity of any grazing was limited by the size of the Paddock.

Legal factors and constraints/Rights over land

141. SDLTM475 considered the legal factors and constraints that would affect whether land is chargeable. This states that "hindrances" such as rights-of-way and pylons will not usually prevent land constituting garden grounds. The Tribunal considered the right of way or easement over the property, whilst impinging on JG's enjoyment of the grounds, did not make the grounds any less the grounds of his residence. As stated by Judge Anne Scott in *Averdieck & Anor v HMRC* [2022] UKFTT 374 (TC), to consider this line of argument leads "straight into the question of 'reasonable enjoyment' which cannot be considered".

142. The Tribunal agree with Judge Mark Baldwin in *James Faiers v HMRC* at [44 - (8) and (9)] that rights over land, particularly in a rural context can exist without affecting the status of the land. The owner does not have "untrammelled dominion unaffected by the presence or rights of others". This applies to JG.

143. The legal and practical restrictions of the right of way, which is by foot or with vehicles over land for agricultural and gardening purposes, do not affect the residential use of the area to a significant extent and is to be expected in a rural context.

144. The Tribunal considered that the use put to the office/studio room above the garage, which had planning permission only for its use as ancillary to the use of the main dwelling, was not relevant. The office/studio was part of the garage building and the garage building is treated as a building or structure in the grounds and gardens of the 0.5 acre.

145. The informal grazing of the Paddock did not meet the test of being governed by a commercial agreement.

146. Whereas the Property had historically been used for a separate agricultural use, this had come to an end in 2003.

147. The right-of-way was not a sufficient factor to render the Paddock non-residential land and whereas the future intentions of JG may be to develop the Paddock that was not the case at the date of acquisition.

148. Weighing up the relevant factors, the Tribunal preferred the submissions made by HMRC and found insufficient reasons that the Paddock could convert the Property to mixed residential and non-residential use and found that the office/studio above the garage was residential, being situated on residential land, and that its actual use was not relevant.

Multiple Dwellings Relief

149. As became apparent during the hearing JG had occupation of the property on 27 November 2018 but for various reasons completion was delayed until January 2019.

150. HMRC in their initial submissions stated that the return window for amending JG's SLT return, based on 10 January 2019 expired on 9 February 2020. At the hearing HMRC stated that this should have been 27 December 2019. In either event no amendments were made to JG's SDLT return.

151. Similarly, when HMRC issued the Closure Notice on 30 November 2020 JG had not raised MDR is an issue but did so on 20 December 2020. No further information and/or documents were supplied in the context of the MDR claim.

152. HMRC say that JG was out of time to make a valid claim for MDR, and that no decision had been made in relation to an MDR claim so that JG does not have a right of appeal in terms of Paragraph 35, Schedule 10 Finance Act 2003.

153. Section 58D Finance Act 2003 introduces Schedule 6B Finance Act 2003 which provides for MDR, and subsection (2) provides" Any relief under that Schedule must be claimed in a land transaction return or an amendment of such a return".

154. Paragraph 6(3) provides that "…an amendment [to a land transaction return] may not be made more than twelve months after the filing date". Paragraph 2(1) provides that the filing date in relation to a land transaction return is the last day of the period within which the return must be delivered. Under section 76 Finance Act 2003, that period was, at that time, 30 days from the effective date.

155. JG's claim was not made within a land transaction return or in amendment to a return within 12 months after the filing date. He submitted no evidential basis which could satisfy the requirements for MDR, other than to claim that there were two properties with their own kitchens and bathrooms on separate water and electricity metres and that there were separate council tax and separate postal addresses.

156. The Tribunal considered that JG failed to amend his SDLT return to include a claim for MDR within the statutory limit and is precluded from claiming MDR.

157. The appeal is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

158. 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.

Ruthven Gemmell WS
TRIBUNAL JUDGE

Release date: 12 JULY 2023

Appendix A Legislation

FA2003 = Finance Act 2003
Section 42 FA 2003 - the tax
Section 43 FA 2003 - land transactions
Section 48 FA 2003 - chargeable interests
Section 55 FA 2003 - amount of tax chargeable
Section 58D FA 2003 - transfers involving multiple dwellings
Section 103 FA 2003 - joint purchasers
Section 116 FA 2003 - meaning of residential property
Section 119 FA 2003 - meaning of effective date of a transaction
Part 1 Schedule 4ZA FA 2003 - higher rates
Part 2 Schedule 4ZA FA 2003 - meaning of higher rates transaction
Part 3 Schedule 4ZA FA 2003 - supplementary provisions
Part 1 Schedule 10 FA 2003 - land transaction returns

Appendix B – Authorities Referred To

Hyman v HMRC [2019] **UKFTT** 469 (TC)
Goodfellow & Anor v HMRC [2019] UKFTT 750 (TC)
C Goodfellow and J Goodfellow v HMRC PTA decision -UT-2020-0027
Secure Service Ltd v HMRC [2020] UKFTT 0059 (TC)
Pensfold v HMRC [2020] UKFTT 0116 (TC)
Myles-Till v HMRC [2020] UKFTT 127 (TC)
Hyman & Ors v HMRC [2021] **UKUT** 68 (TCC)
HMRC v Christian Peter Candy [2021] UKUT 170 (TCC)
Brandbros Ltd v HMRC [2021] UKFTT 157 (TC)
The How Development 1 Ltd v HMRC [2021] UKFTT 248 (TC)
Sloss v Revenue Scotland [2021] FTSTC 1
Hyman & Ors v HMRC [2022] **EWCA Civ** 185
Candy v HMRC [2022] EWCA Civ 1447
Smith Homes 9 Ltd v HMRC [2022] UKFTT 00005 (TC)
Averdieck & Anor v HMRC [2022] UKFTT 374 (TC)
Withers v HMRC [2022] UKFTT 00433 (TC)