FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video hearing

Appeal reference: TC/2022/13513

Stamp duty land tax – purchase of house and separate building –multiple dwellings relief – whether suitable for use as a dwelling - no – whether in the course of being adapted for such use – no – appeal dismissed

Heard on: 22 August 2023
Judgment date: 20 October 2023

Before

TRIBUNAL JUDGE IAN HYDE
JAMES ROBERTSON

Between

JONATHAN RALPH

Appellant

and

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Patrick Cannon, counsel

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

DECISION

INTRODUCTION

1. This appeal concerns the availability of multiple dwellings relief ("MDR") for Stamp Duty Land Tax ('SDLT') purposes on the purchase of a house and self-contained garage with rooms above. The appeal is principally concerned with the extent of the facilities required for the preparation of food in order for a building to be a dwelling and, alternatively, whether it was in the process of being adapted for use as a dwelling.

2. All statutory references are to the Finance Act 2003 unless specified otherwise.

THE FACTS

3. The Appellant provided a witness statement and gave oral evidence. We found the Appellant to be an honest and truthful witness.

4. We find the facts relevant to this appeal as set out below.

The purchase of the Property

5. The Appellant is a wealthy South African businessman who runs a wealth management business in London. He is married with two teenage children. They also own several dogs.

6. The Appellant owns a flat in London but in 2020 wished to buy a more substantial property to enable him and his family to relocate from South Africa. In January 2020 he started looking at suitable properties in the Southeast of England but viewing became difficult due to Covid restrictions and so he restricted himself to online searches.

7. The Appellant started working in London on 1 September 2020 and moved his family from South Africa on 18 August 2020 except for the Appellant's wife who was pregnant at the time and could not fly and so was unable to move to the UK until February 2021.

8. In September 2020 he resumed viewing properties including in the Midlands because the experience of working from home during Covid meant he felt able to look further from London.

9. On 5 September 2020 the Appellant first viewed the property at Stoneybrook in Ashbourne in Derbyshire ('the Property'). The visit was very limited due to Covid restrictions.

10. On 6 November 2020 the Appellant exchanged contracts to purchase the Property for a purchase price of £3,300,000.

11. On 4 December 2020 the purchase of the Property completed.

SDLT return and appeal

12. On 8 December 2020 the Appellant filed an SDLT return in respect of the purchase of the Property in which he claimed MDR. The Appellant self-assessed in the return the amount of SDLT payable to be £193,500.

13. On 27 August 2021 HMRC opened an enquiry into the Appellant's SDLT return under paragraph 12 Schedule 10.

14. On 7 April 2022 HMRC issued a closure notice under paragraph 23 Schedule 10 on the basis that MDR did not apply, increasing the self-assessment by £101,250 to a total of £294,750.

15. On 6 May 2022 the Appellant appealed to HMRC against the closure notice.

16. On 28 July 2022 the Respondents issued their view of the matter letter, upholding the closure notice and offering a statutory review.

17. On 26 August 2022 the Appellant requested a statutory review of the closure notice.

18. On 7 October 2022 the Respondents issued their statutory review conclusion letter, upholding the Closure Notice.

19. On 14 November 2022 the Appellant appealed to this Tribunal.

The Property

20. The Property is a very substantial house built by the previous owner sitting in some 40 acres near Ashbourne in Derbyshire. In addition to the main house there is a detached three bay garage with rooms over on the first floor. This building is described in a number of ways by the parties – including "the Cottage" and "the gym" - but we shall adopt what we intend as a neutral term, "the Annexe".

21. We have had extensive evidence from the Appellant as to the layout and design of the Annexe both before and after completion. We were also provided with the sales brochure and numerous photographs taken by the Appellant both when he visited it before completion and after the alteration works were carried out.

22. There is one gated access to the Property and the Annexe is situated on the left of the approach to the main house. Beyond the Annexe is the main house with additional buildings including a second three bay garage with floor above identical to the Annexe save that the first floor has not been fitted out. The gardens for the main house are on the opposite side of the gravel drive but close to the Annexe and there is no divide excluding occupants of the Annexe from accessing the gardens. There is a seating and garden area behind the Annexe but it is not separated from the main grounds and there is no allocated parking beyond the three integral garages.

The Annexe before completion

23. The Annexe has a rectangular footprint of some 80m² for each floor. On the ground floor are three garages. One of the garages houses the boiler for the Annexe. There are two entrances to the first floor, external stairs from next to the right-hand garage door and through an external door at first floor level from the elevated seating and garden area behind the Annexe.

24. Both entrances access a small entrance lobby on the first floor. Off the lobby is a bathroom with toilet, basin, shower and heated radiator.

25. The first floor has wooden flooring and plastered walls and is almost entirely taken up with one room accessed off the lobby. The ceiling is flat for approximately one third of its width across the shortest side of the room with sloping ceilings either side and integral spotlights. There are four skylights per side inset into the sloping ceiling and a two metre dormer window on one side. Generally, floor, walls and ceiling are of a modern finish that would be consistent with domestic or commercial office use.

26. The Annexe has central heating, fibre broad band, mains electricity, gas, water and a separate zone on the house alarm system. The utilities do not have separate meters. The Annexe is not separately registered for Council Tax.

27. At the time of the Appellant's viewing in September 2020 the Annexe was described on a sign as "the George Lodge Cottage" which was because the then owner's son George had relocated to the Annexe just before lockdown in March 2020 and was living there.

28. The kitchen facilities consisted of a microwave, kettle, toaster, fridge, dustbin, server table, kitchen table and a bench. The main room was fitted out with gym equipment, TV and sofa.

29. Prior to carrying out the alterations described below the Annexe did not have the high voltage electricity connections required to fit a cooker, electric oven or hob.

30. The marketing brochure for the Property included a comment from the seller stating, in respect of the Annexe that "…we also have three closed, heated garages, with a large gym on the upper level which could easily be converted to a self-contained flat if desired".

the alterations

31. The Appellant wanted to refurbish the main house immediately after completion and before his pregnant wife arrived in the UK from South Africa and live in the Annexe whilst this was being done. It was therefore important to the Appellant that the Annexe was suitable to be used as accommodation. To that end the Appellant planned to carry out some alteration works to the Annexe before completion. In the event the alterations had to be carried out after completion because the seller's wife caught Covid which prevented access.

32. Prior to exchange the Appellant appointed an interior designer who, based on drawings from the Appellant and measurements taken by the seller, produced designs for the alterations, which were agreed on 23 November 2020.

33. In November 2020 the Appellant ordered kitchen units and built in appliances from Howdens.

34. In November 2020 the Appellant also ordered a significant number of household goods to equip the Annexe, including fridge freezer, washing machine and tumble dryer, dustbin, server table, kitchen table, dog beds, a double bed and mattress, two single mattresses, a wall mounted television, wi-fi router, linen, crockery, cutlery and so on.

35. On 17 November 2020 the seller confirmed that the Annexe had been cleared and gave Appellant permission to have goods delivered and stored there. The household goods were subsequently delivered prior to completion to the Annexe. Goods were also delivered to the Appellant's flat in London.

36. The Appellant had intended to meet the kitchen fitter on 4 December the day of completion but the fitter's father was being discharged from hospital and so they met on site on Sunday 7 December. Works commenced on or about Monday 8 December and the kitchen units and appliances delivered from Howdens soon after.

37. The alterations were completed by 19 December 2020.

The Annexe as at completion

38. On 4 December 2020 the Annexe was in the same state as it had been prior to completion save that all of the seller's chattels had been removed. The Appellant had been allowed by the seller to store the household goods bought by the Appellant and delivered before completion but as described above no works had started.

The Annexe after the alterations

39. Following completion of the alterations on 19 December 2020, the main room on the first floor of the Annexe included fitted kitchen units and work surfaces on two sides, a sink, dishwasher, fridge freezer, oven and electric hob, with the necessary high voltage power connections. The Appellant had bought a washing machine and tumble dryer but they were never used nor were the necessary plumbing connections fitted.

40. The Appellant noted in his evidence that the necessary electrical and water connections were easy to carry out due to the existing infrastructure, for example the water and drainage connections for the sink were readily accessible as it was fitted on the opposite side of a stud wall to the shower.

41. In the photographs we were shown and taken through by the Appellant, there was a convection microwave, kettle and toaster on the worksurface. There was also a dining table in

the middle of the room, chairs, a double bed, a large television fixed to the wall and other items of furniture. Due to the difficulty in removing it, a punch bag fixed to the ceiling by a chain by the original owner, remained.

42. The bathroom was not changed during the alterations.

43. The Appellant and his family lived in the Annexe for 6 months after completion as the main house was being refurbished and, notwithstanding that a conventional cooker and hob had by then been installed, they never used them, preferring to eat out or use the convection microwave. Further, the Appellant and his family did not need a washing machine, preferring to send their laundry out to be cleaned.

44. In the two years since the alterations were carried out, notwithstanding that the Annexe has frequently been used by the Appellant's family and visitors, the oven and hob have never been used and the high voltage connection never switched on.

RELEVANT LEGISLATION

45. SDLT is a tax on 'chargeable transactions', that is 'land transactions' being the acquisition of a 'chargeable interest' which is not exempt (sections 42(1), 43(1), 48(1) and section 49(1)).

46. Except as otherwise provided, the effective date of a land transaction for SDLT purposes is the date of completion (section 119).

47. Section 55 governs the amount of SDLT chargeable in respect of chargeable transactions.

48. Schedule 6B provides for multiple dwellings relief – MDR – reducing the SDLT payable on chargeable transactions if the main subject-matter consists of an interest in at least two dwellings. Paragraph 2 of Schedule 6B provides so far as relevant:

> "2(1) This Schedule applies to a chargeable transaction that is–
>
> (a) within sub-paragraph (2) or sub-paragraph (3), and
>
> (b) not excluded by sub-paragraph (4).
>
> 2(2) A transaction is within this sub-paragraph if its main subject-matter consists of–
>
> (a) an interest in at least two dwellings, or
>
> (b) an interest in at least two dwellings and other property.
>
> 2(3) …"
>
> (b) An interest in at least two dwellings and other property".

49. Paragraph 7 defines what amounts to a dwelling for the purposes of schedule 6B:

> "(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, or
>
> (b) It is in the process of being constructed or adapted for such use".

LATE APPEAL

50. The Appellant filed his appeal more than 30 days after the date of the notification of the outcome of the internal review (section 49G(2) Taxes Management Act 1970 ("TMA")). HMRC does not object to the appeal being notified late and we grant permission to appeal late under section 49(3) TMA.

THE ISSUES IN THIS APPEAL

51. This appeal concerns the applicability of MDR to the Appellant's acquisition of the Property. The parties are agreed that the effective date for these purposes is the date of completion of the Property by the Appellant, 4 December 2020. The parties are also agreed that an additional £101,250 of SDLT is payable by the Appellant if we do not accept the Appellant's arguments and allow his appeal.

52. MDR is available if the main subject-matter of the chargeable transaction consists of at least two dwellings. In this appeal it is common ground that the main house is a dwelling. The appeal is therefore concerned with two discrete questions:

(1) Whether the Annexe at the effective date was "used or suitable for use as a single dwelling" within paragraph 7(2)(a). HMRC's principal argument concerns whether the Annexe had sufficient facilities for the preparation of food; and

(2) Whether the Annexe at the effective date was "in the process of being…adapted for such use" within paragraph 7(2)(b). HMRC argue that the works had not started on the effective date, that is completion.

53. If either of the tests in paragraph 7(2) are satisfied then the Appellant wins his appeal.

54. The burden of proof is on the Appellant in this appeal.

PARAGRAPH 7(2)(A): SUITABLE FOR USE AS A DWELLING

The Appellant's arguments

55. Mr Cannon for the Appellant argued that the Annexe was "suitable for use as a single dwelling" within the meaning of paragraph 7(2)(a) at the date of completion.

56. Mr Cannon relied upon the Upper Tribunal decision in *Fiander and Brower v HMRC* [2021] UKUT 0156 (TCC):

> "48. We must therefore interpret the phrase giving the language used its normal meaning and taking into account its context. Adopting that approach, we make the following observations as to the meaning of "suitable for use as a single dwelling":
>
> (1) The word "suitable" implies that the property must be appropriate or fit for use as a single dwelling. It is not enough if it is capable of being made appropriate or fit for such use by adaptations or alterations. That conclusion follows in our view from the natural meaning of the word "suitable", but also finds contextual support in two respects. First, paragraph 7(2)(b) provides that a dwelling is also a single dwelling if "it is in the process of being constructed or adapted" for use as single dwelling. So, the draftsman has contemplated a situation where a property requires change, and has extended the definition (only) to a situation where the process of such construction or adaption has already begun. This strongly implies that a property is not suitable for use within paragraph 7(2)(a) if it merely has the capacity or potential with adaptations to achieve that status. Second, SDLT being a tax on chargeable transactions, the status of a property must be ascertained at the effective date of the transaction, defined in most cases (by section 119 FA 2003) as completion. So, the question of whether the property is suitable for use as a single dwelling falls to be determined by the physical attributes of the property as they exist at the effective date, not as they might or could be. **A caveat to the preceding analysis is that a property may be in a state of disrepair and nevertheless be suitable for use as either a dwelling or a single dwelling if it requires some repair or renovation; that is a question of degree for assessment by the FTT.**

> (2) The word "dwelling" describes a place suitable for residential accommodation which can provide the occupant with facilities for basic domestic living needs. Those basic needs include the need to sleep and to attend to personal and hygiene needs. **The question of the extent to which they necessarily include the need to prepare food should be dealt with in an appeal where that issue is material.**" [*Appellant's emphasis*]

57. Mr Cannon relied upon the highlighted comments by the Upper Tribunal at [48(1)] that improvement works were tantamount to "renovation" and should be seen in the same light. On that basis it was open to the Tribunal should treat the Annexe as having been renovated by the carrying out of the alterations.

58. Mr Cannon also relied upon the Upper Tribunal's comments at [48(2)] that having facilities for the preparation of food was not necessarily essential for a finding that the property was suitable for use as a dwelling, but a matter for evaluation by this Tribunal.

59. When the Appellant visited the Property before buying, the Annexe had been used by the previous owner's son and the Appellant saw a microwave, kettle, toaster, fridge, dustbin, server table, kitchen table and a bench. According to the Appellant, the only things missing was an oven, hob and high voltage power connection.

60. The Appellant argued that the definition of cooking facilities should move with the times and there were modern alternatives to traditional cookers that required high voltage electrical connections, particularly as people have different approaches to cooking, driven by societal changes such as cost of living, environmental concerns and so on. Further, traditional oil and woodburning Agas and other woodburning stoves did not require high-voltage electrical supplies. The Appellant produced in support evidence from Pinterest of stove less kitchens.

61. The Appellant also argued that many people eat out or have food delivered and if they do cook it can be without using a cooker. Indeed, the Appellant and his family did so during the 6 months they lived in the Annexe.

62. There were therefore sufficient kitchen facilities as at completion to meet a contemporary and objective observer's requirement for food preparation and eating facilities.

63. The absence of a sink was not an issue, the owner's son had used the basin in the bathroom.

64. The Annexe was eminently sellable, or lettable as a holiday let in the state it was at completion as holiday makers often do not require full kitchen facilities.

65. The Appellant also argued that the lack of separate utility meters, postal address, council tax registration and separate land registry title were of little or no weight in the context of a building in the nature of the Annexe (Judge Citron at [69] in *Fiander* in this Tribunal [2020] UKFTT 190 (TC))

HMRC's arguments

66. Mr Jones for HMRC also relied on paragraph [48] in the Upper Tribunal's decision in *Fiander* when considering the meaning of the term "suitable for use as a single dwelling" and extracted the following principles–

> (1) The word "suitable" implies that the property must be appropriate or fit for use as a single dwelling. It is not enough if it is capable of being made appropriate or fit for such use by adaptations or alterations.
>
> (2) The word "dwelling" describes a place suitable for residential accommodation which can provide the occupant with facilities for basic domestic living needs.

(3) The word "single" emphasises that the dwelling must comprise a separate, self-contained living unit.

(4) The test is objective. The motives or intentions of particular buyers or occupants of the property are not relevant.

(5) Suitability for use as a single dwelling is to be assessed by reference to occupants generally; it is not sufficient if the property would only satisfy the test for a particular type of occupant, such as a relative.

(6) The test is not "one size fits all". What matters is that the occupant's basic living needs must be capable of being satisfied with a degree of privacy, self-sufficiency, and security consistent with the concept of a single dwelling.

(7) Applying the test was a multi-factorial assessment taking into account all the facts and circumstances, although they need not be of equal weight.

67. Consideration must be given as to how many dwellings an objective observer would consider there to be and 'objective observer' is defined at [51] of this Tribunal's decision in *Fiander*:

> "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".

68. This summary of the test was endorsed by the Upper Tribunal in *Fiander*:

> "62. We agree with the FTT's statement at [51] of its decision that suitability for use as single dwelling is an objective determination to be made on the basis of the physical attributes of the property at the relevant time, namely completion. It therefore follows that the property's past history - which is the subject-matter of the additional evidence - is of limited relevance to suitability for use as at completion"

69. HMRC argued that in the current appeal the Annexe was not suitable for use as a dwelling at the point of completion, for two principal reasons:

(1) its lack of kitchen facilities, that is fitted counters, storage, work surfaces and separate sink or high-voltage electricity connections necessary for connecting up a cooker, oven or hob; and

(2) it did not have its own separate utility meter, postal address, title number at Land Registry or Council Tax billing.

70. Mr Jones accepted that, as set out in HMRC's internal manual at SDLTM00210, there need not be a cooker, oven, hob or other white goods in the property at completion as these are often removed but there should be the necessary infrastructure:

> "Kitchen – A dwelling would be expected to have an area where a meal can be prepared and somewhere suitable to eat it (not necessarily in the same place). It is not necessary for a kitchen to have a cooker or white goods such as a fridge or dishwater present at the effective date of the transaction, because these are sometimes removed on a house sale. However, there should be space and infrastructure in place e.g. plumbing for sink, power source for cooker etc."

71. HMRC also referenced the comment in the marketing brochure that the Annexe could be converted to a self-contained flat, indicating that the agents did not believe it was at the time.

72. HMRC referenced decisions of this Tribunal where the absence of kitchen facilities was significant (*Lovell v Revenue & Customs* [2021] UKFTT 291 (TC) at [48], *Mobey v Revenue and Customs* [2021] UKFTT 122 (TC) at [106]). The test was not a "one size fits all", but presence or absence of kitchen facilities was an important factor in deciding whether a property was a suitable for use as a dwelling.

73. Use as a holiday home, AirBnB lettings or other temporary use is not the appropriate test (*Dower & Anor* [2022] UKFTT 170 (TC) at [53(6)], [54] and [55]).

74. Further, the lack of a separate utility meter, postal address, title number at the Land Registry or Council Tax billing was a "reliable indicator" that the Annexe was not suitable for use as a dwelling (*Dower* at [56]).

Discussion

75. In considering the test in paragraph 7(2)(a) as to whether a building is "suitable for use as a single dwelling" we take as a starting point the principles set out by the Upper Tribunal in *Fiander*. Thus, the test must be determined from the perspective of a reasonable objective observer and is to be applied as at the effective date. Each case is to be determined on its facts, applying the multi-factorial test of weighing all the facts and circumstances.

76. In applying paragraph 7(2)(a) we do not accept Mr Cannon's attempt to extend the Upper Tribunal's observations in *Fiander* at [48(1)] about properties in disrepair to include improvement works. A dwelling in disrepair is a different situation to a property that, absent alteration works, is not a dwelling. To hold otherwise and permit potential improvement works to be taken into account would be to elide the tests in paragraphs 7(2)(a) and (b) and undermine the construction applied by the Upper Tribunal that it is not enough for the building to be "capable of being made appropriate or fit for such use by adaptations or alterations".

77. Further, we do not, as suggested by Mr Cannon, read anything significant into the Upper Tribunal's observations in *Fiander* at [48(2)] that the extent to which the test in paragraph 7(2)(a) required basic domestic living needs included the need to prepare food should be dealt with in an appeal where that issue is material. Specifically, we do not take these comments as a steer or endorsement by the Upper Tribunal of an argument that a property should be considered suitable for use as a dwelling even if it did not have the facilities for preparing food.

78. In this appeal the effective date is completion on 4 December 2020. We note that the property had been used by the previous owner's son before completion but we do not find that to be particularly significant, particularly as the occupier had been a close family member occupying in unusual circumstances and on a temporary basis.

79. Further, in determining whether the test in paragraph 7(2)(a) is satisfied, we do not find it relevant that the Appellant had ordered household goods, kitchen units and appliances prior to completion or that the household goods had been delivered to the Annexe prior to completion. Further, we do not find it relevant that the Appellant had contracted with a kitchen fitter to install the kitchen. The test is the state of the property as at completion and those goods did not change the nature of the Annexe until after completion.

80. The principal debate in this appeal has been whether and to what extent there needs to be facilities for the preparation of food. However, that question must be answered in the context of all the other relevant factors.

81. In our view a reasonable objective observer would consider the following features present at completion to points towards the Annexe being suitable for use as a dwelling:

(1) the Annexe is a self-contained detached building;

(2) the nature of the first floor, its structural layout and standard of finish is consistent with use as a dwelling;

(3) the Annexe has a bathroom, shower and hand basin;

(4) The connection to utilities and other services: electricity, gas, water, central heating and fibre broad band;

82. However, the reasonable observer would consider the following features to indicate the Annexe was not suitable for use as a dwelling:

(1) the Annexe did not have any equipment or identifiable area for the preparation, eating or storage of food, that is no work surfaces, kitchen units, tables or chairs;

(2) there was no high-power electrical connections for installing a cooker, oven or hob;

(3) there was no sink in the main room for washing food, crockery, cooking equipment and so on;

(4) there was no plumbing for installing a washing machine or dishwasher;

(5) it did not have its own separate utility meters, postal address, title number at Land Registry or Council Tax billing

(6) the Annexe is not separately registered for Council Tax

(7) overall, given its location on the estate, not being separated from the main house, gardens and other outbuildings at the Property and without separate utility meters we find it unlikely the Annexe could be sold to third party purchaser

83. In our view a reasonable observer would consider the presence of kitchen facilities - being those features listed at paragraph 82(1)-(4) above - as an important factor in determining whether the Annexe suitable for use as a dwelling.

84. The Appellant argued that the test as to what is suitable for use as a dwelling should adapt as modern habits change and, for a number of reasons, people now did not use conventional cookers as much. The Appellant made much of how his family and visitors had not used the oven and hob because they used the convection microwave, ate out or ordered takeaways. Further they did not use the washing machine in the Annexe as they sent their washing out to a laundry. Any washing of dishes was done in the sink in the bathroom.

85. We accept that the Appellant's family lifestyle and that of visitors using the Annexe on a temporary basis did not require the use of a conventional cooker or a washing machine but the test is that of occupants in general and whether viewed objectively they would find the property suitable for use as a dwelling. We do not accept that the Appellant's family lifestyle is representative of occupants in general who would, on an ongoing basis require more than a convection microwave for cooking and washing up in a hand basin in the bathroom.

86. We do accept as does HMRC, that it is not necessary for the property to have installed at the property on the effective date the conventional white goods of cooker (or hob and oven), fridge, washing machine and so on. Nor is it necessary for the property to have fixed worksurfaces and storage of the kind subsequently fitted by the Appellant as they can be freestanding and still serve the same purpose. White goods and loose tables will often be retained by the seller.

87. Nevertheless, the main room in the Annexe was essentially empty at completion. Aside from lights in the ceiling, normal power points and central heating radiators there were no other electrical or plumbing connections. Without carrying out works, an occupier could not connect

and use a conventional cooker, oven, hob, washing machine or dishwasher. Further without carrying out plumbing works, an occupier could not install a sink for washing food and dishes.

88. In our view an objective observer would conclude that this lack of minimum infrastructure weighs heavily against the Annexe being suitable for use as a dwelling. The lack of plumbing and electrical connections for dishwashers and washing machines would also point towards an objective observer considering the property was not suitable for use as a dwelling.

89. We find that the lack of a separate utility meter, postal address, title number at the Land Registry or Council Tax billing, whilst of less significance pointed towards the Annexe not being suitable for use as a dwelling.

90. For the above reasons we do not accept that the Annexe as at completion satisfied the test in paragraph 7(2)(a) of being a building that is "suitable for use as a single dwelling".

PARAGRAPH 7(2)(B): IN THE PROCESS OF BEING ADAPTED

the Appellant's arguments

91. The Appellant argued in the alternative that the Annexe at the effective date was "in the process of being…adapted for [use as a single dwelling]" within paragraph 7(2)(b).

92. The Appellant gave evidence as to the alterations made by the Appellant to the first floor of the Annexe which we have set out above.

93. Addressing the point that the works were only physically commenced after completion, the Appellant relied on comments in the Upper Tribunal in *Ladson Preston and Anor v HMRC* [2022] UKUT 310 (TCC) at [62] to [64] and specifically:

> "62. …The chargeable interest that AKA acquired was the chargeable interest as it stood at the very time of completion. That conclusion depends, not on any definition of "effective date" but on an analysis of the nature of the chargeable interest acquired which is required by paragraph 2(2) of Schedule 6B.
>
> 63. …In the circumstances of this appeal, where the effective date is the date of completion, the FTT made no error of law in concluding that it should apply the requirements of paragraph 2(2) of Schedule 6B by reference to the chargeable interest as it stood at the time of completion, that being the chargeable interest that AKA acquired.
>
> 64. In those circumstances, we see no reason to express any conclusion on whether the works undertaken after completion were, as a matter of evaluation, capable of satisfying the requirements of paragraph 7(2)(b) of Schedule 6B. The FTT, rightly in our judgment, saw no need to express any such conclusion and we do not consider that it would be right for the first evaluative conclusion on those works to come from an appellate tribunal such as us in the absence of an error of law by the FTT."

94. It was therefore a matter of evaluation for each Tribunal as to whether works undertaken after completion were capable of satisfying the requirements of paragraph 7(2)(b).

95. In the current circumstances, the Appellant's strenuous efforts before completion are sufficient to satisfy the test in paragraph 7(2)(b). It was only Covid that prevented the alterations from being carried out before completion. Unlike the facts in *Fiander,* there was already a building and the Appellant was in the course of adapting it at completion.

HMRC's arguments

96. Mr Jones argued that it was a condition of the test in paragraph 7(2)(b) that the adaptation had commenced had to be satisfied as at the effective date, being completion *(Fiander at [48])*.

97. HMRC relied upon the Upper Tribunal in *Ladson Preston* at [38], which concerned the construction of a building but the same principle applied to adaptation of an existing building:

> "38. When paragraph 7(2)(b) is considered in its proper context, there is a clear indication that it is referring to some physical manifestation of a dwelling on the relevant land...in our judgement, a "building" can only be said to be "in the process of being constructed" if there is some physical manifestation of what is ultimately to become that "building". Without such a physical manifestation, there might well be an intention to construct a future building, perhaps even a firm intention, but no building that is in the process of being constructed"

98. Mr Jones also made some observations about the practicalities of self-assessment. If the SDLT liability depended on future works yet to be started it made self-assessment, and HMRC's oversight of compliance, impossible.

99. In the current appeal as the installation works did not commence until 7 December 2020 and the purchase of goods and other preparatory work before completion did not amount to commencing the adaptation, it cannot be said that at the effective date the Annexe was "in the process of being…adapted for [use as a dwelling]" within paragraph 7(2)(b).

Discussion

100. The test in paragraph 7(2)(b) is to be applied as at the effective date, here completion on 4 December 2020 (*Fiander* at [48], *Ladson Preston* at [63]).

101. Even if, following completion of the alterations in December 2020, the Annexe was a dwelling within the meaning of paragraph 7, we do not accept that "in the process of being…adapted" encompasses the steps taken by the Appellant as at completion. The Appellant had bought the kitchen units and appliances and he had contracted with a kitchen fitter to install the kitchen. However, the alterations had not started and we agree with HMRC and the Upper Tribunal in *Ladson Preston* at [38] that "in the process of being…adapted" requires physical works to have started. We accept that the question would be more difficult had the Appellant's fitter had made a nominal start on works but that is not the case in this appeal.

102. We do not accept that the delays caused by Covid, most importantly the inability to access the Annexe between exchange and completion changes the matter. Covid may be a very good reason for the delay but we have to determine the matter on the facts as they are not how the Appellant intended them to be.

DECISION

103. For the reasons set out above we find that the Annexe is not suitable for use as a single dwelling within the meaning of paragraph 7(2)(a) nor is it in the process of being adapted for such use within paragraph 7(2)(b) Schedule 6B. We therefore find that the purchase of the Property is not within Schedule 6B Finance Act 2003 as the main subject-matter does not consist of an interest in at least two dwellings.

104. Accordingly, we dismiss the Appellant's appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

105. 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.

IAN HYDE
TRIBUNAL JUDGE

Release date: 20 October 2023