FIRST-TIER TRIBUNAL
TAX CHAMBER

Taylor House, London

Appeal reference: TC/2022/12710

Stamp duty land tax – whether property acquired entirely "residential property" within s116(1) Finance Act 2003 – yes – appeal dismissed

Heard on: 18 April 2023
Judgment date: 02 April 2024

Before

TRIBUNAL JUDGE GERAINT WILLIAMS

Between

MIHALAKIS MICHAEL AND DORA MICHAEL

Appellant

and

THE COMMISSIONERS FOR HM REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Patrick Cannon, of counsel, instructed by Cornerstone Tax Limited

For the Respondents: Ms Maria Spalding litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. This is an appeal by the Appellants against a Closure Notice issued by the Respondents ("HMRC") on 29 July 2022 under paragraph 23, Schedule 10 of the Finance Act 2003, refusing the Appellant's claim for a refund of Stamp Duty Land Tax ("SDLT") in the sum of £57,000.00.

2. HMRC concluded that the residential rate of SDLT applied to the transaction and that the use of the Property was wholly residential at the date of acquisition.

BACKGROUND FACTS

3. On 12 March 2018, the Appellant's purchased Hookwook House, 41 Firs Woods Close, Potters Bar EN6 4BY ("the Property").

4. On 23 March 2018, the SDLT return was submitted by Lewis Terrance Rose on the basis that the property transaction was 'residential' using 'Code 01'.

5. On 12 February 2019, the Appellants' representative, Cornerstone Tax Limited ("CTL") send a letter to HMRC requesting that the SDLT return be amended on the basis that there was non-residential property, woodland, included in the acquisition of the Property.

6. On 18 April 2019, HMRC issued a formal notice of enquiry to the Appellants pursuant to Paragraph 12, Schedule 10 to Finance Act 2003.

7. On 16 May 2019, CTL responded to the notice, asserting that the woodland to the rear of the Property was non-residential and was not being used. In addition, the Appellants had originally paid the 'additional residential rate' of SDLT on the transaction.

8. Further correspondence ensued between the parties during May 2019 until November 2020. On 13 November 2020, HMRC issued a closure notice under paragraph 23, Schedule 10 to Finance Act 2003, it concluded that the "woodland" was, like the rest of the Property", residential property and the higher rates of SDLT applied. The closure notice stated that the amount now due was SDLT of £57,000.

9. On 7 October 2021, the Appellants appealed against HMRC's decision and claimed the Property was non-residential. It was also disputed whether the higher rates of tax for additional dwellings should be applied to the transaction.

10. On 19 April 2022, HMRC provided their view of the matter concluding that the Property was residential. It was also concluded that the higher rates for additional dwellings was not applicable and amended the calculation to state that the amount now due was SDLT of £29,250.

11. On 5 July 2022, HMRC issued its statutory review conclusion letter upholding the decision that the Property was residential.

12. On 29 July 2022, the Appellants filed their notice of appeal at the Tribunal.

EVIDENCE

13. I was provided with a pdf hearing bundle which contained the appeal documents, relevant correspondence, Estate Agent's Brochure, Transfer of Part dated 14 April 1997, HM Land Registry documents and plan, legislation, authorities and witness evidence of Mr Michael.

14. Mr Michael's witness evidence consisted of a one page witness statement comprised of eight sentences which exhibited six colour photographs of the Woodland. Mr Michael gave oral evidence and was cross-examined.

FINDINGS OF FACT

15. On the basis of the evidence before me I find the following facts relevant to the determination of the appeal.

16. The Appellants purchased the Property on 12 March 2018 for £1,500,000. The Property is situated on a private estate in a semi-rural location. The Property consists of a 25-year old five-bedroomed house with attached double garage ("Hookwood House") and a garden set in approximately half of an acre ("Half Acre") and 3.4 acres of woodland ("the Woodland") directly to the north and north-east of the Half Acre. Hookwood House was described in the estate agents (Statons) particulars as:

> "An extremely spacious and versatile 5 bedroom family home, situated in the private Northaw Park Estate, which occupies a stunning rural position. The property, of just under 5,000 sq.ft. … The first floor accommodation consists of 5 double bedrooms and 4 bathrooms with the master also having its own dressing room. The second floor offers further flexible space to be either a 6th bedroom (there is a shower room) or it can be used as a games/cinema room.
>
> The house stands in around half an acre that backs directly onto Hookwood [sic] with the additional strip of land that reaches, we believe 3.4 acres. There is a carriage driveway and a double garage."

17. The Woodland to the north and the north-east of the Half Acre can be seen in the photographs in Statons' sales particulars.

18. The Property is registered under one HM Land Registry Title Number, HD356217, and the entry in Box 2 of Form TR1 described the Property as "41 Firs Wood Close, Potters Bar EN6 4BY". A copy of the plan annexed to a Transfer of Part dated 14 April 1997 ("the Plan") is annexed to this decision. The boundary to the Property is delineated by the bold black lines on the Plan.

19. The dwelling house, Hookwood House, stands in the Half Acre garden oriented north-west. As can be seen from the Plan, the Half Acre is the rectangular shaped area that is shown on the Plan with the boundary delineated by the bold lines between the points marked A-B, B-C, A-D, the top boundary of the Half Acre is not marked on the Plan but is a straight line between D-C. The bottom part of the rectangular Half Acre, A-B, fronts Fir Wood Close with access to the Property via the carriage driveway.

20. The Woodland is the whole area on the Plan to the north and north-east of a line drawn between C-D. It can be seen from the Plan that the left-hand boundary (A-D) and right-hand boundary (B-C) are straight lines of unequal length with the left-hand boundary being slightly shorter. The unequal lengths of A-D and B-C boundary and the proximity of the bridle path to D on the Plan creates a small triangular sliver of woodland immediately north of the half acre boundary between points D-C. At the top of the left-hand boundary (marked D) the boundary angles slightly upwards in a north-east direction where it widens and abuts and follows the bridle path route for the length of the northern most boundary of the Woodland. The southern boundary to the Woodland marks the boundary between the Woodland and the piece of land that is part of the grounds of the house immediately to the right of Hookwood House. During cross-examination, Mr Michael confirmed that the grounds to the two properties to the immediate right of the Hookwood House extended in a similar "L" shaped dogleg to the north-east but that both had the benefit of the privacy afforded by the Appellant's Woodland.

21. The Property, including the Half Acre and Woodland, is contiguous.

22. The bridle path is denoted by the dotted line on the Plan. To the north of the bridle path is Hook Wood. The bridle path is a public path and Mr Michaels unchallenged evidence was

that it used by horse riders, cyclists, dog walkers and joggers all year round. The bridle path leads to another village. There are no public rights of way over the Woodland.

23. Paragraph 8 of the Third Schedule to the Transfer of Part contains the covenant that the Transferee will "*construct timber post and wire fencing between the points shown by an inward "T" … and thereafter to maintain and keep in good repair those boundaries of the property shown by an inward "T" mark on the Plan*". The boundary surrounding the Woodland is constructed of timber posts with three strands of wire strung between the posts. The posts with a three stand wire fence can be seen in the photographs numbered 25 and 27-30 exhibited to Mr Michael's witness statement. Mr Michaels confirmed in cross examination that the photographs were taken a few months before the hearing, the presence of the timber post and wire fencing at the EDT was unchallenged.

24. Mr Michael's unchallenged evidence was that the Woodland had not been used by the previous owners of the Property and is overgrown with thick brambles and bushes. The Appellants do not use the Woodland at all and only a small part is accessible with the remainder overgrown and unusable. In the winter, the Woodland floods is flooded where it adjoins the half acre.

25. The Woodland is separated from the Half Acre by closeboard fences and a gate. Photograph numbered 26 showed the closeboard wooden fences and gate that Mr Michael had installed after the EDT. Mr Michael confirmed in answer to cross examination that he had replaced the existing fence after he bought the Property as it was low in height and in a poor condition. The replacement closeboard wooden fences and gate were installed in an attempt to provide some privacy and security to the Half Acre as Mr Michael was not comfortable with allowing his young family and small dog to be using an area that was so exposed to the public using the bridle path. Mr Michael asserted that as the Woodland offers no privacy it cannot be used as a garden or recreational space, therefore the Woodland does not perform any function for the Appellant. I do not accept that the Woodland does not provide any privacy or security to the Half Acre such that it cannot be used as a garden or recreational space.

26. The photographs exhibited to Mr Michael's witness statement confirm show that the Woodland is overgrown with thick brambles and bushes to such an extent that it is inaccessible. That inaccessibility provides security to the Property. The Woodland acts as a "buffer" zone between the Half Acre and users of the bridle path thereby increasing the privacy of the Half Acre and HookWood House. I accept that the Woodland does not provide that level of privacy and security that Mr Michael's would like but it does provide a degree of security and privacy. Therefore, I do not accept that it naturally follows that therefore the Woodland is unusable as a garden or recreational space and does not provide any functionality to the Half Acre

27. There was no commercial or third party use of the Woodland on the EDT.

RELEVANT LAW

28. Section 42 of the Finance Act 2003 ("FA 2003") charges SDLT on "land transactions", which is defined in section 43 as "any acquisition of a chargeable interest". Section 43(6) provides that:

> "References in this Part to the subject-matter of a land transaction are to the chargeable interest acquired (the "main subject-matter"), together with any interest or right appurtenant or pertaining to it that is acquired with it."

Section 48 FA 2003 defines "chargeable interest" (so far as relevant) as "an estate, interest, right or power in or over land in England".

29. The rate at which SDLT is charged on a particular land transaction depends on whether the transaction is residential or not. More precisely, section 55(1B) provides that, if the

transaction is not one of a number of linked transactions, the rates to be used to calculate the amount of SDLT chargeable are those in Table A "if the relevant land consists entirely of residential property" and those in Table B "if the relevant land consists of or includes land that is not residential property". Section 55(3) FA 2003 provides that "the relevant land is the land an interest in which is the main subject-matter of the transaction".

30. Section 116 FA 2003 defines "residential property". So far as relevant, it provides:

> "(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),
>
> ….
>
> and "non-residential property" means any property that is not residential property."

APPELLANTS' SUBMISSIONS

31. Mr Cannon's submissions are summarised as follows.

32. In *Hyam and Goodfellow v HMRC* [2022] EWCA Civ 185 ("Goodfellow"), at [11] and [12], the Court of Appeal declined to place an objective limit on the meaning of "grounds" for SDLT purposes in section 116(1)(b) FA 2003 and said that this was a matter of policy with which the Court was not concerned. The Court did however acknowledge that "*there will be cases in which there is room for reasonable disagreement*". The Court of Appeal declined to place any flesh on the bare bones of the definition of "grounds of a building" for SDLT purposes, leaving it for the tribunals to work out while acknowledging that there will be cases in which there will be room for reasonable disagreement.

33. In *Sloss v Revenue Scotland* [2021] FTSTC 1, Judge Anne Scott found that in relation to the definition of residential property in section 59 LBTTA 20131 (which is in all material respects the same as section 116 FA 2003), certain parts of the property purchased did not fall within the 'garden or grounds' of the dwelling. In particular the FTT said:

> "88. We therefore agree with Mr Small that there must be some link with the dwelling and the grounds beyond the fact that they had been purchased together in a single transaction. There must be a functional relationship between the dwelling and the grounds.
>
> …
>
> 106. Even if we are wrong in saying that the grazing was, and is commercial, nevertheless we find that with the exception of field 7 and the paddock, the other fields have very little functional purpose for a house of this size and type. It is not a stately home. It is an attractive house that, with an adequate curtilage, is of a style and size that is available, for example, in Edinburgh.
>
> 107. In summary, looking at all of the evidence, we find that the Appellants have discharged the burden of proof and established that at least part of the pasture land was non-residential. Accordingly too much LBTT has been paid."

34. In *Withers v HMRC* [2022] UKFTT 00433 (TC), the appellant had purchased a dwelling house plus gardens, fields and woodlands. The FTT, adopting the reasoning of Judge Citron in *Myles-Till v HMRC* [2020] UKFTT 0127 (TC) , stated:

> 123. … "section 55 clearly envisages the possibility that the subject matter of a single chargeable transaction will include both residential and non

residential land. Common ownership is a necessary condition for the adjacent land to become part of the grounds of the dwelling building – but not, in my view, a sufficient one."

…

145. HMRC's manual, SDLT 00470 - extent of land and geographic factors states that the extent/size of land in question will also be relevant in relation to a building and that the test is not simply whether the land comprises garden or grounds but whether it comprises the gardens or grounds of the dwelling.

…

153. The Tribunal again adopts the approach of Judge Citron in *Myles-Till* that the words "of" and "use" indicate that the use or function of adjoining land itself must support the use of the building concerned as a dwelling. The grazing land and Woodland Trust land do not provide that support."

35. In *The How Development 1 Ltd v HMRC* [2023] UKUT 00084 (TCC), the UT said that:

"115. In determining whether the woodland formed part of the grounds of The How, we have taken no account of the following points:

(1) The fact that the initial SDLT return was made on the basis that the land was entirely residential.

(2) The position or potential position in relation to planning consent for change of use of the woodland, or the basis of its rateable valuation.

(3) Whether or not the woodland was within the legal curtilage of The How.

(4) Whether or not the woodland fell within section 116(1)(c).

116. We have adopted the approach suggested in *Hyman* UT and endorsed by the Court of Appeal in *Hyman* of weighing up all material factors, based on the FTT's relevant findings of fact. We have taken the following factors in particular into account in reaching our decision, all of which were taken into account by the FTT:

(1) There was no evidence of the use or exploitation of the woodland for commercial purposes. Nor was there any evidence of the use or exploitation of the woodland for any purpose other than that of woodland.

(2) The woodland provided privacy and security to The How by virtue of its location as a hillside barrier between The How and the River Ouse.

(3) The woodland fell within the legal title to the property.

(4) The position and layout of the land and outbuildings was such that the woodland was not inordinately distant from the house and its size and location increased the privacy and security of The How from the south.

(5) The woodland was densely populated and relatively inaccessible.

117. As regards accessibility, we have set out above (in relation to Ground 1(a)) the reasons for our conclusion that this is a factor to be taken into account in the evaluation but is not determinative. We have also set out above (in relation to Ground 2(b)) the reasons for our conclusion that the existence of any tree preservation orders would not prevent the woodland from being grounds.

…

> 123. In considering this question, it is important not to divorce from its context the reference by Judge McKeever in *Hyman* FTT to land "being available to the owners to use as they wish" (set out at paragraph 31 above). The judge was there explaining what she meant by grounds being land which is "occupied by the house", and formed part of her statement, with which we agree, that use need not be active, and nor was it necessary for grounds to be used for ornamental or recreational purposes.
>
> Importantly, in that passage Judge McKeever went on to state that it was not fatal that other people might have rights over the land and that "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". Again, we endorse that statement. This approach is in our view consistent with the conclusion in Hyman that it is not necessary for garden or grounds to be needed for the reasonable enjoyment of a dwelling. Since binding authority now establishes that "grounds" are not confined to land necessary for the reasonable enjoyment of a dwelling, it is in our view consistent that third parties may have rights over the grounds or use the grounds, for example under planning or environmental law, without them ceasing to be grounds of the dwelling. Whether or not the land is used for a commercial purpose, which is clearly a relevant factor, is a separate question. In this appeal, the FTT found that there was no evidence of any use other than as woodland, which provided privacy and security to The How."

36. Mr Cannon submitted that Property is mixed residential and non-residential use for SDLT purposes due to the presence of the Woodland. Mr Michael evidence is that the Woodland does not provide any privacy, it is not used as a garden or recreational space, is inaccessible and unusable due to being overgrown and that it does not confer any benefit on the dwelling house or the half acre.

37. The dwelling house with its garage and garden of approximately half of an acre form a coherent whole on their own. The Woodland of 3.4 acres that was acquired with the Property does not perform any function in relation to the dwelling house given that it is largely inaccessible and does not provide any privacy of security for the dwelling. The Woodland is also an unnecessary appendage to the Property given that the other houses in that location have gardens of a similar size to the Appellants' dwelling but no additional land and if the Woodland was disposed of separately, the dwelling would still have an adequate garden. On that basis it is not the case that the Woodland "forms part of the garden or grounds of" the dwelling and as such it is not residential in nature so that for SDLT purposes the Property consists of both residential and non-residential property.

HMRC'S SUBMISSIONS

38. Ms Spalding's submissions are summarised as follows.

39. There is no dispute that s116(1)(a) FA 2003 is satisfied. The building known as 'Hookwood House' is a building used or suitable for use as a dwelling. The definition of 'garden or grounds' was considered by the FTT in *Hyman* with supporting comments from the UT in *Hyman & Goodfellow*. It was considered that 'garden' and 'grounds' are ordinary English words.

40. As outlined in HMRC's guidance, when considering whether the Property is wholly residential, the Respondents contend that all relevant factors must be considered and weighed against each other; no single factor is likely to be determinative by itself (as supported by the Upper Tribunal in *Hyman & Goodfellow* at [49]). However, not all factors are of equal weight either, and one strong factor could outweigh several weaker or contrary indicators.

41. In *Faiers v HMRC* [2023] UKFTT 212 (TC), Judge Baldwin at [44], helpfully set out principles derived from various SDLT cases on "grounds":

> "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 *Hyam* 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*)."

42. Taking each point in turn, Ms Spalding submitted as follows:

43. *Historical use* – the Property is a residential family home that embraces the rural character of Northaw and the purchase of the dwelling and the Woodland as a single parcel of land, demonstrates there was a relationship between the dwelling and the Woodland which is wholly residential.

44. *Use of the land: was there a self standing function?* – the Woodland to the back of the Property constitutes land that is or forms part of the dwelling pursuant to s116(1)(b) FA 2003 and the Woodland was not used or occupied for a purpose that was separate and unconnected to the dwelling. It is submitted the woodland was not used for any particular purpose, it could be allowed to grow wild, be inaccessible and that this would still constitute residential property.

45. *Geographical factors: proximity, layout of land and outbuildings* – the Woodland surrounding the Property is physically adjoined to the dwelling and in *How* both the FTT and the UT concluded that a woodland formed part of the grounds of the dwelling. The UT in *How* made following useful points:

(a) Accessibility is a factor to be taken into account, but there is no need for accessibility for land to form part of the grounds. The question is one of fact and degree as part of the evaluative exercise (at [44] to [47]).

(b) The provision of privacy and security can be fairly seen as a residential purpose (at [51] & later at [78]).

(c) The use of the woodland is a factor to be considered and it was confirmed there was no identified commercial or other use of the woodland (at [52]).

(d) Land can perform a passive function as well as an active function (at [73]).

(e) The Upper Tribunal remade the First-Tier Tribunal's decision and determined the woodland formed part of the grounds for the purposes of Section 116(1)(b) (at [126]).

The Woodland enhances the rural character of the Property providing views of local woods, provides a degree of privacy and security from users of the nearby public footpath. The combination of physical closeness, accessibility and the lack of any features which would separate the land are factors to demonstrate the grounds are an appendage to the dwelling.

46. *Geographical factors: size of land* – the size of the land is appropriate for a dwelling of this size and the legislation does not set a quantitative limit on the size of the land nor is there

a "reasonable enjoyment" limitation in the legislation. *Withers* and *Sloss* can be distinguished on their facts with 39 and 69 acres respectively and grazing agreements in place.

47. *Legal factors, constraints and interaction with CGT legislation* – the Appellant has not advanced any arguments in respect of this heading and HMRC have accordingly not advanced any arguments.

48. The appeal should be dismissed as:

(a) the Woodland is land that is or forms part of the grounds of the dwelling;

(b) the layout of the garden and grounds show the Woodland to be an appendage to the dwelling;

(c) there was no agreement (commercial or otherwise), occupation or separate use of the woodland prior to or on the EDT to demonstrate the land had a 'self-standing' function;

(d) there was no active or substantial exploitation of the land and so the woodland could be expected to be part of the grounds of the residential property and therefore are residential in nature; and

(e) there is no limitation in s116 of the Act as to the size of the lands.

BURDEN OF PROOF

49. The burden of proof is on Appellants to show, on the balance of probabilities, that the SDLT return as amended by HMRC was incorrect.

DETERMINATION

50. The point at issue in this case is whether at the EDT, the Property consisted entirely of residential property or if it consisted of or includes land that was non-residential property under s116 FA 2003.

51. There is no dispute between the parties that s116(1)(a) FA 2003 is satisfied, "Hookwood House" is a building used or suitable for use as a dwelling. Nor is it disputed that 'garden' and 'grounds' are ordinary English words.

52. In *Faiers*, (at paragraph 41 above) Judge Baldwin, helpfully set out at [44] the "pointers" that can be derived from the various Tribunal decisions considering whether a particular piece of land can be said to be grounds "of" a dwelling. I have adopted those pointers as they address both parties' submissions and applied them (insofar as relevant) below to the facts of this appeal but have at the forefront of my mind that all relevant factors must be considered and weighted against each other, that no single factor is likely to be determinative by itself (*Hyman & Goodfellow* UT at [49]) and not all factors are of equal weight and one strong factor could outweigh several weaker or contrary indicators.

(a) Historic use – there is no suggestion that the Woodland has been used otherwise than as woodland.

(b) Layout/proximity – The Woodland is at the top of the Half Acre but contiguous with it. The Woodland can be seen from Hookwood House and enhances the rural character of the Property.

(c) Extent – the Woodland extends to 3.4 acres and is relatively large by comparison to the Half Acre but there is no limitation in s116 FA 2003 as to the size of the land. The size of the Woodland is appropriate to a dwelling of this size in a semi-rural location, the two properties to the immediate right of Hookwood

House have land similarly extending north-east that mirrors the shape of the Woodland and is of a similar or greater acreage to the Woodland.

(d) Legal factors/constraints - there were no legal factors or constraints preventing the Appellants from using the Woodland with Hookwood House and the Half Acre on the EDT.

(e) Connection – the Woodland is connected directly with the Half Acre.

(f) Common ownership – the Woodland was in common ownership.

(g) Contiguity – The Woodland is contiguous to the Half Acre.

(h) Functionality – the Woodland provides a degree of security and privacy to Hookwood House and the Half Acre.

(i) Unconnected purpose – the Woodland is not used or occupied for a purpose separate from and unconnected with the Half Acre.

CONCLUSION

53. For the reasons set out above I dismiss the appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

54. 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.

GERAINT WILLIAMS
TRIBUNAL JUDGE

RELEASE DATE: 02 April 2024