Case Number: TC/2023/00127

**FIRST-TIER TRIBUNAL**
**TAX CHAMBER**

[By remote video hearing]

***STAMP DUTY LAND TAX - claim for Multiple Dwelling Relief - whether there was one dwelling for SDLT purposes at the effective date of the transaction/point of completion - yes - whether the acquisition qualified for Multiple Dwellings Relief - no - Paragraph 7(2)(a), Schedule 6B, Finance Act 2003. Appeal dismissed.***

**Heard on: 19 September 2024**
**Judgment date: 17 October 2024**

**Before**

**TRIBUNAL JUDGE RUTHVEN GEMMELL WS**
**TRIBUNAL MEMBER RICHARD LAW**

**Between**

**ALEXANDER and REBECCA CLARK**

**Appellants**

**and**

**THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS**

**Respondents**

**Representation:**

For the Appellants: Patrick Cannon, Counsel, ("counsel for ARC")

For the Respondents: Fiona Man, Litigator of HM Revenue and Customs' Solicitor's Office, ("counsel for HMRC")

## DECISION

### INTRODUCTION

1. The form of the hearing was by video, and all parties attended remotely. The remote platform used was the Teams video hearing system. The documents which were referred to comprised of a Document Bundle of 320 pages, an Authorities Bundle of 208 pages and skeleton arguments for both parties. A witness statement of the one of the Appellants, Alexander Clark ("AC"), and extensive colour photographs and related sales information were included in the Document Bundle. AC, who was a credible witness gave oral evidence and was examined and cross examined.

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 to observe the proceedings. As such, the hearing was held in public.

3. AC and his wife Rebecca Clark ("RC"), (collectively "ARC") appealed against the decision by HMRC to issue, on 30 August 2022, closure notices for Stamp Duty Land Tax ("SDLT"), under paragraph 23, schedule 10, Finance Act 2003 ("FA 2003"), as HMRC believed that the residential rate of SDLT applied to the whole property transaction and that the property was a single residential dwelling at the date of acquisition, so that an additional amount of SDLT of £81,250 was due to HMRC.

### Background

4. On 9 January 2023, ARC appealed against Closure Notices dated 30 August 2022, pursuant to Paragraph 23, Schedule 10 to Finance Act 2003 ("FA 2003") in the sum of £81,250.

5. The Closure Notices concluded that at the effective date of transaction/date of completion ("EDT"), ARC's acquisition did not qualify for Multiple Dwellings Relief ("MDR"), and that the annexe ("the Disputed Area") was not suitable as a single dwelling.

6. On 11 August 2020, ARC acquired a chargeable interest as there was a transfer of registered title (TP1). The transfer involved Title Number, BK185056, for 2 Beech House, Bethesda Street, Upper Basildon, Reading, RG 8NT ("the Property"). The Property means both "the Main House", being the main dwelling, and "the Disputed Area", being the annexe.

7. On 18 August 2020, a SDLT return was filed on behalf of ARC by Shepherd and Wedderburn LLP, the solicitors then acting on behalf of ARC, showing the Property as a single residential dwelling, using 'Code 01'. The SDLT due for the Property was £138,750, which was paid.

8. By a letter dated 15 January 2021, HMRC received a letter from ARC's new agent, Hillier Hopkins LLP ("the Agent"), amending the SDLT return to include a claim for MDR (the "Amendment"), on ARC's behalf, on the basis that the Property consisted of two separate dwellings, the Main House and the Disputed Area.

9. For the purposes of identification, reference is made to the floor plan at Appendix A.

10. The top half of the floor plan relates to the ground floor and the Main House comprises of all the rooms shown to the right of and including the kitchen/diner; and the double garage, shown on the left.

11. The Disputed Area comprises of, on the ground floor, the hallway, utility room, WC/shower room and a swimming pool, shown on the left. The WC/shower room was also described as the bathroom although there was no bath but a shower, which was placed very close to the WC and has no shower cabinet or shower curtain. This area was described in the sales particulars as a "wet room".

12. The bottom half of the floor plan shown at Appendix A, shows all the buildings above the ground floor, mostly bedrooms and the landing of the Main House, with the exception of the bedroom and flight of stairs, shown separately on the left-hand side of the plan, (and above the garage of the Main House), which comprises the upper parts of the Disputed Area.

13. ARC contend that the Disputed Area is a separate dwelling, and, therefore MDR is applicable, and that the SDLT due on the purchase of the Property is £57,500. The difference being claimed is £81,250.

14. By letter dated 6 October 2021, HMRC opened an enquiry into the Amendment pursuant to Paragraph 12, Schedule 10 to FA 2003 and within the prescribed nine-month enquiry window.

15. By letter dated 30 August 2022, Officer Jethwa issued Closure Notices to both ARC under Paragraph 23, Schedule 10 to FA 2003, which amended their SDLT return to show that £138,570 was due, a difference of £81,250.

16. By e-mail dated 02 September 2022, ARC appealed the Closure Notices.

**AUTHORITIES**

17. Finance Act 2003

Section 43 of FA 2003: Land transactions.

Section 44 of FA 2003: Contract and conveyance.

Section 48 of FA 2003: Chargeable interests.

Section 55 of FA 2003: Amount of tax chargeable.

Section 58D of FA 2003: Transfers involving multiple dwellings.

Section 103 of FA 2003: Joint purchasers.

Section 116 of FA 2003: Meaning of "residential property".

Schedule 6B to FA 2003: Transfers involving multiple dwellings.

Schedule 10 to FA 2003: Returns, enquiries, assessments and appeals.

Schedule 11A to FA 2003: Claims not included in returns.

**AUTHORITIES**

McColl v Sabacchi [2001] EWHC - Admin 712 ("*McColl*")

Khawaja v HMRC [2008] EWHC 1687 (CH) ("*Khawaja*")

Merchant Gater v HMRC [2020] UKFTT 299 (TC) ("*Gater*")

Wilkinson v HMRC [2021] UKFTT 74 (TC) ("*Wilkinson*")

Fiander and Bower v HMRC [2020] UKFTT 00190 (TC) ("*Fiander Ft-T*")

Fiander and another v Revenue and Customs Commissioners [2021] UKUT 156 (TCC), [2021] STC 1482. ("*Fiander UT*")

George & George v HMRC [2021] 0305 (TC) ("*George*")

Doe & Doe v HMRC [2021] UKFTT 17 (TC) ("*Doe*")

Mobey & Mobey v HMRC [2021] UKFTT 122 (TC) ("*Mobey*")

Mullane & Mullane v HMRC [2021] UKFTT 119 (TC) ("*Mullane*")

Ogborn v HMRC [2021] UKFTT 322 (TC) ("*Ogborn*")

Partridge & Partridge v HMRC [2021] UKFTT 6 (TC) ("*Partridge*")

Ladson Preston Ltd and another v HMRC [2022] UKUT 301 (TCC). *("Ladson*")

Dower & Dower v HMRC [2022] UKFTT 170 (TC) ("*Dower*")

Doe & Doe [2022] UKUT 00002 (TCC) ("*Doe*")

Hyman v HMRC [2019] UKFTT 469 (TC) ("*Hyman"*)

Sloss and Another v Revenue Scotland [2021] FTSTC 1 ("*Sloss"*)

James Winfield v HMRC [2024] UKFTT 00734 (TC) ("*Winfield")* - at the date of the hearing, this case was still within the 56 day appeal period. Counsel for HMRC confirmed that HMRC Solicitor's Department were taking instructions on whether the decision was to be appealed.

**POINTS AT ISSUE**

18. Whether the Property was one or two dwellings for SDLT purposes at the EDT and, consequently, whether MDR is applicable to the transaction.

**BURDEN OF PROOF**

19. The burden of proof lies with ARC to demonstrate that the conclusions stated in the Closure Notices are incorrect, otherwise they stand good.

20. The standard of proof is the ordinary civil test on a balance of probabilities (*Khawaja).*

**EVIDENCE AND FACTS**

*Extent*

21. The Property was described within estate agent Winkworth's sales brochure, whose floorplan is attached at Appendix A, as:

> "An exceptional individual architecturally designed country residence with over 5200 ft² of living accommodation on an acre plot with an indoor pool…This magnificent country home set in one of West Berkshire's premier addresses was individually designed by a local architect and built in 2010..... Ground floor accommodation comprises: a grand reception hall, cloakroom, a generous drawing room with triple aspect windows and wood burner, sitting room, garden room, formal dining room and a kitchen/diner with vaulted ceiling, bifold doors both to the front of the house and the rear courtyard. The kitchen comes complete with a range of Miele appliances and an Aga. An indoor pool house is accessed from the kitchen complete with a wet room and utility area. The swimming pool has a vaulted ceiling and bifold doors opening on to the rear courtyard, a wooden deck at one end perfect for relaxing by the pool and an automatically controlled pool cover. The

> large double garage with electric up and over doors is adjacent to the pool house and has a large double bedroom above which is perfect for staff/guest accommodation, an office or could even be converted to create a separate annex..... The property is described "at a glance" as being a 6 bedroom detached country residence with 5 bathrooms and WC, 4 receptions and double garage with secondary accommodation above."

22. The Disputed Area comprises on the ground floor of a hallway, stairway, WC/shower room and utility room, and a swimming pool, approximately four times the square area of the former four areas. On the first floor it comprises of a bedroom/living room which is built above the double garage said to belong to the Main House. AC's evidence was that there is a door into the bedroom/living room from the top of the stairs that has no lock.

23. AC gave evidence that access to the swimming pool for occupants of the Main House would either be through the hallway of the Disputed Area from the kitchen of the Main House or through the bifold doors in the swimming pool area itself. The bifold doors could only be locked from the inside and, accordingly, there would be no access to the occupants of the Main House through the bifold doors, from the rear courtyard/garden (i.e. from outside) to the swimming pool if these were locked.

24. The other access to the swimming pool was through the door in the Disputed Area hallway to the swimming pool which had a bolt lock, only, on the side of the door facing the Disputed Area hallway. There was no lock on the door to the swimming pool that could be engaged from inside the swimming pool area to the hallway of the Disputed Area.

25. The utility room in the Disputed Area also functions as a kitchen and at the EDT it had its own sink, plumbed-in washing machine, dryer, fitted kitchen units, cupboards and a power source for a cooker. AC in evidence said there was sufficient room for a cooker. It also contained two boilers, one of which served one single central heating system for the Property, but each room had its own heating controls for mostly underfloor heating. The other boiler was for heating the swimming pool. The power source was oil tanks external to the Main House and Disputed Area.

26. AC stated in evidence that an arrangement could be made with the co-owners or tenants of the Disputed Area and the Main House to obtain access to the boilers and that such access would be available in any event in the case of an emergency and vice versa as regards the electricity meters and supply board and water stop tap in the garage. There were, however, no such arrangement at the EDT and no separate meters for any of the utilities supplied.

27. The WC/ 'Bathroom' contained a WC, wash hand basin and shower.

28. The Garage, part of the Main House, contained two fuse boxes for a two-phase power system for the Property connected to one meter. AC gave evidence that one of the fuse boxes in the garage was for the Disputed Area and the other fuse box for the other parts of the Main House. The Garage also contained the internal water stop-tap for both dwellings.

29. AC gave evidence that the garage did not have any specific soundproofing between it and the bedroom/living room above it that he was aware of and in his experience, this was not required. Similarly, AC gave evidence that the noise from the swimming pool did not emanate into the kitchen of the Main House.

30. At the EDT there was no separate occupier of the Disputed Area. Counsel for ARC speculated that in order to consider the test of the suitability of the Disputed Area as a separate dwelling, a hypothetical tenancy should be considered which would allow the issues of access to

the boilers from the Main House and to the water stop and electricity meters in the garage for the occupants of the Disputed Area to the garage to be arranged by contractual agreement.

31. Counsel for ARC conceded that such arrangement may be more difficult if the occupant of the Disputed Area had purchased the property and was an owner rather than a tenant.

32. An essential part of the division of the Main House from the Disputed Area was a door from the kitchen of the Main House into the hallway of the Disputed Area ("the connecting door"), at the EDT, connecting the Disputed Area and the Main House. This was a predominantly glass door with a wooden frame. It had no door closer which would ensure the door was closed, unless it is prevented from doing so, and AC was unaware if it was sufficiently soundproofed or whether it was a fire door meaning one which would meet the usual fire door regulations.

33. The connecting door had a lock which was lockable from the hallway of the Disputed Area and from the kitchen of the Main House. AC confirmed in evidence that if either of the occupants of those areas left the key within the lock, when the door was locked, then the other occupant could not obtain entry as a key could not then be used on the other side.

34. At the EDT, the supply of electricity, oil for the boiler and water were all services provided to the Disputed Area and the Main House without any division or separate metering or bills.

35. The independent entrance to the Disputed Area would require anyone seeking access or egress to pass within clear sight of the kitchen windows of the Main House. Similarly, the bifold doors of the swimming pool look directly onto the garden/rear courtyard of the Main House and directly into the Garden Room of the Main House.

36. The clear glass connecting door also provided a view from any occupants of the Disputed Area in the hallway directly into the kitchen of the Main House and vice versa. ARC suggested that any concerns regarding privacy could be remedied by the fitting of suitable blinds, but these were not in place at the EDT.

37. The Main House had its own utility/laundry room containing a washing machine and dryer on the first floor near a number of bedrooms.

38. HMRC referred to a 1981 application for planning permission to create an additional dwelling which AC reminded the Tribunal had not been made by him but by a previous owner and was for a property that had been demolished. This planning permission had been refused and separate occupation had been prohibited. ARC had made a subsequent application in 2021 for a detached annex which was granted subject to a condition that the annexe should "not be occupied at any time other than for purposes ancillary and/or incidental to the residential use of the dwelling known as Beech House", being the Property. HMRC suggested that conclusions could be drawn that the planning authorities held similar views to those of their predecessors in 1981.

**HMRC'S SUBMISSIONS/CONTENTIONS**

39. HMRC asked the Tribunal to dismiss ARC's appeal for the following reasons:

1. The purported second dwelling (ie the Disputed Area) did not offer a reasonable degree of security and privacy.

2. The Main House and the Disputed Area had a single supply of water and electricity.

3.The Main House and the Disputed Area had one central heating system which was located in the Disputed Area.

4. There was not a separate land registry title or council bill for the Disputed Area.

5. Therefore, the Property was one dwelling for SDLT purposes at the EDT and consequently MDR is not applicable to the Property.

*Stamp Duty Land Tax and Multiple Dwellings Relief*

40. The law in respect of SDLT is contained in FA 2003. At s.49 of FA 2003, SDLT is a tax on 'chargeable transactions', which are 'land transactions' which are not exempt from charge.

41. At s.43 of FA 2003, the term 'land transaction' means the acquisition of a 'chargeable interest', as defined at s.48 of FA 2003.

42. S.55 of FA 2003, sets out the applicable amount of SDLT payable for a property if the relevant land consists entirely of "residential property", Table A, or if the relevant land consists of or includes land that is "non-residential" property, Table B.

43. If MDR is validly claimed, an alternative method for computing the amount of SDLT due is used as opposed to using the total consideration for the transaction. This method involves calculating the SDLT that would be due using the average consideration for one dwelling, and then multiplying that amount by the number of dwellings. This generally results in a lower effective rate of tax overall; however, the effective rate of SDLT cannot fall below 1%.

44. S.55 of FA 2003 sets out the steps and rates applicable. The Property was acquired for £2,000,000 with the amount of tax chargeable in respect of a residential property. The total SDLT calculated was £138,750.

45. Residential' and 'non-residential' property is defined pursuant to s.116(1) 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) …

46. S.58D of FA 2003 requires MDR claims to be made in a land transaction return or an amendment of such a return, whilst Schedule 6B of FA 2003 provides for relief in the case of transfers involving multiple dwellings.

47. Under Schedule 6B, MDR applies to transactions that fall within Paragraph 2(2), 2(3) and those not excluded by 2(4) of Schedule 6B. This case does not concern Paragraph 2(3) and there is no applicable exclusion under Paragraph 2(4). In terms of Paragraph 2(2)(a) Schedule 6B of FA 2003, a transaction will qualify for MDR if its main subject matter consists of an interest in at least two dwellings.

48. Paragraph 7(2) of Schedule 6B of FA 2003 defines a 'dwelling':

> (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. (*emphasis added*)

*Was the Property one single dwelling or two at the point of completion?*

49. HMRC contend that the correct approach is to consider the nature of the chargeable interest as it stood at the time of completion as established in the Upper Tribunal decision in *Ladson*.

50. HMRC contend that the Property was one single dwelling at the point of completion and did not consist of two separate single dwellings within the meaning of Paragraph 7(2)(a) of Schedule 6B to FA 2003.

51. In *Fiander and Brower UT*, the Upper Tribunal made observations as to the meaning of 'suitable for use as a single dwelling' at [48]. Their approach, which was endorsed in the decision of *Doe UT*, can be summarised as follows:

- The word 'suitable' implies that the 'property' must be appropriate or fit for use as a single dwelling. It is not enough for the 'property' to be capable of being made appropriate or fit for such use by adaptations or alterations.
- The word 'dwelling' describes a place suitable for residential accommodation which can provide the occupant with facilities for basic domestic living needs.
- The word 'single' emphasises that the dwelling must comprise of a separate self-contained living unit which is not dependent on the main property for any reason.
- The test is objective. The motives or intentions of particular buyers or occupants of the property are not relevant.
- Suitability for use as a single dwelling is to be assessed by reference to occupants generally; this would not be satisfactory, if the property only satisfies the test for a particular type of occupant, such as a relative.
- The test is not 'one size fits all'. 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.
- The question of whether a property satisfies the above criteria is a multi-factorial assessment, which should consider all the facts and circumstances. Relevant facts and circumstances will obviously include the physical attributes of and access to the property, but there is no exhaustive list which can be reliably laid out of relevant factors. Ultimately, the assessment must be made by the FTT as the fact-finding tribunal, applying the principles set out above.

52. HMRC contend that whilst considering all these factors, it is helpful to consider how many dwellings an objective observer would consider there are at the point of completion. This is the 'objective observer' test, which was advocated in *Fiander Ft*-T at [51] and consequently upheld on appeal in the Upper Tribunal:

> "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".

53. Although not binding, HMRC have issued guidance - SDLTM00420, on the kind of features they would expect to find in a dwelling, namely: basic living facilities, independent entrances, and privacy.

54. HMRC submit that the Disputed Area was not suitable for use as a single dwelling at the point of completion.

55. A dwelling requires basic features, such as security and privacy. The connecting, lockable glass, door, separating the kitchen of the Main House from the Disputed Area impedes the privacy and security of both sets of occupants.

56. The connecting door has insufficient qualities to properly segregate the Main House and the Disputed Area.

57. The 1981 planning application and planning decision for "extensions and conversion of Double Garage into a Granny annexe, etc" [sic] specifically notes that the conversion "shall be used and occupied with the existing dwelling as one residential unit".

58. There is only one driveway to the Main House and Disputed Area.

59. Access to the swimming pool is located in the Disputed Area.

60. The boilers servicing both the Main House, and the Disputed Area are contained in the utility room, located in the Disputed Area.

61. The water and electricity supply for both the Main House and the Disputed Area are billed under one account and contained in the Garage of the Main House.

62. The Main House and the Disputed Area are registered under one single title with the Land Registry.

63. The Disputed Area did not have a separate postal address listed with Royal Mail or a separate council tax banding at the EDT.

*Security and privacy*

64. HMRC dispute ARC's contention that there is clear and sufficient separation between the Main House and the Disputed Area due to the presence of a connecting door which is lockable from both sides. The door is a wood framed door that is predominantly clear glass.

65. HMRC's guidance at SDLTM00425 sets out the features of an interconnecting door which they would expect to see in relation to privacy and security in a successful claim for MDR. The guidance states:

> "A single dwelling requires a degree of privacy from other dwellings. It is unusual, but possible, for adjoining dwellings to have interconnecting doors. It is relevant whether the door between the parts can be locked or is readily capable of being made secure from both sides. The more interconnecting doors that there are between "units" the less likely they could be reasonably considered to be separate single dwellings. *The type of door is also important to consider e.g. whether the door has adequate fireproofing and sound proofing to be considered suitable* to separate the dwellings." (*emphasis added*).

66. *Fiander UT* importantly emphasises the need to facilitate separate and independent life, and with that separation, the requirement of security and privacy, as stated at [48 (6)] and [106].

> [48 (6)] "The test is not "one size fits all": a development of flats in a city centre may raise different issues to an annex of a country property. 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. How that is achieved in terms of bricks and mortar may vary."

[106] "In the context of SDLT, a person buying a property would want and expect that property to contain all the facilities for them to live a separate and independent life…"

67. HMRC contend that the features of an interconnecting door are vital in determining whether it is capable of separating two dwellings to the extent that it can prevent others from entering their property.

68. The FTT further examined the need for a lockable door in relation to the need for a reasonable degree of privacy and security in *Doe Ft-T* at [82] - [83] and [85] - [87], *Fiander Ft-T* at [57] - [62] and [67]), *Partridge* at [60] - [71], and *Mobey* at [94] - [98] and [103] - [109].

69. HMRC submit that the Disputed Area was not suitable for use as a single dwelling. HMRC further submit that even if it were suitable for such use, it would only be suitable for habitation by family members or friends of the occupants of the Main House and cannot be a separate dwelling. For example, a young family, unknown to the occupants of the Main House, residing in the Disputed Area may strongly object to the hampered security and privacy that the glass interconnecting door provides.

70. The photographs in the Document Bundle provided by ARC evidenced that the connecting door had a lock which was operated by a key. HMRC submit that whilst the door is lockable on both sides, the door is operated by a single key which allows the holder of the key to enter the Main House /Disputed Area at will as there is only one lock.

71. If either of the occupants of the Disputed area or the Main House leave the key in the lock of the door when locked, then any access from one area to the other is impossible.

72. The photograph from the side of the Disputed Area of the glass connecting door showed a person in the kitchen. HMRC submit that this impinges on the security and privacy of occupants of the Main House / Disputed Area. HMRC submit that occupants generally would not want their day to day living to be observed in this fashion unless they were connected to the occupants of the Main House.

73. Suitability for connected occupants, rather than occupants generally, is demonstrated in Winkworth's marketing materials, which state "… The large double garage… has a large double bedroom above it which is perfect for guest/staff accommodation…".

74. HMRC contend that when considering the privacy and security concerns linked to the interconnecting door, an objective observer would view this as one property, not two. There is insufficient separation to satisfy a claim for MDR and this is supported by the decision in Fiander Ft-T, at [61].

75. The adoption of the objective observer test, addressing the requirement for security and privacy, can also be seen in the case of Ogborn at [29], where the Tribunal states:

"(3) It was not established that the communicating door between the Main House and the Annex was lockable from both sides at the EDT. *The communicating door was not a fire door or sound proofed* as it had been the door between the kitchen and utility room. *These factors limited both the security and privacy of both the Annex and main house at the EDT.* Adopting the language at paragraph 51 in *Fiander and Brower UT, a reasonable person*

*observing this physical attribute would find it unsuitable for separate dwellings."* (*emphasis added*).

76. HMRC submit the interconnecting door is not soundproofed or fireproofed, it is predominantly glass, and it only has one lock, therefore it insufficiently separates the Main House from the Disputed Area.

77. The Disputed Area is accessed by using the driveway which serves the whole Property. HMRC submit that a purchaser of a property, of the value under appeal, would reasonably expect the driveway to form part of the Main Property and not have to share it.

78. Another attractive feature of the Property, which is essential to its character is the size of the land and the ability to offer privacy, peace and a sense of space. An objective observer would not expect to have their privacy compromised by having to share their driveway.

79. HMRC submit that any use of the Disputed Area by a person unconnected with the occupants of the Main House would significantly affect the privacy and security of the occupants of both the Main House and the Disputed Area, as the occupants of the Disputed Area can overlook the occupants of Main House in their kitchen when they make their way to the entrance of the Disputed Area. Equally, the privacy and security of the occupants of the Disputed Area are compromised as the occupants of the Main House would have full view of the occupants / visitors leaving and returning to the Disputed Area, per *Mobey* at [98].

> "The access to the annexe was along the drive and through the grounds of Glenmore. There was no suggestion that any of the grounds were occupied with the annexe, but the occupants of the annexe could not be prevented from using the grounds of the main house, again compromising the privacy of the occupants of the main house."

*Planning permission*

80. HMRC submit that the Property has never received permission from West Berkshire Council ("the Council") to create an additional dwelling, in fact, it is quite clear in previous planning applications that the Council do not want to create any additional independent dwellings on the land.

81. The planning decision notice dated 16 July 1981, clearly states that "the extension shall be used and occupied with the existing dwelling as one residential unit".

82. The Council's intention is further echoed, in a recent planning application submitted by ARC dated 27 August 2021, for a detached annex. The decision notice dated 9 November 2021, grants ARC permission to build the detached annex subject to a number of conditions, condition 6 being:

> "The annex/outbuilding hereby permitted shall not be occupied at any time other than for purposes ancillary and/or incidental to the residential use of the dwelling known as Beech House."

83. HMRC would therefore consider the Disputed Area to be unsuitable as a separate, and self-sufficient dwelling to the Main House.

*The swimming pool*

84. There is an indoor swimming pool at the Property, accessible internally through a door in the Disputed Area. There are also two sets of bifold doors from the pool to the rear

courtyard/garden of the Main House. However, these are lockable on the inside and cannot be opened from the outside rear courtyard/garden.

85. ARC contend that neither dwelling needs to include the pool area to constitute a single separate dwelling. HMRC submit that the swimming pool would be expected to be a part of the Main House. The marketing materials heavily advertise the swimming pool as a feature of the Property. A purchaser of a £2 million property would reasonably expect it to form part of the facilities of the Main House and not the Disputed Area.

86. In that case, an objective observer would expect the occupants of the Main House to be able to access the pool facility at will, without the need for the occupants of the Disputed Area to grant them access whenever they want to use it.

87. Alternatively, if the pool area was to be used as a communal facility, it would render the interconnecting lockable door redundant as the interconnecting door would need to remain unlocked. This would in turn, jeopardise the privacy and security of the Disputed Area as the occupants of the Disputed Area would have to lock the WC/Bathroom, utility room and bedroom/living room each time they left the Disputed Area. A failure to do so, would allow the occupants of the Main House freedom to move within the Disputed Area.

88. The concept of a one-bedroom, which also serves as a living room, property with a small kitchen and WC/bathroom having a large private swimming pool is contrived. The swimming pool belongs to the Main House and its inclusion in the Disputed Area is simply a device to attempt to claim MDR.

*Marketing Material*

89. HMRC's SDLT guidance, SDLTM00430 states: "Estate agents marketing material is a useful tool to assist in consideration of how many dwellings a property might comprise. However, an estate agents' main objective is in selling the property, not in providing legislatively accurate definitions of dwellings, so this information is not determinative".

90. HMRC contend that the materials help to build a bigger picture and may help show what an objective observer would see at the time of completion.

91. The marketing details specifically refer to the "Double garage with secondary accommodation above", stating that this is "…perfect for staff/guest accommodation…".

92. HMRC submit that the Disputed Area and the Main House are one property. To the extent that there were actually two dwellings, HMRC speculate that an estate agent would market the property as such because it would be more desirable in the marketplace.

93. HMRC refer to *Mobey* at [107]:

> "In assessing whether this test is satisfied, one might ask whether an owner of what was said to be two dwellings was reasonably likely to be able to sell them to unconnected purchasers, assuming that the properties would remain as they were at the EDT. It seems to me that an average purchaser would not buy the annexe, on this basis…".

94. Therefore, HMRC submit that at the time of completion the Disputed Area was not a separate dwelling that could be marketed and sold independent of the Main House for the reasons outlined above. This factor was explored in the case of Dower where it was said at [53(5)]:

> "In the SDLT context, the relevance of this planning consent stipulation at the effective date of transaction meant that the Annexe could not possibly have been sold separately as a residential property in its own right. As set out earlier, it is apt to ask whether the purported second dwelling in a transaction could have been sold separately on the effective date of transaction to address whether MDR could have been in point. Quite apart from the physical attributes of the purported second dwelling, the planning consent restriction would have prohibited the possibility of the Annexe being conveyed as a separate, second dwelling from the Main House, which is an eminently appropriate consideration for SDLT purposes."

*Council tax, utilities, and postal address*

95. HMRC acknowledge that post completion, ARC have successfully applied for an alteration to the Property which lists the Disputed Area as a separate dwelling for Council tax purposes from 27 March 2022. However, at the EDT, the Disputed Area and the Main House were taxed as one dwelling for council tax purposes.

96. HMRC submit that use after the EDT is irrelevant, as per *Ladson*, endorsed by the Court of Appeal in their decision to refuse permission to appeal.

97. HMRC submit that it is irrelevant if ARC intended to use the Disputed Area as a separate dwelling and, therefore, the Property was a single dwelling at the point of completion.

98. Furthermore, the Disputed Area did not possess a separate postal address from the Main House, registered with Royal Mail at the EDT.

99. The lack of separation for both council tax purposes and postal address were found to be reliable factors that a purported second dwelling is not a separate dwelling for MDR purposes, per *Dower* at [57].

> "No separate council tax or postal address… are reliable indicators… not a separate dwelling for MDR purposes. The relevance of these ready indicators should not be downplayed, even though they are not determinative of the substantive issue… a shared council tax account between two households is open to undesirable financial entanglement in relation to liability allocation or non-payment by one household, while the potential abuse from a shared address can be far-reaching due to the myriad significance being attached to a postal address, from the electoral roll to credit and security checks, and for personal identify profile purposes..."

100. The Disputed Area does not have its own separate water or electricity meters; therefore, the occupants of the Main House (including the garage, where the electricity meters are) would be billed for the consumption by both the Main House and the Disputed Area, a position which could easily be abused by unrelated occupants of the Disputed Area.

101. HMRC submit that whilst the Disputed Area and the Main House's utility usage is combined, a factor which is not conclusive, it is considered alongside the other factors to support HMRC's view that the Disputed Area would not be suitable for use as a single dwelling to a person unconnected with the inhabitants of the Main House. Any contractual arrangements governing utility usage were in any event not in place at the EDT.

102. The boilers for both the Main House and the Disputed Area are located in the utility room of the Disputed Area. Therefore, the occupier of the Disputed Area could deny the occupiers of the Main House heating. The thermostatic controls in the Main House can control the temperature

but if the boiler has been turned off or otherwise disconnected it renders the central heating system for the Main House useless. Any maintenance or repair work to the boiler for the Main House would need permission and access granted by the occupier of the Disputed Area.

103. HMRC contend it is unlikely that an objective observer would consider the Property to be two independent dwellings when taking into account the practicalities of this set up.

104. HMRC submit that these factors are a reliable indicator, that the Disputed Area was not a qualifying single dwelling suitable for use independent of the Main House.

105. Taking a balanced view of all the factors in the case, an objective observer would find that the Property formed one single dwelling, and not two independent dwellings.

106. HMRC say that the decision in *Winfield* is an 'outlier' *in* relation to other cases which have come before the FTT. The facts are in any event different from this case. The property was on 2.8 acres which housed a main dwelling and an annex. The door connecting the main dwelling, and the annex was completely wooden, substantial, fireproofed and soundproofed. The door in this case is predominantly glass.

107. In *Winfield*, there had been a tenancy agreement between the previous owner and the occupant of the annex which provided evidence that the property had been let out separately. *Winfield* is a decision which is not binding on the tribunal was based on different facts and each FTT have to decide each case on the facts before them.

*Conclusion*

108. HMRC respectfully request that the Tribunal:

> Find that the Disputed Area had an insufficient interconnecting door separating the Main House and the Disputed Area to provide a reasonable degree of privacy and security.
>
> Find that the Property was one single dwelling at the point of completion and therefore does not qualify for MDR under Schedule 6B of FA 2003.
>
> Uphold the conclusions stated in the Closure Notice and find that the additional amount of £81,250 is due; and dismiss the appeal.

**ARC'S SUBMISSIONS AND CONTENTIONS**

109. ARC's grounds for claiming MDR are that:

> • The Property consists of two independent dwellings consisting of the Main Dwelling and the Annex, each of which affords the physical features necessary for the occupants of that dwelling to lead a private domestic existence because of the existence of the following facilities.
>
> • The Annex contains its own kitchen, bathroom, independent hallway with stairs leading up to a large living and bedroom area and has a separate external access.
>
> •There is a clear and sufficient separation between the two dwellings due to the presence of an internal connecting door which is lockable from both sides.
>
> •The clear glass interconnecting door and the frosted glass window of the bathroom in the Annex have no effect on privacy and are of no significance to MDR because any privacy concerns can be readily addressed by hanging a blind.

•HMRC's Review Conclusion letter accepts each of the dwellings have sufficient bathroom facilities.

•It is irrelevant that the marketing material does not refer to a second dwelling.

•An objective observer would take the physical features and layout of the property to conclude there are two separate dwellings suitable for use as such.

•Neither dwelling needs to include the pool in order to constitute a single separate dwelling. The pool area can be a shared communal area or alternatively it can be isolated by the internal locking door.

•The absence of a separate registered title / postal address / council tax registration / utilities should not detract from the fact that the Annex can be a single separate dwelling.

•The fact that the boiler for the Main Dwelling is in the utility room of the Annex is of no material effect, given that the occupants are neighbours, and they would more likely than not, provide access or provide for access in any tenancy agreement as is quite normal in situations where there are shared utilities; and

• Both dwellings have a heating system with electronic heating controls for each room. This means the Annex has heating controls for its hallway, living room/bedroom, bathroom and utility room individually.

*Relevant case law principles*

110. The leading authority is *Fiande*r *UT* in which the Upper Tribunal at [47- 48] said as follows:

> "47. The HMRC internal manuals on SDLT contain various statements relating to the meaning of "dwelling" and "suitable for use as a single dwelling", but these merely record HMRC's views and do not inform the proper construction of the statute.
>
> 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.
>
> (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 suitability for occupants generally. It is not sufficient if the property would satisfy the test only for a particular type of occupant such as a relative or squatter.
>
> (6) The test is not "one size fits all": a development of flats in a city centre may raise different issues to an annex of a country property. 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. How that is achieved in terms of bricks and mortar may vary.
>
> (7) The question of whether or not a property satisfies the above criteria is a multi-factorial assessment, which should take into account all the facts and circumstances. Relevant facts and circumstances will obviously include the physical attributes of and access to the property, but there is no exhaustive list which can be reliably laid out of relevant factors. Ultimately, the assessment must be made by the FTT as the fact-finding tribunal, applying the principles set out above."

111. As the UT said in *Fiander UT*, ultimately each FTT has to decide individual cases based on the facts that it finds in each case, applying the principles set out by the UT.

112. The most recent decision on MDR, *Winfield* bears strong similarities with the facts of the present appeal and in that decision, the FTT rejected similar arguments being put forward by HMRC in this appeal.

113. In *Winfield*, there was one property that had been marketed as such and which the taxpayer said constituted two separate single dwellings for MDR, each with their own external entrance and with all the necessary physical facilities. The two dwellings were joined internally with lockable fire doors and there was a single electricity supply for both properties, a single council tax account and postal address. The FTT therefore had to undertake a balanced,

multifactorial assessment, essentially looking at whether the fact the two dwellings were joined internally outweighed the evidence that they were in most other respects two distinct properties.

114. This decision is a good example of an FTT standing back and looking at matters in the round rather than being over-influenced by one particular factor. In particular, the FTT found that:

- the internal doors did provide an effective barrier between the two dwellings.

- the shared utilities would have an impact on privacy and security but that if one of the dwellings was let, then that would be on the basis of a proper tenancy agreement which would provide for access and that such access was something that was commonplace in the myriad of dwellings that are let and that such legal rights do not of themselves weigh heavily against the privacy and security which *Fiander UT* required the FTT to consider.

- judicial notice was taken of the fact that in many rural developments involving barn conversions, separate dwellings are built "cheek by jowl" with plate-glass windows around a single courtyard where occupants of one dwelling can readily see into the rooms of another and yet these dwellings "fly off the shelves" and any perceived lack of privacy does not seem to affect the willingness of purchasers to acquire such properties.

- in that context privacy can be secured readily by the use of curtains and blinds.

- the lack of separate council tax accounts and postal addresses did not come anywhere near sufficient to outweigh the facts of the physical attributes and facilities of the two dwellings.

- the planning history did not militate against the suitability for use as single dwellings.

- the fact that the access to the main dwelling was far grander than the access to the annex did not carry much weight and both dwellings had wholly satisfactory and independent access.

- little weight was attached to the fact that the property was marketed as a single dwelling given that estate agents "will do anything to get a deal and market to that effect".

- the dwellings could be sold separately because there was no legal impediment to that effect and cross-rights-of-way could be accommodated in the usual way.

115. The FTT therefore concluded as follows:

> "32. So, standing back and considering things in the round and applying the multifactorial test set out in *Fiander* when interpreting the statutory provisions of whether the dwellings are used or suitable for use as single dwellings, we have no hesitation that the factors weigh heavily in favour of there being two dwellings. We say this for the reasons outlined above. The physical configuration and attributes of each dwelling carries very considerable weight, and that is not, in our opinion, diminished by the common utilities or the state of the internal doors.
>
> 33. Notwithstanding these, there is still a sufficient degree of privacy, self-sufficiency and security for the dwellings to be consistent with the concept of each being a single dwelling.
>
> 34. And this is not diminished by the other factors suggested by HMRC to the extent necessary to justify their assertion that the property is a single dwelling.

35. It is our conclusion therefore that dwelling 1 and dwelling 2 are each suitable for use as a single dwelling. And so, the transaction benefits from MDR."

116. Based on the facts of the present appeal, which bear similarities with *Winfield*, ARC commend the approach of the FTT in that decision to this Tribunal and ask that the tribunal reaches a similar conclusion based on the evidence referred to.

*Result Sought*

117. Accordingly, and based on the above case law principles as applied to the facts in this appeal, the tribunal is invited to decide that ARC's acquisition of the Property was of two separate, single dwellings so that their claim for MDR is valid, and to determine this appeal accordingly.

**TRIBUNAL DECISION**

118. The tribunal considered all the facts and circumstances in a multifactorial assessment and approached "suitability for use" objectively on the basis of the physical attributes of the Property at the relevant time being the EDT.

119. Suitability was, therefore, judged from the perspective of a reasonable person observing the physical attributes of and access to the property and other relevant factors at the EDT.

*Privacy and Security*

120. The tribunal were not persuaded that the Disputed Area constituted a place suitable for residential accommodation which would provide the occupant with facilities for basic domestic living needs at the EDT. The tribunal considered that a separate dwelling requires basic features such as security and privacy and that these were not provided, in particular, by the connecting door, separating the Main House from the Disputed Area.

121. There was insufficient evidence that the connecting door provided sufficient security being a mostly glass door.

122. The locking mechanism on this door could be rendered inoperative by either of the occupants of the two areas leaving a key in the locked door meaning that no matter what contractual arrangements might be in place there could be no access for the occupants of the Main House to either the swimming pool, if it had shared use, or to the boilers located in the utility room/kitchen of the Disputed Area. There were in any event, no arrangements for access to either of these two areas at the EDT and no history of this.

123. The connecting door was not a fire door and not fireproof. Although the evidence was unclear as to the specification of the glass in the door as to what degree it was fireproof, if at all, the door had no door closer, which it is a matter of judicial note is legally required for a fire door, other than those that lead to service ducts or a locked cupboard.

124. As the connecting door was glass, the occupants of the Disputed Area and the Main House could clearly see one another from the hallway– and utility room/kitchen in the Disputed Area and the kitchen in the Main House. ARC suggested that this could be remedied by the installation of blinds but that would be a matter of choice for the respective occupants, and these were not in place at the EDT.

125. Similarly, anyone accessing the front door/entrance to the Disputed Area would pass directly by the kitchen windows of the Main House. Clearly this could also be remedied by installing blinds, but the tribunal were not persuaded that the purchaser of a home worth in the region of £2

million would, necessarily wish two out of three windows sites in their kitchen to have to have blinds to achieve privacy.

126. The bifold doors of the swimming pool looked directly onto the garden/rear courtyard and into the garden room of the Main House and vice versa providing limited privacy for the respective occupants.

127. Similarly, the privacy of the occupants of the Disputed Areas would be compromised as the occupants of the Main House would have a full view of visitors leaving and returning to the Disputed Area

128. Taking all these factors together, the tribunal did not consider that the living needs of either the Disputed Area or the Main House were capable of being satisfied with a degree of privacy and security with the concept of a single dwelling.

129. In these circumstances, the Disputed Area would only be suitable for habitation by family members or friends or connected persons (or, as suggested by Winkworth's sales brochure, for staff accommodation) who were known to the occupants of the Main House.

130. The tribunal considered that there was insufficient security and privacy for the occupants of both areas, in view of the weight it attached to the glass connecting door and positions/sites of the swimming pool, the entrance to the Disputed Area and the kitchen of the Main House.

131. Weighing up these factors, the tribunal considered that a reasonable person observing the physical attributes of the connecting door and the access and egress to, and the position of the Disputed Area would find it unsuitable for separate dwellings.

132. The Tribunal placed less weight on the shared driveway to the Disputed Area and the Main House but considered that an objective observer purchasing a house of this value would likely expect not to have their privacy compromised by having to share a driveway.

*The swimming pool*

133. The Tribunal considered that neither dwelling needed to include the swimming pool to constitute a single separate dwelling but agreed with HMRC that the purchaser of a £2 million property would reasonably expect it to form part of the Main House and not the Disputed Area.

134. Similarly, the tribunal considered that the concept of a one bedroom (which also served as a living room) property, with a hallway, small kitchen and WC/shower room, with a swimming pool, some four times the area of the latter three areas, was contrived and agreed with HMRC's contention that its inclusion in the Disputed Area was a device to attempt to claim MDR.

135. If the swimming pool was to be used as a communal facility either the connecting door would need to remain unlocked or some mechanism for obtaining access would need to be agreed. The privacy and security of the Disputed Area would be jeopardised if the former was in place, as the occupants of the Disputed Area could not lock their accommodation, so that it would be open to the occupants of the Main House. No arrangements for either option were in place at the EDT.

136. Any arrangement for sharing the swimming pool would depend on co-operation between the respective owners or landlord and tenant, which might not be forthcoming, and would depend on an agreement which in any event was not in place at the EDT.

*Reasonably likely to be able to sell*

137. Following on from the decision in *Mobey*, the tribunal considered whether an owner of what was said to be two dwellings was reasonably likely to be able to sell them, assuming the properties were to remain as they were at the EDT.

138. The tribunal considered that an average purchaser would be unlikely to purchase the main house without the swimming pool, not least because of its situation and its effect on the privacy of the Main House, but also because it is a desirable amenity of a property of that value.

139. The tribunal considered that an average purchaser of the Disputed Area, with its limited accommodation was not likely to purchase the Disputed Area, including the swimming pool, if it were to be a communal facility, because of the effects on their privacy and security, nor if there was sole ownership due to the costs and responsibilities of maintaining a swimming pool of that size.

*Marketing materials*

140. The tribunal considered the marketing materials and despite the legal requirement for estate agents to ensure that particulars are not misleading, accepted that their main objective is to sell property and placed less weight on the submissions and contentions in this respect.

141. Notwithstanding this, however, at the EDT, the property was clearly sold as one property, although the agents did suggest that an annexe might be created.

*Planning permission, Council Tax, Postal address*

142. The tribunal also placed less weight on the evidence relating to planning permission application of 1981 that prohibited the addition of an independent dwelling as this related to a previous property which had been demolished.

143. More, but still limited, weight was given to the planning application submitted by ARC in 2021, in relation to the building of a detached annex, which contained a condition that any such annex had to be occupied for ancillary and/or incidental purposes to the residential use of the property.

144. The tribunal considered that the property was considered as a single dwelling for council tax purposes at the EDT but noted that ARC had successfully applied for an alteration which listed it as a separate dwelling in 2022.

145. The tribunal did not consider it was relevant that ARC intended to use the Disputed Areas as a separate dwelling and noted that AC gave evidence that ARC and their family had used it, including the swimming pool and the living room above the garage, as part of the Main House.

146. The tribunal noted that the Disputed Area did not possess a separate postal address from the Main House at the EDT.

*Utilities, Boilers, Electricity Supply and Metters and Water Stop Valve*

147. The tribunal considered that considerable weight had to be given to the practicalities and positioning of the boilers for the whole Property in the Disputed Area and the electricity supply and fuse boxes and stop water tap in the garage to the Main House.

148. Counsel for ARC suggested that these matters could be arranged by contract or by a lease in the case of a tenant, but the tribunal had considerable scepticism as to how these matters could be worked in practice.

149. Access could be arranged to the respective utilities in the two areas and would, it was suggested, be a matter of right in the case of emergency. In the event of a neighbourhood dispute or even by accident, if the owner of the Disputed Area turned off or disconnected the boilers for the central heating system and if the owner of the Main House did the same with the electricity supply, considerable practical difficulties would ensue. There would also need to be cooperation as regards maintenance or repair work.

150. The more difficult concept for an objective observer or reasonable person or average purchaser was the necessary arrangements that would be required as regards the use of electricity and oil and how the respective owners or occupants could accept their respective liabilities. This would, as stated in *Dower*, "be open to undesirable financial entanglement in relation to liability, allocation or non-payment by one household, while the potential abuse from a shared address can be far reaching due to the myriad significance of being attached to a postal address."

151. The tribunal considered that for all practical purposes any such arrangement would likely be unworkable. ARC suggested that this matter could be remedied by the installation of meters, but no evidence was given as to how straightforward and simple that would be, and, in any event, no such meters were in place at the EDT.

152. The tribunal considered the authorities to which it was referred, but in relation to *Winfield* it was cognisant that the decision was still within the appeal period. Notwithstanding this, however, the tribunal considered that there were significant differences, in particular, with the Winfield Tribunal (Judge Nigel Popplewell and James Robertson) finding that the internal doors between the two properties did provide an effective barrier. The tribunal also considered that what might be apposite in relation to "a proper tenancy agreement", referred to by the Winfield Tribunal, would be considerably less so, should the Disputed Area belong to a different owner and also could not see why its considerations should not include a potential sale.

153. Lastly, although the Winfield tribunal considered that there were no legal impediments to sharing and that cross-rights-of-way could be 'accommodated in the usual way', the tribunal considered that the average purchaser would be unlikely to purchase either the Main House or the Disputed Area with the cross rights-of-way and financial arrangements in relation to electricity and heating costs.

154. In conclusion, standing back and considering things in the round and applying the multifactorial test set out in *Fiander UT* when interpreting the statutory provisions of whether dwellings are used or suitable for use as single dwellings, the tribunal had no hesitation in deciding that the factors weighed heavily in favour of their being one dwelling.

155. The tribunal were not persuaded that there were a sufficient degrees of separation and privacy and security, together with the status of the common utilities, for the dwellings to be consistent with the concept of each being a single dwelling.

156. The factors suggested by ARC to justify their assertion that the property was a single dwelling were less compelling than those put forward by HMRC.

157. Accordingly, the tribunal held that the property was one single dwelling at the EDT and does not qualify for MDR under schedule 6B of FA 2003.

158. The tribunal upholds the conclusions stated in the Closure Notice and find that the additional amount of £81,250 is due.

159. The appeal is dismissed.

**RIGHT TO APPLY FOR PERMISSION TO APPEAL**

160. 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.

**WILLIAM RUTHVEN GEMMELL WS**
**TRIBUNAL JUDGE**
**17 OCTOBER 2024**

## Appendix A


SWIMMING POOL
40' x 19'8
12.2m x 6.0m
WC
HALLWAY
UTILITY ROOM
KITCHEN/DINER
24'7 x 14'9
7.5m x 4.5m
DOUBLE GARAGE
24'7 x 20'
7.5m x 6.1m
GARDEN ROOM
21' x 13'5
6.4m x 4.1m
SITTING ROOM
14'9 x 12'10
4.5m x 3.9m
DINING ROOM
14'9 x 9'6
4.5m x 2.9m
HALLWAY
DRAWING ROOM
22'8 x 14'5
6.9m x 4.4m
Winkworth
BEDROOM
19'8 x 14'9
6.0m x 4.5m
BEDROOM
14'9 x 12'6
4.5m x 3.8m
DRESSING ROOM
LANDING
BEDROOM
14'9 x 8'2
4.5m x 2.5m
LAUNDRY ROOM
BEDROOM
14'9 x 8'2
4.5m x 2.5m
VOID
BEDROOM
20'4 x 12'6
6.2m x 3.8m
VOID
VOID
BEDROOM
20'4 x 12'6
6.2m x 3.8m
ENSUITE