FIRST-TIER TRIBUNAL
TAX CHAMBER

[Taylor House]

Appeal reference: TC/2024/00254

STAMP DUTY LAND TAX – annexe to main house with interconnecting door – whether property was purchased as a single dwelling or whether multiple dwellings relief applies – whether annexe was suitable to be used as a single dwelling – privacy and security – whether security door braces between the main house and the annexe constitute a modification to the property – the nature of the chargeable interest acquired – multifactorial assessment taking into account all the facts and circumstances – the objective observer test – Fiander & Brower v HMRC and Ladson Preston Ltd & AKA Developments Greenview Ltd v HMRC considered and applied – Appeal allowed

Heard on: 17 December 2024
Judgment date: 16 January 2025

Before

JUDGE NATSAI MANYARARA
MOHAMMED FAROOQ

Between

CHARLIE JOHNSON

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Patrick Cannon of Counsel

For the Respondents: Ms Kate Birtles, Litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. This appeal concerns the availability of multiple dwellings relief ("**MDR**") for Stamp Duty Land Tax ("**SDLT**") purposes on the purchase of a main house with an annexe. The appeal is principally concerned with whether the interconnecting door between the main house and the annexe, as well as the shared garden, provided sufficient privacy and security for the occupants of either the main house or the annexe, such as to give rise to MDR.

2. The Appellant ("Charlie Johnson") appeals against a Closure Notice issued by HMRC under para. 23 of Schedule 10 to the Finance Act 2003 ("**FA 2003**"). The Closure Notice concerns liability to SDLT arising from a transaction in residential property. The Appellant acquired freehold title in respect of a property known as, and situate at, 38 Parkland Avenue ("**the Property**") for consideration of £1,170,000. The effective date of the transaction ("**EDT**"), i.e., the date of completion, was 29 October 2021.

3. The Appellant completed an SDLT return and self-assessed the SDLT due as being £60,750. The Appellant later requested a repayment of SDLT, in the amount of £22,250, on the basis that the Property was purchased with a self-contained annexe; this amount being calculated on the basis that the purchase was a transaction that consisted of an interest in "at least two dwellings" within para. 2(2) of Schedule 6B FA 2003, and qualified for MDR.

4. HMRC submit that, at the point of completion: (i) the Property consisted of a single dwelling and that the acquisition did not qualify for MDR; and (ii) the annexe did not satisfy the test in para. 7(2)(a) of Schedule 6B; namely a building that is "suitable for use as a single dwelling". The Closure Notice, therefore, amended the Appellant's SDLT return to charge additional tax in the sum of £22,250.

ISSUE(S)

5. The issue for consideration is whether the acquisition of the Property qualifies for MDR. MDR applies where the subject-matter of a land transaction is an interest in at least two dwellings. Paragraph 7 of Schedule 6B FA 2003 sets out the meaning of "dwelling" and states, at para. 7(2), that "a building or part of a building counts as a dwelling if (a) it is used or suitable for use as a single dwelling".

BURDEN AND STANDARD OF PROOF

6. The burden of proof lies with the Appellant to demonstrate that the conclusions stated in the Closure Notice are incorrect, otherwise the Closure Notice shall stand good.

7. The standard of proof is the ordinary civil standard; that of a balance of probabilities.

8. As confirmed by the Upper Tribunal ('UT') in *Shinelock Ltd v HMRC* [2023] UKUT 107 (TCC), the matter in issue in relation to an appeal against a closure notice is the conclusion notified in the closure notice - albeit not limited to a stated reason for that conclusion - and the associated amendment arising from such conclusion.

AUTHORITIES AND DOCUMENTS

9. The authorities to which we were specifically referred to by the parties included:

(1) *Fiander & Brower v* HMRC [2021] UKUT 0156 (TCC) (*'Fiander'*);

(2) *Wilkinson & Anor v HMRC* [2021] UKFTT 74 (TC) ('*Wilkinson*');

(3) *Dower & Anor v* HMRC [2022] UKFTT 170 (TC) ('*Dower*');

(4) *Ladson Preston Ltd & AKA Developments Greenview Ltd v HMRC* [2022] UKUT 00301 (TCC) ("*Ladson*"); and

(5) *James Winfield v HMRC* [2024] UKFTT 00734 (TC) (‘*Winfield*’).

10. A number of other authorities were included in the Authorities Bundle.

11. The documents to which we were referred were: (i) the Hearing Bundle consisting of 319 pages; (ii) the amended Authorities Bundle consisting of 305 pages; (iii) HMRC’s Skeleton Argument dated 26 November 2024; and (iv) the Appellant’s Skeleton Argument dated 26 November 2024.

BACKGROUND FACTS

12. On 15 October 2021, the Appellant entered into an agreement to purchase the Property for consideration of £1,170,000.

13. On 29 October 2021, the Appellant completed the purchase of the Property.

14. On 2 November 2021, the Appellant’s SDLT return was submitted by “Simply Conveyancing. The SDLT return stated the amount of tax due to be paid as being £60,750.

15. On 26 May 2022, “SDLT Experts Ltd” (“the agents”) wrote to HMRC requesting a repayment of SDLT in the amount of £22,250 on the basis that the Property had multiple dwellings as it was purchased with a self-contained annexe, as follows:

> “***Reason for the refund***
>
> *This transaction’s original SDLT calculation was completed incorrectly because it qualifies for Multiple Dwelling Relief (MDR) which was not applied for originally. The property includes a main house and a “Granny Annexe”.*
>
> ***Annexe***
>
> *This is a true annexe for MDR purposes because:*
>
> - *the main residence is more than 66% value of the whole transaction.*
> - *the annexe is wholly within the grounds of the main residence. See floor plan 1, photo 3.*
> - *the annexe is attached to the main house and has its own external and separate entrance, see document 1 and photo 3.*
> - *the annexe has a kitchen, with sink, fridge, food preparation space, oven, microwave oven and toaster. See photo 8 & 9.*
> - *the annexe has a bedroom with see floorplan 1.*
> - *the annexe has a bathroom which includes a toilet, wash basin, and shower. See floorplan 1 and photos 10 & 11.*
> - *the annexe has its own boiler. See photo 12.*
> - *the annexe has its own heating controls. See photo 13.*
> - *the annexe has its own living space, see floor plan 1 and photo 9.”*

16. On 27 May 2022, the Appellant submitted an amended SDLT return, which included a claim for MDR by entering code 33 at box 9 of the return.

17. On 23 June 2022, HMRC authorised the repayment of SDLT in the amount of £22,250 (plus £69.19 in interest). HMRC subsequently opened an enquiry into the SDLT return.

18. By a letter dated 11 January 2023, HMRC informed the Appellant that they would be conducting a compliance check into the amended SDLT return and requested the following information from the Appellant:

> “*1) Does each dwelling have its own:*
>
> > *a. Fuse box/consumer unit*

b. Internal water stop tap

c. Gas shutoff valve

d. Gas, electricity or water meters

e. Postal address

2) Please provide supporting evidence for the existence of any items in (1) above

3) Please provide a copy of the floor plan for the property and indicate the following:

a. The location of all fuse boxes/consumer units

b. The location of all boilers

c. The location of all gas shutoff valves

d. The location of all internal water stop taps

e. Which (in any) doors separating the dwellings are lockable

4) If there are any internal doors separating the dwelling, please provide a photo of each side of the doors and state if they can be lockable from both sides. If a lock is installed please provide a photo.

5) Since purchasing the property, have any changes been made to the internal layout such as the condition of removal of any doors or walls? If so, please provide a full description of the changes.

6) Since purchasing the property, have any of the following facilities been added or removed from any part of the dwellings, and please provide a full description and location of any of these:

a. Kitchen worktop/sink/cupboards/cooker

b. Bathroom sink/toilet/shower/bath

c. Fuse box/consumer unit

d. Internal water stop tap

e. Gas shutoff valve

7) Please provide any other information or documents that would support your claim for Multiple Dwellings Relief."

19. By a letter dated 20 February 2023, the Appellant's agents responded, as follows:

"*The purchase consisted of a main house with an attached annexe. 2 Dwellings.*

1. Yes. 1 fuse box for each dwelling. See floor plan 1. There is 1 water stop located in the main house kitchen. See floor plan 1. There is 1 gas shut off valve, located outside and is accessible to both dwellings. See floor plan 1. There is one set of gas, electric and water meters. The gas and water meters are located outside and are accessible from either dwelling. The electricity meter located under the stairs of the main house. See floor plan 1. The property has one postal address.

2. Supporting evidence…

3. Floor Plan…

4. Interconnecting doors from both sides.

5. No changes have been made since completion.

6. No facilities have been added or removed since completion.

…

B1 – Boiler Main House

B2 - Boiler Annexe

GM Loc - Gas meter and gas shut off valve on outside wall Green outline is the annexe

Electricity meter is under stairs of main house.

WM - outside water meter at end of drive."

20. On 9 June 2023, HMRC wrote to the Appellant setting out their view that MDR was not due.

21. On 13 October 2023, HMRC issued the Closure Notice.

22. On 1 November 2023, the Appellant appealed against the decision and requested a statutory review.

23. On 15 November 2023, HMRC wrote to the Appellant to acknowledge the request for a review.

24. On 20 December 2023, HMRC issued the Review Conclusion letter, upholding the decision.

25. On 15 January 2024, the Appellant submitted an appeal to the First-tier-Tribunal ('FtT').

RELEVANT LAW

26. The law in respect of SDLT is largely set out in Part 4 FA 2003.

[All references to sections "s" below are to FA 2003, unless stated otherwise]

27. By virtue of s 42, SDLT is a tax charged on land transactions. "**Land transactions**" are defined at s 43 as being the acquisition of a chargeable interest in the main subject matter, together with any interest or right appurtenant or pertaining to the interest so acquired (s 43(6)).

28. Section 48 defines a "**chargeable interest**" as "an estate, interest, right or power over any land in England." Under s 49, a land transaction is a "**chargeable transaction**" if it is not exempt.

29. Section 44 sets out the rules to determine the "**effective date**" of the chargeable transaction; which in this case and in accordance with s 119 is the date of completion. Therefore, the SDLT charge arises on the date of completion by reference to the relevant land transaction.

30. The amount of tax chargeable in respect of a chargeable transaction depends upon whether the relevant land consists, entirely, of residential property, or consists of, or includes, land that is not residential property (s 55).

31. Section 116 sets out the meaning of "**residential property**", as follows:

> "(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 all forms part of the garden or grounds of a building within paragraph (a) (including any building or structure on such land), or
> >
> > (c) an interest in or over land that subsist for the benefit of a building within paragraph (a) or of land within paragraph (b) and "non-residential property" means any property that is not residential property."

32. On a notifiable transaction taking place, s 73 requires the purchaser to submit a land transaction return (i.e., an SDLT return) within 14 days of the EDT.

33. Section 55 deals with the amount of SDLT chargeable in respect of chargeable transactions. Different rates are applied to the different parts of the consideration. Section 55 (1B) sets out the applicable amount of SDLT payable 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**). The rates in Table A are higher than those in Table B. In this context, the relevant rates are: 0% for so much of consideration as does not exceed £125,000, 2% for so much as exceeds £125,000 but does not exceed £250,000 and 5% for so much as exceeds £250,000 but does not exceed £925,000.

34. Section 58D provides for the claim to relief in relation to transfers involving multiple dwellings to be in a land transaction return, or an amendment of such a return.

35. Schedule 6B to FA 2003 contains the provisions for MDR. The Schedule applies, *inter alia*, to a chargeable transaction if its main subject-matter consists of an interest in at least two dwellings. A building counts as a dwelling if it is used or is suitable for use as a "**single dwelling**". Schedule 6B provides for relief in the case of transfers involving "**multiple dwellings**".

36. Sub-para. 2(2) of Schedule 6B provides that:

> **"Transactions to which this Schedule applies**
>
> …
>
> (2) A transaction is within this sub-paragraph if its main subject-matter consists of—
>
> (a) an interest in at least two dwellings, or
>
> (b) an interest in at least two dwellings and other property."

37. The focus of this appeal is a transaction within para. 2(2)(a).

38. Paragraph 3 of Schedule 6B divides all chargeable transactions into either "single dwelling transactions" or "multiple dwelling transactions", as follows

> **Key terms**
>
> 3 (1) A chargeable transaction to which this Schedule applies is referred to in this Schedule as a "relevant transaction".
>
> (2) ...
>
> (4) A relevant transaction is a "multiple dwelling transaction" if its main subject-matter consists of—
>
> (a) an interest in at least two dwellings, or
>
> (b) an interest in at least two dwellings and other property.
>
> (5) In relation to such a transaction, those dwellings are referred to as "the dwellings".

39. Paragraph 4 of Schedule 6B provides for the calculation of relief. If it were found in this case that there was an acquisition of two dwellings, then paras. 4 and 5 of Schedule 6B provide that SDLT is charged as follows:

(1) Step 1: Determine the tax that would be chargeable under Section 55 if the total consideration was divided by the number of dwellings.

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

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

40. Paragraph 7 of Schedule 6B defines "*What counts as a dwelling*", as follows:

"**What counts as a dwelling**

7 (1) This paragraph sets out rules for determining what counts as a dwelling for the purposes of this Schedule.

(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.

(3) Land that is, or is to be, occupied or enjoyed with a dwelling as a garden or grounds (including any building or structure on such land) is taken to be part of that dwelling..."

41. Stamp duty is charged by reference to the circumstances pertaining at the EDT, so the question whether the relief applies must be determined as at that date. Where MDR is available, the relief can lower the effective rate of SDLT by splitting the chargeable consideration between each dwelling, subject to a minimum SDLT charge of 1% on the total chargeable consideration.

42. Paragraph 12 of Schedule 10, in relation to the 'Notice of Enquiry', provides, *inter alia*, for the time-limit for opening an enquiry being nine months of the 'relevant date' of: (a) the filing date, (b) the date of the return being delivered if after the filing date, or (c) the date of amendment(s) made to a filed return. Paragraph 23 of Schedule 23 provides for the completion of an enquiry by the issue of a closure notice.

APPEAL HEARING

Preliminary discussions

43. At the commencement of the appeal hearing, Ms Birtles confirmed that HMRC accept that the annexe to the main house is self-contained. She confirmed that the concern is in relation to the interconnecting door between the main house and the annexe, and the shared garden. The issue is, essentially, one of privacy and security. This, therefore, narrowed the focus in the appeal.

44. We heard oral evidence from the Appellant and submissions from both representatives.

Appellant's evidence and submissions

45. In his oral evidence, the Appellant adopted the contents of his witness statement, dated 23 June 2024, as being true and accurate (the contents of which we will set out in greater detail later). In response to further questions in examination-in-chief from Mr Cannon, the Appellant stated that the annexe has its own separate front door, and that the Property was listed as two separate dwellings on Rightmove. He added that the council had confirmed that the annexe has its own council tax band and is a separate property. In relation to parking, he explained that there are two entrances to the driveway and the entrance to the main house is to the right, while the entrance to the annexe is to the left (there are dropped kerbs for both entrances). He further added that the annexe has its own distribution board for circuitry, as well as separate cooking, washing and sleeping facilities.

46. On the issue of the interconnecting door between the main house and the annexe, the Appellant explained that door braces were inserted on both sides of the door. He gave a description of the door braces and said that each door brace comprised of a telescopic leg that can be adjusted. Furthermore, each door brace goes from the handle of the door to the floor. He explained that once a door brace is in place on one side of the door, a person cannot open the door from the other side. He further explained that no structural alterations to the Property had to be made in order to fit the door braces.

47. In relation to privacy and security, and the risk of any occupant of the annexe looking through the patio doors to the main house, the Appellant stated that if an occupant of the annexe had no access to the garden, there would be no opportunity to look through the patio doors. He added that this is something that could be addressed in a tenancy agreement. He further added that the patio doors to the main house had a lock and key and could not be opened from the outside.

48. Under cross examination from Ms Birtles, the Appellant said this:

(1) The interconnecting doors between the main house and the annexe were not lockable at the date of completion.

(2) The door braces were added to the interconnecting doors one week after purchase and there are no additional security measures in respect of the door, apart from the braces.

(3) He does not know whether the interconnecting door is a fire door and he does not know whether there is any soundproofing in respect of the door.

(4) He was unsure of how the previous owners occupied the Property and whether they freely moved between the main house and the annexe.

(5) He would be comfortable with a third party occupying the annexe if he vetted the third party.

(6) The water stopcock is external (on the street). He is aware that the annexe has a separate gas bill because he received two bills in the post.

(7) He accepts that a person visiting the annexe could potentially have the same access to the garden and the patio doors. This would not be so if the occupants of the annexe did not have access to the garden. He has rented properties in the past where he had no access to the garden.

(8) He accepts that a person could stand in front of the patio doors and see his family going about their day-to-day business, but this would be no different from a trespasser doing the same.

49. In re-examination, the Appellant repeated that it would be possible to include specific terms relating to access to the garden in any tenancy agreement. He clarified that although one door brace would have been sufficient, he inserted two door braces for security. He was unable to shed light on whether the door braces could be removed as he was unsure of how they were inserted.

50. Mr Cannon's submissions can be summarised as follows:

(1) The annexe can be viewed, objectively, as a single, separate dwelling for MDR purposes. The annexe has all the necessary physical features for the occupant to carry on a private domestic existence, including its own external entrance door, a sitting/living area, a bedroom, a bathroom with toilet and shower, a kitchen with food storage and a food preparation area, and its own boiler.

(2) The absence of a lockable, internal interconnecting door at the EDT would not prevent an objective observer from treating the annexe as a single separate dwelling; particularly because security door braces could easily be placed on either side of the door and these cannot be bypassed with a key, and are not affixed to the door frame but can be placed in position without any change or modification to the structure of the doorway. The door braces are kept in position as long as desired by the occupant of either dwelling. HMRC's Statement of Case, at para. 46, is mistaken in stating that the removal of one

door brace means that the door can be opened from that side. This is not correct because the door can only be opened if both braces are removed.

(3) The privacy of the occupants of the main house and the annexe is adequate for separate dwellings, generally, and there are numerous buildings with flats where the occupiers share facilities and the use of garden space, and those where there is garden space but use of it is restricted to certain occupiers only (for example, to a ground floor flat).

(4) Taking a multi-factorial approach to the features and facilities of the main house and the annexe, the two dwellings qualify as single separate dwellings in their own right so that the Appellant's claim for MDR should be confirmed.

(5) Ultimately, the FtT has to decide individual cases based on the facts that it finds in each case, applying the principles set out by the UT in *Fiander*.

(6) The recent decision on MDR in *Winfield* bears strong similarities to the facts of the present appeal. In that decision, the FtT rejected similar arguments being put forward by HMRC in this appeal. In the present appeal, the facts pointing towards the annexe being a single, separate dwelling are even stronger than those in the *Winfield* appeal and include the following: (i) both dwellings have their own boiler; (ii) both dwellings have their own electrical circuitry board; and (iii) each dwelling is separately rated for council tax purposes as a separate unit of residential accommodation. It is also notable that the annexe has a gas shut off valve and stopcock, and also has access to an external gas and water shut-off valve.

HMRC's submissions

51. Ms Birtles' submissions can be summarised as follows:

52. In respect of "privacy and security":

(1) The annexe is only separated from the main house by an interconnecting door which is not lockable. The Appellant has not provided any evidence that the door meets the required sound and fireproof standard. At the EDT, the occupants of both the main house and the annexe could move freely between the annexe and main house because the interconnecting door did not have any locks. Consequently, there was no separation between the annexe and the main house, resulting in a complete lack of privacy and security. By providing photographs of door braces which were put in place after the EDT, the Appellant has merely shown an interim solution. As the door braces were fitted post EDT, they are not relevant for the multi-factorial assessment.

53. In respect of the "garden and grounds":

(1) The fact the annexe's external door opens directly onto the garden and grounds of the main house would have an impact on privacy and security for the occupants of the main house.

(2) An objective observer would not expect a shared garden arrangement, or unrestricted access and views into the main house from the garden. An objective observer would find that it is unlikely that a purchaser of a £1,170,000 detached property would consider this an acceptable level of intrusion from an unconnected third party and/or any visitors to the annexe.

54. Concluding the "multi-factorial assessment", HMRC ultimately submit that:

(1) It is unlikely that an objective observer would consider the Property to be two separate dwellings at the point of completion. Whilst the annexe may have some of the

physical features expected in a truly independent and separate dwelling, these are outweighed by the fact that this is an internal annexe, without lockable doors and, therefore, no real separation. The annexe lacks privacy and security due to how closely connected the main house and annexe are.

(2) All of these factors demonstrate that the annexe and main house are intrinsically linked and are so reliant on each other that they cannot be truly independent dwellings. Therefore, para. 2(2) of Schedule 6B FA 2003 is not satisfied as the relevant transaction's main subject-matter consists of an interest in a single dwelling.

55. At the conclusion of the hearing, we reserved our decision, which we now give with reasons.

FINDINGS OF FACT

56. We have derived considerable benefit from hearing the oral evidence. We find the Appellant to be a credible witness who gave his evidence in a clear and straightforward manner, without equivocation. We accept his evidence as representing a truthful and accurate description of the Property, both as it was at the EDT and since the purchase was made. The Appellant's credibility as a witness was not challenged by HMRC, despite the parties having diametrically opposed views on the interconnecting door between the main house and the annex on the issue of privacy and security.

57. We find that:

58. On 29 October 2021, the Appellant purchased the Property for £1,170,000. The Property was marketed as having a self-contained annexe, with its own entrance, bedroom, shower room, lounge/dining room and kitchen.

59. In his witness statement, the Appellant states that the annexe has the following, separate to the main house:

(1) Lockable front door;

(2) Fully fitted kitchen;

(3) Fully fitted bathroom;

(4) Its own living area;

(5) One bedroom;

(6) Its own boiler;

(7) Its own fuse box;

(8) Its own gas shut-off valve;

(9) Its own stopcock; and

(10) Its own council tax bill.

60. The annexe can control all of its own utilities (gas, electricity and heating) separate to the main house. The Appellant's written evidence was not challenged, in this respect. We have also had the benefit of seeing the floor plans to the Property.

61. We further find that:

(1) the interconnecting door between the main house and the annexe is secured by the use of two security door braces, which are attached to each side of the door;

(2) the interconnecting door cannot be opened unless both braces are removed; and

(3) the door braces can be fixed without any structural changes to the Property, door, door frame or floor.

62. We are satisfied, for the reasons which we will give later, that on completion the Property comprised two "dwellings". The main house has its own separate living, sleeping and cooking facilities. The main house is accessed from the outside via a lockable front door. The annexe has its own independent kitchen, as can be seen from the floor plan and the photos. The annexe has its own bathroom with toilet, and shower, one bedroom, its own lounge/diner area to sit and relax, its own boiler for heating and hot water and its own fuse box (as set out above). The annexe also has its own separate and lockable entrance, separate from the main house.

63. We have further had the benefit of considering the letter, dated 17 January 2022, from the Valuation Agency Office ('VAO'). The letter confirmed that the Property consisted of more than one dwelling, whilst confirming the position in respect of council tax. The letter states, *inter alia*, that:

> *"**Other Supporting Information***
>
> *You have asked for the annexe at your property to be merged with the main house to form a single council tax banding.*
>
> *The Valuation Office Agency gives every house, flat or other domestic property a council tax band so that your local council is able to collect the correct amount of council tax. Normally each of these will receive a single band.*
>
> *However, when banding properties the Valuation Office is required by law to apply a separate Council Tax band to every: **'building, or part of a building, which has been constructed or adapted for use as separate living accommodation'.***
>
> *The Annexe at 38 Parkland Avenue was brought into the council tax list on 6 September 2015 following a full site inspection by a property inspector. **The inspection confirmed that The Annexe was a fully self-contained unit with a kitchen, bedroom, bathroom and its own front door**. You have confirmed in your email of 13 December 2021 that no works have been carried out on the property.*
>
> *As the Annexe has been separately banded for over six years, I would have expected your solicitor and/or estate agent to have made you aware of this at the time of your purchase. The information is also freely available on our website.*
>
> *Based on the information available to me at this time a separate council tax band must still be applied to both 38 Parkland Avenue and The Annexe at 38 Parkland Avenue..."*

64. The annexe is, therefore, considered to be a separate dwelling and has its own council tax banding (as stated earlier).

65. The Appellant's agents provided HMRC with supporting documents, which showed the floor plan of the annexe, completion statement showing original SDLT paid, photo of the outside of the annexe showing the front door, submission receipt & electronic SDLT certificate, copy of the land transaction contract, picture of kitchen showing oven, hob, microwave, washing machine, toaster and food preparation space, picture of open plan living space and picture of kitchen showing fridge freezer, picture of annexe shower, picture of annexe toilet, picture of annexe boiler and picture of annexe heating controls. We have also had the benefit of seeing a number of photographs showing the layout of the main house and the annexe.

66. The following facts were, therefore, either accepted, admitted or proved:

(1) The EDT was 29 October 2021.

(2) The main house and annexe were "physically distinct parts of the Property". Either could be inhabited without crossing through common areas that were not part of the individual dwellings.

(3) The physical attributes of both main house and annexe accommodated the basic domestic living needs of the occupants of either.

(4) Both the main house and annexe could be entered from the outside via a lockable door.

(5) The annexe is self-contained.

(6) There was independent access to the annexe at the EDT.

(7) There were bathroom facilities available in the annexe.

(8) There was an area suitable for living and sleeping.

(9) There were kitchen facilities available in the annexe.

(10) The annexe accommodated sleeping, eating, cooking, washing and sanitary needs.

(11) The annexe has its own gas supply and shut-off valve.

(12) The door braces on the interconnecting door did not comprise of an alteration to the Property.

67. We, therefore, make these material findings of fact.

DISCUSSION

68. This appeal concerns SDLT and, in particular, whether the Appellant benefits from MDR on the acquisition of the Property. In summary, the Appellant asserts that the annexe can be viewed, objectively, as a single, separate dwelling. Ms Birtles, on behalf of HMRC, asserts that at the point of completion, the annexe did not satisfy the test in para. 7(2)(a) of Schedule 6B; namely a building that is "suitable for use as a single dwelling", and that the Property consisted of a single dwelling and did not qualify for MDR.

69. The enquiry in this appeal is, essentially, whether the Property comprises an interest in at least two dwellings. It is for the Appellant to establish, on the balance of probabilities, that he is entitled to MDR. This requires him to establish that the main house and the annexe were both, on the EDT, either used or suitable for use as single dwellings. For the reasons given below, we are satisfied that the Appellant benefits from MDR and we allow his appeal.

70. The effect of MDR is to lower the effective rate of SDLT by splitting the chargeable consideration among the number of dwellings which are the subject-matter of the land transaction. It is helpful to set the scene by summarising the legislation. Once again, references to sections ('s') and Schedules are to FA 2003.

71. SDLT was introduced as a new tax by Part 4 FA 2003. It replaced stamp duty in relation to land. The legislative framework is largely contained in FA 2003. There are three elements to the charge to SDLT:

(1) the acquisition;

(2) of a chargeable interest in land;

(3) for chargeable consideration.

72. The transactional heart of SDLT is reflected in the structure of the taxation set out in FA 2003, which sets out detailed rules for determining when the charge arises on the transaction. SDLT is subject to a self-assessment regime.

73. Section 42 provides that SDLT applies to "land transactions" and makes clear that the tax is chargeable whether or not there is any instrument effecting the transaction in question. By virtue of s 49, all land transactions are chargeable to tax, unless they are exempted. Section 43 defines a land transaction as any acquisition of a "chargeable interest", which is defined by s 48 to include - subject to certain exceptions - any "estate, interest, right or power in or over land in the United Kingdom". The subject matter of a land transaction is the chargeable interest acquired (the main subject matter), together with any interest or right appurtenant or pertaining to it that is acquired with it.

74. Section 43(4) provides that references to the "purchaser" and "vendor" are to the person acquiring and person disposing of the "subject-matter of the transaction". SDLT is charged on the "chargeable consideration" for the transaction, which is generally any consideration in money or money's worth given for the subject-matter of the transaction, whether directly or indirectly by the purchaser or a person connected with him. At the relevant time, SDLT returns were generally required to be submitted, and tax paid, within 14 days of the EDT; which is generally the date of completion (ss. 76 and 119). Unlike stamp duty, SDLT is a tax on transactions, rather than documents.

75. Section 55 provides for the applicable rates of SDLT - in accordance with the land transaction - by reference to factors such as "residential" or "non-residential", whether as a transaction in a number of linked transactions or any relevant relief that is due. Section 58D provides for the claim to relief in relation to transfers involving multiple dwellings to be in a land transaction return, or in an amendment to such a return.

76. Where a transaction consists entirely of a residential property, the rates in Table A of s 55 apply. A key constituent to determining whether a transaction comprises residential property is to establish if a building falls within s 116(1)(a). A building that is used, or suitable for use, as a dwelling (including the land representing grounds or garden and any rights benefiting the building) is residential property. Therefore, if it looks like a dwelling and is used or suitable for use as a dwelling, it will meet the terms of s 116(1)(a).

77. The conditions for MDR are set out in Schedule 6B. Paragraph 7(2)(b) of Schedule 6B explains what is to count as a "dwelling". Paragraph 7(2)(b) is not, however, the operative provision that provides for MDR to be available, but is part of a wider definition of what is to count as a dwelling that is used to answer the question posed by para. 2(2)(b), which involves a consideration of the nature of the chargeable interest acquired. The operative provision is, therefore, found in para. 2.

78. For MDR to be available, a transaction must involve a chargeable interest consisting of more than one dwelling. To qualify for MDR, a chargeable transaction must fall within either para. 2(2) or 2(3) of Schedule 6B, and must not be excluded by para. 2(4). Paragraph 2(2) of Schedule 6B provides for MDR to be available only where the "main subject-matter" of a transaction consists of an interest in two or more dwellings. The relevant question on which availability of MDR depends involves an examination of the nature of the chargeable interest that is acquired. Where MDR is available, the total consideration for all the dwellings is averaged, the SDLT payable on the average consideration is calculated and that amount of SDLT is charged on each dwelling. This usually produces a lower amount of SDLT than if normal rates were applied to the total consideration.

79. MDR has now been abolished, with effect from 1 June 2024.

80. Ms Birtles submits, on behalf of HMRC, that main house and the annexe lack sufficient security and privacy as a result of the interconnecting door directly linking the annexe to the main house, for the Property to qualify for MDR. In this respect, we have been referred to HMRC's guidance and now turn to consider the guidance.

HMRC's Guidance

81. SDLTM00425 - Scope: what is chargeable: land transactions: Residential Property– How many Dwellings? – Physical Configuration (2), provides that:

> **"Facilities**
>
> Sleeping Area – A dwelling would be expected to have an area available for sleeping. A room to sleep would normally have lighting, power points, and a window and be of a reasonable size. It will normally be separated from a 'living area.'
>
> Living Area – A dwelling would be expected to have a suitable area for day-to-day living, including space for chairs, tables, cupboards, furniture and to have visitors. The room would normally have lighting, power points, heating and a window.
>
> Bathroom – It would be essential for a dwelling to have its own washing and toilet facilities, which would usually include a bath or shower, a toilet and sink.
>
> Kitchen – A dwelling would be expected to have an area where a meal can be prepared and somewhere suitable to eat it (not necessarily in the same place). It is not necessary for a kitchen to have a cooker or white goods such as a fridge or dishwasher present at the effective date of the transaction, because these are sometimes removed on a house sale. However, there should be space and infrastructure in place e.g. plumbing for sink, power source for cooker etc.
>
> Accommodation such as studio flats, which may combine two or more areas into one room, would meet the requirements.
>
> **Independent Entrances**
>
> It is important that each dwelling has sufficiently independent access. This could be a separate entrance from the outside of the building, or from common parts of the building such as in the case of flats. Typically, there will be common parts (such as hallways and staircases) which each dwelling will have access to via a lockable door.
>
> HMRC would not normally consider the hallway or living accommodation of the main house as a common area. For example, an upstairs flat may appear sufficiently independent on its own. But if access to it is through the downstairs accommodation, then the lack of privacy/separation for the downstairs area is likely to mean that there is only a single dwelling.
>
> **Privacy and interconnecting doors**
>
> 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, <u>or is readily capable of being made secure from both sides</u>.
>
> 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 fire proofing and sound proofing to be considered suitable to separate the dwellings."

<u>[Emphasis added]</u>

82. We bear in mind that HMRC's Guidance is not an exhaustive code, or a comprehensive edict. It is trite law that guidance and kindred instruments do not have the status of law and, thus, are subservient to primary legislation and secondary legislation.

The legislation

83. The primary meaning of a "dwelling" remains that in s 116, the wording of which is replicated in other parts of the SDLT code.

84. A "dwelling" in the MDR legislation (para. 7, Schedule 6B) refers to:

(1) a building or part of a building which is suitable for use as a single dwelling or is in the process of being constructed or adapted to such use;

(2) land that is to be occupied or enjoyed with a dwelling, such as a garden or grounds;

(3) land that subsists (or will subsist) for the benefit of a dwelling; and

(4) an interest in a building or part of a building which is to be constructed or adapted for such use as a single dwelling, construction or adaption of which has not yet begun, where that interest is included in a substantially performed contract.

85. This general definition is different from - though very similar to - that found in s 116.

86. The term “dwelling” is not defined in the SDLT legislation and, in principle, it therefore has its ordinary meaning. In *Uratremp Ventures Limited v Collins* [2001] UKHL 43 (‘*Uratremp*’), the House of Lords stated that the word “dwelling” has its ordinary meaning, but in deciding what it means in status, one has to consider the meaning in the context of the legislation (and on the basis of the facts in a case). The Lords were here addressing the meaning of dwelling in the context of s 1 of the Housing Act 1988. Lord Irvine LC said this:

> “Dwelling” is not a term of art, but a familiar word in the English-language which in my judgement in this context connotes a place where one lives, regarding and treating it as home. Such a place does not cease to be a “dwelling” merely because one takes all or some of one’s meals out; or brings takeaway food in to the exclusion of home cooking; or at times prepare some food for consumption in heating devices falling short of a full cooking facility.”

87. Referring to the different statutory contexts that had given rise to “this jungle of judicial glosses on the meaning of dwelling house” (at [14]), Lord Steyn made the pertinent observations in relation to statutory construction of this familiar word “dwelling”, at [15]:

> “The starting point must be that “dwelling house” is not a term of art. It is an ordinary word in the English language. While I accept that dictionaries cannot solve issues of interpretation, it nevertheless is helpful to bear in mind that dwelling house has for centuries been a word of wide import. ... In ordinary parlance a bed-sitting room where somebody habitually stays is therefore capable of being described as a dwelling house. So much for generalities. The setting in which the word appears in the statue is important. It is used in legislation which is intended to afford a measure of protection to tenants under assured tenancies. This context makes it inappropriate for the court to place restrictive glosses on the word “dwelling”. On the contrary, as counsel appearing as *amicus curiae* accepted, the courts ought to interpret and apply the word “dwelling house” in s 1 the 1988 Act in a reasonably generous fashion.”

88. *Uratemp* has been relied upon in some MDR appeals to argue that “dwelling” should be given a wide meaning. However, as Lord Steyn’s exposition has made clear, the meaning of dwelling has been given a reasonably generous interpretation in *Uratemp* due to the purpose of the Housing Act, which is to afford a measure of protection to tenants. It is not to say that there is no intersection in “this jungle of judicial glosses on the meaning of dwelling house” between different statutory contexts; but what is a dwelling in one statutory context cannot be transposed into another directly.

89. The meaning of “dwelling” in the SDLT context intersects with what Lord Millet observed in *Uratemp* at [30] and [31]: that the words “dwell” or “dwelling” mean the same as “inhabit” and “habitation” or, more precisely, “abide” and “abode”, and refer to ‘the place where one lives and makes one’s home’. Lord Millet continued by saying:

> “They [i.e. “dwell” and “dwelling”] suggest a greater degree of settled occupation than “reside” and “residence”, connoting the place where the occupier habitually sleeps and usually eats, ... In both ordinary and literary usage, residential accommodation is a “dwelling” if it is the occupier’s home (or one of his homes). It is the place where he lives and to which he returns and which forms the centre of his existence.”

90. In *Fanning v HMRC* [2023] EWCA Civ 263 ('*Fanning*'), at [30] (Peter Jackson, Lewis and Falk LJJ), the Court of Appeal said this:

> "30. The modern approach to statutory interpretation was conveniently summarised by Lewison LJ in Pollen Estate Trustee Co Ltd v HMRC [2013] EWCA Civ 753; [2013] STC 1479 at [24]:
>
> > "24. The modern approach to statutory construction is to have regard to the purpose of a particular provision and interpret its language, so far as possible, in a way which best gives effect to that purpose…"

91. We are, therefore, required to apply a purposive interpretation to the language of the provision. We are further required to determine the nature of the transaction to which the taxing provision is intended to apply, and to then decide whether the actual transaction answers the statutory description. The Oxford English dictionary defines "dwelling" as a "place of residence". The use of the adjective "single" qualifies "dwelling", informing the reader as to the type of dwelling being identified. Use of the word "single" shows that the dwelling must have some sense of unity. It should have coherence as one identifiable property.

The caselaw and the meaning of "suitable for use as a single dwelling"

92. The definition of MDR, particularly in the context of dwellings which include an annexe, has been the subject of much adjudication and consideration.

93. There have been a number of FtT decisions relating to the application of the test in para. 7 of Schedule 6B, to which we have been referred by Ms Birtles.

94. Ms Birtles relies on the case of *Dower*, in relation to the issue of privacy (as something which carries considerable weight). The property in *Dower* also comprised a main house with an annexe. However, in *Dower*, the annexe did not have a gas oven, or any designated kitchen area. It did not have a separate postal address, nor was it a separate property in its own right for council tax purposes. Furthermore, access to the annexe from the street was through the front drive of the property and involved passing the front and the side of the main house and the garage, which were not part of the annexe. The internal access of the annexe was gained through a gate that leads to the rear end of the garage to the entrance porch. That is not the situation in the appeal before us.

95. The case of *Wilkinson* was another case before the FtT, which was relied on by Ms Birtles. The tribunal held that:

> "90. Overall the lack of food preparation and washing up facilities weighs against the Bedroom being suitable for use as a single dwelling, although it is not determinative."

96. The property in *Wilkinson* therefore did not have separate food and washing up facilities. The tribunal also held that:

> "67…Putting locks on previously unlockable doors does not replace the locks. The equivalent for the locks would be if the vendor had removed the locks themselves and the purchaser had to replace them.
>
> 68. Second, placing locks on the doors changes the nature and function of the doors. The lockable doors provide a means of privacy and security not afforded by the doors without locks. There may be regulations such as fire regulations which need to be satisfied in order to fit locks."

97. We note that *Wilkinson* was decided before the UT decision in *Fiander*, which we will consider shortly. We further note that *Wilkinson* and, indeed, other decisions of the FtT to which we were referred) did not consider the issue of door braces being placed on an interconnecting door. Limited help can be given by previous decisions of the FtT which turn on their own facts. We require to be cautious about deriving principles from other cases which

have very different facts. We are not bound by decisions of the FtT, which we acknowledge can be persuasive.

98. The case of *Winfield*, which Mr Cannon submits involved similar arguments to those being advanced by HMRC in the appeal before us, concerned internal doors between dwellings, as well as shared utilities. In that appeal, HMRC's case was that there was a lack of independent utilities; as well as a single council tax account and address. In the appeal before us, the incontrovertible facts are that the annexe does have independent utilities, facilities and a separate council tax account.

99. The leading case in respect of the issues in this appeal is *Fiander*, in which the UT (Judges Thomas Scott and Ashley Greenbank) considered what was necessary for a building to comprise more than one dwelling for the purposes of MDR.

100. *Fiander* concerned a house with an annexe. The annexe was connected to the main house by a corridor (whereas the annexe in the appeal before us has an interconnecting door). The annexe comprised of a living room, kitchen/breakfast room, bathroom, two bedrooms and a loft room. It could be accessed via French doors, but a corridor connected the main house and annexe. There was a door at one end of the corridor, but at the time of completion no door was attached to it. The main house had the same facilities, plus some additional rooms. The annexe did not have its own separate post box, council tax rating or utility supply. The lack of a physical barrier between the main house and annexe meant that the annexe lacked the degree of security and privacy required to be considered suitable for use as a separate dwelling. The property was in a state of "relatively minor disrepair", which meant it was not immediately suitable for use as a dwelling.

101. A building (or part of a building) was found to be suitable for a use only if it could, generally, be so used as at the point of completion. In other words, it is insufficient that a family member may have found the annexe suitable for his or her occupation as a dwelling. Nor did it assist that relatively minor alterations (such as the addition of lockable doors) may have permitted an additional degree of privacy and security.

102. When the appeal was before the FtT ([2020] UKFTT 190 (TC)), the FtT found that:

> "51. We approach "suitability for use" as an objective determination to be made on the basis of the physical attributes of the property at the relevant time. Suitability for a given use is to be adjudged from the perspective of a reasonable person observing the physical attributes of the property at the time of the transaction.
>
> 52. A dwelling is the place where a person (or a group of persons) lives. A building or part can be suitable for use as a dwelling only if it accommodates all of a person's basic domestic living needs: to sleep, to eat, to attend to one's personal and hygiene needs; and to do so with a reasonable degree of privacy and security. By requiring that the building or part be suitable for use as a "single" dwelling, the statutory language emphasises suitability for self-sufficient and stand-alone use as a dwelling. Use as a "single" dwelling excludes, in our view, use as a dwelling joined to another dwelling."

103. The UT in *Fiander* considered that in the MDR context, the property had to be suitable for use as a separate dwelling, and that if it would only be suitable where there was a special relationship between the occupants of both dwellings, that was insufficient. The open corridor between the main house and annexe in *Fiander* meant that there was insufficient privacy and security for each. The appellant in that appeal sought to argue that the necessary degree of privacy could be achieved by putting a lockable door in the door jamb that was already there.

104. The main issue for the UT in *Fiander* was whether both the main house and the annexe qualified as buildings, or part of a building suitable for use as a dwelling as a piece of land. It is clear that in the view of the UT, a dwelling cannot be so if it is joined to another dwelling

and there is no physical barrier between them. A single dwelling can be "part of a building"; for example, a flat in a block of flats. Although they are joined, they are physically separated by walls and lockable doors.

105. The UT offered some general guidance on the meaning of the phrase "suitable for use as a single dwelling". Having said, at [46], that it did "not consider that decided cases in completely different contexts, such as council tax and VAT ... form the basis for any reliable guidance as to its meaning, construed purposively", the UT then said this, at [47] to [48]:

> "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."

106. And at [66]:

> "66. The FTT's approach was to ask itself whether an objective observer would conclude that each part of the Property had been used as a single dwelling "in the relatively recent past", and it is not clear that the additional evidence would have informed a conclusion as to whether any such use had in any event been "relatively recent."

107. Following the case of *Fiander*, the Stamp Office updated the guidance to refer to the "objective observer" test and the requirement that for a dwelling to be regarded and treated as such, it had to be suitable for an occupant, generally, and not just for a particular occupant.

108. Turning to the circumstances of this appeal:

<u>Consideration</u>

109. We take, as a starting point, the principles set out by the UT in *Fiander.* Thus, the test must be determined from the perspective of a reasonable objective observer and is to be applied as at the EDT. Each case is to be determined on its facts, applying the multi-factorial test of weighing all the facts and circumstances (and the physical attributes of a property).

110. The statutory test, and the question we must answer, is whether the Appellant's purchase of the Property was a purchase of "an interest in at least two dwellings". To answer that question, we must decide whether the annexe and the main house were, individually at the EDT, "suitable for use as a single dwelling". *Fiander* tells us that this must be assessed by reference to suitability for occupants, generally, and that the test is "objective". This is a multifactorial assessment. 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.

111. The Property in the appeal before us is a detached property consisting of a main house and an annexe situated to the side of the main house, connected by an internal interconnecting door. The main house has its own separate living, sleeping and cooking facilities. The annexe has its own independent kitchen, as can be seen from the floor plan and the photos. The annexe also has its own bathroom with toilet and shower, one bedroom, its own lounge/diner area, its own boiler for heating and hot water and its own fuse box. The main house is accessed from the outside via a lockable front door. The annexe also has its own separate and lockable entrance. Both of these doors are to the front of the Property. The driveway has separate entrances to the main house and the annexe.

112. We are satisfied that both the main house and the annexe in the appeal before us benefit from all of the usual facilities (i.e., kitchen, bathroom, living quarters etc.) required for occupation. HMRC accept this and this matter is not, therefore, in issue between the parties. HMRC further do not dispute that the utilities in respect of the annexe can be controlled separately from the main house, and that both dwellings have separate council tax accounts.

113. The main crux of HMRC's case is that the privacy and security of the main house and the annexe are called into question by the fact that: (i) the interconnecting door separating the main house and the annexe does not provide adequate privacy and security; (ii) the shared garden enables an occupant of the annexe to look into the main house (through the patio doors) while the occupants of the main house are going about their daily business; and (iii) an occupier of the annexe would expect to use the garden as a private, secure garden. We will take (ii) and (iii) first; which we can deal with relatively briefly.

114. As regards (ii) and (iii) (the shared garden and the patio doors to the main house), it is clear (as stated in the Appellant's unchallenged evidence) that if the annexe was let, it would be on the basis of a proper legal agreement (i.e., a tenancy agreement) which would cater for any access. The Appellant's evidence is that such a tenancy agreement could incorporate the issue of access to the garden. As Judge Popplewell found in *Winfield*, at [21]:

> "21…access pursuant to the terms of a tenancy is something which is commonplace in the myriad of dwellings which are let on leases rather than occupied on a freehold basis. And indeed, freehold owners are subject to common rights-of-way in many urban and rural situations. So legal rights over property, whilst relevant, do not of themselves, weigh heavily against the privacy and security which the *Fiander* criteria requires us to consider."

115. Ms Birtles submits that an occupier of the annexe would expect to use the garden as a private, secure garden. It is clear that the test is not a "one size fits all". We are cautious about the suggestion that an occupier of the annexe would expect shared use of the gardens, thus infringing on the privacy of the main house. In our view, privacy is a relative quality and the weight to be attached to it depends on the characteristics of the objective occupier. We have accepted that a tenancy agreement can properly deal with access to the gardens, and would not be an infringement on the rights of the tenant as there is no general right of access to a garden.

116. In respect of the patio doors were access to the garden given to an occupant of the annexe, it is clear that blinds and shutters are ordinarily used in a number of situations to add privacy (whether or not a garden is accessible to third parties). Furthermore, it is not disputed that the patio doors can be locked from the inside of the main house. We are satisfied that any lack of privacy associated with looking through the windows of an adjacent dwelling could be cured by the use of blinds/shutters or curtains. In our view, privacy is a relative quality and the weight to be attached to it depends on the characteristics of the objective occupier. It is not uncommon for adjacent properties to overlook other properties. Indeed, during the hearing, we considered the situation where new property developments - which often include several distinct properties in a gated community - occasionally include shared gardens where occupants of one dwelling can see into the rooms of another. Any lack of privacy in such developments does not appear to affect the willingness of purchasers to purchase such properties.

117. In respect of (i) (the interconnecting door), we are satisfied that this is secured from both sides using a security door brace, which prevents forced entry into either the main house or the annexe. We are further satisfied that insertion of a door brace does not constitute an alteration to the Property in the same way that blinds, shutters and keys to windows would not. The unchallenged evidence is that the brace is recommended by the police, local councils, and Neighbourhood Watch groups. The door brace can be inserted and removed without any alterations to the door, door handle or frame. We are satisfied that the braces do provide an effective barrier between the two dwellings. They are substantial and, once inserted in the main house, the door cannot be opened by any occupants in the annexe.

118. It is pertinent to note that HMRC's own manual "SDLTM00425" provides that:

> "**Privacy and interconnecting doors**
>
> …
>
> …It is relevant whether the door between the parts can be locked, <u>or is readily capable of being made secure from both sides</u>."

119. We are satisfied that the interconnecting door between the main house and the annexe were, and are, capable of being made secure from both sides. We have considered alternative situations, such as when a new occupant to a property changes the locks to windows, or adds a latch to a door, to reinforce privacy and security. We are satisfied that such situations would not be considered alterations to a property.

120. Whilst the Appellant was unable to confirm how the Property was occupied at the time of completion, the statute requires us to consider whether the Property (in this case the annexe) was "used" or "suitable for use" as a single dwelling. We have found that both the main house and the annexe have the physical attributes and facilities to comprise separate dwellings. They are, indeed, suitable for use as such. The VAO letter provides helpful evidence in this respect. Whilst it is true that the main house and the annexe have an external water meter, an apportionment of use can also be dealt with via a tenancy agreement.

121. Of great importance is the need for two properties to be separately suitable for use as a separate home by unconnected occupants. Each dwelling must have facilities to enable the occupants to live an independent life and each of the dwellings must have adequate privacy and security. It is clear that the physical configuration and facilities of the main house and the annexe militate in favour of there being two separate dwellings. The assessment, as stated, is multi-factorial and is not a one size fits all.

122. Having considered the oral and documentary evidence, cumulatively, and applying the multi-factorial test set out in *Fiander* when interpreting the statutory provisions, we find that the Property qualifies for MDR. The statutory question is whether the dwellings are suitable for use as single dwellings. It is clear that both have independent access. We have further considered the concerns raised by HMRC in respect of the interconnecting door and the garden. Our findings above are consistent with the requirement for privacy, self-sufficiency and security.

CONCLUSIONS

123. We hold that:

(1) The transaction applies for MDR and constitutes the purchase of two separate dwellings.

(2) The physical attributes of both main house and annexe accommodate the basic domestic living needs of occupants of either.

(3) Both the main house and annexe could be entered from the outside via a lockable door.

(4) The main house and annexe are physically distinct parts of the Property. Either can be lived in without crossing through common areas.

(5) The door braces do not constitute an alteration to the Property.

(6) A tenancy agreement would cater for any access to the garden.

124. Accordingly, therefore, the appeal is allowed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

125. 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.

Release date: 16 January 2025