Neutral Citation: [202*] UKFTT **** (TC)

Case Number: TC/2022/00160

FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video hearing

Appeal reference: TC/2022/00160

Stamp duty land tax – acquisition of a flat with the benefit of a right to use a communal garden – whether the main subject matter of the transaction wholly residential – yes – appeal dismissed

Heard on: 9 January 2023
Judgment date: 19 January 2023

Before

TRIBUNAL JUDGE MARK BALDWIN

Between

DANIELLE KATIE SEXTON and
EMMA RACHEL SEXTON

Appellants

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

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

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

DECISION

INTRODUCTION

1. Danielle Katie Sexton and Emma Rachel Sexton ("the Taxpayers") jointly acquired Flat 10, 42 Onslow Gardens, London, SW7 3PY ("the Flat") on 19 January 2018.

2. On 11 September 2020, Cornerstone Tax Limited ("Cornerstone"), acting on behalf of the Taxpayers, submitted a Stamp Duty Land Tax ("SDLT") overpayment relief claim under paragraph 34, Schedule 10, Finance Act 2003 ("FA 2003") (all statutory references in this decision notice are to provisions of FA 2003) claiming that the property acquired by the Taxpayers had been mis-classified as residential.

3. HMRC enquired into the claim and issued a closure notice pursuant to paragraph 11, Schedule 11A on 16 June 2021. In the closure notice, HMRC found there was no misclassification as the property as wholly residential and so the claim to a refund of £85,250.00 was refused. This closure notice is the matter under appeal.

THE FACTS

4. The facts are not in dispute. The interest in the Flat acquired by the Taxpayers was the remainder of a leasehold interest running from 4 April 2007 until 21 December 2138. The interest was created by a lease ("the Lease") dated 4 April 2007 between The Wellcome Trust Limited and Mr and Mrs I Al Shibibi. As well as creating a leasehold interest in the Flat, the Lease also confers on the "Tenant" certain rights in respect of a communal garden.

5. Before setting out the provisions relating to the garden in the Lease, it is necessary to set out certain terms as defined in the Lease. These are:

> **"the "Garden":** the ornamental garden and terrace (if any) described in Paragraph 8 of the Particulars which shall be deemed to include (where the context so admits) the railings surrounding the Garden and the gates giving access thereto including the locks on such gates"
>
> **"the "Garden Rate":** such sum as the Landlord shall reasonably specify from time to time having regard to the costs and expenses hereinbelow referred to as a contribution (which is to be calculated on the basis that all persons who have a right of access to the Garden joint tenants or joint freeholders being treated as a single person for the purpose of this calculation) contribute to such costs and expenses in equal shares or calculated on such other equitable basis as may be properly determined by the Surveyor from time to time) towards the costs and expenses incurred from time to time by or on behalf of the Landlord in respect of the administration and services provided in respect of the Garden and the repair maintenance upkeep and upgrading of the Garden"
>
> **"the "Garden Rules":** the Landlord's Garden Rules applicable to the Garden laid down from time to time by the Landlord or the Surveyor"
>
> **"the "Tenant":** the person or persons specified in Land Registry Panel LR3 or (without prejudice to the application of Section 79 Law of Property Act 1925) the person or persons in whom the Term is from time to time vested whether by assignment devolution in law or otherwise and whenever the expression the "Tenant" shall include more than one person the covenants in this Lease on the part of the Tenant shall be deemed to be joint and several"

6. So far as operative provisions concerning the garden are concerned, the Lease contains a covenant on the part of the Tenant as follows:

> **"4.4 To pay the Garden Rate:**
>
> To pay to the Landlord:

> 4.4.1 The Garden Rate at the times and in the manner set out in Clause 3
>
> 4.4.2 Such sum as shall reimburse the Landlord the cost (including administration costs) of replacing any key or other device giving access to the Garden entrusted to the Tenant which may be lost."

The Tenant also covenants to comply with the Regulations in Schedule 4 to the Lease, which include the following (in paragraph 24):

> "To use the Garden in a quiet and orderly manner and in accordance with the Garden Rules applicable from time to time and not to use or permit the same to be used in a manner which may cause nuisance or annoyance to the Landlord or its tenants or to the owners or occupiers of any adjoining or neighbouring premises or damage to the Garden or any neighbouring or adjacent building."

7. So far as the Landlord is concerned, the Lease contains the following covenant:

> **"Garden:**
>
> Subject to and conditional upon payment being made by the Tenant of the Garden Rate in accordance with this Lease to keep the Garden in neat order and good and tidy condition."

8. Finally, and most importantly, Schedule 2 to the Lease sets out certain rights (the "Included Rights") which are demised to the Tenant "in common with the Landlord and all other persons authorised by the Landlord and all other persons entitled thereto". One of the Included Rights is the following:

> "If and so long as the Tenant shall punctually make payment of the Garden Rate at the times and in the manner provided in this Lease the right: (a) to walk and sit in the Garden (b) to be provided by the Landlord with a key or other device giving access thereto PROVIDED THAT the Landlord may suspend (for any period or periods at its discretion) or cancel such right if the Tenant shall at any time fail to observe and perform the terms and conditions of Clause 4.4 or Paragraph 24 of Schedule 4 AND PROVIDED FURTHER THAT the Landlord may suspend (for such period or periods as may be necessary) such right in the event of work being undertaken to or in the Garden."

9. Emma Sexton provided a brief witness statement (which was accepted by HMRC) which, so far as relevant, reads as follows:

> " [M]y sister Danielle and I purchased the flat as joint owners. We had unrestricted access to the gardens, which could only be entered with the use of a key. The key was only issued after the garden community charge was paid and would not be available to any resident who had not paid the charge., The use of the garden is regulated by clause 5.3 of the lease agreement dated 4th April 2007, which states that the lessee must make payment of the garden rate and ensure the Garden is kept in neat order and good and tidy condition."

THE LAW

10. Section 42 charges SDLT on "land transactions", which is defined in section 43 as "any acquisition of a chargeable interest". Section 43(6) is an important provision for us. It provides that:

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

11. In turn, section 48 defines "chargeable interest" (so far as relevant) as "an estate, interest, right or power in or over land in England".

12. The rate at which SDLT is charged on a particular land transaction depends on whether the transaction is residential or not. More precisely, section 55(1B) provides that, if the transaction is not one of a number of linked transactions, the rates to be used to calculate the amount of SDLT chargeable are those in Table A "if the relevant land consists entirely of residential property" and those in Table B if the relevant land consists of or includes land that is not residential property. Section 55(3) provides that "the relevant land is the land an interest in which is the main subject-matter of the transaction".

13. Section 116 defines "residential property". So far as relevant for us, it provides:

> "(1) In this Part "residential property" means
>
> (a) a building that is used or suitable for use as a dwelling, or is in the process of being constructed or adapted for such use, and
>
> (b) land that is or forms part of the garden or grounds of a building within paragraph (a) (including any building or structure on such land), or
>
> (c) an interest in or right over land that subsists for the benefit of a building within paragraph (a) or of land within paragraph (b);
>
> and "non-residential property" means any property that is not residential property.
>
> (6) In this section "building" includes part of a building."

14. In *Re Ellenborough Park*, [1956] Ch 131, the Court of Appeal held that rights conferred on buyers of plots of land to enjoy a "pleasure ground" subject to contributing a just proportion of the costs of its maintenance amounted to an easement as a matter of English land law. It is common ground between the Taxpayers and HMRC that the rights over the communal garden enjoyed by the Taxpayers by virtue of the Lease constitute an easement in English land law, and from now on I will refer to those rights as "the Easement".

15. The requirements for there to be an easement are summarised in Megarry & Wade on The Law of Real Property (9th ed) as follows (at paragraph 26-004):

> "Four requirements must be satisfied before there can be an easement. First, there must be a dominant tenement and a servient tenement. Secondly, the easement must confer a benefit on (or "accommodate") the dominant tenement. Thirdly, the dominant and servient tenements must not be owned and occupied by the same person. Fourthly, the easement must be capable of forming the subject-matter of a grant."

16. As to the requirement for there to be a dominant tenement, the authors go on (at paragraphs 26-005 and 26-006) to observe:

> "If X owns Blackacre and grants a right to use a path across Blackacre to the owner for the time being of the neighbouring plot Whiteacre, Blackacre is the servient tenement and Whiteacre the dominant tenement. Had X granted the right to A who owned no land at all, A would have acquired a licence to walk over Blackacre, but A's right could not exist as an easement, for there would be no dominant tenement. According to the distinction already explained, an easement cannot exist in gross but only as appurtenant to a dominant tenement; indeed, technically, the easement is appurtenant to an estate in the dominant land. The reason for this requirement is said to lie in the policy of the law against encumbering land with burdens of uncertain extent.

> On any transfer of the dominant tenement, the easement will pass with the land, so that the occupier for the time being can enjoy it, even if that occupier is a mere tenant."

17. As to the requirement that, to exist as an easement, a right must confer a benefit on the dominant tenement, they say (at paragraph 26-008):

> "A right cannot exist as an easement unless it confers a benefit on the dominant tenement as such. It is not sufficient that the right should give the owner for the time being some personal advantage; the test is whether the right gives the dominant tenement a benefit or utility as such, thereby making it a better and more convenient property."

Commenting on rights to use a garden or park, the authors observe (at 26-018) that,

> "It used to be said that a right to use a garden or a park merely for recreational purposes, being a mere jus spatiandi, is incapable of being an easement; but this right, which is of value to many houses adjacent to parks and gardens, has since been admitted into the company of easements,…"

THE TAXPAYERS' ARGUMENTS

18. For the Taxpayers, Mr Cannon says that the "relevant land" within section 55(3)(a) included, as the main subject matter of the transaction within section 43(6), the Easement as "any interest or right appurtenant or pertaining to" the chargeable interest in the Flat. This right is not residential in nature so that under section 55(1B) the rates in Table B applied. The reason why Mr Cannon says that the right to use the communal gardens was not residential in nature is that the gardens are used "in common" with the other owners of properties in Onslow Gardens, the right does not subsist solely for the benefit of the Flat. As such, the Easement is non-residential in nature, because to be residential in nature the right must subsist for the benefit only of the dwelling in question and not communally. He says that there is a natural implied limitation in the statutory language that confines section 116(1)(c) to interests or rights that solely benefit a particular dwelling.

19. Second, and in the alternative, he says that the Easement is over land that is not residential property, namely the bare land that is the communal gardens. As the gardens are not the gardens or grounds "of" the flat (which Mr Cannon submits means the garden must belong exclusively to or be controlled by the owners of the Flat), they cannot fall within section 116(1)(b) and so any right over the gardens cannot fall within (c). As he succinctly put the point, the acquisition of a dwelling with an easement over non-residential land will take the dwelling outside the definition of residential property. He did not shrink from the conclusions this leads to; for example, he agreed that, if I buy a cottage surrounded by farmland and that cottage has a right of way over the farmland, my acquisition would not be of residential property. In short, he says that the subject matter of the land transaction was the leasehold interest in the Flat (residential) plus the Easement over the bare land at Onslow Gardens (non-residential) and as such the "main subject matter" of the land transaction within section 43(6) FA 2003 was both residential and non-residential property.

HMRC'S ARGUMENTS

20. HMRC say that the Flat is the main subject matter of the transaction and the Easement is a right appurtenant to the main subject matter. Accordingly, they say, the Easement over the garden does not change the nature of the property from residential to non-residential. In their view the legislation is not worded in such a way that, to be appurtenant to a dwelling, the interest or right has to subsist exclusively for one dwelling and therefore, many dwellings can benefit from the communal garden and they will all constitute residential property.

21. HMRC also submit that the Easement to use the communal gardens falls within section 116(1)(c) as an interest in or right over land that subsists for the benefit of a building within paragraph (a) or of land within paragraph (b). In their view, the full property, which includes the communal gardens, is residential.

DISCUSSION

22. There are some similarities between this case and *Nael Khatoun v HMRC*, [2021] UK FTT 104 (TC), so we should first consider whether we can learn anything from that decision which is helpful in resolving this case. The facts in that case were, broadly, as follows:

(1) Mr Khatoun acquired the freehold of 25 Tedworth Square on 15 August 2018 from a Mr Ipkendanz.

(2) On the same day Mr Khatoun signed a one-page "key fine form" issued by Cadogan Estates Limited and relating to Tedworth Square garden (the "communal garden"), a communal garden situated across the street from the property.

(3) Then or shortly afterwards, Mr Khatoun received a key to the communal garden.

(4) On 1 April 2019, Mr Khatoun entered into a deed of agreement (the "deed of agreement") with Cadogan Holdings Ltd ("Cadogan"), a sister company of Cadogan Estates Ltd, with an attached "code of conduct" and "FAQs" relating to the communal garden (totalling seven pages in all). The tribunal took the view that the deed of agreement was the formalisation of the terms under which Mr Khatoun was given the key, and with it access to the communal garden, some months earlier.

(5) The essential terms of the deed of agreement were that (1) Cadogan granted permission to Mr Khatoun to enter and use the communal garden as a pleasure garden in common with Cadogan and other persons having permission from Cadogan; and (2) Mr Khatoun covenanted to pay Cadogan the annual "garden rate". Other terms of the deed of agreement included: (1) it was expressed to include Mr Khatoun's successors in title to the property; (2) it could be terminated by Cadogan on three months' notice.

23. The taxpayer argued that the relevant land in the chargeable transaction by which he acquired the property included land that was not residential property – namely, an equitable interest over the communal garden. The tribunal held that the right Mr Khatoun acquired was an exempt interest (a licence to use the land) and it was acquired separately (from Cadogan) and not with the property. Accordingly, the only land he acquired under his transaction with Mr Ipkendanz was the freehold interest in the dwelling. Given these findings of the tribunal, this decision is of limited help to us. I do, however, note Judge Citron's comment (at paragraph [42]) that Mr Khatoun's right to enter and use the communal garden was a right that subsisted for the benefit of a dwelling and on that basis that right was residential property. That is a point we will come back to.

24. In the course of argument before the tribunal, we noted a curious sentence at the end of paragraph [44], where Judge Citron observed "in addition, Mr Khatoun's right was not appurtenant to the property; and whilst there was clearly a connection between the right being granted to Mr Khatoun and his ownership of the property, the right did not itself pertain to the property: it pertained to the communal garden." This comment is best understood in the light of Judge Citron's conclusion that all Mr Khatoun had was a personal licence. In consequence, that right could not be appurtenant to Mr Khatoun's property; it was a personal right which pertained to the garden. I do not consider that Judge Citron was suggesting that, if Mr Khatoun had the benefit of an easement (properly so called), that easement would not have been a right appurtenant to his property; it could not have been an easement without that being the case.

25. Turning back to this case, section 55 identifies the "appropriate table" (Table A or Table B) to use in calculating the SDLT chargeable on a land transaction by asking whether the relevant land consists entirely of residential property. For these purposes, the relevant land is "the land an interest in which is the main subject matter of the transaction". To identify the appropriate table we need to do two things: identify the "relevant land" (the land which is the main subject-matter of the transaction) and, having done that, ask whether the relevant land consists entirely of residential property.

26. Section 122 points us to section 43(6) when it comes to determining the meaning of "main subject-matter" in relation to a land transaction. Section 43(6) provides that references to the subject matter of a land transaction "are to the chargeable interest acquired (the "main subject matter"), together with any interest or right appurtenant or pertaining to it that is acquired with it".

27. In the course of argument, I asked Mr Cannon whether the effect of section 43(6) might be that, where two chargeable interests are acquired as part of the same transaction but one is clearly ancillary to the other, the ancillary interest is subsumed within the first and the "main subject matter" of the transaction is the principal interest only. This is essentially HMRC's first argument. Mr Cannon replied that section 43(6) might have this effect where what he described as a "lesser interest" was being acquired as part of a transaction. His example was a restrictive covenant which benefits land being acquired. He could see a transaction like that being covered by section 43(6) but not a transaction where the secondary, appurtenant right or interest was a chargeable interest in its own right. The problem with this analysis is that a restrictive covenant would seem to be a "chargeable interest" in its own right. It seems to fit neatly within the definition of a "power in or over land" and the benefit of a restrictive covenant certainly could constitute the benefit of a restriction affecting the value of an estate or interest in land. On that basis, the creation or surrender or release of a restrictive covenant could be a chargeable transaction. As a more general matter, FA 2003 does not in terms create a hierarchy of chargeable interests.

28. Given that "interests" and "rights" in or over land are included in the definition of chargeable interests in section 48 and section 43(6) is addressing the position of interests and rights which are appurtenant to or which pertain to another interest in land, it is hard to see why the phrase "interest or right appurtenant or pertaining to" the main subject-matter of a land transaction should not include such a right or interest which is itself a chargeable interest. Indeed, the whole structure of SDLT would suggest that this is the case. SDLT is charged on land transactions (defined as the acquisition of a chargeable interest). On that basis, the only rights and interests which can be part of the subject matter of a land transaction are chargeable interests. Section 43(6) clearly contemplates that there may be cases where a number of chargeable interests are acquired as part of the same transaction and they do not all comprise the "main subject-matter of the transaction".

29. It is hard to see what role that expression performs in section 55 other than to sweep up chargeable interests which are appurtenant to the principal chargeable interest being acquired and subsume them within that principal interest when it comes to deciding what constitutes the "relevant land" for the purposes of section 55. The expression "main subject-matter" appears in a number of other places in FA 2003 and its role appears to be similar in those places too. For example, Schedule 7A provides a relief from SDLT for "seeding" certain authorised property funds. One of the conditions for the relief is that "the main subject-matter of the transaction consists of a major interest in land"; paragraph 1(1) Schedule 7A. If appurtenant interests and rights are swept up in the main subject-matter of the transaction, the involvement of such rights or interests in the transaction will not prevent the relief being available.

30. That does, of course, beg the question when an interest or right is appurtenant to or pertains to another chargeable interest and is acquired with it. Easements may, in fact, be a very good example of such a right. As we have noted already, an easement is a right over land (the servient tenement) which exists to confer a benefit on (or "accommodate") the dominant tenement. Because an easement exists to confer a benefit on the dominant tenement, it runs with the dominant tenement and passes automatically on a transfer of the dominant tenement. It is hard to think of a better example of a right over land which is appurtenant to the land it benefits than an easement; not only does it benefit that land, it is inseparable from it. Two passages from the decision of the Supreme Court in *Regency Villas Title Limited v Diamond Resorts (Europe) Ltd*, [2018] UKSC 57, illustrate this:

> "[36] The requirement that the right, if it is to be an easement, should accommodate the dominant tenement has been explained by judges, textbook writers and others in various ways. In his Modern Law of Real Property, 7th ed (1954) at p 457, Dr Cheshire expressed it in this way:
>
> "One of the fundamental principles concerning easements is that they must be not only appurtenant to a dominant tenement but also connected with the normal enjoyment of the dominant tenement."
>
> Citing from Bailey v Stephens (1862) 12 CB(NS) 91, at 115, he continued: "It must … have some natural connection with the estate as being for its benefit ..."

And again at [40]:

> " The following general points may be noted. First, it is not enough that the right is merely appurtenant or annexed to the dominant tenement, if the enjoyment of it has nothing to do with the normal use of it."

31. On that basis, it seems appropriate to describe the Easement as a right appurtenant to the leasehold interest in the Flat, and, when the Taxpayers acquired the leasehold interest in the Flat, they acquired the Easement at the same time as, indeed as an inseparable part of, that acquisition. On that basis, the "main subject-matter" of that land transaction was the Flat alone.

32. If I am right to conclude that the effect of section 43(6) is that the main subject matter of this transaction is the Flat alone (and the Easement over the communal garden falls to be subsumed within it and ignored for the purposes of section 55, because it is an interest or right which is appurtenant to the leasehold interest in the Flat), then that is the end of the matter. If this analysis of section 43(6) is correct, only the Flat is the main subject matter of the transaction, and the Flat is clearly residential property, being a part of a building which constitutes a single dwelling falling within section 116(1)(a).

33. If my reading of section 43(6) is wrong, then the main subject matter of the transaction comprises the Flat and the Easement. Again, the Flat itself is clearly residential property within section 116(1)(a), and Mr Cannon does not dispute that. The question then is whether the Easement falls within either (b) or (c).

34. Dealing with (b) first, I would not describe the communal gardens in Onslow Gardens as land that forms part of the garden or grounds of the Flat. The communal gardens do not adjoin the Flat and it seems a strange use of language to describe a communal garden square as forming part of the garden or grounds "of" a flat. The Upper Tribunal in *Hyman, Pensfold and Goodfellow v HMRC*, [2021] UKUT 0068 (TCC), clearly considered that "of" requires some kind of link between the land said to constitute garden or grounds and a dwelling, although they did not go on to explore what that link might be. They said (at [33]):

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

> the dwelling. The section does not spell out what criteria are to be applied for the purpose of establishing the necessary connection. We note that FA 2003, in a separate definition of "dwelling" for a specific purpose, refers to "land occupied and enjoyed with the dwelling as its garden or grounds": see schedule 6A, paragraph 7(1) and see, also, schedule 4ZA, paragraph 18(3) and schedule 4A, paragraph 7(3), which are in slightly different terms. We were not addressed as to whether the word "of" is to be interpreted as involving the same degree of connection between the dwelling and the garden or grounds or a different degree of connection. Again, it is not necessary for us to deal with that point to deal with the sole issue raised in these appeals."

35. Turning to (c), however, I can see no reason why the right to use the communal gardens does not fall square to the phrase a "right over land that subsists for the benefit of a building within paragraph (a)". The Easement subsists for the benefit of the Flat, rather than a particular individual, because it is one of the Included Rights conferred by the Lease on the Tenant and the benefit of the Easement (and the obligations associated with it) passes with the leasehold interest created by the Lease. The right clearly benefits the Flat because, as the authors of Megarry & Wade observed (see [17] above) of this type of right, it makes the Flat a better and more convenient property. Clearly, a flat in the middle of central London which carries with it the right to enjoy a pleasant garden square (Mr Cannon's description of the communal gardens as "bare land" rather undersells what is in fact a very pleasant, well-tended urban oasis) is inherently more attractive than a similar flat which does not.

36. There is nothing in section 116(1)(c) which suggests that, to fall within (c), the right or interest over land has to be an interest in or right over other residential property. The only requirement in (c) is that the interest in or right over land subsists for the benefit of a building within (a) or land within (b). If (as is the case with this Easement) a right has no independent existence other than by reference to an interest (it was created by the Lease and passes with the leasehold interest created by the Lease), it is hard to see how that right does anything other than subsist for the benefit of that interest and, if that interest falls within (a), then the right must surely fall within (c). This addresses the situation discussed above of the purchase of a cottage surrounded by farmland with a right of way over the farmland. Either the main subject matter of the transaction is the cottage alone or, if the cottage and the right of way are to be analysed separately for these purposes, the right of way will fall within (c).

37. Mr Cannon said that the right to use the communal gardens was not residential in nature because the gardens are used "in common" and the Easement does not subsist solely for the benefit of the Flat. He says that a right which otherwise would be within (c) will fall outside (c) if it benefits more than one property, because there is a natural implied limitation in the language that confines section 116(1)(c) to interests or rights that solely benefit a particular dwelling. I am with Mr Cannon when he says that a right will fall within (c) only if it benefits a particular building within (a) or land within (b), and therefore there must be an identification with such a building or piece of land. However, I can find nothing in sub-section 116(1) which suggests that, to the extent such an interest or right also subsists for the benefit of another building within (a) or piece of land within (b) (or even a building or piece of land not within (a) or (b)), it does not fall within section 116(1)(c).

38. This, however, is not a case where the same right benefits a number of properties. The Easement is created by the Lease, passes with the leasehold interest the Lease creates and benefits only the Tenant of the Flat. The fact that other people with properties in or around Onslow Gardens may have similar (or identical) easements does not to my mind mean that this easement created by this lease is not a right over land which benefits this flat alone. The right (the Easement) the Lease creates is peculiar to the Flat; although enjoyed in common with others with similar rights, it is an individual right over a communal facility.

39. If it falls to be analysed in its own right, the Easement falls within section 116(1)(c).

40. In *Nael Khatoun* Judge Citron indicated that, had he needed to decide the point, he would have concluded that Mr Khatoun's rights over the communal garden fell within section 116(1)(c) (see [23] above), and that fortifies me in my conclusion.

DISPOSITION

41. Pulling all of this together:

(1) The main subject-matter of the transaction under which Taxpayers acquired the leasehold interest in the Flat (and by virtue of that acquisition became entitled to the benefit of the Easement which is one of the Included Rights conferred by the Lease) was the leasehold interest in the Flat and only that interest. That is clearly "residential property", as it falls within section 116(1)(a).

(2) Alternatively, if I am wrong in my analysis of section 43(6) and the main subject matter of the transaction comprises the leasehold interest in the Flat and the Easement, the main subject matter of the transaction would still fall entirely within section 116(1), the Flat falling within (a) and the Easement within (c).

(3) As a result, the correct Table to use to calculate SDLT on the land transaction in question is Table A in section 55.

42. It follows that the closure notice is correct and this appeal falls to be, and is, dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

43. 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.

MARK BALDWIN
TRIBUNAL JUDGE

RELEASE DATE : 19 JANUARY 2023