FIRST-TIER TRIBUNAL
TAX CHAMBER

Video

Appeal reference: TC/2021/14252

STANP DUTY LAND TAX – whether property mixed use such that table B of Finance Act 2003 determines rate for SDLT purposes – commercial use of 8-acre field – no – functional use of the field unconnected with dwelling – no – residential – appeal dismissed

Heard on: 15 September 2023
Judgment date: 20 September 2023

Before

TRIBUNAL JUDGE AMANDA BROWN KC

Between

SANGEETA MODHA

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Patrick Cannon of Counsel instructed by Cornerstone Tax

For the Respondents: Nina Stuart litigator of HM Revenue and Customs' Solicitor's Office

DECISION

1. With the consent of the parties, the form of the hearing was Video using the Tribunal video hearing system. A face-to-face hearing was not held because it was expedient not to do so. I was provided with a bundle of documents (including authorities) of 511 pages and additional authorities, together with skeleton arguments from both parties.

2. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

INTRODUCTION

3. This matter concerns an appeal bought by Ms Sangeeta Modha (**Appellant**) against a decision of HM Revenue & Customs (**HMRC**) dated 18 December 2020 that £130,950 was due by way of stamp duty land tax (**SDLT**) in connection with the acquisition by the Appellant of Firs Farm in Illston, Leicestershire. The Appellant had originally paid SDLT on the purchase in the sum of £130,950 on the basis that SDLT was properly due in accordance with the rates provided in Table A of section 55 as varied by Schedule 4ZA Finance Act 2003 (**FA03**) i.e. a residential property purchased as a second property.

4. Subsequently, on 30 April 2019, the Appellant submitted an amended SDLT return claiming a refund of £69,450 on the basis that, properly considered, the purchase of Firs Farm should have been taxed at the rates provided in in Table B of section 55 FA03 on the basis that taken as a whole the purchase was of a dwelling and non-residential land i.e. mixed use.

5. HMRC's closure notice concluded that the rate at which SDLT was due was that under Table A.

6. For the reasons set out below I have determined that SDLT is due at the rates prescribed in Table A as varied by Schedule 4ZA FA03 and that the appeal should be dismissed.

THE LAW

7. Section 42 FA03 charges SDLT on "land transactions" as defined in section 43 FA03 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 (section 43(6)). Section 48 defines a chargeable interest as "an estate, interest, right or power over any land in England."

8. The rate at which SDLT is charged in respect of any particular land transaction depends on whether the interest acquired is an interest in residential property or not. Section 116 FA03 provides the definition of residential property. The definition of residential property under section 116(1) is:

> "(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)

9. Section 55(1B) FA03 provides that the rates of SDLT applicable to a transaction consisting entirely of residential property shall be taxed at the rates specified in "Table A" and if the transaction "consists of or includes land that is not residential property" that the rates in Table B shall apply.

10. Pursuant to paragraph 3 Schedule 4ZA FA03 higher rates of SDLT are payable in respect of transactions the consideration for which exceeds £40,000 and involve major interests in a

single dwelling where the purchaser has a major interest in another dwelling at the time of purchase and the purchase is not a replacement for the purchaser's only or main dwelling.

11. For the purposes of paragraph 3 paragraph 18 Schedule 4ZA (**Para 18**) provides that a dwelling comprises:

> "(2) A building or part of a building … a) … used or suitable for use as a single dwelling …" [and]
>
> "(3) Land that is, or is to be occupied or enjoyed with a dwelling as garden or grounds (including any building or structure on that land)"

12. It is important to note that the provisions of Para 18 and section 116(1) FA03 are similar but not identical. There may be cases in which the difference in language between section 116(1)(b) "is or forms part of the garden or grounds of [a dwelling]" and Para 18(3) "is or is to be occupied or enjoyed with a dwelling as garden or grounds" may give rise to a different result. For present purposes, and on the facts as I have found them below it makes no difference in this case.

13. Where the higher rate applies Table A is modified and the rate of SDLT is:

On consideration up to £125,000	3%
Over £125,000 - £250,000	5%
Over £250,000 - £925,000	8%
Over £925,000 - £1,500,000	13%
The remainder	15%

THE ISSUE AND THE TEST TO BE APPLIED

14. There is no despite between the parties that Firs Farm is a single dwelling and that the garages, stables, tack room, garden and paddock are all to be considered to be residential by virtue of section 116(1)(b) and paragraph 18(2) and (3) Schedule 4ZA FA03.

15. The only issue for me to determine is whether an eight-acre field is also part of the grounds of the dwelling under section 116(1)(b) and paragraph 18(3) Schedule 4ZA FA03.

16. Determining this issue is now becoming well-trodden for the Tribunal. The approach to be adopted has been confirmed by the Court of Appeal in *Hyman and Goodfellow v HMRC* [2022] EWCA Civ 185 as requiring the Tribunal to undertake an evaluative exercise to determine whether the land in question meets the ordinary meaning of "garden and grounds of a [dwelling]" or "to be occupied or enjoyed with a dwelling".

17. Individual Tribunal decisions are largely helpful only to the extent that they indicate how the judge in question undertook the evaluation of the facts before them. However, in *Faiers v HMRC* [2023] UKFTT 212 (TC) Judge Baldwin extracted a route map through the various cases in which the vexed question of when a particular piece of land can be said to be grounds "of" a dwelling. So far as relevant in this appeal he helpfully stated (at paragraph 44):

> "(1) "Grounds" is an ordinary (albeit a little archaic, at least in the view of some of my fellow judges) English word which has to be applied to different sets of facts. So, in deciding whether a particular piece of land comprises all or part of the "grounds" of a dwelling, it is necessary to adopt an approach which involves identifying the factors relevant in that case and balancing them when they do not all point in the same direction.

> (2) The discussion in HMRC's SDLT Manual is a fair and balanced starting point for this exercise, but each case needs to be considered separately in the light of its own factors and the weight to be attached to them. Listing them briefly, the factors addressed in the SDLT Manual are: historic and future use; layout; proximity to the dwelling; extent; legal factors/constraints.
>
> (3) Section 116(1)(b) refers to a garden or grounds "of" a dwelling. The word "of" shows that there must be a connection between the garden or grounds and the dwelling. (4) Common ownership is a necessary condition for adjacent land to become part of the grounds of the dwelling, but it is clearly not a sufficient one.
>
> (5) Contiguity is important; grounds should be adjacent to or surround the dwelling; *Hyman*.
>
> (6) One requirement (in addition to common ownership) might be thought to be that the use or function of the adjoining land must be to support the use of the building concerned as a dwelling (*Myles-Till*). That may be putting the test too high to the extent it suggests that unused land cannot form part of the "grounds" of a dwelling (cp *Hyman* in the FTT at [62]). Such a requirement must also contend with the decision of the Court of Appeal in Hyam and Goodfellow that it is not necessary, in order for garden or grounds to count as residential property, they must be needed for the reasonable enjoyment of the dwelling having regard to its size and nature.
>
> (7) In that light, the "functionality" requirement might perhaps be put the other way round: adjoining land in common ownership will not form part of the "grounds" of a dwelling if it is used (*Hyman* in the FTT at [62]) or occupied (*Withers* at [158]) for a purpose separate from and unconnected with the dwelling. That purpose need not be (although it commonly will be) commercial *(Withers*). …"

18. Whilst the parties had some nuances as to the approach which should be adopted, in particular referring in more detail to the cases referred to by Judge Baldwin, I determine that following this route map is a pragmatic way of approaching resolution of the present dispute.

EVIDENCE AND FACTUAL FINDINGS

19. I was provided with a bundle of documents. In terms of the primary findings of fact these documents were:

(1) The land registry documents and plans.

(2) A planning application and the associated permission granted in 2008 for the construction of a menage.

(3) Sales particulars.

(4) A series of letters from a Mr Nourish and three of the Appellant's neighbours. The authors of these letters did not prepare witness statements bearing a statement of truth and did not give oral evidence; hence they were not subject to cross examination. Mr Nourish's letter had clearly been prepared for him because there were "gaps" for him to fill in. The other letters were not quite word for word identical but very similarly drafted giving at least the impression that the authors had been asked what to write. Despite this I consider that they represent evidence on which it is reasonable to rely though giving it appropriate weight.

(5) Three annual grazing agreements entered between the Appellant and Mr Vyas

20. Ms Modha gave evidence and was cross examined. Despite that cross examination there was little dispute as to the relevant facts of the case.

21. On the basis of the evidence available to me I find the following facts relevant to the determination of the appeal:

(1) On 12 April 2018 Ms Modha purchased Fir Farm for £1,440,000.

(2) Firs Farm is registered at the land registry under title number LT189247. It comprises a five-bedroomed property with landscaped gardens, two double garages, a manege, a paddock and an eight-acre field. The total plot is approximately ten acres. Given the size of the dwelling this is an appreciable plot but unlike some of the other cases is not so large that the size of the field, in and of itself, is sufficient to indicate that it is not residential in nature.

(3) The plot including the garden, paddock and field is contiguous. The photographs available in the Connells particulars of sale show that there is gated access between the rear of the garden and the field. The paddock and manege are also fenced off from the garden.

(4) From the photographs and Ms Modha's unchallenged description of the plot it is plain that the garden, paddock and manege are relatively flat (though there are steps up to the garden from the patio outside the house). The field runs across the back of the paddock, garden and manege and across the back of properties to the west of Firs Farm. The field the falls away steeply from then end of the garden/manege/paddock to the far boundary. The vertical drop is 16m across the approx. 160m length of the field with the greater drop being closest to the garden. As a consequence of this topography the field is not visible from the house itself. The full extent of the field is, however, visible from the end of the garden and, at least, the far end of the manege (visibility being more likely from closer to the house from the saddle of a horse) and thus it is visible from the dwelling in section 116 FA03 terms (which the Appellant accepts includes the garden, paddock and manege). One of the very attractive amenities of Firs Farm as a whole is the sweeping views from the rear.

(5) In the period immediately prior to the purchase of Fir Farm by the Appellant there was conflicting evidence as to whether the field was used by the previous owners as a paddock.

(a) The following evidence indicated that the field may have been used as a paddock:

(i) The Strutt and Parker sales particulars (undated but provided by the Appellant's representative to HMRC during the enquiry) indicated that the field was used by the previous owners as a paddock:

> "beyond the immediate lawned gardens sits a competition sized manege on top of the hill. A side paddock runs alongside the east side of the house, adjacent to the Church with gated access off the drive. Beyond the manege, a large paddock stretches to the north-west and includes two ponds and livestock fencing"

(ii) The 2008 planning permission for the construction of the manege shows that the manege was substantially constructed in the area shown on the plan as garden with some limited encroachment into the field. The application described the area as currently used as a garden and pony paddock.

(iii) Following the construction of the manege there is a large five-bar gate between the garden and the field through which it might be expected that horses could pass.

(b) However, that is to be balanced against:

(i) The google satellite image taken prior to the construction of the manege indicates that the garden was confined with a hedge around it and is surrounded from the northwest to the east by what appears to be a paddock which is separated from the field by a hedge. The field is lush green, and the paddock is drier and browner.

(ii) The Connells estate agent particulars which stated:

> "The rear garden has an indian [sic] sandstone patio area with steps up to the lawn and outside tap and lighting with fenced surround, paddock and competition size menage [sic]. There is a field to the rear with pond and the house sits in approx. 9 acres."

(iii) The photograph of the field in the Connells particulars plainly shows that the boundary of the field along its northwestern edge has significant gaps in the hedge which appear to have permitted vehicular access as tracks pass through them such that the field would have been unsuitable for horses.

Taking the evidence as a whole I form the view, on the balance of probabilities, that the previous owners did not use the field as a paddock for horses.

(6) I find that as of 12 April 2018 there was an arrangement between the previous owners and a Mr Nourish regarding the maintenance of the pasture in the field which was convenient for both of them. That arrangement was continued by the Appellant. However, I do not consider the arrangement represented a commercial use of the field in either instance. In my view there was a barter of convenience pursuant to which the field was managed. I make this finding by reference to the following evidence:

(a) There is no formal agreement between either the previous owner or the Appellant and Mr Nourish.

(b) The photograph to which I have referred above in the Connells sales particulars shows that there are vehicle tracks consistent with them having been made by a tractor mower.

(c) The google image taken after the manege was constructed also plainly shows that the field has been mown and the grass left to become hay. Again there are vehicle tracks.

(d) Ms Modha gave unchallenged evidence that she did not have the equipment which would have enabled her to mow the field. She stated that she estimated that it would cost her between £6,000 and £10,000 to purchase the equipment that she would have needed to maintain the field.

(e) Mr Nourish does not make any payment for the arrangement to cut the field; and, by reference to the unchallenged evidence of Ms Modha, Mr Nourish is entitled to sell the hay/silage taken from cutting the field and she understood he would make £60-70 per bale.

(f) The letter from one of the neighbours indicated that Mr Nourish would cut the field once per year, in unchallenged oral evidence Ms Modha said it would be cut twice per year. Whether it is once or twice per year makes little difference.

(7) There was no commercial use of the field on 12 April 2018 as a consequence of the grazing agreement granted to Mr Vyas. Subject to the obvious conflict between the terms of the grazing agreement and the arrangements with Mr Nourish (Mr Vyas has an

obligation under the agreement to "maintain the grazing area through necessary topping or cutting for silage/hay" and Mr Nourish has an arrangement which permits him to do the same) I would accept that the agreement with Mr Vyas is at least capable of representing commercial use of the field. He pays £25 per month under what appears to be a rolling contract for a "personal right of access [to the field] for grazing the pasture and sheepdog training". Whilst his licence is subject to a restriction which permits the Appellant to use "a small area of up to [ ] acres … for the purpose of growing organic vegetables" the vast majority of the field is commercially exploited by the Appellant under the agreement and there is nothing to indicate that the arrangement is anything other than at arm's length, at least assuming the licence payments are made. Had the agreement been entered on 12 April 2018 I would have been required to determine whether the fact that the agreement could only be signed with the Appellant after the transaction had taken place would have prevented it from affecting the nature of the transaction (as mixed property). However, whilst the first grazing agreement purports to have been made on 12 April 2018 it was signed by Mr Vyas until 15 May 2018. Absent evidence from Mr Vyas that there was some verbal agreement he considered binding on him from 12 April 2018 I consider that the agreement was not concluded on 12 April 2018 and cannot therefore represent commercial use on the effective date of the transaction.

(8) It was asserted that the only permitted planning use of the field was an agricultural use and that to use it for any other purpose would have required planning approval. I was provided with no evidence of that assertion. I am sure that the field could not be built upon without consent but that is not the same as saying that it could only be used for agricultural purposes. Whilst the organic growing of vegetables may be considered to be agricultural, vegetable growing is a common use of a garden. I find that there was nothing to prevent the field being used as an extension to the garden. For instance children could have sledged in the snow or used for garden adventures, camping den construction etc. Vegetables could have been grown, and it could have been used as an additional paddock. That the Appellant did not chose to use the field does not preclude it from functioning in that way.

DETERMINATION

22. Therefore applying the *Faier*'s approach and applying as a starting point the factors in the SDLT manual:

(1) Layout/proximity – the field is at the bottom of the garden, manege and paddock but contiguous with them;

(2) Extent – as indicated above 9-10 acres is significant but as is apparent other houses in Illston also have fields. It is a rural location.

(3) Legal factors/constraints – there was nothing to prevent the Appellant using the field with the dwelling on 12 April 2018.

23. The field was in common ownership; it was not used and had no function unconnected with the dwelling, in particular, certainly as of 12 April 2018, there was no commercial use capable of giving it a separate purpose. With no separate function there is no basis on which to conclude that it was anything other than available for use with the dwelling and thereby part of the grounds.

24. For these reasons I dismiss the appeal.

AMANDA BROWN KC
TRIBUNAL JUDGE

RELEASE DATE: 20 SEPTEMBER 2023