

Neutral Citation: [2023] UKFTT 00866 (TC)

Case Number: TC08943

FIRST-TIER TRIBUNAL
TAX CHAMBER

Birmingham

Appeal reference: TC/2018/05329

Keywords

Heard on: 20 February 2023
Judgment date: 29 September 2023

Before

TRIBUNAL JUDGE ANNE FAIRPO
SHANEEM AKHTAR

Between

MARK WHITE
CAROL KANE

Appellants

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Boch, counsel, instructed by Cornerstone Tax Limited

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

DECISION

Background

1. This is an appeal against a decision of HMRC to refuse a claim for a refund of Stamp Duty Land Tax (SDLT).

2. The appellants jointly purchased Horton Hall in Staffordshire, on 23 August 2013. The acquisition was a single transaction, the property consisting of five Land Registry titles, for £1,300,000. The purchase was notified to HMRC on the date of purchase as the purchase of residential property and the SDLT paid with the land transaction return was £65,000.

3. On 14 June 2017 the appellants claimed a refund of £13,000 of SDLT on the basis that the acquisition should have been notified as a purchase of mixed residential and non-residential property and that the correct SDLT due should have been £52,000. The amount claimed was paid by HMRC on 24 July 2017.

4. On 23 February 2018, HMRC opened an enquiry into the claim. This was closed on 3 April 2017 by a decision letter from HMRC refusing the refund on the basis that the property was entirely residential. The decision was appealed and a review requested. The review upheld the decision on 6 July 2018. The appellants then appealed to this tribunal on 3 August 2018.

5. The dispute between the parties is as to the nature of fields surrounding Horton Hall which were acquired with the property. The appellants contend that these are either not grounds of Horton Hall or, in the alternative, that they were in agricultural use and so are not residential property.

Relevant law

6. SDLT is calculated as at the effective date of the transaction. This was agreed to have been 23 August 2013. The relevant law at the time defined "residential property" and "non-residential property" in s116 Finance Act 2003 as follows:

> "(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."

7. There was no dispute that the buildings and the gardens purchased were residential, within s116(a). The dispute concerned the fields acquired in the same transaction and whether they formed part of the grounds of the buildings (and so within s116(b) FA 2003) or were otherwise not residential property.

Evidence

8. There was no witness evidence from anyone involved with the property transaction or who had knowledge of the property at the date of the transaction.

9. Mr Warren, an agricultural and rural planning consultant engaged by the appellants in 2019 to provide a report on the use of the property, gave evidence of the property in 2019.

10. Mr Warren confirmed that he had no direct knowledge of any activities on the fields in question at the effective date of the transaction. He had carried out a site visit on 30 May 2019 and had been provided with photographs by the appellants which he was told had been taken approximately two weeks earlier. He spoke to the appellants and one of the staff members, who had not been at the property at the date of the transaction. He was advised by the appellants that the fields were used by two local farmers but he did not speak to either of the farmers. He had checked Google Earth historic aerial mapping which had showed the land in agricultural use in the past, with satellite imagery showing tramlines from tractor wheels going back to the 1980s. He confirmed that there were clear footpath signs and stiles at relevant points in the property.

11. Mr Cobley, the head of Ms Kane's family office. also gave evidence. He had been in the role since July 2022 and had worked for the family office of her business partner between October 2020 and July 2022. He had been introduced to Ms Kane sometime between 2014 and 2016 although he had mostly dealt with her personal assistant at the time. He had no direct knowledge of the transaction. He had been informed by Ms Kane, her driver and groundsmen at the property that there was a loose arrangement for the use of the fields by two local farmers. He confirmed that the driver and the groundsmen were engaged some time after the effective date of the transaction and had not worked at the property at the time of the transaction. He understood that their knowledge came from talking to the farmers.

Whether the relevant fields formed part of the grounds of the residential property

12. The Upper Tribunal in *Hyman* [2021] UKUT 68 (TCC) agreed that (at [49]) the term "grounds" is an ordinary English word and that:

> "when considering whether land forms part of the … grounds of a building, a wide range of factors come into consideration; no single factor is likely to be determinative by itself; not all factors are of equal weight and one strong factor can outweigh several weaker contrary indicators; where a number of contrasting factors exist, it is necessary to weigh up all the factors in order to come to a balanced judgment of whether the land in question constitutes 'garden or grounds'. This part of the guidance also refers to a number of factors which are individually discussed in other parts of the Manual but states that the list of other factors will not necessarily be comprehensive and other factors which are not mentioned there might be relevant."

13. Each case of course needs to be considered on its own facts. The relevant factors put forward by the parties in this case can be summarised under the following headings:

(1) historic use

(2) use at the time of the transaction

(3) legal constraints

(4) geographical factors such as proximity and nature of the land

Historic use

14. Mr Warren's evidence was that the satellite imagery showed agricultural use in the past. Given the history and location of the property and the general surrounding area, it would be surprising if it had not so been used at some point in the past. However, we were provided with no evidence as to the nature and extent of such use.

15. It was stated that the previous owner had entered into informal arrangements with one or more farmers, allowing them to use the land. It was also suggested that an owner would benefit from such arrangements by being relived of the need to maintain the land, which would amount to compensation. However, there is no obligation to maintain land - if an

owner of the property were to choose to maintain the fields in this way it would appear to be for the benefit of the property by maintaining views and possibly maintaining good relationships with neighbours. Neither of these is a commercial activity or purpose.

Use at the time of the transaction

16. There was no direct witness evidence as to the use of the land at the effective date of the transaction: those providing evidence had no personal knowledge of the property at that date and had relied on information provided to them by others which they had not verified and much of which was provided by people who had no personal knowledge of the property at the effective date of the transaction. The evidence was also very general and did not confirm what arrangements regarding the fields were in place at the effective date of the transaction.

17. The appellants submitted that the inherent quality of the fields was agricultural and not residential, and the concept of grounds should not be considered to extend to areas which were used for arable and livestock purposes.

18. We do not consider that the fact that land has from time to time been used for agricultural purposes and is suitable for such purposes means that the land cannot be regarded as part of the grounds of a building. The existence of, for example, gates suitable for tractor access onto the land is also not determinative of its nature at the effective date of the transaction.

19. We agree with the decision in *Myles-Till* [2020] UKFTT 127 (TC) (at [44] & [45]) that:

> "One must, in addition, look at the use or function of the adjoining land to decide if its character answers to the statutory wording in s116(1) - in particular, is the land grounds "of" a building whose defining characteristic is its "use" as a dwelling? The emphasised words indicate that that the use or function of adjoining land itself must support the use of the building concerned as a dwelling. For the commonly owned adjoining land to be "grounds", it must be, functionally, an appendage to the dwelling, rather than having a self-standing function ... use for a "commercial" purpose is a good and (perhaps the only) practical example of commonly owned adjoining land that does not function as an appendage but has a self-standing function."

20. We note also the Upper Tribunal in *Hyman* agreed that there was no requirement that land be necessary for the reasonable enjoyment of the buildings, nor that there was any statutory size limit as to the area of land, in order for land to constitute grounds. This approach was upheld by the Court of Appeal in the same matter ([2022] EWCA Civ 185) which noted (at [30]) that "Land does not cease to be residential property merely because the occupier of a dwelling house could do without it". For this reason, we consider that land in common ownership does not need to have a specific purpose or direct use in connection with the buildings in order to 'support the use' of the buildings and therefore form part of the grounds of the property. What is relevant is whether the relevant land has at the effective date of the transaction a self-standing function – that is, a purpose separate and unconnected from any residential part of the property.

21. For the reasons set out above, we find that the relevant land did not have such self-standing function at the effective date of the transaction. Whether it might have had such a function earlier and/or later is not relevant for the purposes of determining the nature of the property for SDLT purposes.

Legal constraints

22. The transaction documents make no reference to any agreements (formal or otherwise) for the use of the relevant land by third parties at the effective date of the transaction. The

particulars of sale refer to land with the property but make no reference to that land being encumbered by any such agreements nor that the use of the land would be restricted by agricultural use.

23. There was no documentary evidence of any agreements in respect of the fields in place at the date of the transaction. Reference was made to informal agreements with the farmers but, again, we had no evidence that these agreements were in place at the effective date of the transaction or binding on the appellants as purchasers. From the information available, we consider that it is more likely than not that the appellants decided to enter into informal arrangements with local farmers that were similar to those previously in existence. There was no evidence that this was done as part of the transaction nor was there any evidence that such arrangements were entered into at the effective date of the transaction.

24. This is in clear contrast to the position in *Withers* [2022] UKFTT 00433 (TC). That case involved an apparently similar situation, regarding grazing land and woodland surrounding an area of buildings but, as noted at [159] in that decision, "There were, importantly, grazing and Woodland Trust agreements in place at the time [of] purchase" which led the Tribunal to concluded that the relevant areas of land had self-standing functions. There was no evidence of any such agreements being in place at the time of purchase in this case.

25. Given the lack of any evidence with regard to actual use or legal constraints, we conclude that the relevant land was not in commercial use at the effective date of the transaction.

Geographical factors

26. Horton Hall was built in the seventeenth century on the site of an earlier house which dates back to the twelfth century. We were informed that the surrounding land sold in this transaction was the remains of a much more extensive estate dating back over generations which had been sold piecemeal over time. We note that this is also in contrast to the building in Withers, which was a relatively modern barn conversion built on land which had previously formed part of another estate and where the adjoining fields had been acquired in three transactions between 12 and 25 years before the purchaser acquired the whole.

27. The fields largely surround the buildings at Horton Hall. It was submitted for the appellants that some of the fields were relatively far away from the buildings but the maps provided show that the fields form two continuous areas, one surrounding and adjoining two sides of the area containing the buildings and gardens and one (a single rectangular field) running along the opposite side of the lane from the house with the shorter side extending along the lane to the same extent as the area containing the buildings and gardens. The result is that the area containing the buildings and gardens is effectively bordered on three sides by the fields, albeit with a lane separating the buildings area from one of the fields.

28. Whilst the far border of the fields may be some distance from the area containing the buildings and gardens, we find that the fields as a whole are not significantly separated from that area and the fields can be readily accessed from the buildings. The lane which runs between the Hall and one of the fields does not, in our view, mean that the field cannot be regarded as part of the grounds of the Hall given its closeness to the Hall and the extent to which it runs opposite one side of the area containing the Hall.

Whether part of the property was otherwise not residential property at the date of the transaction

29. The appellants submitted that the existence of public footpaths on the property was not consistent with the land being entirely residential.

30. The First-tier Tribunal in both *Hyman* [2019] UKFTT 469 (TC) and *Averdieck* [2022] UKFTT 384 (TC) concluded that footpaths do not render property non-residential, despite the obligations associated with such rights of way. Although these decisions are not binding on us, we agree with the conclusions: the existence of a public right of way across a piece of property does not amount to a self-standing function or commercial use of the property and so is not sufficient to make a property non-residential.

31. As set out above, we have also found that that there was no evidence that the fields were in commercial use at the date of the transaction.

Conclusion

32. Having reviewed the evidence, and weighed the various factors which are relevant to the question of whether the relevant land forms part of the grounds for the purposes of s116 FA 2003, we find that at the effective date of the transaction the fields were, functionally, occupied with and were appendages to Horton Hall. They were long-standing parts of a larger estate surrounding the Hall and there was no evidence that at the effective date of the transaction the relevant fields had any self-standing function. There was no evidence that any historic use of the relevant land for agricultural purposes was sufficiently relevant to the transaction to be of significant weight in balancing the other factors.

33. Even if the appellants subsequently chose to enter into informal arrangements with local farmers allowing the farmers to use the fields that does not mean that the transaction was one of mixed use property. There was no evidence that such arrangements were in effect at the effective date of the transaction, and nothing in the transaction documents which indicated that the appellants were obliged to enter into such arrangements.

34. For these reasons we conclude that the fields were residential property at the effective date of the transaction as they formed part of the grounds of the residential property and were not otherwise precluded from being residential property.

35. The appeal is therefore dismissed.

Right to apply for permission to appeal

36. 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.

ANNE FAIRPO
TRIBUNAL JUDGE

Release date: 29th September 2023