

# Short shrift

**Julie Butler and Fred Butler** review the outcome of a recent First-tier Tribunal decision concerning mixed use relief.

**T**he purchase of a farm has many potential reliefs, from rollover relief for capital gains tax, to possible inheritance tax relief on death or gifting. The stamp duty land tax benefit of mixed usage has been in the spotlight, particularly for uncommercial smallholdings.

The First-tier Tribunal decision in *J and C Averdieck* (TC8623) dealt with a claim which attempted to widen the availability of the relief, attracting the attention of the national newspapers. In short, the founder of Gu chocolate desserts has been ordered to pay a bill of about £120,000 after losing an SDLT case over the acquisition of his £3m country home.

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## Reclaim of SDLT paid

James Averdieck and his wife bought the 14-acre home in August 2020, initially paying £258,630 stamp duty land tax. However, they used a specialist SDLT ‘refund company’ to request HMRC return £119,180 to them due to the ‘mixed use’ of a public footpath at the edge of the property.

The claim for the refund was on the basis that a footpath which ran across the rear of the property was classed by the local highway agency as a public highway, so the couple – as owners of the land – had to ensure the footpath was safe for people to use. They also said the path restricted their use of the land and did not contribute to their ‘reasonable enjoyment of the dwelling’.

### Key points

- The footpath was a lane which provided access to the taxpayers’ and other people’s properties.
- The fact that a farmer and other householders used the lane for access did not make its use commercial.
- HMRC has been cracking down on SDLT mixed use claims and cases going through the tribunals are numerous.
- Mixed use SDLT for the purchase of small farms of commercial use and a residence can still qualify under the current legislation.



HMRC refused the reclassification. Mr and Mrs Averdieck appealed to the First-tier Tribunal. They claimed that because the highway was used by a farmer to gain access to his farm this constituted commercial use of the land.

The tribunal noted that the footpath was, in fact, a lane which also provided access to the taxpayers’ and other people’s properties. Further, the judge agreed that they had ‘statutory obligations as does every other owner of a bridleway or public footpath’. When Mr and Mrs Averdieck bought the property, they tried to exclude the lane from the purchase but could not do so – it was, in effect, part of the ‘package’.

## Lessons to be learnt

In press reports in the national media covering the case, HMRC said it hopes ‘the case serves as warning to those considering getting involved with tax refund agents’. Perhaps the answer is for taxpayers to be wary of such agents where the arguments appear weak or perhaps a ‘gamble’.

The judge was of the view that ‘the existence of burdensome obligations does not make the grounds any the less the grounds of the residence’. Indeed, there were fences, hedgerows and trees which provided the privacy.

The fact that a farmer and other householders used the lane for access did not make its use commercial – no one conducted their business on the lane. Indeed there was no business being undertaken by Mr and Mrs Averdieck.

Judge Scott concluded: ‘I do not accept that the lane constitutes a commercial operation. It is like any other public right of way and I find that it forms part of the grounds of the property.’

HMRC has previously warned taxpayers to be cautious when using tax refund agents, which have caused controversy of late, particularly on the SDLT mixed use relief ([tinyurl.com/hmrcnewsrelmay22](https://www.tinyurl.com/hmrcnewsrelmay22)).

The judge was scathing of the claim in *Averdieck*. She said: ‘While I accept that the farmer’s business is a commercial

operation, it is conducted on his farm. It is no more conducted in the lane than it is on the main road.' As many tax advisers are aware, HMRC has been cracking down on SDLT mixed use claims and cases going through the tribunals are numerous, for example *Hyman and another v CRC* [2022] STC 358 and *How Developments* (TC8194).

HMRC has also been tough on spurious attempts to obtain multiple dwellings relief, for example, by stating that a bedroom is a studio flat and a dwelling in its own right.

The tribunal dismissed the taxpayers' appeal. It accepted that Mr and Mrs Averdieck's maintenance obligations did impose a burden, but not that this impinged 'so heavily on them that the lane cannot be residential property'. The lane did not constitute a commercial operation; it was 'like any other public right of way and I find that it forms part of the grounds of the property'. Many tax advisers would consider the application unlikely to succeed from the outset.

### Problems for others

Mixed use claims that have very little basis in law together with similar SDLT multiple dwellings relief claims cause problems for those with realistic claims. A positive to take is that perhaps the focus of the national press on the negative aspects of weak claims and those promoted by 'cold calling specialists' will help discourage these types of claims.

Mixed use SDLT for the purchase of small farms of commercial use and a residence can, and should, still qualify under the current legislation. Clients buying small farms can use SDLT mixed use relief and it can be a very useful tax saving for genuine commercial operations.

The *Averdieck* case highlights the importance of ensuring that someone is conducting their business on the land being purchased prior to acquisition (which can give rise to issues for the 'rollover buyer' looking for vacant possession) and continuing thereafter. Other cases, such as *Hyman and Pensfold* (TC7609) have highlighted the importance of

ensuring whatever commercial use, for example grazing, that is being undertaken on the land is referenced in the contract of sale or purchase. Other important factors could be to include machinery or kit as part of purchase as well as ensuring a business is registered from the day of completion by the purchaser.

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With the move to 'farming for the environment', there are many opportunities for the small farm to qualify for the relief, especially with all the commercial opportunities of environmental land management schemes. Each application for mixed use relief must be assessed on its own merits with suitable evidence obtained before submission to HMRC. ●

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