

Walk in the woods

Julie Butler and **Fred Butler** explain the benefits of making commercial use of woodlands.

In *The How Development 1 Ltd* (TC8194), the First-tier Tribunal determined that the purchase of a substantial property and grounds consisted entirely of residential property and was subject to higher residential rates of stamp duty land tax.

This case shows that, to help the future purchaser of a property with large grounds, it is important to plan ahead for stamp duty land tax considerations. We are not suggesting that in these situations there is scope to create a case for mixed use when in reality there is none. Rather, one should look at the potential for the commercial use of woodland in this current climate. The mixed rate of stamp duty land tax can be advantageous, so having woodland operating as commercial rather than as recreational or even undisturbed should be looked at.

“There was no evidence of any commercial woodland activity, and it did not represent agricultural or commercial land.”

The How

The How Development 1 Ltd (How Ltd) was a property developer that bought ‘The How’ for £2.8m. This property comprised 15.7 acres of land, the main house, the lodge house, outbuildings, areas formerly used as market gardens, orchards, further gardens and grounds and a wooded area of about two acres forming a boundary with a river.

The How Ltd submitted its stamp duty land tax return on the basis the property was residential and paid £334,000. However, it later sought a refund of £204,000 saying the

Key points

- A property developer claimed woodland was commercial for stamp duty land tax purposes.
- The First-tier Tribunal agreed with HMRC that there was no evidence of commercial use.
- Importance of ability to show that woodlands were used commercially before and after completion of a sale.
- Other advantages of using woodland for commercial purposes.



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property was mixed use because the woodland did not subsist for the benefit of the property. HMRC checked the repayment claim but concluded the woodland formed part of the garden or grounds of the dwelling subject to the residential stamp duty land tax rates, and it issued a closure notice. How Ltd appealed.

Many would argue that there was never a realistic mixed use claim here, however we must consider that there were areas formerly used in a commercial way such as the market garden. Another changing consideration is how commercial woodlands have become.

How Ltd claimed the woodland was agricultural land and, while it was included with the property, it was not accessible from the main house. Further, a public footpath ran through it so the owner could only use the woodlands in the same way as members of the public could. Conversely, HMRC argued that the woodland formed part of the grounds of the dwelling and therefore fell into the definition of residential property – FA 2003, s 116:

- ‘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).’

Natural barrier

On reviewing the evidence, the tribunal considered that the woodland fell within the definition of the residential property and therefore the mixed rate claim failed. Its discussions on the matter looked at several different factors that led to this conclusion. The tribunal first pointed out that there was no evidence of any commercial woodland activity, and it certainly did not represent agricultural or commercial land. Instead,

it formed a natural hillside barrier between the house and the river and therefore was ancillary to and formed part of its garden and grounds.

The judge said:

‘Certain types of land can be expected to be garden or grounds, so paddocks and orchards will usually be residential, unless actively and substantially exploited on a regular basis. That logic applies equally to woodland. There is no suggestion of any previous commercial activity in the recent past and whatever may happen in the future has no relevance in determining the current status of the woodland for the purposes of stamp duty land tax.’

Given there is no definition of ‘garden or grounds’ within the stamp duty land tax legislation, the tribunal determined the expression must be given its ordinary meaning. As in *Goodfellow* (TC7507) and *Hyman* (TC7271), it was inferred that ‘grounds’ has a wider meaning than ‘garden’, particularly for grander properties such as The How, thereby disagreeing with the appellant’s interpretation of the two cases.

How Ltd had submitted that the woodland was not essential to the character of the house and was not land attached to or surrounding the house that could be used by the owners as they wished because of the public footpath. However, the tribunal said the woodland therefore provided privacy and security to the house that was needed because of the public right of way and thus could be said to subsist for the benefit of the property. It was not necessary for the woodland to be physically accessible from or in the immediate locality of the house to still be deemed as part of its grounds.

It was noted that while there may be similarities in legislative language and considerations, it did not necessarily follow that capital gains tax provisions and case law should apply to stamp duty land tax.

How Ltd’s appeal was therefore dismissed.

Lack of commercial activity

This case (and other recent stamp duty land tax cases) shows that being able to provide evidence of the commercial activity undertaken before completion – and immediately after – is

essential. Where possible the commercial activity should be referenced in the sales contract.

It is even better if there can be an actual sale of a crop too, be it standing timber or grass. Ensuring that the purchaser brings the property into commercial use immediately and having evidence to support such operation is also advisable. When it comes to operating woodland commercially HMRC will expect to see evidence of timber sales in the recent past, along with some degree of management plan showing when the next sales are due.

It could be argued that the woodland in the *How* case was too integrated with the grounds to qualify, but there are lessons to be learnt on the commercial use and evidence of woodland. Where woodland has been left unused, perhaps due to the high cost of harvest, there is scope to change this and take advantage of the current rise in timber prices. This should be weighed up by all owners of woodland, not only to help the current shortage in timber supplies, but also for their tax bill, be it claims for an stamp duty land tax mixed rate, as reviewed here, or ones of business property relief for inheritance tax. ●

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