

SDLT ON WOODLAND WITH RESIDENCE

Following on from the *How Development* case which was lost at Upper Tribunal, we consider a woodland Stamp Duty Land Tax (SDLT) case that was not only a success but showed that perhaps HMRC had not done as much research into the facts of the case as they perhaps should have.

The facts of the original SDLT refund

Marie Guerlain-Desai (MGD) purchased Durford House, a six-bedroom property set in 16.6 acres of land. It included a triple garage, outbuildings and approximately four acres of private formal gardens with some 12 acres of mature woodlands at the rear. The total consideration paid was £3,160,000 and the SDLT tax liability was £372,750 at the residential rate. An SDLT agent helped MGD in claiming a refund of £225,250 plus interest because the woodland was non-residential and the SDLT on the purchase should be calculated at the non-residential rate. HMRC raised an enquiry into the refund and concluded that the amended SDLT Return was incorrect because the woods were residential in their view. They issued a closure notice for the sum of £225,250 of SDLT, applying the residential rate of duty. Marie Guerlain-Desai appealed to the First-tier Tribunal (FTT).

The commercial position of the woodland

The background was MGD's woodland was part of Durford Wood, an area with four woods which covered 300 acres and 35 properties with woodland. There was public access to the woods and MGD had obligations to maintain it. MGD's private garden was fenced off but the woods were not fenced or gated in any way. In addition, the woods provided no privacy or security to the dwelling house. The wood was managed by Durford Wood Landowners Limited (DWLL) which was a resident's company. To give background, Durford Wood is a hamlet in the parish of Liss, Hampshire. It is situated in Woolmer Forest and lies on the Hampshire/West Sussex border. The woods are described as a popular trail for hiking, running and walking. The nearest town is Petersfield and a search shows the nearest hotel as "Yurts". On purchase of the house, MGD then became liable to make payments to DWLL and obligated to maintain the woods and abide by the decisions of the management company. DWLL took charge of MGD's property to secure payment of her obligations to the company. The proposed budget for DWLL was discussed each year and all shareholders/residents are required to contribute to the annual running costs and to an adequate "sinking fund" and a road reserve fund for the maintenance of access roads. Each property owner used the woods as did the general public. That use by the public was considerable. There was no view of its woods from the dwelling house.

Character of the woodland

The tribunal thought that the woodland appeared to have taken on a character more akin to a common. The tribunal were not persuaded that the woods were a key selling point nor essential to the dwelling house and private garden's character so as to demonstrate a connection between the woods and the dwelling. No-one from HMRC had visited or seen the property as part of their work in assessing the property and a visit was necessary. The FTT reported that they found MGD to be a 'credible witness' whose evidence included photographs of the property. HMRC had made statements which were 'in complete contradiction' to the evidence presented by MGD. Given the lack of evidence etc, the tribunal decided to treat HMRC's submissions 'with caution'.

The tribunal were of the view that the woods served no functional purpose for the dwelling and, to the extent that they did provide a passive function, it was no more in terms of usage

than was available to a third party, here the public, which in turn was unconnected with the dwelling.

The tribunal decision – the woods did not comprise the garden & grounds

After considering extensive case law on this topic, FTT concluded that:

The woods did not form a positive function for the dwelling house. They were not passively integral to the grounds of the dwelling house providing exclusivity, privacy and security. They did not serve a functional purpose for, or a use that supports, the dwelling. In evaluating all the facts and circumstances, the tribunal considers that the woods do not comprise the gardens and grounds of the dwelling in terms of the legislation. The refund of SDLT was allowed.

Looking at the facts it would appear that perhaps HMRC had become too confident in denying an SDLT refund that they had become complacent. A visit by HMRC would have shown not just the public access but the disconnect of the woodland to the residence. The commercial approach from Durford Wood Estate seems something to be considered by other owners of woodland when making SDLT claims. The Upper Tribunal (UT) success of *Mr Taher Suterwalla and Mrs Zahra Suterwalla v HMRC* [2024] UKUT 00188 (TCC) has meant that there are positives for future SDLT claims. There are just so many SDLT cases going through the tribunals, eg. *Modha* and *Kozlowski* and a non-stop stream of cases which have found it difficult to achieve mixed usage SDLT.

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