[2020] UKFTT 0056 (TC)

TC07552

CAPITAL GAINS TAX - section 222 Taxation of Chargeable Gains Act 1992 – principal private residence relief - whether appellant occupied property - whether property main residence of appellant – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2018/04297

BETWEEN

CAROL ADAMS **Appellant**

-and-

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

TRIBUNAL: JUDGE GREG SINFIELD
TRIBUNAL MEMBER IAN ABRAMS

Sitting in public at Taylor House, 88 Rosebery Avenue, London EC1R 4QU on 3 December 2019

Rebecca Sheldon, counsel, for the Appellant

Christopher Thompson-Jones, litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents

DECISION

INTRODUCTION

1. The Appellant, Ms Carol Adams, appeals against a closure notice, under Section 28A of the Taxes Management Act 1970, amending her 2013-14 tax return, resulting in an additional tax liability of £43,103.48. The tax relates to a gain made by Ms Adams on the disposal of a two-bedroom terraced house at 5 Holly Mount, Hampstead, London NW3 ('the Property'). Ms Adams had purchased the Property in 1994. From 1995 until 2013, Ms Adams let the Property to tenants. In February 2014, Ms Adams sold the Property for a substantial gain. In her tax return, Ms Adams claimed that the amount of the gain chargeable to capital gains tax under the Taxation of Chargeable Gains Act 1992 ('TCGA 1992') was reduced by the application of the relief (known as principal private residence relief or PPR relief) under sections 222 and 223 TCGA 1992. HMRC took the view that PPR relief did not apply and the whole of the gain was chargeable to capital gains tax. Ms Adams appealed against the amendment to her tax return on the single ground that the Property was her main residence for the last six months of her ownership and thus qualified for PPR relief.

LEGISLATION

2. Sections 222 and 223 TCGA 1992 (as they were in force during the relevant period) make provision for relief from capital gains tax where the gain on a disposal is attributable to the disposal of a private residence which has at any time in the "period of ownership" been the taxpayer's only or main residence. The following provisions are relevant for present purposes:

> "222 Relief on disposal of private residence
>
> 222(1) This section applies to a gain accruing to an individual so far as attributable to the disposal of, or an interest in -
>
> (a) A dwelling-house or part of a dwelling-house which is, or has at any time in his period of ownership been, his only or main residence, or
>
> (b) …
>
> …
>
> 223 Amount of relief
>
> 223(1) No part of a gain to which section 222 applies shall be a chargeable gain if the dwelling-house …. has been the individual's only or main residence throughout the period of ownership, or throughout the period of ownership except for all or any part of the last 36 months of that period.
>
> (2) Where subsection (1) above does not apply, a fraction of the gain shall not be chargeable gain, and that fraction shall be-
>
> (a) the length of the part or parts of the period of ownership during which the dwelling-house or parts of the dwelling-house was the individual's only or main residence, but inclusive of the last 36 months of the period of ownership in any event, divided by
>
> (b) the length of the period of ownership."

3. There was an error in the calculation of the relief in Ms Adams' original 2013-14 tax return. In it, she claimed relief for a period of 43 months, which appeared to have been calculated by taking 36 months plus the claimed period of occupation, rather than just 36 months as then allowed under section 223 TGCA 1992. At the hearing, Ms Sheldon, who appeared for Ms Adams, readily acknowledged the error in the calculation and said that Ms Adams did not seek relief for more than the last 36 months of the period of ownership.

4. Finally, under section 222(5) TCGA 1992, where an individual has two or more residences within section 222, the individual has the right to nominate which is to be treated as the main residence for any period and so will attract relief for the period by giving notice to HMRC provided it is given within two years from the beginning of the period. This gives the individual the right to choose which of his or her two or more residences is to be treated as their main residence for PPR relief purposes. A nomination is conclusive as to which of two residences is to be regarded as the main one but it is not mandatory. In this case, Ms Adams did not give any such notice notwithstanding, as will be seen, that she had a substantial property in the country which, it was not disputed, had been her main residence.

CASE LAW ON RESIDENCE

5. In *Fox v Stirk, Ricketts v Registration Officer for the City of Cambridge* [1970] 2 QB 463, the Court of Appeal considered whether students should be resident in the constituency of the University that they attended. In his judgment, Lord Denning MR cited a passage from the speech of Viscount Cave LC in *Levene v Inland Revenue Commissioners* [1928] AC 217:

> "… the word 'reside' is a familiar English word and is defined in the Oxford English Dictionary as meaning 'to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place'."

6. Lord Denning went on to say:

> "I derive three principles. The first is that a man can have two residences. He can have a flat in London and a house in the country. He is resident in both. The second principle is that temporary presence at an address does not make a man resident there. A guest who comes for the weekend is not resident. A short stay visitor is not resident. The third principle is that temporary absence does not deprive a person of his residence. If he happens to be away for a holiday or away for the weekend or in hospital, he does not lose his residence on that account."

7. Further to this Lord Widgery commented:

> "This conception of residence is of a place where a man is based or where he continues to live, the place where he sleeps and shelters and has his home. It is imperative to remember in this context that 'residence' implies a degree of permanence. In the words of the Oxford English Dictionary, it is concerned with something which will go on for a considerable time. Consequently, a person is not entitled to claim to be a resident at a given town merely because he pays a short, temporary visit. Some assumption of permanence, some degree of continuity, some expectation of continuity, is a vital factor which turns simple occupation into residence."

8. These comments are regarded as equally applicable to PPR relief and were relied on by the Court of Appeal in *Goodwin v Curtis* (1998) 70 TC 478. In that case, the taxpayer moved into the property in question as a stop-gap measure pending finding somewhere else to live. Millett LJ held in his judgment at 510:

> "Temporary occupation at an address does not make a man resident there. The question whether the occupation is sufficient to make him resident is one of fact and degree for the Commissioners to decide.
>
> The substance of the Commissioners' finding taken as a whole, in my judgment, is that the nature, quality, length and circumstances of the taxpayer's occupation of the [property] did not make his occupation qualify as residence."

9. In the same case, Lord Justice Schiemann said at 510:

> "… in order to qualify for the Relief a taxpayer must provide some evidence that his residence in the property showed some degree of permanence, some degree of continuity or some expectation of continuity."

10. Ms Sheldon referred us to the case of *Morgan v HMRC* [2013] UKFTT 181 (TC) ('*Morgan'*). In 2001, Mr Morgan was engaged to be married and agreed to purchase a house where he and his fiancée would live. Shortly before the completion of the purchase, his fiancée ended the engagement. Nevertheless, Mr Morgan completed the purchase and moved into the house. He lived in the house between 15 June and 30 August. He then moved out and rented the house to tenants until March 2006. Mr Morgan then moved back into the house but sold it four months later. HMRC issued an assessment charging tax on the gain. Mr Morgan appealed, contending that the house had qualified as his principal private residence. The First-tier Tribunal ('FTT') found the case to be extremely finely balanced but accepted Mr Morgan's evidence that he intended that it should be his home when he moved into the property in 2001 and allowed his appeal. Ms Sheldon relied in particular on a passage from the decision at [26] in which the FTT observed:

> "It is our view that Mr Morgan need only show that at the time when he moved into the property, it was his intention to make it his permanent residence, even if he changed his mind about it the following day."

11. The FTT in *Morgan* found that the house in that case was, albeit for a brief period, Mr Morgan's residence because, when he moved into it in June 2001, he intended to live there permanently. The FTT said that they had found the case to be extremely finely balanced. While we do not disagree in any way with the passage from *Morgan* cited by Ms Sheldon or the FTT's decision to allow the appeal in that case, we consider that *Morgan* is an example of a case that turns on its particular facts and it is, of course, not binding on us.

ISSUES TO BE DETERMINED AND BURDEN OF PROOF

12. Ms Adams' only ground of appeal against the amendment of her self-assessment tax return for 2013-14 was that the Property was her main residence during the period of 14 August 2013 to 23 February 2014 and, accordingly, any gain during the last 36 months of her period of ownership was not chargeable to capital gains tax. HMRC's primary case was that Ms Adams was not entitled to claim PPR relief because she had never occupied the Property as a residence at all. In the alternative, HMRC contended that, if she had occupied it as a residence, the Property was not Ms Adam's main residence.

13. The only issue to be determined in this appeal is whether the gain made by Ms Adams on the disposal of the Property qualifies for PPR relief under sections 222 and 223 TCGA 1992. In order to establish that PPR relief applied, Ms Adams must prove, on the balance of probabilities, that she occupied the Property as her main residence during the period of 14 August 2013 to 23 February 2014 or for part of that period.

14. In our view, the legislation and case law authorities cited above show that a residence for the purposes of sections 222 and 223 TCGA 1992 means a dwelling-house, or part of one, which an individual owns and occupies as his or her home with a reasonable expectation of living there permanently or for a considerable period of time. Whether that is so in any particular case is a question of fact and degree to be assessed by taking account of the nature, quality, length and circumstances of the individual's occupation of the property. Where a person has more than one residence (and has not made a nomination – see [4] above), the main residence is the one that is properly regarded as the individual's principal or more important residence. That is also a question of fact and degree to be determined by considering (per Lord Denning MR in *Fowell v Radford* (1969) 21 P & CR 99 at 100 cited by Nourse J in *Frost v Feltham* [1981] STC 115):

> "The whole of the history and the circumstances, the value of the residences, the purposes for which they are used, the time they have been used and the amount of time spent during the course of the year at each."

15. It has been settled law for more than 90 years that, in an appeal against an assessment for tax, the burden is on the appellant to show that the sums charged to tax by the assessment are excessive (see the comments of Lord Hanworth MR in *T Haythornthwaite & Sons Limited v Kelly (Inspector of Taxes)* (1927) 11 TC 657, at 667). The position was confirmed by Mustill LJ in *Brady (Inspector of Taxes) v Group Lotus Car Companies plc* [1987] STC 635, at 642, as follows:

> "The starting point is an ordinary appeal before the [Tribunal]. Here, however unacceptable the idea may be to the ordinary member of the public, it has been clear law binding on this court for sixty years that an inspector of taxes has only to raise an assessment to impose on the taxpayer the burden of proving that it is wrong: *Haythornthwaite & Sons Ltd v Kelly* (*Inspector of Taxes*) (1927) 11 TC 657."

The standard of proof is the ordinary civil standard, which is the balance of probabilities.

SUBMISSIONS

16. As the outcome of this appeal turns on the facts, we can summarise the parties' submissions here and deal with them in more detail when we consider the evidence. Ms Sheldon contended that there was strong evidence that Ms Adams occupied the Property as her main residence between 14 August 2013 and 24 February 2014. In addition to Ms Adams' testimony, Ms Sheldon pointed to the payment of council tax, gas and electricity bills as showing Ms Adams occupied the Property as her main residence. Ms Sheldon also relied on the enhancement expenditure incurred renovating property as evidence that Ms Adams intended to live there herself permanently or for a substantial period of time. Ms Sheldon submitted that the evidence showed that Ms Adams had no intention of selling the Property when she first moved into it. Ms Adams only formed an intention to sell the Property some months later when it became financially necessary to do so. Ms Sheldon submitted that the nature, quality, length and circumstances of Ms Adams' occupation of the Property were sufficient to qualify as a residence for the purposes of principal private residence relief.

17. HMRC's primary submission was that Ms Adams did not occupy the Property as a residence at any time during the period from 14 August 2013 to 27 February 2014. In the alternative, HMRC submitted that, if the Tribunal were to find that Ms Adams occupied the Property, she did not do so with a sufficient degree of permanence, continuity or expectation of continuity so as to amount to residence during the period. Further, even if the Property was occupied by Ms Adams as a residence, HMRC did not accept that it was her main residence and, therefore, PPR relief was not available in respect of the Property.

18. Having outlined the positions of the parties, we now turn to consider the evidence.

EVIDENCE

19. The evidence in this appeal consisted of a document bundle which contained a short witness statement by Ms Adams and various documents, including emails and letters between the parties or with third parties, invoices and online marketing materials relating to the sale of the Property. Ms Adams also gave oral evidence on oath at the hearing. She was not asked any questions in chief by Ms Sheldon so her witness statement stood as her evidence in chief. Ms Adams was cross-examined by Mr Thompson-Jones, who appeared for HMRC, and she was also asked a number of questions by the Tribunal.

20. As will be seen below, we have concluded that Ms Adams' evidence was not entirely credible and we were unable to accept it in relation to certain key points which we describe in our findings of fact and in our conclusions on the evidence. For that reason, we felt unable to accept Ms Adams' evidence in relation to certain key points in our findings of fact below without some documentary or other evidence to corroborate it.

21. On the basis of the documents provided and the evidence given at the hearing, we find the material facts to be as set out below.

FACTS

Background

22. At the time of the purchase of the Property, Ms Adams was living in Wellington House in Belsize Park, London NW3 and working in central London. Ms Adams operated a commercial photographic studio and ran, in conjunction with the studio, a photographic library. The businesses had been established with her husband in the 1970s and operated by both of them until her husband's death in 1991. After her husband's death, Ms Adams continued to run the businesses as sole proprietor.

Purchase of the Property

23. The Property is a two-bedroom, Grade II Listed, freehold Queen Anne house in Hampstead Village. At the time, the Property was in an appalling condition. Ms Adams' evidence was that she was originally attracted to the Property because she had lived a short distance from Hampstead Village for over 30 years and it was where she intended to live in retirement (at the time, Ms Adams was only in her forties). When it was purchased, the Property needed substantial works to preserve its structural integrity and restore its distinctive character. Ms Adams said that she looked on the Property as her potential dream home. She felt that if she put it into a good state of repair then it would be ideal by reason of its size, layout and location for when she eventually retired.

24. In February1994, Ms Adams purchased the Property for £175,000. She borrowed £60,000 by way of a mortgage with Bank of Scotland ('BoS').

Renovation of the Property

25. Once purchased, Ms Adams carried out extensive works to the Property. She went to great lengths to restore the Property to a very high standard with a view to her eventual occupation of it in her retirement years. HMRC subsequently accepted that there had been enhancement expenditure of £340,000 in relation to the Property. The renovation works lasted until February 1995.

26. The cost of restoring the Property exhausted most of Ms Adams' savings and she decided to rent the Property out until she was ready to retire and live there. The Property was tenanted for 18 years between 1995 and 2013 by approximately ten different tenants. The last tenants were Mr and Mrs Winter who rented the Property from July 2006 until early August 2013.

Cessation of studio lease.

27. In 2003, a rent review of her business premises in central London resulted in a request to pay "virtually twice the then prevailing rent" which caused Ms Adams to give up the premises.

28. Around that time, Ms Adams, who was now in her early fifties, considered retiring from business altogether but, after a short while, concluded that she should seek a new business opportunity.

29. There was a lack of clarity about the timing of Ms Adams' decision which was not resolved by answers to questions from the Tribunal. In her witness statement, Ms Adams states that her realisation that she wanted to find a new business activity coincided with the completion of the restoration of the Property but that had happened in 1995 and the prompt to look for a new business occurred in 2003 when there were tenants in the Property. We find that it is more likely than not that Ms Adams decided to look for a new business in 2003.

30. Ms Adams also said in her witness statement that she had contemplated moving into the Property at that time but was wary of her commitment to make monthly payments to BoS, her obligations in respect of a very modest bank loan facility and some financial commitments she had at that time. She explained to us that the financial commitments were the wages and other expenses relating to her film sales and distribution business which she carried on at premises in Dean Street, Soho. Ms Adams said in her statement that she felt that she would be better off at that time if she could find a new business opportunity and thereby secure a source of income to help her meet her commitments. In her witness statement, Ms Adams also said that not moving into the Property would give her time to put her finances in order.

31. It is clear (and we so find) that Ms Adams' film sales and distribution business was not generating enough income, even with the addition of the rent obtained from the Property, to

support Ms Adams and that is why, in around 2003, she decided to look for a new business opportunity. That is the reason why we do not accept that Ms Adams thought seriously about moving into the Property at that time. She was clearly aware of her financial situation and obligations and chose, quite sensibly in our view, to seek a way to increase her income. Had she moved into the Property she would have lost a source of income, namely the rent. We did not have any evidence about what proportion of Ms Adams' total income was rent but we infer from the fact that meeting the costs of the business was a concern that the rent was a significant contribution to her income. We note that Ms Adams made a logical choice not to move into the Property in 2003 because she needed more, not less, income.

Purchase of the Livery

32. On 28 September 2007, Ms Adams purchased Wild Meadows Livery, Guestling Green, East Sussex ('the Livery') for £775,000. Ms Adams did not have a mortgage in relation to the Livery as the purchase was financed entirely from the proceeds of sale of her residential property in Wellington House.

33. In her witness statement, Ms Adams said that she had decided to start a livery business for financial and personal reasons. It was not clear from the statement whether Ms Adams decided to run a livery and then found a property in which to do it or found the Livery and then decided to carry on a livery business. In response to our questions, Ms Adams told us that she did not have any experience of running a livery but she loved horses. In her witness statement, Ms Adams explained that her niece, Jo Walmsley, had become unemployed around the time that Ms Adams was considering purchasing the Livery. Jo was an experienced horse-handler and they agreed that, if Ms Adams bought the Livery, she would move into the farmhouse with Ms Adams and work the livery with her.

34. The Livery consisted of a four bedroom and two bathroom farmhouse, a separate studio flat that had the benefit of permitted office use and the livery facilities which included 16 stables, a tack room, two sand-schools (or manèges), a livery yard and numerous storage areas. The property also included two acres of paddocks for grazing. At that time, the Livery's own capacity for grazing was supplemented by access to other grazing land under a licence granted by a neighbouring farmer. Ms Adams told us that around one acre of grazing was required for each horse and so access to additional grazing land was essential if the Livery was to accommodate more than two or three horses. Ms Adams was clear that, on the modest weekly charges which was all that local horse owners would pay, the Livery could not make money from only two horses. In fact, Ms Adams told us that the Livery never really made much money because of the low level of fees even when they had 11 horses, which was the most they ever had in livery. Even if 11 horses could produce a reasonable income, which Ms Adams' own testimony suggested they could not, the folly of buying a livery business with no guaranteed access to grazing was shown by subsequent events.

35. After a couple of years, the licence for grazing on the neighbouring land expired and was not renewed. Ms Adams' evidence was that from that time, ie around 2009 or 2010, the livery business became a "financial disaster" and was no longer commercially viable. Without enough grazing, the horse-owners relocated their horses to other liveries. In her witness statement, Ms Adams said that, following the loss of grazing rights and thus business, Jo decided to move elsewhere to find paid employment. Ms Adams' evidence was that she had no alternative but to close the livery business on 31 October 2012.

36. It was apparent from Ms Adams' answers that she had not prepared any business plan or income projections in relation to the livery business. She could not tell us how much income she expected to earn from the livery business at the time she bought the Livery. We find it very surprising, if Ms Adams' motive in buying the Livery was to own and run a livery

business, that she did not have any plan for (or even, we find, any expectation of) making a profit. That is particularly surprising when it is remembered that Ms Adams used her principal asset, the property in Wellington House, to purchase the Livery in her own name thus risking the major part of her capital on a business venture for which she had no experience and no plan.

37. We do not accept Ms Adams' evidence that she bought the Livery as, or primarily as, a business. The lack of any serious attempt to assess the Livery's potential as a business shows that Ms Adams' motive in buying it was largely unconnected with the business aspect of it. We find that Ms Adams bought the Livery primarily as a place to live and, which is not disputed, it was her main residence from 28 September 2007 until, at least, August 2013 and from February 2014 until today. We accordingly also reject Ms Adams' evidence that she intended, after she had "made a go" of the business, to leave Jo in charge and retire to live at the Property as there is no evidence to corroborate it and her conduct in buying the Livery and the improbability of the livery business ever providing a living contradict it.

Dealings with Coutts

38. In her witness statement, Ms Adams said that, following the cessation of the livery business in October 2012, she approached her bank, Coutts & Co ('Coutts'), with a request to extend her overdraft facility. We were not shown any evidence of dealings with Coutts before 10 May 2013 when Mr Chris Palmer wrote a letter to Ms Adams. The letter related to Ms Adams' £7,500 overdraft facility with the bank. It stated:

> "Whilst, under normal circumstances, we are happy to continue the facility … we would like to remind you that it is designed to provide short-term financial assistance, and that your account should typically be in credit.
>
> Unfortunately, this has not been the case over the past year …"

39. Mr Palmer asked Ms Adams to contact her Associate Private Banker, Michael Squire, to confirm that regular funds would be forthcoming. Ms Adams said that she had not previously known of the existence of Mr Squire.

40. Ms Adams subsequently wrote to Mr Palmer and Mr Squire on 12 May 2013 but she says that she did not hear back from either of them. We were not provided with copies of her communications of 12 May. She wrote to both of them again on 19 June 2013 and received a reply from Mr Squire. We were not provided with either item of correspondence.

41. Ms Adams also wrote to the Head of Private Banking at Coutts on 9 July 2013 and a copy of that letter was in the documents' bundle although we were not shown it by the parties. In that letter, Ms Adams asked the simple question: should I take my account elsewhere?

Moving into the Property

42. Mr and Mrs Winter had been tenants of Ms Adams in the Property since July 2006. During that time, Ms Adams had never met Mr and Mrs Winter. In June 2013, they told Ms Adams that they wanted to leave the Property. In an email to Mr Winter, dated 19 June, Ms Adams stated that she had given a landlord's reference for them and asked Mr Winter to keep her informed of the possible timing of any move so that she could arrange with "my contractors a workable timescale for renovation of the property". Mr Winter responded by email the same day and said that he and Mrs Winter had thoughts about starting a family and they needed somewhere bigger. He also said that the Property needed a "fair amount of maintenance" and it might be more convenient and quicker to get the work done if the property were empty.

43. The next email that were shown was another one from Mr Winter to Ms Adams dated 12 August 2013 in which he said that it was so good to meet Ms Adams and Tony Carr at last. Tony Carr was a former solicitor and friend of Ms Adams who lived in the studio flat in the Livery and used it as an office. Mr Winter apologised for not "sending the keys last week". He also offered to retain a set of keys for a few days or weeks so that he could let builders into the Property for the purpose of looking at it and giving quotes as their new home was only a few minutes away. Finally, he said that he hoped they would keep in touch and meet again. In her oral evidence, Ms Adams said that the reference to builders in Mr Winter's email was not right as she did the work to the Property herself to save money. She told us that Mr Winter retained the keys because he had left some things in the house that he might have wanted to collect although there is no mention of that in the email. Mr and Mrs Winter did not have any furniture to move because the Property had been let fully furnished.

44. Ms Adams responded to Mr Winter's email on 13 August. In her email, Ms Adams said:

> "I am delighted to take up your kind offer regarding the keys. Please hang on to one set for the time being. You can mail me the second set. I will liaise with you if I may regarding the possible appointments I am able to make for building contractors to visit the house to price up the work that I need to do.
>
> I will be coming up to Hampstead in a few days time to get a better look at what work I think will need to be done there. That will be easier for me now the house is empty. I will also be able to check the inventory."

Ms Adams also asked Mr Winter to let her know the date when they vacated the property and the final meter readings.

45. In her witness statement, Ms Adams said that, on moving into the Property, she personally carried out works of redecoration and making-good. In her oral evidence, Ms Adams said that she was living at the Property at that time or preparing to live there but was probably back in the Livery on 13 August when she sent the email. She told us that she was coming and going between Hampstead and Sussex. Ms Adams said that her personal effects and clothing were brought to the Property by Mr Carr driving up from the Livery which was two and a half hours away. Ms Adams did not need to move any furniture from the Livery as the Property was still fully furnished following the letting. When asked why there was no reference in the emails to her moving into the Property, Ms Adams said that she did not think that it had come up. Ms Adams also said that she did not want the Winters to come in when she was decorating the Property herself.

46. Mr Winter sent Ms Adams another email on 14 August. He said that he and Mrs Winter were looking forward to meeting Ms Adams "and Tony" again and referred to their next visit. He explained that he would be out of the country from 18 to 25 August but Mrs Winter would be at home if Ms Adams was "planning to come on any of those days" and offered to hand over the keys in person. In the email, Mr Winter confirmed that they had substantially moved out of the Property on 6 August but had come back over the following couple of days to pick up bits and pieces and do some cleaning.

47. Notwithstanding his offer to meet to hand over the keys and complete the inventory, it is clear from Mr Winter's email to Ms Adams of 26 August that no meeting had taken place with Mrs Winter while he was away or been arranged. In his email, Mr Winter asked Ms Adams whether she had "had any thoughts about when you are going to come up to London for the inventory". Mr Winter then said they had good availability that week. Ms Adams replied by email the following day saying:

> "The best day for us this week is Friday 30th and we could see you there at 2:30pm at Holly Mount".

48. Ms Adams said that she and Tony Carr met Mr and Mrs Winter in the local pub, the Holly Bush, which is also in Holly Mount. She said it was a social occasion. Ms Adams said that she did not remember if they exchanged keys but there was no completion of the inventory at any time.

49. We found Ms Winter's testimony about her occupation of the Property and the exchange of emails with Mr Winter lacked credibility. There was nothing to support Ms Adams' evidence that she personally carried out works of redecoration and making-good and a great deal of material to contradict it. She referred in emails to Mr Winter to builders coming to the Property to give quotes and told Coutts on more than one occasion (see below) that it was being renovated in September 2013. Coutts understood the works to include external works and we conclude that the intended renovation works were clearly beyond Ms Adams on her own. In her witness statement, Ms Adams said that, over the years, a good and close bond had developed between her and Mr and Mrs Winter yet the email from Mr Winter on 12 August 2013 shows that they had never met before. Further, when asked by Mr Thompson-Jones why Mr Winter did not appear to know that she lived in the Property, Ms Adams said, "I don't tell him my movements" which contrasted with the impression that she had sought to create that they were good friends. That answer was also inconsistent with the fact that Ms Adams had accepted Mr Winter's offer to retain keys and let in builders. In any event, there would be no need for Mr Winter to retain keys to allow builders to have access to the Property if Ms Adams were living there as she could have granted the builders access herself. The fact that Ms Adams asked Mr Winter to mail a set of keys to her is plainly inconsistent with Ms Adams living at the Property which was only a few minutes away from the Winters' new home so Mr Winter could easily have dropped off the keys which would avoid the cost, delay and risk inherent in posting them. The fact that Mr Winter had a set of keys showed that he could drop in at any time which was inconsistent with Ms Adams' oral evidence to us that she was concerned that he might see her decorating. We also could not see why Ms Adams would be concerned that Mr Winter, with whom she said she got on well (although they had only just met), might see her in overalls with a paint brush. Further, Ms Adams made several references to contractors or builders in her emails but no mention of doing any work herself or of moving into the Property yet there was no reason why she should not mention that to Mr Winter.

50. Ms Adams said that she could not remember when they exchanged keys and that she did not bother with the inventory. It is clear from Mr Winter's email that, as at 14 August, he had not left any things in the house that he wanted to collect later. That contradicted what Ms Adams told us in her oral testimony. Further, the reference in Mr Winter's email to handing over the keys in person on Ms Adams' next visit is consistent with earlier emails and plainly inconsistent with Ms Adams living in the Property at that time or intending to do so in the near future. The reference in Ms Adams' email of 27 August to seeing Mr and Mrs Winter "there … at Holly Mount" is also inconsistent with her being in occupation of the Property at the time of the email. Had Ms Adams been living in the Property then the email would have referred to meeting "here" not "there" and if they had been meeting in the pub then it would have said "at the Holly Bush" and not "at Holly Mount".

51. The inconsistencies between the emails and some of Ms Adams' written and oral evidence described above as well as the general lack of credibility of her explanations lead us to conclude that the only reasonable explanation is that Ms Adams was not living in the Property between 13 August and 30 August 2013.

More dealings with Coutts

52. In her witness statement, Ms Adams stated that, on 30 August 2013, while Mr Squire was on holiday, she had a meeting with his superior, Ms Alexandra Carr, and another associate private banker, Ms Karen Hunnisett. At the meeting, Ms Carr agreed in principle to extend Ms Adams' loan facility and increase her overdraft.

53. On 3 September 2013, Mr Squire emailed Ms Adams further to a telephone conversation earlier that day. Mr Squire said that the bank could not offer Ms Adams a ten year capital and interest loan for the purpose of renovating the Property. We note that we had no evidence of any renovation being planned in September 2013 but there is no reason to doubt that is what Ms Adams had told Mr Squire. The intention to renovate the Property in September strongly suggests that Ms Adams was not living there or intending to live there. The Property was quite small and we consider that it is unlikely that Ms Adams, who described herself to us as a very tidy person, would want to live there while the works, even if they were only decorating, were being carried out when she had accommodation available at the Livery. Accordingly, Ms Adams has not satisfied us that she was living in the Property in September 2013.

54. Having refused to grant Ms Adams a ten year facility in his email of 3 September, Mr Squire offered a five year capital and interest loan instead at monthly repayments of around £470. Over the lifetime of the facility, that would be a payment of capital and interest of £28,200 in total. Mr Squire also suggested that Ms Adams' best option would be to approach BoS, with whom she already had a mortgage, and ask for a further advance. Mr Squires went on to state that, as BoS would already have a charge over the Property, the interest rate would probably be lower than that charged by Coutts. Mr Squire ended by asking Ms Adams to let him have her thoughts.

55. On 10 September, Ms Hunnisett sent Ms Adams an email with a proposal in relation to her borrowing requirements. The email stated that Coutts would need to take a second charge on the Property behind BoS which would allow Coutts to:

(1) increase the overdraft facility to £12,500 for a maximum of eight weeks while the second charge was put in place;

(2) once the charge was in place, lend Ms Adams £30,000 of which £10,000 would be used to repay all but £2,500 of the overdraft; and

(3) assuming the Property had been let, structure the loan as a repayment loan at the six month review.

56. In the email, Ms Hunnisett said: "At the six month review we hope you will have let the property." She also asked Ms Adams to provide further information about "the renovation work proposed", which included "external works", and a "personal cashflow". We were not shown any response from Ms Adams but, on 16 September, Coutts wrote to Ms Adams, at the Livery, confirming the grant of a £12,500 overdraft expressed to be for the purpose of "general expenditure in anticipation of income". As Ms Adams had no source of income at this time other than the rent from the Property, the purpose of the loan, which must have come from her, suggests (and we so find) that Ms Adams' intention at this time was to let the Property, once the works had been completed, in order to produce income.

57. Coutts' agreement to provide the loan referred to above was confirmed by Mr Squire in a letter dated 19 September, addressed to Ms Adams at the Livery. The fact that Coutts were corresponding with Ms Adams at the Livery shows that Coutts considered that was the appropriate address at which to contact her rather than at the Property. This evidence supports our view that, in September 2013, Ms Adams was not living in the Property.

58. In his letter of 26 September 2013 confirming the loan had been agreed, Mr Squire stated that the bank would "not be able to make this facility available until such time as all listed pre-conditions are met." In her witness statement, Ms Adams said that Mr Squire attempted to block what Ms Hunnisett was doing but there is no evidence to support this assertion. To the contrary, Mr Squire was obviously implementing Ms Hunnisett's proposal by confirming that the loan was agreed. In her witness statement, Ms Adams said:

> "[Mr Squire] attempted to undermine the entire process by saying 'please note that we will not be able to make this facility available until such time as all listed pre-conditions are met'. I wrote back to him, requesting that I be provided with details of the pre-conditions."

59. Ms Adams said she received no response from Mr Squire. We have not been provided with the loan agreement which was enclosed in draft with the letter of 19 September and in final form with the letter of 26 September. It is our view, in the absence of evidence to the contrary and on the basis of our knowledge of banks and banking agreements, that the "listed pre-conditions" referred to the conditions contained in the agreement itself.

60. At some point, Ms Adams explored the possibility of selling the Livery but the lack of grazing rights meant that selling it was very difficult and she said that it could only be sold for significantly less than she had originally paid for it. In her witness statement, Ms Adams says that Mr Squire suggested that she sell the Livery but we were not shown any evidence to support that. As has been seen, Mr Squire was trying to arrange a loan for Ms Adams up to at least the end of September 2013. Therefore, we do not accept that Mr Squire suggested that Ms Adams should sell the Livery at that time.

61. On 9 October, the Property appeared for sale on Zoopla at a price of £1,250,000 with all furniture and kitchen appliances available. We were shown sale details and photographs of the Property taken from the Zoopla website. Ms Adams told us that she also marketed the Property on Zoopla for rental. We were not shown any details about the possible rental from the Zoopla website but we accept that Ms Adams also tried to rent the Property as this was consistent with the purpose of the loan as stated to Coutts. Ms Adams said that, by marketing the Property for sale, she had hoped to demonstrate to Coutts that she was willing to work constructively with them and that she had not exaggerated the level of equity that she had to support her borrowing.

62. HMRC submitted that the photographs taken from the Zoopla website showed that the Property was vacant because they showed that there were no personal belongings on display when the Property was marketed for sale on the Zoopla website on 9 October 2013. Ms Sheldon submitted that the pictures of the interior of the Property showed that it was fully furnished and that it was not unusual to remove personal belongings from view in pictures designed to market a property for sale. In our view, the photographs did not give the impression that the Property was occupied as a home. There were some indications of occupation, eg a cup and saucer on a table in the sitting room, a photograph on the wall, candlesticks on a fireplace and a hand towel on a ring in the bathroom. However, there were no clothes or hangers in the open cupboard/wardrobe in the bedroom, no toiletries or bath towels on the towel rails in the bathroom and the shelves in the rooms were empty. Ms Adams said that the empty cupboard was in the spare bedroom, the toiletries were in the bathroom cabinet and the Property looked empty because she is quite a tidy person and she was photographing it. We do not accept Ms Adams' explanation. We are familiar with photographs of properties for sale on property websites and in estate agents' brochures. We consider that there is a real and obvious difference between photographs of properties that are lived in but have been tidied for sale and those properties which have not been lived in. Our view is that the Property looked unlived in and that the few small items that could be seen

and which Ms Adams relied on as showing occupation looked as though somebody occasionally visited the Property and wanted to be able to have a cup of tea and use the bathroom while there.

63. In her witness statement and before us, Ms Adams said that she did not have her two Labrador dogs with her throughout the time that she was living in the Property. That much was apparent from the complete absence of any canine paraphernalia in the photographs. She said that the dogs remained at the Livery with Mr Carr because she did not want them to get in the way of her decorating the interior of the Property. If, as Ms Adams would have had us believe, she was living in the Property when she had finished decorating it then there does not seem to be any reason why her dogs could not have joined her at that time and yet they did not. It would, in our view, be unusual for a pet owner to move to a new house on a permanent basis and leave her pets at her former home. We conclude that this is further evidence that Ms Adams never occupied the Property as a residence.

64. On 11 October, Ms Carr of Coutts emailed Ms Adams and said that she would ask Mr Squire to respond that day. We do not know if Mr Squire made contact on 11 October but, on 23 October, Ms Adams wrote a letter to Ms Carr to express concern about a telephone conversation with Mr Squire earlier that day. The letter states that Mr Squire had warned of further delay as a result of Ms Adams' decision to change solicitors. In the letter Ms Adams complained that Mr Squire did not want to see the loan concluded and then said:

> "The delay has limited my marketing of the property. It is only being offered for sale at present, and against my better judgment. There have been many viewings and the best offer received so far is not far removed from my asking price."

Ms Adams said that the reference to the marketing of the Property for sale in her letter of 23 October was to the fact that she had put it up for sale on Zoopla.

65. On 23 December 2013, Ms Adams sent an email to Mr Squire. In the email, Ms Adams referred to the fact that Mr Squire had previously told her in a telephone conversation that she had ceased to be eligible for the bank loan as she was no longer carrying out works of repair and improvement to the Property. The email stated:

> "As you know I felt obliged to market [the Property] for sale when you originally declined to consider a loan application shortly prior to my last tenant vacating, when I first contemplated the need to carry out works of repair and refurbishment."

66. In her witness statement, Ms Adams denied that the email of 23 December showed that she had decided to sell the Property at or around the time that her last tenants, Mr and Mrs Winter, vacated the Property. Although she asserted that she did not decide to sell the Property until sometime in early October 2013, Ms Adams did not explain why she used the language she did in her email to Mr Squire. From the evidence presented to us, the first refusal of a loan application was in Mr Squire's email of 3 September 2013, ie shortly after (not prior to) the last tenant vacating. We conclude that it is more likely than not that "prior to" was a slip for "after" and, therefore, that Ms Adams had decided to sell the Property not in early October but in September which was, on the basis of our other findings above, before she had moved into the Property (if she ever did).

67. On 23 January 2014, Mr Squire responded to an email from Ms Adams which we were not shown but, we infer from Mr Squire's email, told him of the exchange of contracts for the sale of the Property which had happened on that day. In her witness statement, Ms Adams says that Mr Squire's email made mention of Ms Adams' meeting with Ms Carr and Ms Hunnisett on 30 August 2013 but that is not correct as the email does not mention anything

about that meeting. The email referred to the increase in Ms Adams' overdraft made by Coutts in September "pending the security being put in place for [Coutts] to advance a loan to you, for the purpose of doing the required works on [the Property] to be able to rent the property again …". Mr Squire's email also said that it was Ms Adams' decision not to pursue the loan facility offered by the bank and, at no point, had the bank suggested that Ms Adams sell the Property. Mr Squire offered, now that contracts had been exchanged, to try to arrange an increase of Ms Adams' overdraft facility.

68. We record that we were also shown evidence that Ms Adams had paid council tax and some gas and electricity bills in relation to the Property but, while the payment of such bills may suggest responsibility for a property, it does not show that there was occupation as a residence.

Sale of the Property

69. The completion statement from Ms Adams' solicitors, Platt & Fishwick, showed that contracts for the sale of the Property were exchanged on 22 January 2014 and completion took place on 24 February. The Property was sold for £1,150,000 which allowed Ms Adams to redeem her mortgage with BoS for £290,834.58.

Subsequent events

70. Ms Adams filed her tax return for 2013-14 on 29 January 2015. In the return, she claimed private residence relief of £113,941 and lettings relief of £40,000 to reduce the chargeable gain on the disposal of the Property.

71. On 6 January 2016, HMRC opened an enquiry into Ms Adams' 2013-14 return. On 28 December 2016, HMRC accepted that there had been enhancement expenditure on the Property of £340,000. On 13 April 2017, HMRC expressed the view that 5 Holly Mount was not eligible for principle private residence relief or letting relief. On 21 December 2017, a closure notice was issued stating that an additional tax liability of £43,103.48 was due from Ms Adams. An appeal against the decision was received from Ms Adams' representative on 29 January 2018. On 27 February 2018, HMRC decided that, applying Goodwin *v Curtis*, Ms Adams did not meet the residency test. Ms Adams requested an independent review of the decision on 21 March 2018. In a letter dated 24 May 2018, HMRC accepted that Ms Adams had moved into the Property but not that Ms Adams had any intention to reside at the Property. On 15 June 2018, Ms Adams notified her appeal to the Tribunal.

CONCLUSIONS ON THE EVIDENCE

72. Having described the evidence in some detail and made our findings of fact, we can set out our conclusions quite shortly.

73. We find that Ms Adams has not proved, on the balance of probabilities, that she occupied the Property as a residence during the period from 14 August 2013 to 23 February 2014. Apart from the testimony of Ms Adams, which we have found to be unreliable in certain respects for the reasons set out above, there is a complete absence of evidence to show that Ms Adams ever lived at the Property at all and we conclude that it is more likely than not that she never occupied the Property as a residence. Even if we are wrong in reaching that conclusion, we have found that Ms Adams did not occupy the Property as a residence between 14 August and the end of September 2013 and had formed an intention to sell the Property in September before she later moved into it (if she did). That and the fact that the Property was first marketed for sale on the Zoopla website on 9 October 2013, in our view, show that Ms Adams never intended to occupy the Property permanently or with any degree of continuity. We conclude that the Property was never Ms Adams' main residence at any

point during the period from 14 August 2013 to 23 February 2014. Accordingly, our decision is that Ms Adams was not entitled to PPR relief in respect of her disposal of the Property.

DISPOSITION

74. For the reasons set out above, Ms Adams' appeal is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

75. 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.

JUDGE GREG SINFIELD

CHAMBER PRESIDENT

RELEASE DATE: 30 JANUARY 2020