[2022] UKUT 2 (TCC)

Appeal number: UT/2021/000064

STAMP DUTY LAND TAX - multiple dwellings relief – main house and annexe - the test for a single dwelling in paragraph 7(2) Schedule 6B to the Finance Act 2003 – application of principles in Fiander and Brower - appeal dismissed

UPPER TRIBUNAL
(TAX AND CHANCERY CHAMBER)

ANDREW AND TIFFANY DOE **Appellants**

- and -

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

TRIBUNAL: JUDGE THOMAS SCOTT
JUDGE RUPERT JONES

Sitting in public by way of remote video Microsoft Teams hearing, treated as taking place in London, on 16 November 2021

Patrick Cannon, Counsel, instructed by Goldstone Tax Limited for the Appellants

Michael Ripley, Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. The Appellants appeal against the decision of the First-tier Tribunal ("FTT") dated 25 January 2021 (the "Decision"), released under reference [2021] UKFTT 17 (TC). The FTT decided that the acquisition of a residential property by the Appellants did not qualify for multiple dwellings relief ("MDR") for the purposes of Stamp Duty Land Tax ("SDLT") and dismissed the Appellants' appeal.

2. With the permission of the FTT, the Appellants appeal against the Decision on the grounds that the FTT erred in law in coming to the conclusion that the property, consisting of a main house and annexe, did not qualify for MDR because it was suitable for use as a single dwelling.

3. Therefore the issue in the appeal is whether the FTT made an error of law in drawing the conclusion that the property was suitable for use as a single dwelling rather than multiple dwellings, applying the statutory definition of "dwelling" in paragraph 7(2) Schedule 6B to the Finance Act 2003 ("FA 2003").

The FTT's decision

4. References below to paragraphs in the form "[*x*]" are, unless stated otherwise, to paragraphs of the Decision.

5. The FTT recorded the background to the appeal at [4]-[8].

6. The Appellants acquired a property in Islington, London (the "Property") with vacant position for £2,700,000. The contract of sale was dated 11 August 2017 and completion occurred on 18 August 2017.

7. The Appellants initially declared and paid SDLT of £237,750 but subsequently requested a refund of £80,250 on the basis that the Property qualified for MDR.

8. On 28 March 2019, HMRC notified the Appellants that an enquiry had been opened into the SDLT return and on 8 July 2019 HMRC issued a closure notice amending the Appellants' SDLT return by disallowing MDR and requesting repayment of the £80,250.

9. The Decision sets out the FTT's findings of fact in relation to the physical attributes of the Property at [10]-[15]:

> (1) The Property was a detached house, which (from 1969) included an annexe utilising part of the first floor ([10], [11]).
>
> (2) In the sale particulars of the estate agent it was stated that on the ground floor there were two receptions rooms, with the entrance hall leading

through to a dining room which in turn led to the kitchen from which the ground floor bathroom could be accessed ([13]).

(3) In respect of the first floor, the sale particulars stated that there were two bedrooms with a separate annexe on the half landing. The annexe had its own bedroom, bathroom and kitchen ([14]).

(4) The Property had two doorbells ([15]).

10. The FTT returned to the physical attributes and layout of the Property by reference to the floorplan within the sale particulars provided by the estate agents at [66]-[70]. The FTT stated at [72]:

> 72. In the present case, it is not in dispute between the parties that the annexe comprises self-contained accommodation. There is a bedroom, kitchen and bathroom within the annexe and the door into and out of the annexe can be locked. The annexe has its own boiler and electrical circuit. Neither is it in dispute between the parties that there is a separate doorbell at the front of the house for the annexe.

11. Mr Cannon also represented the Appellants before the FTT. The FTT summarised his primary argument in the appeal at [73]:

> 73. Mr Cannon in his skeleton argument states that the existence of a common front door, communal hallway and staircase is of no significance for MDR purposes given that any building in multiple occupation with separate self-contained dwellings such as flats in divided houses, mansion blocks or blocks of flats will have these features such that the Property is in principle no different from any other divided house in this respect. Mr Cannon also points to the presence of lockable internal doors to preserve the privacy and security of the respective parts of the building.

12. The FTT recorded an alternative argument of Mr Cannon at [74]:

> 74. Mr Cannon also contended that even if the two bedrooms (on the first floor) and the reception room and study on the ground floor are discounted, there is still objectively a separate dwelling (on the ground floor) consisting of a single unit behind a lockable door comprising a living/sleeping area and a kitchen and bathroom much like a studio flat. That accommodation, it is submitted, is on its own suitable for use as a single dwelling without the "nice to have" other rooms elsewhere in the building (namely, the reception room, the study and the two bedrooms on the first floor).

13. The FTT noted at [79]:

> 79. In the present appeal, the ex-wife and child of the civil partner of the seller of the Property were living in the Property at the time of sale to the Appellants as was the civil partner …. of Mr Anson (the seller). The Appellants have also provided a copy of the electoral register detailing that one Ms Agnes Groves was listed on the electoral register in 1960 (and afterwards) for 18 Ripplevale Grove, N.1 as was Mr Colin S Anson.

> Mr Doe gave evidence that Ms Groves was living at 18 Ripplevale Grove, N1 when Mr Anson bought the Property and that she continued to live there in a separate part from Mr Anson after his purchase of the Property.

14. The FTT summarised its approach to deciding the appeal as follows:

> 57. The approach adopted in the *Fiander* case [the FTT decision then available] with respect to "suitability for use" was an objective determination of the physical attributes of the property at the relevant time… That is the approach that I have adopted with respect to this case and is the approach that I was encouraged to adopt by both parties in this appeal.
>
> …
>
> 60. A dwelling is a place where a person or a number of persons live. A building or a part of a building can be suitable for use as a dwelling only if a building or part of a building accommodates all of the basic domestic living needs of that person or persons.
>
> 61. Those basic domestic living needs are to sleep, to eat, and to attend to the personal and hygiene needs of the person or persons living in the dwelling.
>
> 62. Those basic domestic living needs also are to be accommodated with a reasonable degree of privacy and security.
>
> …
>
> 81. With respect to whether or not a building or part of a building is suitable for a use, I agree with the approach taken in the *Fiander* case that it is if it can generally be so used. In other words, if a building (or part of a building) is suitable for use only in quite specific circumstances, then this points against the conclusion that the building (or part of a building) is suitable for that use.

15. The FTT drew further factual inferences in its reasoning, particularly at [82]-[83] and [85]-[87], as follows:

> (1) Access to the annexe within the Property also gave access to the rest of the house. An occupant of the annexe using the front door would have access to each of the reception room, the study and the dining room (leading to the kitchen and bathroom) on the ground floor. "An occupant of the main house would have to lock each of those rooms on leaving each of those rooms on every occasion to ensure that access to each of those rooms was not available to the occupants of the annexe. Unless that was done, occupants of the annexe could freely gain access to the reception room, the study, the dining room and hence the kitchen and bathroom on the ground floor" ([82]).
>
> (2) For example, "the occupants of the main house, on route to or from the bathroom at night and perhaps in some state of undress, potentially meeting occupants of the annexe in the communal areas of the Property is not a fanciful notion but a very real one given the layout of the Property" ([83]).

(3) In consequence, the main house and the annexe were not generally suitable for use as single dwellings due to the insufficiency of privacy and security for the occupants ([85]).

(4) An objective observer would not have reasonably concluded that the Property was suitable for use as two dwellings: [86]. The FTT did "not accept that, in the eyes of an objective observer at the time of completion, an objective observer would have reasonably concluded that the Property was suitable for use as two dwellings on that basis, particularly as it would have resulted in a very significant part of the Property being rendered redundant."

The law

16. Unless stated otherwise, statutory references below are to FA 2003.

17. SDLT applies to land transactions by reference to the "effective date". In the present case, the effective date was the date of completion: sections 44(3) and 119.

18. There is no dispute that the Property was residential for the purposes of SDLT and, at the effective date, the normal rates for SDLT under section 55 FA were:

(1) 0% for so much of consideration as did not exceed £125,000;

(2) 2% for so much as exceeded £125,000 but did not exceed £250,000; and

(3) 5% for so much as exceeded £250,000 but did not exceed £925,000.

19. Section 58D introduced Schedule 6B, which provides for relief in the case of transfers involving multiple dwellings. Relief is available where the main subject-matter of a chargeable transaction consists of an interest in at least two dwellings (pursuant to paragraphs 2(1)(a) and 2(2)(a)).

20. Insofar as relevant, paragraph 7, Schedule 6B provides as follows:

> (1) This paragraph sets out rules for determining what counts as a dwelling for the purposes of this Schedule.
>
> (2) A building or part of a building counts as a dwelling if—
>
> (a) it is used or suitable for use as a single dwelling, or
>
> (b) it is in the process of being constructed or adapted for such use.

21. Where MDR applies, SDLT is calculated in accordance with paragraphs 4 and 5 of Schedule 6B. In summary, the relief can lower the rate of SDLT by splitting the chargeable consideration among each of the dwellings (subject to a minimum SDLT charge of 1% on the total chargeable consideration).

22. A building cannot be both a single dwelling and multiple dwellings at the same time for the purposes of Schedule 6B. A transaction must be either a "single dwelling

transaction" or a "multiple dwelling transaction" (see paragraph 3, Schedule 6B). Equally, a property cannot be both a two-dwelling building and a three-dwelling building at the same time because the calculation of MDR presupposes that it is one or the other (paragraph 5(1), (5), Schedule 6B).

The Upper Tribunal's guidance in Fiander and Brower v HMRC

23. The Upper Tribunal has recently considered the scope of MDR in *Fiander and Brower v HMRC* [2021] UKUT 156 (TCC) ("*Fiander*"). The Upper Tribunal dismissed the appeal from the FTT decision: *Fiander and Brower v HMRC* [2020] UKFTT 190. The Upper Tribunal's decision in *Fiander* was issued subsequent to the FTT's Decision in this case, but the FTT's decision in *Fiander* was relied upon in argument before the FTT and in the Decision.

24. At [48] of its decision in *Fiander*, the Upper Tribunal made a series of general observations giving guidance as to the meaning of "suitable for use as a single dwelling" as provided in paragraph 7, Schedule 6B. By way of summary, the following observations from the Upper Tribunal's guidance are material to the present case (references being to paragraphs of *Fiander*):

> (1) The word "suitable" implies that the property must be appropriate or fit for use as a single dwelling. The status of a property must be ascertained from its physical attributes at the effective date of the transaction[1] ([48(1)]).
>
> (2) "The word "dwelling" describes a place suitable for residential accommodation which can provide the occupant with the facilities for basic domestic living needs….to sleep and to attend to personal and hygiene needs" ([48(2)]).
>
> (3) The word "single" emphasises that the dwelling must comprise a separate self-contained living unit ([48(3)]).
>
> (4) The test of "suitability for use" is objective ([48(4)].
>
> (5) Suitability is to be assessed by reference to occupants generally. It is not sufficient for the property to be suitable only for a relative or squatter ([48(5)]).
>
> (6) There is no "one size fits all" test: different properties may raise different issues. What matters is that the occupant's basic living needs must be capable of being satisfied with a degree of privacy, self-sufficiency and security ([48(6)]).
>
> (7) Suitability for use is a multi-factorial assessment which should take into account all the facts and circumstances. "Ultimately, the assessment must be made by the FTT as the fact-finding tribunal, applying the principles set out above" ([48(7)]).

[1] In the present case, that means the date of completion, i.e. 18 August 2017.

Appellants' submissions

25. Mr Cannon submitted that in arriving at its conclusion that the Property was suitable for use as a single dwelling the FTT made three errors of law which rendered the Decision unsustainable.

26. First, he submitted that the FTT failed to give proper weight to the fact that the Property had historically been used by two independent occupiers who lived in separate parts of the Property, thereby satisfying the test for a single dwelling under paragraph 7(2) of Schedule 6B. He argued that the FTT focussed instead on the suitability for use as a single dwelling.

27. Second, Mr Cannon submitted that the FTT incorrectly rejected the Appellants' alternative argument recorded at [74] and [86] that there were objectively two single dwellings at the Property. These were a separate dwelling on the ground floor behind a lockable door comprising a living/ sleeping area, kitchen and bathroom, like a studio flat, and the separate annexe on the half-landing which was accepted by the FTT as self-contained accommodation also behind a lockable door. He submitted that the FTT at [86] rejected that argument on the basis that "it would have resulted in a very significant part of the Property being rendered redundant", namely the two bedrooms on the first floor and the reception room and study on the ground floor.

28. He argued that the FTT's reasoning was flawed in two respects. First, the concept of redundancy of part of the property (even if valid) should not trump the physical existence within the Property of two separate dwellings for the purposes of a claim for MDR, being dwellings that had been both used and were suitable for use as separate dwellings. In any event the relevant parts of the Property were not "redundant" because they were available exclusively to the occupants of the main dwelling due to their door being lockable.

29. Mr Cannon further submitted that the FTT's focus on the "redundant" rooms led it into error in accepting HMRC's arguments at [75] and [83] that a hypothetical occupant of a bedroom on the first floor, including a child, coming downstairs at night to use the bathroom, might encounter the occupant of the annexe and that this possibility compromised the privacy and security of the occupants of both parts of the Property.

30. Third, he submitted that the FTT's findings were underpinned by the needs of a couple occupying the main dwelling with dependent children and the apparent concern as to the possibility of the children meeting a "stranger" occupying the annexe. Therefore, he submitted, the FTT unduly focussed on the apparent needs of couples with dependent children as a paradigm against which the statutory definition of dwelling should be tested to the detriment of other occupiers such as those who are single or without children and who would be far less concerned about rubbing shoulders in the communal hallway (as were the persons who occupied the Property in the past, asserted Mr Cannon).

31. He submitted that the FTT failed to take account of the unusual nature and history of the Property and, contrary to the decision at [48(6)] of *Fiander*, applied a "one size fits all" approach in finding that the accommodation did not provide the necessary privacy and security for the occupiers of both parts of the Property.

HMRC's submissions

32. Mr Ripley, counsel for HMRC, opposed the appeal. He submitted that the FTT did not err in law in any of the ways that Mr Cannon alleged but that it applied the law consistently with the guidance in *Fiander* to the facts which it was entitled to find. He submitted that the FTT arrived at a proper conclusion for justifiable reasons.

33. We did not call upon Mr Ripley in oral argument as we did not consider it necessary for him to expand upon the points made clearly in his written skeleton argument.

Discussion and analysis

The nature of the appeal and the Upper Tribunal's jurisdiction

34. In his skeleton argument, Mr Cannon purported to be challenging the FTT's "legal conclusion" from the facts as found. However, in response to questioning from the Tribunal at the beginning of his oral submissions Mr Cannon conceded that the Appellants could only succeed by establishing that the FTT's findings of fact or evaluative judgment involved material errors of law.

35. The Upper Tribunal recently summarised the position in relation to such a challenge in *HMRC v Anna Cook* [2021] UKUT 15 (TCC), at [18]-[19] of its decision:

> 18. An appeal to this tribunal lies only on a point of law: section 11(1) of the Tribunals, Courts and Enforcement Act 2007 ("TCEA 2007"). While there cannot be an appeal on a pure question of fact which is decided by the FTT, the FTT may arrive at a finding of fact in a way which discloses an error of law. That is clear from *Edwards v Bairstow* [1956] AC 14. In that case, Viscount Simonds referred to making a finding without any evidence or upon a view of the facts which could not be reasonably entertained, and Lord Radcliffe described as errors of law cases where there was no evidence to support a finding, or where the evidence contradicted the finding or where the only reasonable conclusion contradicted the finding. Lord Diplock has described this ground of challenge as "irrationality"[2].
>
> 19… we have borne in mind the caveats helpfully summarised in *Ingenious Games LLP & Others v HMRC* [2019] UKUT 226 (TCC), at [54]-[69]. The bar to establishing an error of law based on challenges to findings of fact is deliberately set high, and that is particularly so where the FTT is called on to make a multi-factorial assessment. As stated by Evans LJ in *Georgiou v Customs and Excise Commissioners* [1996] STC 463, at 476:

[2] *Council for Civil Service Unions v Minister for the Civil Service* [1985] AC 374, at 410F411A.

> … for a question of law to arise in the circumstances, the appellant must first identify the finding which is challenged; secondly, show that it is significant in relation to the conclusion; thirdly, identify the evidence, if any, which was relevant to that finding; and fourthly, show that that finding, on the basis of that evidence, was one which the tribunal was not entitled to make. What is not permitted, in my view, is a roving selection of evidence coupled with a general assertion that the tribunal's conclusion was against the weight of the evidence and was therefore wrong. A failure to appreciate what is the correct approach accounts for much of the time and expense that was occasioned by this appeal to the High Court.

36. In *FAGE UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5 Lewison LJ said this at [114]:

> Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them.

37. It follows from this that the question before an appellate tribunal or court exercising an "error of law" jurisdiction is not whether it would have made the same decision as the first-instance tribunal. The appeal is not a re-run of the first-instance trial: as Lewison LJ said in FAGE UK (at [114]), "the trial is not a dress rehearsal. It is the first and last night of the show". The test is whether the FTT's evaluative judgment was within a reasonable range of conclusions that a properly directed tribunal could have made on the evidence before it.

38. We wish to emphasise that on an appeal from a decision of the FTT such as this, any challenge based on the principles in *Edwards v Bairstow* should be clearly identified as such in a party's skeleton argument and should take into account the correct approach to such a challenge summarised in the passage above from *Georgiou*.

Addressing the grounds of appeal

39. Mr Cannon made three criticisms of the Decision which we address as three separate grounds of appeal:

> (1) The FTT failed to give proper weight to the fact that the Property had historically been used by independent occupiers;
>
> (2) The FTT discounted the Appellants' argument that there are objectively two single dwellings at the Property and incorrectly focussed on a concept of "redundancy"; and
>
> (3) The FTT focussed unduly on the apparent needs of couples with dependent children when considering the privacy and security of the Property in terms of its suitability for use as a single dwelling.

(1) The actual and historical use of the property

40. Mr Cannon submitted that more than one part of the Property satisfied the condition in the first part of paragraph 7(2)(a), Schedule 6B ("*it is used… as a single dwelling*"). Thus, he submitted that the FTT wrongly focussed on suitability for use because actual use of the Property as two separate dwellings was sufficient.

41. That submission is flawed for several reasons.

42. First, it assumes the answer to the very question which was before the FTT and determined by it. Contrary to Mr Cannon's submission, there was no finding by the FTT that the Property was in fact used as two single (separate) dwellings. Nor did Mr Cannon identify the evidence which would have compelled such a finding. Accordingly, there is no factual or evidential basis for the argument the Property was historically used as two single dwellings.

43. Mr Cannon placed significant emphasis on what he described as the FTT's conclusion at [79] that the annexe had been separately occupied by tenants independent of the occupier of the main dwelling since 1960 i.e. for nearly 60 years.

44. However, this point is misconceived because there was no such conclusion. There was no finding of fact by the FTT that there was separate and independent occupation of the main parts of the house and the annexe for sixty years or at all. Paragraph [79] states as follows:

> In the present appeal, the ex-wife and child of the civil partner of the seller of the Property were living in the Property at the time of sale to the Appellants as was the civil partner (Ahmed) of Mr Anson (the seller). The Appellants have also provided a copy of the electoral register detailing that one Ms Agnes Groves was listed on the electoral register in 1960 (and afterwards) for 18 Ripplevale Grove, N.1 as was Mr Colin S Anson. Mr Doe gave evidence that Ms Groves was living at 18 Ripplevale Grove, N1 when Mr Anson bought the Property and that she continued to live there in a separate part from Mr Anson after his purchase of the Property.

45. The FTT took into account amongst other evidence the hearsay evidence of Mr Doe as to what the seller had told him about the previous occupation. While the FTT may take hearsay evidence into account, it is fully entitled to give it whatever weight it considers appropriate[3]. No finding of fact which would support Mr Cannon's description of the FTT's conclusion on this issue was made as to the previous use or occupancy of the Property or the independence of or nature of the relationship between its occupants. Therefore, the premise of Mr Cannon's argument was fatally flawed.

46. In any event, as made clear by the UT in *Fiander*[4] the status of the Property for SDLT purposes must be judged at the effective date. The Upper Tribunal's guidance was given in the context of whether a house and its annexe were each "suitable for use"

[3] Rule 15(2) First-tier Tribunal (Tax Chamber) Rules.
[4] [48(2)] of *Fiander*.

but precisely the same reasoning applies in the context of whether each part of a building "is used" as a single dwelling.

47. In the present case, the evidence did not demonstrate that the Property was ever used as two separate dwellings and the FTT made no such finding.

48. Although the Property was not found to have been "used" as two single dwellings at the effective date of the Appellants' acquisition, it was nevertheless open to the FTT to take into account the historical use of the Property when determining whether it was "suitable for use" as two single dwellings. Nonetheless, it was ultimately for the FTT to evaluate the parts of the Property objectively and decide as matter of fact whether it was suitable for use as two single dwellings at the effective date. Even if the evidence before the FTT had demonstrated that some previous occupants had considered the Property to be suitable for such use, the FTT nevertheless had to form its own view. The reasons the FTT gave are more than a reasonable foundation for its conclusion that the Property was not suitable for use as two dwellings.

49. Further and in any event, the Appellants' criticism that the FTT "failed to give proper weight" to the historical use of the Property does not identify any error of law. Questions of weight are for the first instance decision maker (see *Runa Begum v Tower Hamlets London BC* [2003] UKHL 5 at [99], as recently summarised in *Saint-Gobain Building Distribution Limited v HMRC* [2021] UKUT 0075 (TC) at [25(4)]).

50. We are satisfied that this ground of appeal identifies no error of law in the FTT's Decision.

(2) Whether there were objectively two dwellings in the Property

51. Whether or not there were objectively two dwellings in the Property was the very question which the FTT expressly considered and determined in favour of HMRC. The Appellants' submission makes no attempt to identify all the evidence relevant to the FTT's finding or to explain why that finding was not one it was rationally entitled to make.

52. Mr Cannon relied on the FTT's statement at [72] that "it is not in dispute between the parties that the annexe comprises self-contained accommodation". However, it did not follow from the fact that there was no dispute that the annexe was self-contained that the annexe and the remainder of the Property comprised two self-contained units generally capable of separate use. Even if one part of the Property might have been sufficiently self-contained to be suitable for separate use by a particular kind of occupant, it would not follow that the Property comprised two separate single dwellings.

53. Moreover, it is unclear on what basis the Appellants criticise the FTT for taking into account the physical attributes and layout of the Property (including the access to the different parts). The fact that the Property was not configured as two single dwellings was plainly relevant.

54. Mr Cannon also contends that "in any event" the FTT was wrong to find that a very significant part of the Property would be redundant on the Appellants' alternative analysis. However, there are two problems with this:

> (1) In referring to redundancy, the context was that the FTT was expressly considering the Appellants' fall-back position that one could "discount" significant parts of the Property in order to characterise the Property as containing two dwellings (see [74] and [86]). In other words, the "redundancy" to which the Appellants object was an issue which arose directly from the Appellants' alternative argument.
>
> (2) The FTT expressly considered the Appellants' alternative analysis (namely that the ground floor rooms were treated as part of a single dwelling separate from the annexe secured by a series of lockable doors) and it rejected it ([82]). Thus, the FTT fairly considered both arguments put forward by the Appellants and rejected them for reasons which we consider to be unassailable.

55. We are satisfied that this ground of appeal identifies no error of law in the FTT's Decision.

(3) Whether the FTT focussed unduly on the needs of couples with children

56. Mr Cannon submitted that the FTT "*focus(sed) unduly on the apparent needs of couples with dependent children as some sort of paradigm.*" There is no substance to this complaint.

57. The Decision at [83] properly and relevantly records the general lack of separation between the parts of the Property as a consequence of its layout. There is no reference in the Decision to couples and the only reference to children is in an example recorded as put forward by HMRC's representative in the FTT at [75]:

> Mr Marks, in his arguments, emphasised the insufficient privacy within the Property. He gave the example of an occupant of the main house, including a child, having to leave their bedroom on the first floor and go through the communal area of the Property to the toilet downstairs at night or to have a bath before going to bed in some state of undress. That could result in an occupant of the main house meeting an occupant of the annexe, a stranger, in the communal area of the Property when returning from having used the bathroom on the ground floor and returning to their bedroom on the first floor.

58. Mr Cannon confirmed that this ground rests entirely on the presence in the example of the words "including a child".

59. The lack of privacy and security between different parts of the Property was reasonably likely to be material for a wider category of potential occupants than merely couples with children. The FTT's reasoning at [82]-[85] did not depend on assuming any particular type of occupant, and indeed the FTT was expressly mindful of not doing so (see [81]).

60. It cannot be said that the FTT was wrong to take into account the lack of privacy and security between the different parts of the Property in deciding it was suitable for use only as a single dwelling. Privacy and security are material and important factors. Further, the FTT (as the fact-finding tribunal) was entitled to decide to give weight to the absence of privacy and security in performing the multi-factorial evaluative exercise.

61. We are satisfied that this ground of appeal identifies no error of law in the Decision.

Conclusion

62. The FTT was entitled to find that the Property was not configured in such a way that it comprised two self-contained living units generally suitable for separate occupation but was suitable for use as a single dwelling. For the reasons set out above, its evaluative judgment contains no error of law and the FTT was entitled to reach the conclusion it did for the reasons it gave.

Disposal

63. For these reasons, the appeal is dismissed.

Signed on Original

JUDGE THOMAS SCOTT **JUDGE RUPERT JONES**

RELEASE DATE: 17 January 2022