



FIELD COURT TAX CHAMBERS

Dower: SDLT and multiple dwellings¹

When microwave meals aren't enough

Having regard to the huge disparity in the rates of SDLT for residential property, it is no surprise that claims are frequently made for multiple dwellings relief (MDR). The latest one to hit the tribunal is *Dower v HMRC* UKFTT 170 (TC).

To satisfy the test for MDR under FA 2003 Sch 6B, the subject matter of the land transaction must consist of at least two dwellings. No surprise there.

Mr and Mrs Dower claimed that the annex to their main house, being a flat above the separate garage was a separate dwelling. It was self-contained with a secure entrance, a bedroom, a sitting room and bathroom but it did not have a separate kitchen. They cooked their meals with a microwave and a slow cooker.

Mr and Mrs Dower lived in the annex for four months while the main house was undergoing renovation. Under the circumstances, it looks a bit difficult for HMC to say that the annex was not suitable for residential accommodation as the taxpayers lived there for four months and had all the necessary facilities in the separate dwelling.

However, undeterred, HMRC argued that it was not a separate dwelling. They said that the tribunal should have regard to the *SDLT Manual* on the matter which set out the position. (I love it when HMRC does that: 'we have said that this is the position, so obviously that must be right'. No need for courts then or even laws)

The tribunal explained that to be a separate dwelling, it needed to be suitable for residential accommodation, and had to provide the occupant with facilities for basic living needs, such as sleep and hygiene, as well as the ability to prepare food.

The judge said that the absence of 'proper kitchen facilities' weighed heavily against it being suitable for use as a dwelling.

I think we could have a lot of fun guessing what is meant by 'proper kitchen facilities'. (It's tempting, but I resist). Mr and Mrs Dower clearly thought the kitchen facilities were adequate as they lived there and eat their meals there for months – although I suppose you cannot possibly have a proper meal cooked in a microwave.

That clearly weighed heavily with the judge, but she highlighted other tests which needed to be considered before the annex could be regarded as a dwelling suitable for residential accommodation:

- There was no separate council tax or postal address.

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- Whether it could have been sold separately.
- The occupation for four months was temporary because they were only living there while the main house was being renovated.
- It would have been inconvenient for Mr and Mrs Dower to have had unrelated persons living there.

It is difficult to see how any of these tests can impact on whether the annex was suitable for residential accommodation. Indeed, if these tests hold, they would seem capable of disqualifying almost any separate dwelling from MDR. Anyway, that is where we are in the absence of an appeal.

Peter Vaines

Field Court Tax Chambers