Neutral Citation: [2025] UKFTT 01439 (TC)

Case Number: TC09696

FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video hearing

Appeal reference: TC/2023/17001

STAMP DUTY LAND TAX – apartment acquired with a basement storage unit – single contract but separate leasehold interests – whether single transaction or separate but linked – whether "interest or right appurtenant or pertaining" – no – meaning of residential property – whether lease of the storage unit "an interest in or right over land that subsists for the benefit" of the apartment – no – appeal allowed

Heard on: 22 September 2025
Judgment date: 24 November 2025

Before

TRIBUNAL JUDGE RACHEL GAUKE
JANE CUMMINS

Between

RAJ SEHGAL
VARSHA SEHGAL

Appellants

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Michael Firth KC of counsel, instructed by TT Law

For the Respondents: Ellis Davies, litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. Mr and Mrs Sehgal appealed against a closure notice issued by HMRC on 21 July 2023, refusing a refund of stamp duty land tax ("SDLT") in the amount of £1,749,250. The dispute concerns whether SDLT was due at the rates applying to residential property.

2. For the reasons set out below, we have decided to allow the appeal.

HEARING AND EVIDENCE

3. The hearing was conducted by video link on Microsoft Teams. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely to observe the proceedings. As such, the hearing was held in public.

4. We had a 418-page hearing bundle which included the notice of appeal, the amended grounds of appeal, HMRC's statement of case, correspondence between HMRC and Mr and Mrs Sehgal (and their then agents, Cornerstone Tax 2020 Ltd ("Cornerstone")), and conveyancing documentation including the relevant agreement for sale, leases, TR1, SDLT return and Land Registry official copies. We also had a 485-page authorities bundle containing relevant legislation, case law, textbook extracts and HMRC guidance. In addition, we had both parties' skeleton arguments, some additional case law, legislation and Parliamentary explanatory notes, and a further copy of the relevant SDLT return originally submitted by Mr and Mrs Sehgal.

5. We had a brief witness statement from Mr Sehgal, essentially confirming the conveyancing and procedural history of the transactions and the SDLT dispute. We accept the accuracy of this statement, but did not find it necessary to rely on it for our findings of fact below because we were able to base these on the documentary evidence. Mr Sehgal attended the hearing but did not give oral evidence. Mr Davies (appearing before us for HMRC) confirmed that he had no questions for Mr Sehgal. We understood this to be because the essential facts were not in dispute.

FINDINGS OF FACT

6. On 14 January 2022, Mr and Mrs Sehgal entered into an agreement with Grosvenor Square Ltd and Twenty Grosvenor Square Residential Ltd to purchase a fourth floor apartment (the "Apartment") in 20 Grosvenor Square, London (the "Building"). In the same agreement, Mr and Mrs Sehgal agreed to purchase a car parking space, and a storage unit (the "Storage Unit"). A single premium of £18,250,000 was payable under the agreement in respect of the Apartment, the car parking space, and the Storage Unit.

7. The Storage Unit was on the second basement floor of 20 Grosvenor Square. We were not told the precise dimensions of the Storage Unit, but based on the floor plan in the hearing bundle we find that it was less than two metres wide and less than four metres deep.

8. Completion of the sale of all three elements (the Apartment, the car parking space, and the Storage Unit) took place on 4 March 2022. The purchase of the Apartment took the form of the assignment to Mr and Mrs Sehgal of the remaining term of a long lease (for over 900 years). This lease makes no reference to the Storage Unit. The car parking space was also purchased through the assignment of a long lease, again for over 900 years.

9. The leases of the Apartment and car parking space were acquired by a single form TR1, which shows the transferor as Grosvenor Square Ltd and the transferee as Mr and Mrs

Sehgal. The TR1 makes no reference to the Storage Unit but the "consideration" is stated to be the whole amount of the premium (£18,250,000). We find that the parties had not agreed to apportion a specified part of the premium to the Storage Unit.

10. The Storage Unit was acquired on the same date (4 March 2022) by the grant of a new lease by Grosvenor Square Ltd to Mr and Mrs Sehgal for 20 years (the "Storage Unit Lease").

11. The leases of the Apartment and the car parking space, and the Storage Unit Lease, were each registered with separate title numbers at the Land Registry.

12. The Storage Unit Lease includes terms that would be expected in a lease, such as obligations to pay ground rent and a service charge, and forfeiture provisions if these amounts are not paid. The Storage Unit Lease also conferred on Mr and Mrs Sehgal the right to access the Storage Unit via defined access routes through communal parts of the Building.

13. Under the Storage Unit Lease, Mr and Mrs Sehgal covenanted (amongst other things):

> "not to assign, charge, transfer, underlet, agree to underlet, part with or share possession of the Property except as a whole and in respect of any transfer or underletting not without complying with clause 4.15;"

14. The Property was defined as the Storage Unit.

15. Under clause 4.15 of the Storage Unit Lease, Mr and Mrs Sehgal covenanted:

> "4.15.2 not at any time to underlet the whole of the Property without the consent of the Landlord (such consent not to be unreasonably withheld or delayed) and except:
>
> 4.15.2.1 to a person(s) who are:
>
> (i) an existing owner of a Residential Apartment; or
>
> (ii) an existing tenant of a Residential Apartment, and only for a term expiring on or before the term of the tenancy of such Residential Apartment;"
>
> […]
>
> 4.15.3 not at any time to assign or transfer the Property without the consent of the Landlord (such consent not to be unreasonably withheld or delayed) and other than to a person(s) who are:
>
> 4.15.3.1 simultaneously acquiring a Residential Apartment; or
>
> 4.15.3.2 an existing owner of a Residential Apartment;"

16. A Residential Apartment was defined as a residential apartment in 20 Grosvenor Square (ie the Building).

17. The Storage Unit Lease contained a list of rules and regulations which Mr and Mrs Sehgal had to observe. These rules included various uses that were prohibited for the Storage Unit, such as use as a workshop, or to keep an animal, or to store flammable substances. At rule 2.5 there was a general obligation:

> "Not at any time to use the Property or permit it to be used except for the purpose of private residential storage ancillary to the use of a Residential Apartment."

18. A single SDLT return was submitted for these transactions on 7 March 2022. This gave the amount of the consideration as £18,250,000. In response to the question "is this transaction linked to any other(s)?", Mr and Mrs Sehgal's agents ticked "no". The amount of

SDLT was calculated on the basis that the acquisition was of residential property, and that the higher rates in FA 2003, Sch 4ZA applied.

19. On 1 December 2022, Mr and Mrs Sehgal's then agents sent a letter requesting an amendment to the SDLT return on the basis that the calculation should have applied the "mixed-use" rates of SDLT. The agents maintained that the property was mixed use, because there was a right to use shared amenities, including a communal garden, gym, spa, and children's play area. Mr and Mrs Sehgal applied for an SDLT refund of £1,749,250.

20. On 4 May 2023, HMRC issued a formal notice of enquiry into the amendment. On 21 July 2023, HMRC issued a closure notice, concluding that the acquisition was of wholly residential property and that no refund of SDLT was due.

21. On 25 July 2023, Mr and Mrs Sehgal appealed against the decision in the closure notice and requested a review, maintaining that the communal areas should be classified as non-residential. On 26 September 2023, HMRC provided their "view of the matter", which was that the transactions were wholly residential. HMRC offered a review of their decision, which Mr and Mrs Sehgal accepted on 28 September 2023.

22. On 13 October 2023, HMRC's reviewing officer wrote to Mr and Mrs Sehgal, introducing himself and stating that the statutory review period would expire on 15 November 2023. The officer also explained that he was obliged by legislation to consider any representations Mr and Mrs Sehgal wished to make during the review period, stating:

> "If you wish to provide me with any additional information or documentation, or to make any new arguments, please ensure that I have these in writing at your earliest opportunity, preferably by 3 November 2023."

23. On 2 November 2023, Mr and Mrs Sehgal's agents wrote to HMRC to provide further representations in addition to the arguments that had already been raised. This letter stated that the transactions qualified for the non-residential rate because of the Storage Unit Lease. The agents contended that the Storage Unit Lease was a linked transaction in relation to the lease of the Apartment, that the Storage Unit was not residential property, and that therefore the transaction qualified for the non-residential rates.

24. On 14 November 2023, HMRC issued a review conclusion letter, upholding their decision that the residential rates applied to the transactions. This letter considered Mr and Mrs Sehgal's previous arguments concerning shared amenities and communal areas. The reviewing officer wrote again to Mr and Mrs Sehgal on 28 November 2023, explaining that he had received the further representations sent on 2 November 2023, but not until the review conclusion letter had already been issued. The officer explained that there was no statutory mechanism to alter the review conclusion or issue a second review, and that if Mr and Mrs Sehgal did not agree with the review conclusion, they should notify their appeal to the Tribunal.

25. Mr and Mrs Sehgal notified their appeal to the Tribunal on 4 December 2023. Their grounds of appeal referred to the arguments concerning shared amenities and communal areas, and also enclosed the representations made on 2 November 2023 (concerning the Storage Unit Lease) as further and alternative grounds of appeal.

26. The appeal was stayed pending determination of another appeal, the decision in which was subsequently published as *Kwasi and Divine Bonsu v HMRC* [2024] UKFTT 159 (TC) ("*Bonsu*"). Following the expiry of the stay, Mr and Mrs Sehgal confirmed their intention to continue the appeal, and on 18 June 2024 submitted amended grounds of appeal. These grounds no longer sought to rely on the arguments concerning shared amenities and

communal areas, but stated that the amended SDLT return was correct to apply the non-residential rates because of the Storage Unit Lease.

RELEVANT LEGISLATION

27. SDLT is chargeable, by section 42 of the Finance Act 2003 ("FA 2003"), on a "land transaction", which in turn is defined, by FA 2003, s 43, as an acquisition of a "chargeable interest". FA 2003, s 49(1) provides that a land transaction is a "chargeable transaction" if it is not a transaction that is exempt from charge.

28. FA 2003, s 43(6) provides that:

> "References in this Part to the subject-matter of a land transaction are to the chargeable interest acquired (the 'main subject-matter'), together with any interest or right appurtenant or pertaining to it that is acquired with it."

29. A "chargeable interest" is defined by FA 2003, s 48(1) as follows:

> "**48 Chargeable interests**
>
> (1) In this Part "chargeable interest" means—
>
> (a) an estate, interest, right or power in or over land in England or Northern Ireland, or
>
> (b) the benefit of an obligation, restriction or condition affecting the value of any such estate, interest, right or power,
>
> other than an exempt interest."

30. The rate at which SDLT is charged depends on whether the land in question is residential property. If the relevant land consists entirely of residential property, the rates in Table A in FA 2003, s 55(1B) apply. If the relevant land consists of or includes land that is not residential property, the lower rates in Table B in FA 2003, s 55(1B) apply.

31. The definition of "relevant land" differs depending on whether the chargeable transaction is one of a number of linked transactions. If it is not, FA 2003, s 55(3)(a) provides that:

> "the relevant land is the land an interest in which is the main subject-matter of the transaction".

32. By contrast, if the chargeable transaction is one of a number of linked transactions, FA 2003, s 55(4)(a) provides that:

> "the relevant land is any land an interest in which is the main subject-matter of any of the linked transactions".

33. Linked transactions are defined at FA 2003, s 108. This provides relevantly as follows:

> "**108 Linked transactions**
>
> (1) Transactions are "linked" for the purposes of this Part if they form part of a single scheme, arrangement or series of transactions between the same vendor and purchaser or, in either case, persons connected with them.
>
> […]
>
> (2) Where there are two or more linked transactions with the same effective date, the purchaser, or all of the purchasers if there is more than one, may make a single land transaction return as if all of those transactions that are notifiable were a single notifiable transaction."

34. FA 2003, s 116 defines residential property as follows.

"116 Meaning of "residential property"

(1) 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);

and "non-residential property" means any property that is not residential property."

35. FA 2003, s 116(6) defines a building as including part of a building.

36. FA 2003, Sch 4ZA provides for different, higher rates of SDLT to apply to "higher rates transactions". Sch 4ZA, para 1 states:

> "(1) In its application for the purpose of determining the amount of tax chargeable in respect of a chargeable transaction which is a higher rates transaction, section 55 (amount of tax chargeable: general) has effect with the modification in sub-paragraph (2)"

37. The modification in sub-paragraph (2) is to substitute a different version of Table A in which the rates are higher than the rates in the unmodified version. We understand it is not disputed that in this case, if Table A applies, the relevant version is the modified version set out in Sch 4ZA, para 1(2).

38. Sch 4ZA, paras 2 to 7 set out how to determine whether a chargeable transaction is a higher rates transaction. This will be the case where, broadly speaking, additional dwellings are purchased, or where dwellings are purchased by companies. The remainder of Sch 4ZA (paras 8 onwards) consists of "supplementary provisions". These supplementary provisions include, at para 18, rules for determining what counts as a dwelling for the purposes of Sch 4ZA. Para 18 is in similar, but not identical, terms to FA 2003, s 116(1). Relevantly for this case, Sch 4ZA, para 18 provides:

> "(3) Land that is, or is to be, occupied or enjoyed with a dwelling as a garden or grounds (including any building or structure on that land) is taken to be part of that dwelling.
>
> (4) Land that subsists, or is to subsist, for the benefit of a dwelling is taken to be part of that dwelling."

39. We have also noted section 6(c) of the Interpretation Act 1978, which provides that in any Act, unless the contrary intention appears, words in the singular include the plural and words in the plural include the singular.

RELEVANT CASE LAW

40. There are a number of previous decisions of this Tribunal that have considered the meaning, for the purposes of FA 2003, s 43(6), of the "main subject-matter" of a transaction, and of an "interest or right appurtenant or pertaining" to the main subject-matter. Some of these decisions have also considered the meaning, for the purposes of FA 2003, s 116(1)(c), of "an interest in or right over land that subsists for the benefit of" a dwelling. We are not bound by these decisions but under the principle of judicial comity, we should follow the approach of these earlier decisions unless we are convinced that they are wrong (*Gilchrist v HMRC* [2014] UKUT 169 (TCC)).

Sexton

41. *Sexton v HMRC* [2023] UKFTT 73 (TC) ("*Sexton*") concerned the acquisition of a leasehold interest in a flat, where the relevant lease conferred on the tenant of the flat certain rights in respect of a communal garden. It was common ground that the rights over the communal garden constituted an easement under English law.

42. The Tribunal considered at [28] the meaning of the phrase "interest or right appurtenant or pertaining" to the main subject-matter, and observed that it was hard to see why this phrase should not include a right or interest which is itself a chargeable interest. The Tribunal's view at [30] was that an easement may be a very good example of a right that is appurtenant to or pertains to another chargeable interest and is acquired with it, as not only does it benefit that other chargeable interest, but is inseparable from it.

43. On that basis the Tribunal concluded that the "main subject-matter" of the transaction was the flat alone, with the easement as a right appurtenant to the leasehold interest which fell to be ignored for the purposes of FA 2003, s 55.

44. In case this conclusion was wrong, the Tribunal went on to consider whether the easement fell within the definition of residential property as provided by FA 2003, ss 116(1)(b) or (c). For present purposes, it is the consideration of s 116(1)(c) that is relevant, and on this the Tribunal said as follows.

> "35. Turning to (c), however, I can see no reason why the right to use the communal gardens does not fall square to the phrase a "right over land that subsists for the benefit of a building within paragraph (a)". The Easement subsists for the benefit of the Flat, rather than a particular individual, because it is one of the Included Rights conferred by the Lease on the Tenant and the benefit of the Easement (and the obligations associated with it) passes with the leasehold interest created by the Lease. The right clearly benefits the Flat because, as the authors of Megarry & Wade observed (see [17] above) of this type of right, it makes the Flat a better and more convenient property. Clearly, a flat in the middle of central London which carries with it the right to enjoy a pleasant garden square (Mr Cannon's description of the communal gardens as "bare land" rather undersells what is in fact a very pleasant, well-tended urban oasis) is inherently more attractive than a similar flat which does not.
>
> 36. There is nothing in section 116(1)(c) which suggests that, to fall within (c), the right or interest over land has to be an interest in or right over other residential property. The only requirement in (c) is that the interest in or right over land subsists for the benefit of a building within (a) or land within (b). If (as is the case with this Easement) a right has no independent existence other than by reference to an interest (it was created by the Lease and passes with the leasehold interest created by the Lease), it is hard to see how that right does anything other than subsist for the benefit of that interest and, if that interest falls within (a), then the right must surely fall within (c)."

Espalier

45. In *Espalier Ventures Property (Lansdowne Road) Ltd v HMRC* [2023] UKFTT 725 (TC) ("*Espalier*"), the Tribunal considered a flat that was acquired together with three physically detached lock-up garages. The flat and the garages had separate Land Registry titles. The flat was held via a leasehold interest that also included rights over a communal garden.

46. The Tribunal noted at [34] that HMRC had accepted that the garages formed part of the main subject-matter of the transaction, and stated:

> "35. Whether it was formally conceded or not I take the view that as the legal titles to the Flat and the Garages were separated and at least theoretically could have been under separate ownership any concession on this point was well made. The Appellant did intend to purchase the Garages and the Flat and those formed the "main subject matter"."

47. Regarding the communal gardens, the Tribunal concluded at [45] that these met the definition of an easement and were appurtenant to the flat.

Bonsu

48. We have referred to *Bonsu* above, as this was the case behind which the current appeal was stayed. *Bonsu* (as with *Sexton*, which was decided earlier) concerned the purchase of a leasehold interest in an apartment, where the lease contained a right to use communal gardens. As was the case in *Sexton*, it was common ground that the rights over the communal gardens constituted an easement for land law purposes.

49. The Tribunal held, at [27], that the main subject-matter of the transaction was the leasehold interest in the apartment, and that the easement was not the main subject-matter for the purposes of FA 2003, s 43(6). The Tribunal took the view, at [28], that the natural construction of s 43(6) is that it envisages there being a single main subject-matter within a transaction. The Tribunal held that an "interest or right appurtenant or pertaining" to a main subject-matter can include a chargeable interest, and went on to find at [31] that the leasehold interest in the apartment was clearly the main subject-matter of the transaction, and the easement was clearly appurtenant or pertaining to that leasehold interest.

DISCUSSION

50. We have carefully considered the submissions of both parties, but have not found it necessary to refer to every argument and authority that was put to us.

51. As a preliminary point, HMRC submitted that the Tribunal lacked jurisdiction to consider this appeal. We consider this point below.

52. On the substantive issue, the arguments fell under two broad headings.

(1) Whether the acquisitions of the Apartment and the Storage Unit were separate transactions, and if not whether the lease of the Storage Unit was "an interest or right appurtenant or pertaining to" the lease of the Apartment. We refer to this as the "separate transaction issue".

(2) Whether the Storage Unit fell within the definition of residential property, which the parties agreed depended on whether the lease of the Storage Unit was "an interest in or right over land that subsisted for the benefit" of a building within FA 2003, s 116(1)(a). We refer to this as the "residential property issue".

53. It was common ground, and we agree, that if the acquisitions of the Apartment and of the Storage Unit were separate transactions, they were "linked" within the meaning of FA 2003, s 108(1). This is because both acquisitions took place under the same contract and had the same completion date, they were between the same parties, and there was a single price. It follows that they were part of a single arrangement between the same vendor and the same purchaser.

54. Mr and Mrs Sehgal did not argue that the acquisition of the car parking space affected their SDLT liability. As Mr and Mrs Sehgal bear the burden of showing that they have been overcharged, we have not considered the car parking space in our analysis of whether the non-residential rates of SDLT apply.

The jurisdiction of the Tribunal

55. HMRC argued that the Tribunal lacked jurisdiction to consider this appeal. They submitted that:

(1) The amended grounds of appeal rely on there being several linked transactions, but Mr and Mrs Sehgal did not amend their land transaction return to reflect this position. The return self-assessed that there was a single land transaction and it is now too late for the return to be amended. The only amendment made to the return by Mr and Mrs Sehgal's agents was to change the category of property from residential to mixed use.

(2) HMRC's enquiry was limited to this amendment, and the Tribunal's jurisdiction is therefore also limited to the closure notice in respect of that enquiry.

(3) If Mr and Mrs Sehgal considered there to have been several linked transactions, their amendment to the SDLT return should have reflected this, but it did not.

(4) At no stage during the enquiry did Mr and Mrs Sehgal raise that there had been multiple transactions, and HMRC did not investigate that point. The closure notice did not address or refer to any conclusion regarding the number of transactions. HMRC concluded that the main subject-matter of the transaction was the Apartment, with the Storage Unit appurtenant or pertaining pursuant to FA 2003, s 43(6), and that therefore the acquisition was a single transaction of wholly residential property.

(5) The "closure notice concluded that the easement contained within the lease was 'appurtenant or pertaining' to the 'main subject-matter' which was the apartment or, alternatively, that the easement subsisted for the benefit of the dwelling per Section 116(1)(c) FA 2003 as a single transaction." (This, including the references to an "easement", is a verbatim quote from HMRC's skeleton argument.)

(6) The attempt to introduce multiple transactions is effectively a new enquiry, rather than a challenge to HMRC's stated conclusions. HMRC did not investigate the multiple transactions position, which requires consideration of other legislation and relevant evidence on that point.

(7) Therefore, the issue as to whether there were linked transactions was not within the scope of the closure notice, meaning that the amended grounds of appeal are outside the Tribunal's jurisdiction and should be struck out under Rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009.

(8) The Tribunal is a creature of statute, and its jurisdiction is entirely statutory. Therefore, the Tribunal is limited to determining whether the amendments made by HMRC, in the closure notice, were correct.

(9) Support for this position is found in *HMRC v Tower MCashback LLP* [2011] UKSC 19 ("*Tower MCashback*") at [17] to [18], *Fidex Ltd v HMRC* [2016] EWCA Civ 385 ("*Fidex*") at [44] to [45], and *Shinelock Ltd v HMRC* [2023] UKUT 107 (TCC) ("*Shinelock*") at [61] to [64].

56. Mr and Mrs Sehgal submit, in response, that filing the SDLT return for linked transactions on the basis of a single transaction is correct under FA 2003, s 108(2), and in any event, HMRC's conclusion was that the non-residential rates do not apply and it is that conclusion which Mr and Mrs Sehgal seek to challenge.

57. We note that the amended grounds of appeal concern the Storage Unit Lease, and are the only grounds on which Mr and Mrs Sehgal currently seek to rely. The original grounds of appeal included contentions regarding the shared amenities and communal areas, but Mr and Mrs Sehgal no longer seek to rely on these grounds.

58. HMRC's enquiry was made as a result of the amendment to Mr and Mrs Sehgal's SDLT return. By virtue of FA 2003, Sch 10, para 13, the enquiry was therefore limited to "matters to which the amendment relates or that are affected by the amendment". FA 2003, Sch 10, para 23 provides that an enquiry is completed when HMRC issue a closure notice, informing the taxpayer that they have completed their enquiries and stating their conclusions. FA 2003, Sch 10, para 35 provides a right of appeal against (inter alia) a conclusion stated in a closure notice.

59. In this case the closure notice was issued on 21 July 2023. The HMRC officer who issued the notice referred to the letter from Cornerstone dated 1 December 2022, which amended the return to change the classification of the property from residential to mixed use. The reason given by Cornerstone for this amendment was that the property had the benefit of the right to use shared amenities and communal areas. The officer set out her reasons for disagreeing with this argument, and stated her conclusion as follows:

> "I have amended your amendment from £1,749,250 to nil as no refund is due to you – this was a residential transaction as originally returned".

60. We have considered carefully the cases cited by HMRC (*Tower MCashback, Fidex* and *Shinelock),* and have concluded that these support Mr and Mrs Sehgal's submissions rather than HMRC's. In the relevant passages of *Fidex*, the Court of Appeal considered the Supreme Court's judgment in *Tower MCashback*. Kitchen LJ (as he then was) summarised the relevant principles at [45] as follows.

> "i) The scope and subject matter of an appeal are defined by the conclusions stated in the closure notice and by the amendments required to give effect to those conclusions.
>
> ii) What matters are the conclusions set out in the closure notice, not the process of reasoning by which HMRC reached those conclusions.
>
> iii) The closure notice must be read in context in order properly to understand its meaning.
>
> iv) Subject always to the requirements of fairness and proper case management, HMRC can advance new arguments before the FTT to support the conclusions set out in the closure notice."

61. These principles make clear that the scope of the appeal is defined by the conclusions in the closure notice, not the reasoning by which HMRC reached those conclusions. The discussion in the closure notice about the shared amenities and communal areas represented HMRC's reasoning, but the conclusion was that the residential rates of SDLT applied. This is the conclusion against which Mr and Mrs Sehgal are appealing.

62. It will be apparent from the extract from *Fidex* above that this was a case in which the taxpayers sought to restrict the scope of the arguments that could be deployed by HMRC, rather than, as here, HMRC seeking to restrict the arguments that can be raised by the taxpayers. However, we consider that the same principles apply, and that, subject to fairness

and proper case management, Mr and Mrs Sehgal can raise new arguments to support their challenge to the conclusions in the closure notice.

63. Fairness and proper case management were considered by the Upper Tribunal in *Shinelock*. At [123], the Upper Tribunal referred to a "critical overarching restriction" on the First-tier Tribunal's powers to permit parties to raise new arguments. This restriction relates to the requirements of procedural fairness, including "the avoidance of ambushes and the rights of all parties to know the case which they face".

64. We do not consider HMRC to have been ambushed by the arguments raised in Mr and Mrs Sehgal's amended grounds of appeal. These arguments were first put to HMRC in the letter from Mr and Mrs Sehgal's agents dated 2 November 2023, which was within the statutory review period. The same arguments were included in the grounds of appeal that were originally notified to this Tribunal on 4 December 2023.

65. HMRC have therefore had ample time to consider these arguments, and to study the relevant legislation. As to the submission that HMRC needed to consider other relevant evidence, they have not specified which evidence this is, or whether they have had difficulty obtaining it. The correspondence in the hearing bundle indicates that documents requested by HMRC in the course of the enquiry were supplied promptly, and in any event this was not a case where the underlying facts were in dispute.

66. We also agree with Mr and Mrs Sehgal that FA 2003, s 108(2) has the effect that where there are linked transactions, the purchaser can make a single SDLT return as if all of those transactions were a single transaction. Mr and Mrs Sehgal completed their SDLT return as if there were a single transaction, and in light of FA 2003, s 108(2), this was consistent with their position that there were in fact several linked transactions. This is not a case in which Mr and Mrs Sehgal are raising a novel argument that would have required an amendment to their return, and which they are now out of time to make.

67. At first sight, this analysis does not seem to fit with the fact that Mr and Mrs Sehgal (or their agents) ticked "no" in response to the question "is this transaction linked to any others?". However, we consider that a purchaser who chooses, in accordance with FA 2003, s 108(2), to treat linked transactions as a single transaction, is correct to answer "no" to this question, unless there are further linked transactions in addition to those being notified in the return. In these circumstances the reference in the SDLT return to "this transaction" may be read as "the linked transactions being notified in this return".

68. In conclusion, we reject HMRC's submissions on this point and find that the Tribunal does have jurisdiction to consider the appeal.

Approach to statutory interpretation

69. HMRC invited us to apply a purposive interpretation to the relevant provisions of FA 2003. They submitted that we should have regard to the purpose of a statutory provision and interpret its language, as far as permissible, in a way that gives best effect to that purpose. They further submitted that we should seek to avoid a construction that produces an absurd result, since this is unlikely to have been intended by Parliament.

70. HMRC supported these submissions by reference to the judgments of the Court of Appeal in *Mudan v HMRC* [2025] EWCA Civ 799 ("*Mudan*"), and of the Supreme Court in *R(O) v Secretary of State for the Home Department* [2022] UKSC 3 ("*R(O)*").

71. In *Mudan*, Lewison LJ said:

> "[12] The general principles of statutory interpretation are not in doubt. They were explained by Lord Hodge in *R (O) v Secretary of State for the Home Department* [2022] UKSC 3, [2023] AC 255 at [29] to [32]. The task of the court is to identify the meaning of the words that Parliament has used. Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained. External aids to interpretation therefore must play a secondary role. Explanatory Notes, prepared under the authority of Parliament, may cast light on the meaning of particular statutory provisions. […]
>
> [13] Lord Hodge referred to the purpose of the legislation. This is of prime importance. As Bennion, Bailey and Norbury on Statutory Interpretation, 8th ed (2020), explain at para 12.2: "Every enactment to be given a purposive construction." […]"

72. In *R(O)* at [31], Lord Hodge referred to the following passage from the judgment of Lord Nicholls in *R v Secretary of State for the Environment, Transport and the Regions, ex p Spath Holme Ltd* [2001] AC 349, 369:

> "The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful, so long as it is remembered that the 'intention of Parliament' is an objective concept, not subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used. It is not the subjective intention of the minister or other persons who promoted the legislation. Nor is it the subjective intention of the draftsman, or of individual members or even of a majority of individual members of either House. These individuals will often have widely varying intentions. Their understanding of the legislation and the words used may be impressively complete or woefully inadequate. Thus, when courts say that such-and-such a meaning 'cannot be what Parliament intended', they are saying only that the words under consideration cannot reasonably be taken as used by Parliament with that meaning."

73. We confirm that, when we have sought to ascertain the meaning of the statutory provisions that are relevant to this case, we have kept in mind the guidance provided by these authorities.

The separate transaction issue

74. SDLT is a tax on land transactions, and it is therefore relevant to determine whether the acquisitions of the Apartment and Storage Unit were a single land transaction, or whether each was a separate transaction.

75. On this question, HMRC submitted as follows.

> (1) There was a single transaction encompassing the Apartment, car parking space and Storage Unit. This is evidenced by the fact that there was a single contract for sale which provided for the payment of a single premium.

(2) A land transaction can encompass multiple chargeable interests (three, in this case), and the evidence demonstrates that this was a single land transaction effected on the same date.

(3) The number of legal documents or instruments does not affect the application of SDLT and is an irrelevant consideration. Likewise, SDLT is not charged by reference to Land Registry titles, as it is a charge on land transactions.

(4) The original SDLT return was filed on the basis that this was a single transaction.

76. Mr and Mrs Sehgal submitted that the acquisition of the Apartment and the Storage Unit were separate transactions, because they were separate legal interests in separate pieces of land acquired under separate acquisitions and could have been acquired by different persons. They argued that a land transaction means the acquisition of a chargeable interest, not a transaction in the sense of a single bargain or contract.

77. We agree with Mr and Mrs Sehgal that the fact that there was a single contract is not determinative of this question. It would be possible for several otherwise unconnected plots of land to be included in a single contract for sale, with a single price. We do not consider that a natural reading of FA 2003, s 43(1) would lead to the conclusion that there would be, in this hypothetical situation, a single acquisition of a chargeable interest. We are reinforced in this view by the fact that Parliament has legislated for this type of situation by enacting provisions relating to linked transactions, as defined by FA 2003, s 108.

78. On the other hand, we agree with HMRC that the position is not determined by the number of legal instruments effecting the transfers, as SDLT is a tax on land transactions and not on instruments. For the same reason, the answer is not provided by the SDLT return, particularly as FA 2003, s 108(2) expressly permits two or more linked transactions to be notified on a return as if there were a single notifiable transaction.

79. On balance, we prefer the arguments of Mr and Mrs Sehgal on this question, and find that the acquisitions of the Apartment and the Storage Unit were separate land transactions, because they were separate legal interests in separate pieces of land that could have been acquired by different persons. However, we heard detailed arguments on the analysis that would follow if there were a single transaction. We have therefore set out below what our findings would be if we are wrong in our view that there are separate transactions. It will be seen that the effect of these findings is that the outcome of the appeal would be the same whether there are separate transactions or a single transaction.

Appurtenant or pertaining

80. If there is a single transaction, FA 2003, s 55(3) requires us to identify the "main subject-matter" of that transaction. The relevant definition is in FA 2003, s 43(6), which provides:

> "References in this Part to the subject-matter of a land transaction are to the chargeable interest acquired (the 'main subject-matter'), together with any interest or right appurtenant or pertaining to it that is acquired with it."

81. It was not disputed that the lease of the Apartment and the lease of the Storage Unit are both chargeable interests. If the acquisitions of these two chargeable interests form a single land transaction, then there are two ways of applying s 43(6): either both of these interests form, together, the main subject-matter of the transaction, or one is the main subject-matter and the other is an "interest or right appurtenant or pertaining to it that is acquired with it".

82. It was common ground, and the facts clearly indicate, that if the second of these interpretations is correct, then it would be the lease of the Apartment that is the main subject-matter and the lease of the Storage Unit that is the "interest or right appurtenant or pertaining" to the lease of the Apartment.

83. We agree with HMRC, and with the comments of the Tribunal in *Sexton* at [28], that an "interest or right appurtenant or pertaining" to the main subject-matter of a transaction can itself be a chargeable interest. Therefore, the fact that the lease of the Storage Unit is a chargeable interest in its own right does not prevent it from being an "interest or right appurtenant or pertaining" to the lease of the Apartment.

84. The next question is whether the lease of the Storage Unit is "appurtenant or pertaining" to the lease of the Apartment.

85. On this issue, HMRC submitted as follows.

(1) The Storage Unit was appurtenant or pertaining to the Apartment. It was acquired with the Apartment under a single overarching contract for sale involving the same purchaser, same vendor, same completion date and a single premium.

(2) There was a clear intention to keep the Apartment linked to the Storage Unit, as this makes the Apartment more convenient.

(3) As a consequence, the Storage Unit should be disregarded for the purposes of FA 2003, s 55 and/or FA 2003, Sch 4ZA. This leaves only the dwelling to be considered, and the dwelling was wholly residential property.

86. Mr and Mrs Sehgal submitted that the Storage Unit was not appurtenant or pertaining to the Apartment. They argued that an interest is only "appurtenant" to another interest if it is validly annexed to it in the same way that an easement must be appurtenant to a particular piece of land. According to Mr and Mrs Sehgal, whether an interest is "appurtenant or pertaining to" another depends upon whether one interest in land belongs to the other, not whether the two interests happen to be owned by the same person who may decide to use them together.

Previous decisions of the Tribunal

87. On the meaning of "appurtenant or pertaining", both parties took us to previous decisions of this Tribunal. In each of *Bonsu*, *Sexton* and *Espalier*, the Tribunal found that an easement consisting of a right to use a communal garden was "appurtenant or pertaining to" the leasehold interest with which it was acquired. We note in particular the following comments by the Tribunal in each case.

88. In *Bonsu*:

> "31. Fourthly, the leasehold interest in the Property is clearly the main subject matter of the transaction and the Easement is clearly appurtenant to or pertaining to that leasehold interest. As explained by *Lord Briggs in Regency Villas Title Ltd v Diamond Resorts (Europe) Ltd, supra*, at [2] (set out at paragraph 24 above), the very nature of an easement is that it is appurtenant to a dominant tenement. The dominant tenement here is the Property by virtue of the Lease. Further, the Easement was granted within the Lease, was one of a package of rights contained within the Fourth Schedule, is paid for by way of service charges together with other rights and obligations relating to the Lease, and was for use in connection with the Lease. Indeed, Mr and Mrs Bonsu only acquired the Easement by virtue of the transfer of the Lease; the grant of the Easement itself was to Mr and Mrs

Bonsu's predecessors in title (and, even then, was as a right granted within the Lease). It is also of note that the contract of sale and the TR1 provide for the transfer of the Lease and make no separate reference to the Easement (albeit that the easement is one of the rights contained within the Lease). Similarly, the consideration appears to be for the transfer of the Lease as a whole (including the rights within it) and there is no evidence of any apportionment to represent the easement or any evidence as to any independent value."

89. In *Sexton*:

> "30. That does, of course, beg the question when an interest or right is appurtenant to or pertains to another chargeable interest and is acquired with it. Easements may, in fact, be a very good example of such a right. As we have noted already, an easement is a right over land (the servient tenement) which exists to confer a benefit on (or "accommodate") the dominant tenement. Because an easement exists to confer a benefit on the dominant tenement, it runs with the dominant tenement and passes automatically on a transfer of the dominant tenement. It is hard to think of a better example of a right over land which is appurtenant to the land it benefits than an easement; not only does it benefit that land, it is inseparable from it. Two passages from the decision of the Supreme Court in *Regency Villas Title Limited v Diamond Resorts (Europe) Ltd, [2018] UKSC 57*, illustrate this:
>
> > "[36] The requirement that the right, if it is to be an easement, should accommodate the dominant tenement has been explained by judges, textbook writers and others in various ways. In his Modern Law of Real Property, 7th ed (1954) at p 457, Dr Cheshire expressed it in this way:
> >
> > "One of the fundamental principles concerning easements is that they must be not only appurtenant to a dominant tenement but also connected with the normal enjoyment of the dominant tenement."
> >
> > Citing from Bailey v Stephens (1862) 12 CB(NS) 91, at 115, he continued: "It must … have some natural connection with the estate as being for its benefit ..."
>
> And again at [40]:
>
> > "The following general points may be noted. First, it is not enough that the right is merely appurtenant or annexed to the dominant tenement, if the enjoyment of it has nothing to do with the normal use of it.""

90. In *Espalier*:

> "45. It is my view that the interest in the Communal Garden meets this definition of an easement which is appurtenant to the principal interests in the Flat and the Freehold Share and is not capable of being considered separately from them, they do not represent an independent main subject matter and form an ancillary part of the main subject matter being that of the Flat which is accepted as a dwelling."

Whether appurtenant

91. It is, in our view, clear from these decisions that an important part of the reasoning that led the Tribunal in each case to conclude that the relevant easement was appurtenant to the relevant leasehold interest was that the easement was inseparable from, and had no existence independent of, the leasehold interest.

92. It may also be seen that in *Bonsu* and *Sexton* the Tribunal gave "appurtenant" a meaning derived from land law, and that both referred in this context to the Supreme Court's judgment in *Regency Villas Title Ltd v Diamond Resorts (Europe) Ltd* [2018] UKSC 57 ("*Regency Villas*"). The passages from *Regency Villas* at [37] and [40], cited in *Sexton*, show that an easement is appurtenant to a dominant tenement. From this we conclude that when we are determining whether an interest or right is "appurtenant" to a chargeable interest for the purposes of FA 2003, s 43(6), it is appropriate for us to consider whether it is appurtenant in the same way that an easement is appurtenant. The passage from *Regency Villas* at [40], cited in *Sexton*, may also be regarded as authority for the proposition that "appurtenant" has the same, or a similar, meaning to "annexed".

93. The facts in Mr and Mrs Sehgal's case may be readily distinguished from a right to use a communal garden, where that right is an easement granted within a lease. The lease of the Storage Unit is not an easement. It exists separately from, and was not granted within, the lease of the Apartment, and may be assigned or sublet to occupiers of other apartments (subject to obtaining the landlord's consent, which is not to be unreasonably withheld). Mr and Mrs Sehgal could sell the Apartment but keep the Storage Unit, or sell the Storage Unit but keep the Apartment. A transfer of the Apartment would not automatically transfer the Storage Unit, demonstrating that the Storage Unit is not annexed to the Apartment.

94. Mr Firth directed us to section 1(1) of the Law of Property Act 1925 ("LPA 1925"), which provides that leasehold interests and freehold interests are "the only estates in land which are capable of subsisting or of being conveyed or created at law". These are distinct from the "interests or charges over land" listed in LPA 1925, s 1(2), which include easements. Mr Firth also directed us to paragraph 4-039 of Megarry & Wade, which explains that the difference between legal "estates" in s 1(1) and legal "interests or charges" in s 1(2) is a "convenient distinction between rights over a person's own land and rights over the land of another".

95. We take from this that a leasehold interest, as a right over one's own land, has a different status in law from an easement, as a right over someone else's land. As a result we are not convinced that a leasehold interest can be appurtenant to another leasehold interest in the same way that an easement can be appurtenant to another interest in land.

96. It is true that the use of the Storage Unit is restricted (in rule 2.5 of the Storage Unit Lease) to that of private residential storage ancillary to the use of an apartment in the Building, but its use is not linked to the Apartment specifically. If Mr and Mrs Sehgal sold the Apartment but kept the Storage Unit, their usage of the Storage Unit would be restricted, but they could underlet it or permit its use by an occupier of another apartment in the Building. Alternatively, if they sold the Apartment and bought another apartment in the Building, they could continue to use the Storage Unit to store their own possessions.

97. These restrictions on use are also very different from an easement that consists of a right granted within a lease, and that has no existence independent of that lease. An interest with restricted use may nonetheless have an independent existence, if, as with the lease of the Storage Unit, it can be assigned or transferred on its own, albeit only to a restricted class of assignee.

98. Mr Davies submitted that the question for the Tribunal concerns SDLT, not land law, and that the SDLT legislation sometimes departs from land law principles. This may be true, but in using the word "appurtenant", Parliament has chosen a term with an established meaning in land law. As SDLT is a tax on land transactions, it is reasonable to suppose that Parliament intended "appurtenant" to take its land law meaning, unless a contrary intention appears. HMRC did not provide any authority for their preferred meaning of "appurtenant" as

having more to do with subjective intentions. We agree with Mr and Mrs Sehgal that what matters is the relationship between the interests in land, not what the current owner of a particular interest in land intends to do or does do with the physical property.

99. Mr Davies also submitted that the possibility of a future assignment is irrelevant. We understood this submission to mean that we should determine whether the Storage Unit is appurtenant to the Apartment at a particular point in time, presumably the effective date of the transaction, and not by reference to any future transactions that may or may not take place. While we accept that we should assess the position as at the effective date, we consider that the fact that it would be possible in future to assign the lease of the Storage Unit is relevant, because it demonstrates that it has an existence independent of the lease of the Apartment.

Whether pertaining

100. We have considered whether, even if not "appurtenant", the lease of the Storage Unit could "pertain to" the lease of the Apartment. Unlike "appurtenant", we were not shown any authorities to the effect that "pertaining" has an established meaning in land law. Instead, both parties referred us to the Tribunal's decision in *Espalier*, where it was said:

> "49. I note, though it is not necessary for me to decide, that section 43 FA03 includes interests appurtenant or pertaining to the main subject matter. The Appellant made no submission on the meaning of pertaining but on the basis that pertaining to is something different from appurtenant to (because parliament chose to include both) I would have concluded that even if not appurtenant, giving "pertaining" its ordinary meaning "belong to something as a part, appendage, or accessory" the interest in the Communal Gardens is pertaining to the leasehold interest in the Flat." (Emphasis in original)

101. In our view, the lease of the Storage Unit does not belong to the lease of the Apartment as a part, appendage or accessory, for essentially the same reasons that we have found it is not "appurtenant". The Storage Unit can be assigned or underlet independently of the Apartment, and while its use is restricted to that of private residential storage ancillary to the use of an apartment in the Building, there is no link within the Storage Unit Lease to the specific Apartment acquired by Mr and Mrs Sehgal.

102. In the hearing, Mr Davies suggested that we should consider an alternative definition of "pertaining", giving it a wider meaning such as "connected" or "related". He was not able to provide us with an authority for this alternative definition, from a dictionary or otherwise.

103. In the absence of an appropriate authority we are unable to accept an alternative definition that is as wide, and as unclear, as "connected" or "related". Tax legislation often uses the term "connected", and when it does so it provides a clear definition; here, Parliament has not chosen to use that word.

104. Mr Firth referred us, in this context, to the *ejusdem generis* principle. This is a principle of statutory construction whereby wide words associated in the text with more limited words are taken to be restricted by implication to matters of the same limited character. The principle is most often used where a list of specific terms is followed by general words, but it may apply whatever the form of the association. Applying this principle, we find that Parliament, in choosing to use the phrase "appurtenant or pertaining", intended "pertaining" to have a similar character to "appurtenant", rather than to have a far wider-ranging meaning.

105. Even if (which we do not accept) we could interpret "pertaining" as meaning "connected" or "related", we consider that it would still be necessary for there to be a

connection or relation between the Storage Unit and this particular Apartment, over and above the fact that they were both acquired by Mr and Mrs Sehgal at the same time. Otherwise, the words "appurtenant or pertaining" in s 43(6) would be otiose, and the relevant wording could simply be "any interest or right that is acquired with it". As we have found, the Storage Unit Lease, considered on its own, has no more connection to the Apartment than to any other apartment in the Building.

Conclusion on the separate transaction issue

106. In conclusion on the separate transaction issue, in our view the acquisitions of the Apartment and the Storage Unit were separate transactions, but in case this is wrong, for the reasons given above we find that the lease of the Storage Unit was not an "interest or right appurtenant or pertaining to" the lease of the Apartment.

107. It follows that if (despite our view to the contrary) the acquisitions of the Apartment and the Storage Unit constituted a single transaction, the lease of the Apartment and the lease of the Storage Unit must together be the main subject-matter of that transaction. Applying this to the main dispute in this appeal, namely whether the residential rates of SDLT apply, we must then consider s 55(1B), which tells us that the appropriate table is Table A if the relevant land consists entirely of residential property, or Table B if the relevant land consists of or includes land that is not residential property. S 55(3) defines "relevant land" for these purposes as the land an interest in which is the main subject-matter of the transaction.

108. If the lease of the Storage Unit is part of the main subject-matter, then the combined effect of these provisions is that Table A will only apply if the Storage Unit is residential property. Whether the Storage Unit is residential property under FA 2003, s 116(1)(c) is the question we must address in the next part of this decision, which we have termed the residential property issue.

109. Our finding that the lease of the Storage Unit was not an "interest or right appurtenant or pertaining to" the lease of the Apartment means, therefore, that the outcome of this appeal rests on our determination as to whether the Storage Unit is residential property under FA 2003, s 116(1)(c). If the answer is yes, the appeal must be dismissed, and if no, the appeal succeeds, irrespective of whether there are separate transactions or a single transaction.

110. We note that, consistent with our view that there are separate transactions, we are not convinced that it is correct to interpret FA 2003, s 43(6) such that the main subject-matter of a transaction can comprise more than one chargeable interest.

111. The Tribunal has taken different approaches to this question in the past. In *Espalier* at [35], the Tribunal took the view that the garages and the flat formed the main subject-matter, but the parties in that case do not appear to have argued this point in detail. The Tribunal in *Bonsu* at [28], by contrast, considered that "the natural construction of section 43(6) is that it envisages there being a single main subject matter within a transaction". In *Sexton* at [28], the Tribunal stated that s 43(6) "clearly contemplates that there may be cases where a number of chargeable interests are acquired as part of the same transaction and they do not all comprise the "main subject-matter of the transaction"." The Tribunal in *Sexton* did not, however, state in terms that there may be multiple chargeable interests in a single main subject-matter, and held at [31] that in that case the flat alone was the main subject-matter, with the easement an interest or right appurtenant to the leasehold interest in that flat.

112. We would be inclined to agree with the Tribunal in *Bonsu* that the most natural reading of FA 2003, s 43(6) is that it envisages a land transaction having a single main subject-matter. Given our finding that lease of the Storage Unit was not an "interest or right appurtenant or

pertaining to" the lease of the Apartment, this reinforces our view that the acquisitions of the Apartment and of the Storage Unit were separate transactions.

The residential property issue

113. Under this heading we must decide whether the Storage Unit is residential property as defined by FA 2003, s 116(1)(c).

Overview of the parties' submissions

114. HMRC submitted that the lease of the Storage Unit is "an interest in or right over land that subsists for the benefit" of the Apartment. In support of this argument, they drew attention to the restrictions on underletting or assignment in clause 4.15 of the Storage Unit Lease, and the restrictions on the use of the Storage Unit (including the restriction at rule 2.5 in that lease), as set out above.

115. HMRC further submitted that the Storage Unit is contained within the same building as the Apartment, and provides a benefit in offering general storage for the owner of the Apartment, contributing to an attractive package in the centre of London. According to HMRC, there is a demonstratable factual connection between the Apartment, as the dwelling, and the Storage Unit which subsists for its benefit and was acquired as part of the land transaction. On this basis, HMRC argued that there is a beneficial connection between the use of the Storage Unit and the Apartment, so that it would be artificial to assert that there is an entirely separate transaction.

116. We have referred to further detailed submissions by HMRC on the residential property issue as part of our discussion below.

117. Mr and Mrs Sehgal submitted that the test requires identification between one interest in land and another such that it attaches to and cannot be disposed of independently of the other. They relied on *Sexton* at [35] to [37], as set above, as authority for the proposition that an interest or right was only within s 116(1)(c) if it benefitted a particular interest within s 116(a) or (b). They submitted that by contrast, in this case:

(1) the lease of the Storage Unit is granted to particular individuals;

(2) the lease of the Storage Unit exists separately from the lease of the Apartment;

(3) it is open to the owners of the lease of the Storage Unit to assign that lease or sublet to others (with the landlord's consent, not to be unreasonably withheld, and to occupiers of other apartments);

(4) the lease of the Storage Unit ends after 20 years (compared to over 900 years for the Apartment lease);

(5) the Appellants could sell the Apartment but keep the Storage Unit;

(6) the Appellants could use the Storage Unit to store items having nothing to do with occupation of the Apartment; and

(7) the Appellants could buy a different apartment in the building and use the Storage Unit to store things for the benefit of individuals in either or both apartments.

118. According to Mr and Mrs Sehgal, these facts lead to the conclusion that the Storage Unit lease does not have identification with the Apartment (being the particular dwelling within s 116(1)(a)).

119. On the meaning of "subsists for the benefit", Mr Firth directed us to section 12 of the Land Registration Act 2002 ("LRA 2002"). This provides relevantly as follows.

> "**12. Leasehold estates**
>
> (1) This section is concerned with the registration of a person under this Chapter as the proprietor of a leasehold estate.
>
> (2) Registration with absolute title has the effect described in subsections (3) to (5).
>
> (3) The estate is vested in the proprietor together with all interests subsisting for the benefit of the estate."

120. He also directed us to LRA 2002, s 59, which provides relevantly as follows.

> "**59. Dependent estates**
>
> (1) The entry of a person in the register as the proprietor of a legal estate which subsists for the benefit of a registered estate must be made in relation to the registered estate."

121. It was common ground that the Apartment was residential property within the meaning of FA 2003, s 116(1)(a), because it is part of a building used or suitable for use as a dwelling.

Our views on the residential property issue

122. We have studied carefully the decision in *Sexton* and particularly, in this context, the passages at [35] and [36]. In our view, the lease of the Storage Unit may be distinguished from the easement, consisting of a right to use communal gardens, that was at issue in *Sexton*. The easement in *Sexton* was created by the lease of the flat, passed with the lease, and had no existence independent of the lease. By contrast, the leasehold interest in the Storage Unit was created by the Storage Unit Lease, does not pass with the leasehold interest in the Apartment, and may be sold to persons other than the owners of the Apartment. In this sense, the lease of the Storage Unit has an independent existence.

123. We do not agree with HMRC's arguments concerning the benefits conferred by the Storage Unit, because these benefits are conferred on Mr and Mrs Sehgal as the owners of the lease of the Storage Unit, not on the owners of the Apartment from time to time. The wording of FA 2003, s 116(1)(c) requires the lease of the Storage Unit to subsist for the benefit of the Apartment, not of particular individuals.

124. Mr and Mrs Sehgal could sell their interest in the Storage Unit to the owner of a different apartment in the Building, at which point it would benefit those other individuals instead. Alternatively Mr and Mrs Sehgal could sell the lease in the Apartment, move out of the Building, but hold on to the lease of the Storage Unit while considering how best to dispose of it; at that point the Storage Unit would benefit no-one. We do not consider it to be consistent with the scheme of the legislation for the same interest to be capable of subsisting, at different times, for the benefit of different apartments, or of none.

125. Mr Davies submitted that there is no requirement for the relevant interests to be indivisible, but in *Sexton* one of the reasons the easement was found to subsist for the benefit of the flat was that the easement had no independent existence. The fact that the lease of the Storage Unit does have an independent existence is a strong factor in leading us conclude that it does not subsist for the benefit of the Apartment.

126. We also found Mr Firth's arguments concerning LRA 2002, ss 12(3) and 59(1), to be persuasive. FA 2003 was enacted not long after LRA 2002, and we consider that in choosing

to use the words "subsisting [or subsists] for the benefit" in both enactments, Parliament intended them to have the same meaning. The lease of the Storage Unit has its own title number at the Land Registry and is not referenced in the register of title relating to the lease of the Apartment. If the lease of the Storage Unit were an "interest subsisting for the benefit of" the Apartment, the effect of LRA 2002, ss 12(3) and 59(1), is that the proprietor of that lease would instead be registered in relation to the separate registered leasehold estate in the Apartment.

127. We have in mind here HMRC's submission that the law on SDLT may depart from land law, including from the provisions of LRA 2002. HMRC further submitted, in this context, that FA 2003 is a taxing statute focused on transactions, rather than on categorising property rights for conveyancing purposes.

128. For present purposes we need only decide whether Parliament intended FA 2003 to depart from land law in the specific case of s 116(1)(c). As we observed above in the context of the meaning of "appurtenant", SDLT is a tax on land transactions, and it is therefore reasonable to suppose that, by using words from LRA 2002, Parliament intended "subsists for the benefit" to take its land law meaning, unless a contrary intention appears. HMRC have not persuaded us that there was such a contrary intention.

129. We do not go so far as to say that considerations relating to land registration provide, on their own, a complete answer to the SDLT question in this case. However, these considerations, when taken in combination with the factors which demonstrate that the lease of the Storage Unit had an existence independent from the lease of the Apartment, are sufficient to convince us that the lease of the Storage Unit does not fall within FA 2003, s 116(1)(c).

Mudan

130. HMRC invited us to interpret the term "residential property" widely, and cited *Mudan* at [59] and [60] by way of authority. At [59], Lewison LJ found that the definition is "necessarily broad". At [60] he said:

> "The definition is, in my judgment, concerned with what might be described as land use rather than occupation as such."

131. And at [68]:

> "The ordinary speaker of English would, in my view, characterise property as "residential property" if it was the sort of property that people live in."

132. *Mudan* concerned a property that required extensive works before it could be moved into. The question was whether this property was "suitable for use" as a dwelling within the meaning of FA 2003, s 116(1)(a). We consider it would take the words of the judgment out of context, if one were to take the remarks at [60] concerning land use and apply them to s 116(1)(c).

133. As regards the extract from [68], the disputed question in this case is whether the Storage Unit is residential property. In our view, an ordinary speaker of English would not regard the Storage Unit, considered on its own, as the sort of property that people live in, because people do not normally live in storage units.

Interests in and right over land

134. HMRC drew our attention to the fact that FA 2003, s 116(1)(c) refers to "interests in and right over" land, and submitted that by choosing to use both terms, Parliament must have

intended interests and rights to have different meanings. They further submitted that an "interest in land" refers to the legal or equitable ownership of property, which can include freehold and leasehold interests, while a "right over land" is likely to refer to easements, profits à prendre and restrictive covenants.

135. We understood that by this submission HMRC contended that if we were to find that a leasehold interest cannot "subsist for the benefit" of a building or land, we would render the words "interest in land" in s 116(1)(c) otiose.

136. We remind ourselves that the question we must answer is not whether the lease of the Storage Unit is an interest in land (in our view it clearly is), but whether it is an interest in or right over land that subsists for the benefit of the Apartment. By finding that this particular interest does not "subsist for the benefit", we do not accept that we have rendered the words "interest in land" otiose, because there may be other types of interest that would not be described as a "right", but that do meet the statutory description. Our findings are limited to the particular factual circumstances of the lease of the Storage Unit.

Sch 4ZA and the principle of updating construction

137. A further submission by HMRC was that we should read s 116(1)(c) in light of the wording of Sch 4ZA, para 18, and particularly para 18(4) which provides that "land that subsists, or is to subsist, for the benefit of a dwelling is taken to be part of that dwelling".

138. Mr Davies argued that the reference to "land" is clearer than the term "interest in or right over land" in s 116(1)(c), and that there is no policy reason why the two provisions should be different. He submitted that we should have regard to para 18(4) because this wording was enacted more recently than s 116(1)(c) (in 2016 rather than 2003) and we should apply the "updating construction" principle of statutory interpretation. He directed us to paragraphs [14.1] and [14.2] of Bennion, Bailey and Norbury on the application of this principle.

139. We note the following extracts from paragraph [14.1] of Bennion, Bailey and Norbury.

> "Updating construction:
>
> (1) Acts are usually regarded as 'always speaking'. Here, it is presumed that the legislature intends the court to apply a construction that allows for changes that have occurred since the Act was initially framed (an 'updating construction').
>
> […]
>
> The legislature may be taken to intend that an enactment…should be applied at any future time in such a way as to give effect to its original intention, making allowances for any relevant changes that have occurred since the Act's passing.
>
> The changes that may give rise to the question of whether an updating construction is appropriate include the creation of new institutions or other bodies (eg devolved legislatures and administrations), technological or scientific developments, new natural phenomena or diseases, changes in social conditions or in the way that society views particular matters, and changes in the territory for which an Act is law. However, the categories of changes that might be relevant are not fixed."

140. We also note the following passage from Lord Wilberforce's judgment in *Royal College of Nursing of the United Kingdom v Department of Health and Social Security* [1981] AC 800 at [822].

> "…when a new state of affairs, or a fresh set of facts bearing on policy, comes into existence, the courts have to consider whether they fall within the parliamentary intention. They may be held to do so, if they fall within the same genus of facts as those to which the expressed policy has been formulated."

141. This is not a case where there is a "new state of affairs" in the nature of a technological or social change, new institution or new natural phenomenon. HMRC are effectively inviting us to interpret s 116(1)(c) as though it used the same words as para 18(4), on the grounds that para 18(4) was enacted more recently and deals with similar subject-matter, and that therefore we may infer that if Parliament were to enact s 116(1)(c) today it would use wording similar to that in para 18(4).

142. We find that this is not an appropriate application of the "updating construction" principle and decline to place the gloss on the interpretation of s 116(1)(c) for which HMRC contend. Instead we have taken our task to be to interpret s 116(1)(c) as it stands, keeping in mind the guidance provided by the authorities we cited earlier in our discussion (*Mudan* at [12] and [13], and *R(O)* at [30]).

Whether subsisting for the benefit of other residential property

143. Mr Davies raised an additional point at the hearing regarding how FA 2003, s 116(1)(c) should be applied in this case. He submitted that for HMRC to succeed on this point it is not necessary for the Storage Unit to subsist for the benefit of the Apartment, but for the benefit of "a building within paragraph (a) or of land within paragraph (b)". He referred to *Sexton* at [36] where the Tribunal said that the "only requirement in (c) is that the interest in or right over land subsists for the benefit of a building within (a) or land within (b)." He also referred to the Tribunal's findings at [37] to the effect that an interest or right in (c) can subsist for the benefit of more than one building within (a) or piece of land within (b).

144. This point did not appear in HMRC's skeleton argument and was not well developed before us. We understood the context of this submission to be that while the Storage Unit Lease does not, by its terms, benefit solely the Apartment, the restrictions on underletting, assignment and use mean that it can only ever benefit an apartment in the Building.

145. Mr Firth's response was that while *Sexton* shows that an interest or right may be identified with multiple dwellings, this is only applicable where (as in *Sexton*) it actually benefits each dwelling. Here, by contrast, the lease of the Storage Unit only benefits one of a range of apartments, without being identified with any one of them.

146. We considered how s 116(1)(c) might be interpreted to give effect to HMRC's submission. One option would be to consider the Building (ie the entirety of 20 Grosvenor Square) as a building within paragraph (a), namely a building that is used or suitable for use as a dwelling.

147. The Building is clearly not a single dwelling, as it contains multiple apartments. However, we have in mind that words in the singular may include words in the plural, meaning that it is possible for us to read s 116(1)(a) as referring to a building that is suitable for use as "dwellings". The question would then be whether the Storage Unit is an interest in or right over land that subsists for the benefit of the Building.

148. The problem with this is that the Storage Unit is part of the Building. We agree with the Tribunal in *Kozlowski v HMRC* [2023] UKFTT 711 (TC) ("*Kozlowski*") at [100] that s 116(1)(c) is not apt to cover rights or interests in the subject property itself. Therefore we do not accept HMRC's submission when framed in these terms.

149. An alternative approach would be to say that s 116(1)(c) applies because the Storage Unit can only ever benefit an apartment in the Building, even if the identity of the apartment in question may change from time to time. This would require us to find that the lease of the Storage Unit is an interest in or right over land that subsists for the benefit of whichever apartment is owned by the persons who have the use of the Storage Unit at that moment in time.

150. In our view this places too much of a strain on the statutory language. We consider that "subsists for the benefit of a building" means a particular identified building (or dwelling), not one of a class of dwellings where the identity of the benefited dwelling may change from time to time.

151. We recall that there are circumstances (for instance if Mr and Mrs Sehgal were to sell the Apartment, move out of the Building, but hold on to the Storage Unit while deciding how best to dispose of it), when the Storage Unit would not benefit anyone. We are not willing to accept an interpretation of s 116(1)(c) whereby not only could the identity of the "building" change from time to time, but there could be times where no building at all is benefited. It follows that we do not accept this alternative formulation of HMRC's submission.

152. We note that our finding here does not conflict with the findings of the Tribunal in *Sexton*, as in that case the easement benefited multiple flats at the same time, as opposed to a single flat the identity of which could change. The Tribunal in *Sexton* also found, at [38], that the particular easement created by the lease in that case was peculiar to the flat in question: "despite being enjoyed in common with others with similar rights, it is an individual right over a communal facility". In this case, by contrast, the Storage Unit is not a communal facility but can only be used by Mr and Mrs Sehgal, as the current owners of the leasehold interest in the Storage Unit.

Further Tribunal decisions cited by HMRC

153. HMRC's skeleton argument referred, within their submissions on FA 2003, s 116(1)(c), to three further decisions of this Tribunal. However, we do not consider that any of these decisions assist HMRC in this case, for the following reasons.

154. The first decision to which HMRC referred is *Landmaster Investment Ltd v HMRC* [2023] UKFTT 736 (TC) ("*Landmaster*"), and specifically the Tribunal's rejection, at [73(4)], of an argument by the appellants in that case that the "relevant land" for the purposes of FA 2003, ss 55(1B) and 55(1C) was the entire building in which the apartment was located, and that because this building included areas not used or suitable for use as a dwelling (such as communal areas), the relevant land did not consist entirely of residential property as defined in s 116. We do not, however, consider that this assists HMRC in this case, because Mr and Mrs Sehgal did not make the same argument.

155. The second decision is *The How Development 1 Ltd v HMRC* [2021] UKFTT 248 (TC) ("*The How*"). This case was about a house that was acquired together with an area of woodland, that was physically inaccessible from the house but that provided a degree of privacy and security. The Tribunal found, at [77], that "the woodland can therefore be said to subsist for the benefit of The How".

156. We did not derive assistance from *The How*, both because the factual circumstances were quite different from this case, and because that decision was concerned not with FA 2003, s 116(1)(c), but with s 116(1)(b). Unlike this case, the woodland in *The How* was included in the same title as the main house and was conveyed in the same transfer. The decision was appealed, and the Upper Tribunal found that the First-tier Tribunal's decision

was plainly focused on s 116(1)(b) and not s 116(1)(c) (see *The How Development 1 Ltd v HMRC* [2023] UKUT 84 (TCC) at [104]).

157. The third decision referred to by HMRC is *Kozlowski* (to which we have already referred above) in which the Tribunal found at [100] that s 116(1)(c) is "apt to cover rights attaching to a property which are exercisable over someone else's land rather than rights or interests in the subject property itself". But a lease is a separate legal estate, not a right over someone else's land. LPA 1925, s 1, interpreted with the assistance of paragraph 4-039 of Megarry & Wade, both as referred to above, is authority for this proposition.

158. We were somewhat unclear as to whether HMRC regarded *Kozlowski* as an authority in their favour. Elsewhere in their skeleton argument HMRC submitted that the statutory wording does not have any limitations that an interest in or right over land is limited to other or third-party land, and that we should not impose a limit to the statutory wording that is not expressly there. In the hearing, Mr Davies said that the judge in *Kozlowski* gave no reason for her views and that in any event we are not bound by another decision of this Tribunal.

159. Whether *Kozlowski* assists HMRC or not, it may be seen from the reasoning above that the fact that the lease of the Storage Unit was not a right over someone else's land is not one of the reasons for our decision on s 116(1)(c).

Conclusion on the residential property issue

160. For the reasons given above we find that the lease of the Storage Unit is not "an interest in or right over land that subsists for the benefit" of a building within FA 2003, s 116(1)(a), and therefore does not fall within the definition of residential property.

161. It will be recalled that in our view this case concerns separate transactions rather than a single transaction. We also said that if we were to decide that the Storage Unit is not residential property under FA 2003, s 116(1)(c), the appeal would succeed, irrespective of whether there are separate transactions or a single transaction.

162. It will also be recalled that it was common ground, and we found, that if the acquisitions of the Apartment and of the Storage Unit were separate transactions, they were "linked" within the meaning of FA 2003, s 108(1).

163. For separate but linked transactions, we must look to FA 2003, ss 55(1C) and 55(4). These tell us that we must apply Table A if the relevant land consists entirely of residential property, and Table B if the relevant land consists of or includes land that is not residential property. Relevant land is defined as "any land an interest in which is the main subject-matter of any of the linked transactions". In this case the main subject-matter of one of the linked transactions is the leasehold interest in the Storage Unit. As we have found that the Storage Unit is not residential property, the appropriate table is Table B.

164. If we are wrong in our view that there are separate transactions in this case, but correct that the lease of the Storage Unit was not an "interest or right appurtenant or pertaining to" the lease of the Apartment, then the lease of the Apartment and the lease of the Storage Unit must together be the main subject-matter of a single transaction. We would then look to FA 2003, ss 55(1B) and 55(3). These again tell us that we must apply Table A if the relevant land consists entirely of residential property, and Table B if the relevant land consists of or includes land that is not residential property. This time relevant land is defined as "the land an interest in which is the main subject-matter of the transaction".

165. To understand this provision where the main subject-matter consists of two chargeable interests, we must apply the rule that unless the contrary intention appears, words in the

singular include words in the plural. The definition of relevant land could then be read as "the pieces of land interests in which are the main subject-matter of the transaction." We would comment again that this strikes us as a strained interpretation of the legislation, supporting our view that this case involves separate transactions. Nonetheless, to pursue this line of reasoning: if the leasehold interest in the Storage Unit is part of the main subject-matter, and as we have found that the Storage Unit is not residential property, the appropriate table remains Table B.

166. On either analysis therefore, the non-residential rates of SDLT apply and the appeal must be allowed.

167. We have reached our decision for the reasons we have given above, based on the particular facts of this case, and on the arguments raised by the parties. We are conscious that this appears to be a surprising result, given the relatively small value that must attach to the Storage Unit compared with that of the Apartment. However, the legislation is clear that the residential rates apply only if the relevant land consists entirely of residential property (emphasis added). The word "entirely" is not ambiguous, and means that if even a very small proportion of the relevant land is non-residential, then the non-residential rates apply. If this were not the meaning that Parliament intended, we consider that it would not have used this word.

Note on the meaning of relevant land

168. This conclusion disposes of the appeal. We would, though, make one further point, which was not argued before us, but which reinforces us in our view that the non-residential rates of SDLT apply. This arises from our reading of FA 2003, s 55.

169. It will be recalled that the question as to which of Tables A or B applies is determined by whether the "relevant land" consists entirely of residential property. The "relevant land" is then defined as "the land an interest in which is the main subject-matter of the transaction", or alternatively (for linked transactions) as "any land an interest in which is the main subject-matter of any of the transactions" (emphasis added). We note that relevant land is not defined as "the interest which is the main subject-matter of [any of] the transaction[s]". Section 55 draws a distinction between land, and interests in land.

170. In this case, the land is the Storage Unit, and the interest in that land is the Storage Unit Lease. When we consider the Storage Unit as land, distinct from the Storage Unit Lease, it does not appear to fall into any of the heads of FA 2003, s 116(1). It is not within s 116(1)(a) or (b), but as it is itself land, it also does not appear to be an "interest in or right over land" within s 116(1)(c). It would follow from this reasoning that the "appropriate table" is Table B.

171. We note that this view is consistent with the reasoning in *Landmaster* at [73(5)], where the Tribunal rejected an argument "to the effect that s 116(1)(c) FA 2003 establishes that the "relevant land" for purposes of s 55(1B) and (1C) FA 2003 can be something other than physical land or a physical building."

172. We did not hear submissions on this proposition and wish to make clear that this is not the basis on which we made our decision, and that we would have decided the appeal the same way even if we had not thought of this point. However, having reached our decision on the basis of the parties' arguments as set out above, this additional consideration reinforces us in our view that our decision is consistent with the legislation.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

173. 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.

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