Tax Chamber
First-tier Tribunal for Scotland

[2026] FTSTC 4

Ref: FTS/TC/AP/25/0007

***Land and Buildings Transaction Tax – whether residential or non-residential – whether suitable for use as residential property – Mudan considered – appeal allowed***

# DECISION NOTICE

IN THE CASE OF

**Bagshaw Limited**

Appellant

- and -

**Revenue Scotland**

Respondent

**TRIBUNAL: ANNE SCOTT, President**
**CHARLOTTE BARBOUR, Member**

**Of consent, the parties requested that the hearing listed for 3 and 4 February 2026 be vacated and the appeal be decided on the papers**

**Further written submissions for the Appellant dated 8 April 2026**

**Further written submissions for the Respondent dated 29 April 2026**

DECISION

## Introduction

1. This is an appeal against a decision by Revenue Scotland contained in a Closure Notice, dated 20 December 2024, which was upheld on review dated 28 March 2025 (together "the Decision").

2. The Decision was to the effect that the two properties purchased by the Appellant, ("the Properties"), were properly to be treated for Land and Buildings Transaction Tax ("LBTT") purposes as residential property at the effective date, which was 17 December 2020.

3. The total consideration was £1,700,000. The total tax originally paid had been £228,250 being LBTT of £160,250 plus Additional Dwelling Supplement ("ADS") of £68,000. Following an amendment to the LBTT return on 8 June 2021, when the Appellant's then agent claimed Multiple Dwellings Relief ("MDR") of £43,750, the total tax due was reduced to £184,500 and a repayment made to the Appellant.

4. On 23 April 2024, a claim was made for the Appellant in terms of section 107 Revenue Scotland and Tax Powers (Scotland) Act 2014 ("RSTPA") for repayment of LBTT of £111,000 on the basis that the transaction should have been recorded as being non-residential. Had it been recorded as non-residential the LBTT due would have been £73,500.

5. We had a Hearing Bundle extending to 452 pages and an Authorities Bundle extending to 154 pages. Both parties had lodged Written Submissions. The parties had lodged a Statement of Agreed Facts which we have not incorporated herein in that format as, on checking the contemporaneous documentation, there were a number of inaccuracies and omissions.

6. On 18 March 2026, the Tribunal issued an Order seeking Further Written Submissions addressing those inaccuracies and omissions and, in compliance with the Order those were filed on 8 and 29 April 2026.

## The Legislation

7. It is common ground that the sole issue in this case is whether or not the Properties are "residential property" within the meaning of section 59(1) Land and Buildings Transaction Tax (Scotland) Act 2013 ("LBTTA") which reads:

> **"59 Meaning of "residential property"**
>
> (1) In this Act "residential property" means—
>
> (a) a building that is used or is suitable for use as a dwelling, or is in the process of being constructed or adapted for such use,
>
> (b) land that is or forms part of the garden or grounds of a building within paragraph (a) (including any building or other 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)."

8. For completeness, section 59(2) LBTTA reads:

"(2) Accordingly, "non-residential property" means any property that is not residential property.".

**The Facts**

9. The first record of a disposition of the Properties that we have seen was dated 2 May 1873 when the land with a "Lodging &c (sic) thereon" was conveyed. The Properties originally consisted of a townhouse (19 Park Circus, Glasgow) with a mews building (22 Park Terrace Lane, Glasgow). The townhouse is three storeys with a basement and at some unspecified later date a two storey billiard extension with basement was constructed to the rear. Planning documents describe it as an "historic" extension. The mews building which, possibly, was originally stable accommodation, is one and a half storeys with a basement and faces onto a lane. The result of the historic extension is that there is no significant garden ground to the rear of either the townhouse or the mews and the only external space is two courtyards enclosed by the two buildings.

10. They are Category A listed buildings.

11. Until 2019, the townhouse and the mews were held on one single title. At some unknown date the townhouse and the mews acquired different postal addresses.

12. In 1920 the Properties were sold to Atholl Nursing Home Limited. The Liquidator of that company sold them in November 1934 and in December 1934 they were again sold to an individual who sold them to another individual in December 1936.

13. On 7 April 1937 the Properties were transferred by Disposition to the Trustees for the Ecclesiastical Superior and Members of Finance Board of Roman Catholic Archdiocese of Glasgow.

14. Despite research, the history of their use whilst owned by the Archdiocese (until 1979) is not very clear. For an unknown period, they were used as a nursing home which included an operating theatre. We find that, on the balance of probability, the Properties had kept their identity as a nursing home in the period from 1934 until 1937.

15. In the period 1948 to 1955, that operating theatre was converted into an Oratory (Chapel) complete with rows of seating flanked by the Stations of the Cross as the altar was approached.

16. From 1951 until 1964 the Properties housed the Archdiocesan Curia (the central administrative office of the Archdiocese which managed pastoral planning, administration and judicial affairs). In 1962 the Bishop-Auxiliary was also in residence at the Properties.

17. From 1965 until 1976 the Properties became the residence of the then current and later a retired Archbishop. It is not clear whether the Curia continued to operate from the

Properties but, as can be seen from paragraph 19 below, the Properties were still believed to contain offices.

18. From 1977 it was neither a residence nor the base for the Curia but there was some evidence of auxiliary administrative use.

19. On 5 September 1979 the Properties were transferred by Disposition from the said Archdiocese to the Trustees for the Franciscan Convent of Immaculate Conception ("the Order"). That disposal, of what was described by the Sisters as a purchase of the "Archdiocesan offices", which became a "house and cottage" was a result of negotiations whereby the Archdiocese purchased the Order's much larger former convent and the Sisters were dispersed to move to the community of their choice.

20. The Sisters used the Properties as their Convent (the Oratory remained intact) and home. It was their base for their outreach ministries. Some of the Sisters were students and some elderly Sisters simply resided there.

21. On 16 November 1998 planning permission was granted by Glasgow City Council for the change of use of the Properties from that of convent to offices.

22. On 31 December 1999 the Properties were transferred by Disposition to the Scottish Catholic International Aid Fund ("SCIAF"). In what had been the Oratory three windows were reinstated and the Oratory was converted into a light space used for meetings and occasional worship. Part of the conversion into offices included the etching of the "SCIAF" name and logo, together with words "Uniting to end poverty Caritas Scotland" onto the windows at the front of the Properties.

23. SCIAF relocated to new offices in August 2019.

24. On 28 November 2019 the Properties were transferred to Martin Wightman Lightbody by a Disposition dated 20 November 2019 and to West Coldstream Properties LLP ("WCP") by a Disposition dated 28 November 2019. In both cases the subject matter of the Dispositions was the townhouse postal address.

25. The (single) LBTT return for those transactions classified the Properties as non-residential.

26. The identical plans referred to within, and annexed to, both of the Dispositions included a box entitled "Information" dated November 2019. It stated that it was the "Drawing Title" of "Floor Plans with proposed subdivision" for a "Project Title" which was the "proposed conversion" by the client "Mr and Mrs Lightbody" of 19 Park Circus, Glasgow (but which was in fact the townhouse and mews) into five residential apartments. In summary, and as indicated in the Dispositions, Mr Lightbody purchased approximately 7/10ths of the Properties and WCP purchased 3/10ths.

27. Two Energy Performance Certificates ("EPCs") dated 2 September 2019 described the Properties as "Offices and Workshop businesses".

28. In a single Disposition, on the effective date, 17 December 2020, the Appellant purchased the Properties. At the effective date, the Properties were in the process of being

registered as separate titles, but this process had not yet been completed. The separate titles were not that of the townhouse and the mews but rather:

(a) a title to parts of the lower ground floor and ground floor of the townhouse, the courtyards and the mews and all of the first, second and third floors of the townhouse (7/10ths), and

(b) a title to parts of the lower ground floor and ground floor of the townhouse, the courtyards and the mews (3/10ths).

29. The LBTT return filed on 17 December 2020 referenced the townhouse address only and described the transaction as being residential. The Appellant paid LBTT of £228,250 being LBTT of £160,250 and ADS of £68,000.

30. Prior to purchasing the Properties, the Appellant had instructed Halcyon Reinstatement Services Limited ("Halcyon") to advise on adaptation of the Properties to residential use. They have confirmed that at that juncture:

> "When first inspecting the site in 2020 the property was already in an uninhabitable condition. Previous owners had removed plumbing/heating and electrical systems, there were no usable toilet facilities, the condition of the property was in a state that looked like it was uninhabitable long before our inspection."

31. The asbestos survey dated 7 December 2020, described the two Properties as being "Main Building and Mews Cottage" and the type of building as being "Commercial".

32. The amended LBTT return filed on 8 June 2021 used the postal address of the mews and claimed MDR. The LBTT calculation otherwise remained unchanged. That claim was accepted and a repayment of £43,750 was made to the Appellant. The net amount of LBTT paid, which was at the higher residential rate, was therefore £184,500. As we have indicated, had the transaction been classified as being non-residential, then the LBTT due would have been £73,500.

33. The first planning application for the conversions was filed on 16 December 2021.

34. On 23 April 2024, the repayment claim in the sum of £111,000 was filed with Revenue Scotland on the basis that a fundamental mistake had been made when both LBTT returns were filed by the then solicitors. The Properties were not residential and had been used as offices for many years.

35. The following supporting evidence was provided:

(a) A copy of the amended LBTT return.

(b) Planning history extracted from a Glasgow City Council portal showing non-domestic use for the townhouse.

(c) The two EPCs dated 2 September 2019.

(d) A chain of emails between the Appellant and Glasgow City Council regarding 100% Empty Property Relief agreed for non-domestic rates for the Properties. There was conformation that the Properties were on the non-domestic Valuation Roll.

(e) The two title sheets.

36. On 7 May 2024, Revenue Scotland issued a Notice of Enquiry under Schedule 3 RSTPA, referred to section 59 LBTTA, their guidance LBTT4010-Residential transactions, LBTT4012-Non-Residential transactions and LBTT4011-Mixed transactions-Commercial use and requested the provision of extensive further information by 6 June 2024.

37. On 22 May 2024, the Appellant replied furnishing the documentation that had been requested and confirmed that:

(a) The solicitors who had filed the LBTT return had not provided them with a satisfactory explanation as to why the transaction had been reported as being a residential transaction; no tax advice had been sought.

(b) The Properties had been used as offices for many years (as the planning history previously provided had demonstrated) and the Appellant's intention had been to develop the Properties for residential use. Planning permission had been obtained but the conversion had not commenced.

(c) The Appellant had not sought tax advice on the repayment claim but had relied on information that was readily available including Revenue Scotland's website; they had read the legislation and Revenue Scotland's guidance.

(d) When purchasing the Properties, the planning history had been checked and the Appellant had inspected the Properties. No sales brochure or online link relating to the sale was available.

38. In response to the query about documentation supporting commercial use of the Properties at the effective date, the Appellant furnished photographs of the front of the townhouse showing SCIAF's name etc etched on the glass. They reminded Revenue Scotland that the Properties were listed for non-domestic rates and the EPCs described them as offices.

39. They explained that the Appellant had relied on the solicitors at the time of purchase but later a "chance review" had uncovered the obvious mistake by the solicitors.

40. On 19 June 2024, the Appellant sent Revenue Scotland a copy of the non-domestic rates demand for 2024/25 for the townhouse.

41. On 25 June 2024, Revenue Scotland emailed the Appellant:

(a) Stating that their guidance stipulated that the "use at the effective date overrides any past or intended future use" and asked for documentary evidence that the Properties were used as offices at the effective date.

(b) Asking for clarification as to whether any construction or adaption for residential use had begun at the effective date as well as confirmation as to whether the

Properties had ceased to be used as offices and/or whether any conversion work has been undertaken.

(c) Requesting a copy of non-domestic rates bills for the mews.

(d) Requesting any planning documents for the mews of a nature similar to that already provided in relation to the townhouse. (We observe that Revenue Scotland quoted the planning information already supplied and that included the mews.)

(e) Requesting any further details such as those listed in Revenue Scotland's guidance LBTT4011 titled "Mixed Transactions – Commercial use" to evidence that the Properties were being used commercially at the effective date.

(f) In relation to suitability for use as a dwelling, confirmation of what utilities the Properties had at the effective date, such as heating, electricity, gas and water and whether the utilities were connected to the Properties and in working order at the effective date. Confirmation as to whether the Properties had cooking facilities and/or shower/bath facilities at the effective date.

42. On 26 July 2024, the Appellant replied, referring to section 59 LBTTA and pointing out that they did not have to prove commercial use at the effective date but only that it was not residential property in terms of that section. Copies of the following were enclosed:

(a) The 2019 and 2020 dispositions and the Appellant explained that the division of title was not between the townhouse and mews but was an internal division.

(b) Concluded missives dated 9 and 10 December 2020 (which had previously been provided on 22 May 2024). The Appellant pointed out that:

(i) Clause 6 provided that "The Seller confirms that no part of the property is (or has within the prescriptive period been) used as a private residence…"

(ii) Clause 13 was headed "No Employees" and that was inconsistent with the Properties having been used for residential purposes at the effective date.

(c) The first page of an application for planning permission which read:

"Change of Use from Offices to Residential. Conversion of existing townhouse, annex and mews buildings to the rear to form 5 No. residential apartments."

The Appellant confirmed that no work had commenced at the effective date as that was not possible without planning permission.

(d) A Design Statement by the architects who had filed the planning application. It had the same description as the planning application. Relevantly it read:

"The existing property has been the home of the Glasgow offices for the charity SCIAF for the last 20 years. The property has been neglected and requires extensive repairs, maintenance and refurbishment. Some of the principle (sic) rooms on the ground, first and second floors have been altered, subdivided and the architectural features removed including cornicing and ceiling rose work,

> timber panelling & architraves and fire places (sic). A passenger lift has been installed in the past through the centre of the staircase, the majority of the balusters to stairs have been retained however some of the carved timber newel posts and handrail have been removed to facilitate the lift. The associated games/billiard room and mews building to rear (sic) fronting [the mews] have been retained but again altered, subdivided and most internal architectural features removed.
>
> Pre-application discussions have previously taken place with [named individual] of the planning department and the principle of subdividing the property into five dwellings was agreed; the main townhouse in to three apartments over five floors and the annex buildings in to a further 2 apartments including the mews house…".

It contained numerous pictures showing the condition of the Properties at that time. Clearly the Properties had been stripped down to the basic fabric. There were images of what the renovated Properties might look like with examples of similar projects.

(e) A copy of a non-domestic rates demand for 2023/24.

(f) An email dated 3 March 2021 from the Glasgow City Assessor confirming that until "significant work" was underway to convert the building for domestic use or it was fully used as a domestic residence it would be valued as non domestic.

(g) A copy of a "Report of Handling" dated 14 April 2022 in relation to the planning application. It included the planning history from the decision in 1998 permitting the conversion from a Convent to offices with both internal and external alterations. In 2012 and 2015 there were five decisions on applications for the installation of an external wheelchair platform lift in the basement lightwell. It recommended that, subject to certain caveats, planning permission be granted.

43. The Appellant also explained that the photographs in the Design Statement demonstrated that the Properties could not be used as a dwelling and had only had a "basic staff kitchen and lavatories". In addition, it was pointed out that the Properties had ceased to be used as offices at some point before SCIAF sold them.

44. The Appellant again stated that the former solicitors had clearly made a mistake in describing the Properties as being residential.

45. On 2 August 2024, Revenue Scotland responded asking if the Properties had been used as offices by Mr Lightbody and WCP. It was argued that section 59(6) LBTTA meant that if the Properties had not been in use at the effective date but could have been suitable for use both as residential and non-residential purposes, then if one use was more suitable than another that would be a deciding factor. Suitability for other uses would not be considered. The argument concluded "Otherwise, the building is to be treated as residential and suitable for use as a dwelling.".

46. In regard to suitability, the Appellant was asked to confirm what utilities the Properties had at the effective date and whether the utilities were then connected to the Properties and in working order.

47. On 7 October 2024, the Appellant replied and confirmed that the Properties had never been used by Mr Lightbody and WCP and had not been in use for any purpose between December 2019 and the effective date.

48. The Appellant robustly rejected the argument on section 59(6) pointing out that the Properties had never been suitable for any of the uses in subsections (3) and (4) and therefore section 59(6) was irrelevant.

49. The Appellant produced the letter from Halcyon (see paragraph 30 above) which was dated 1 October 2024.

50. The Appellant confirmed that at the effective date:

(a) Plumbing and heating facilities had been removed or disconnected and there were no usable toilet facilities.

(b) Although water and electricity were connected they were subsequently disconnected on the insistence of the insurers.

51. It was explained that the Appellant had sold the Properties on 3 July 2024 and that had been on the basis that it was a non-residential transaction as had been the sale from SCIAF.

52. The Appellant referred to Revenue Scotland's Guidance 4010 and pointed out that none of the factors listed under "Meaning of a Dwelling" were present in the building at the effective date. It was in a state of dereliction, had no bathroom facilities, no domestic kitchen, and no accommodation for living or sleeping.

53. It was also pointed out that:

(a) Revenue Scotland had overlooked the history of use of the Properties which the Appellant viewed as being significant.

(b) This was not a case in which a residential property had deteriorated and had to be substantially repaired.

(c) This was the case of a building which appeared to not have been in residential use within living memory.

54. It was reiterated that the LBTT returns had been filed by the solicitors who "…at its kindest had misunderstood the LBTT status of the building and consequently given us defective advice…".

55. A new officer took over the enquiry and apparently had difficulty understanding the, in our view very clear, floor plans that had been provided and, so on 30 October 2024, asked for details of the "physical configuration of the townhouse and the mews".

56. On 7 November 2024, the Appellant responded enclosing the Land Registry plan which had been previously provided and argued that Revenue Scotland's enquiry seemed to "go off at a tangent". All relevant information had been provided and the only issue was whether the Properties were suitable for use as a dwelling. The Appellant again complained about the long delay in dealing with the repayment claim.

57. On 15 November 2024, the Appellant wrote to Revenue Scotland:

(a) again complaining about the delay,

(b) reiterating the facts that planning permission was only granted a year after the effective date, and prior to that the Properties had only been used and were only usable as offices for many years,

(c) arguing that when purchased, the Properties had not been suitable for use as a dwelling and were not in course of adaptation for such use,

(d) reiterating that the LBTT return(s) had been a mistake on the part of the solicitors, and

(e) asking for closure.

58. Correspondence ensued and on 20 December 2024, the Closure Notice was issued. It stated that:

(a) Revenue Scotland would not repay £73,500. The LBTT return had correctly recorded the transaction as being residential.

(b) The history of the enquiry was narrated.

(c) Revenue Scotland stated that they had adopted the approach at paragraph 58 of *Mudan* v *HMRC* [2024] UKUT 307 (TCC) ("Mudan UT") that " …although the building was used as an office for around 21 years originally it was built as a dwelling…" and relied on the facts that:

(i) the transaction had been reported as being residential,

(ii) MDR had been claimed on the same basis,

(iii) there had been a large kitchen in the townhouse and a small one in the mews,

(iv) there was a bath and shower in the townhouse and "toilets throughout",

(v) utilities were connected at the effective date.

(d) It was argued that although:

(i) "A substantial amount of works were required to make the building (sic) habitable" there were no irremediable defects which would affect the structural integrity.

(ii) There were no active "services" at the effective date reconnection was feasible and new bathrooms and kitchens could have been fitted.

(iii) It was "unlikely that the building could have been occupied at the effective date without plumbing and heating services" that was relevant but not determinative.

(iv) Repairs were needed and the issue as to whether those were minor or fundamental was not a defining factor and there was no evidence that the repairs would have any impact on whether the Properties would be suitable for use as a dwelling.

(e) Revenue Scotland said that they relied upon paragraph 129 of *Professor Richard Ball and Dr Sigrid Torkoroff v Revenue Scotland* [2024] FTSTC 6 ("Ball") and their guidance LBTT4010.

59. On 17 January 2025 the Appellant requested a review on the basis that:

(a) Revenue Scotland had incorrectly identified the quantum of the repayment claim which was £111,000.

(b) Revenue Scotland had failed to appropriately apply the principles articulated by the Upper Tribunal in *Mudan UT* and had relied upon the structure of the building to the exclusion of other relevant factors. They had not taken cognisance of *HMRC v Ridgway* [2024] UKUT 00036 (TC) ("Ridgway").

(c) Revenue Scotland had failed to distinguish *Ball.*

(d) The Properties had not been used as dwellings since the 1920s or 1930s and had not been fit for residential use for decades.

(e) The claim for repayment had arisen because of an error by the solicitors. All of the other transactions, involving experienced solicitors, had declared the Properties to be non-residential.

(f) Extensive argument was advanced on the detail of the Closure Notice.

60. On 20 January 2025, the Appellant sent Revenue Scotland a Supplemental Bundle to read in conjunction with the letter of 17 January 2025. The Bundle included the following documents:

(a) A document summarising the planning history of the Properties.

(b) The letter from Halycon.

(c) A plan provided to the purchaser from SCIAF pursuant to section 63 of the Climate Change (Scotland) Act 2019; and

(d) An asbestos building survey.

61. On 14 February 2025, Revenue Scotland issued their View of the Matter letter. That conceded that the Closure Notice had incorrectly identified the quantum of the repayment claim, came to no conclusion but asked for further representations by 28 February 2025.

62. The Appellant replied on 17 February 2025, drawing the case of *Fitzgerald v HMRC* [2025] UKFTT (00089) (TC) ("Fitzgerald") to Revenue Scotland's attention. It was argued that the Appellant would have been in breach of planning (and other legislation) if the Properties had been used for anything other than offices.

63. On 28 March 2025, Revenue Scotland issued their Review Conclusion letter which upheld the Closure Notice largely on the same basis as previously, albeit the quantum was corrected. The review officer also argued that because the Report of Handling referred to the conversion of a townhouse, that meant that the planners considered the Properties to be residential.

64. The Appellant appealed to the Tribunal on 22 April 2025. The Grounds of Appeal reiterated the Arguments previously advanced.

65. Following the release of the decision in *Mudan v HMRC* [2025] EWCA Civ 799 ("Mudan *CA*"), at the behest of the Tribunal, the Appellant filed Amended Grounds of Appeal and Revenue Scotland filed an Amended Statement of Case.

66. The Statement of Agreed Facts and the Written Submissions were filed with the Tribunal.

***Mudan CA***

67. Section 59 LBTTA is identical in its terms to the Stamp Duty Land Tax ("SDLT") provisions at section 116 of the Finance Act 2003.

68. Both parties have relied on the jurisprudence relating to SDLT and, as the Tribunal indicated at paragraph 30 in *Straid Farms Limited v Revenue Scotland* [2017] FTSTC 2:

> "…the Explanatory Notes to RSTPA state:
>
> 'The effect of [the legislation] is that the jurisprudence concerning the proper bounds of the tax authority's role is imported into the devolved tax system. This jurisprudence includes not only case law from the UK jurisdictions but other English-speaking jurisdictions'."

69. *Mudan CA* is the most authoritative jurisprudence concerning section 116 Finance Act 2003 and the Court reviewed, and approved, many of the earlier cases including *Ridgway* (see paragraph 59(b) above).

70. At paragraph 54 of *Mudan CA,* Lord Justice Lewison referred to *Mudan* in the Upper Tribunal (hereinafter "*Mudan UT"*) and stated that the Upper Tribunal had:

> "…summarised their conclusions in a lengthy passage at [58] which deserves quotation in full:
>
> > 'In our opinion, the following points should be considered in determining the impact of works needed to a building on its suitability for use as a dwelling:
> >
> > (1) In assessing the impact of the works needed to a building in the context of determining suitability for use as a dwelling, a helpful starting point is to establish whether the building has previously been used as a dwelling. That is relevant for two reasons. First, as we said in *Fiander UT* [2021] STC 1482, previous use as a single dwelling is relevant in determining whether an alteration needed to a building would be a repair or renovation (because of prior use as a dwelling) or, alternatively, an adaptation or alteration, changing the

building's characteristics by making it usable as a single dwelling for the first time. Second, actual use as a dwelling is a very strong indication that the building has possessed the fundamental characteristics of a dwelling, and has previously been suitable for use as a dwelling. An assessment of the repairs and renovations needed can then be made against that backdrop and by reference to the state of the building during its actual use as a dwelling. Previous use is, of course, fact sensitive, and factors such as the length of time between the previous use as a dwelling and the effective date will be relevant. The fact of previous use as a dwelling does not mean that a building remains suitable for use as a dwelling regardless of what happens to the building and regardless of the effluxion of time. Equally, to state the obvious, the fact that there has been no previous use as a dwelling does not mean that a building is not suitable for use at the effective date. However, previous use is a highly relevant factor in the evaluation of suitability.

(2) Looking at the building as at the effective date, an assessment must be made of the extent to which it has the fundamental characteristics of a dwelling, including the extent to which it is structurally sound. Is it, for instance, a desirable house which has become dilapidated and requires updating, or is it an empty shell with no main roof? Subject to the points which follow, in principle the former is likely to be suitable for use as a dwelling and the latter is not.

(3) The necessary works should be identified, and their impact on suitability for use should be considered collectively. A distinction must be drawn between works needed to render a building habitable and works to be carried out to make the property ‘a pleasant place to live’, in the words used by the FTT at FTT [30] (such as painting and decorating). The latter do not affect suitability for use as a dwelling.

(4) An assessment should be made of whether the defects in the building which require works are capable of remedy (in colloquial terms, are fixable). That assessment should take into account whether the works would be so dangerous or hazardous as to prejudice their viability (as in *Bewley* [2019] UKFTT 65 (TC)). If they would, then the building is unlikely to be (or remain) suitable for use as a dwelling. It should also take into account whether the works could be carried out without prejudicing the structural integrity of the building (because, for instance, the walls might collapse). If they could not, the building is unlikely to be suitable for use as a dwelling.

(5) If occupation at the effective date would be unsafe or dangerous to some degree (for instance, because the building requires rewiring), then that would be a relevant factor, but would not of itself render the building unsuitable for use as a dwelling.

(6) The question of whether a repair would be a “minor repair” is not irrelevant, but nor is it particularly informative in assessing suitability. While certain repairs were described as ‘minor’ in *Fiander FTT,* that classification was not a reason for the decision in *Fiander UT*. It is too vague and abstract to form a principled basis for the overall determination of the impact of the need for repair on suitability. For the same reason, an approach which seeks to establish whether

the necessary works are 'fundamental' is acceptable if it is effectively shorthand for the approach we describe above, but as a free-standing test it is not particularly informative.

(7) Applying the principles we have set out, the question for determination is then whether the works of repair and renovation needed to the building have the result that the building does not have the characteristics of a dwelling at the effective date, so it is no longer residential property.'"

71. In the following paragraphs, Lord Justice Lewison then went on to confirm that in the Court's view:

(1) Given the wording in the section in the legislation, the test that must be applied is to consider both use and suitability for use [56].

(2) That is a matter of statutory interpretation and therefore regard must be had to the purpose of the legislation and the context within which the language is used [57].

(3) The context is the levying of tax on land transactions; therefore that "militates against restricting the assessment whether property satisfies the definition to a snapshot on a particular date" [58].

(4) The definition is "concerned with what might be land use rather than occupation as such" [60].

(5) The phrase "suitable for use as a dwelling" is only part of the overall definition of "residential property" and because the definition of a building includes a building in the process of construction or adaptation that is looking to the future and thus, again, the assessment is not confined to a "snapshot" on a particular day [61].

(6) The objective characteristics of the building should be considered and so property which is used as a dwelling notwithstanding dilapidation etc is residential property [62].

(7) Some concentration on the structure of the building is appropriate as it is consideration of a building as opposed to internal fit out [63]. It is the building which must be suitable for use as a dwelling.

(8) The argument that the property in question should be suitable for immediate use was rejected [66] and in that context he stated that a Tribunal is entitled to consider the past history of a building and whether it retains its identity. In other words, does it lose its character as a residential property.

(9) Consideration should be given as to whether in the course of building work a building which had been a dwelling has "lost its identity" and therefore had the "fundamental characteristics of a dwelling"; attention should be given to the past history of the building and whether it retains its identity [64-66].

(10) Where works are required it is a "question of fact and degree whether the works were so extensive as to deprive a building of its character as residential property" [66]

(11) At paragraph 68 he stated:

> "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. If property previously used as a dwelling was undergoing extensive refurbishment such that it could not be lived in for the time being, but would be once the work was complete, I would be very surprised if the ordinary speaker of English would remove that property from the category of 'residential property'. As Mr Mudan himself accepted, the property "was still residential in character" at the time of the purchase. If, as a matter of ordinary language, it was not residential property: what was it?"

**Discussion**

72. Since the Properties were not in use at the effective date, and indeed had not been in use for any purpose for some time, we are concerned only with suitability for use and therefore the many factors identified in the two preceding paragraphs. As *Mudan UT* made clear it is a multi-factorial evaluative assessment and no one factor is determinative.

73. At the heart of Revenue Scotland's case is the fact that the Properties were built as residential properties. That is undoubtedly the case for the townhouse and may well have been the case, at least in part for the mews. The parties have agreed that they were residential in character when constructed and we accept that. We also find that they remained so until used as a nursing home from approximately 1920.

74. In their Further Written Submissions, Revenue Scotland stated that:

> "…the mixed use of the property over time is not in dispute…However, the fact that the building has been used for purposes other than a dwelling has at no point changed the building's fundamental characteristics. It has not been altered to the extent that it no longer has its fundamental (*residential*) nature. The property was designed and built for use as a residential property…".

75. We have considerable difficulty with that proposition which could be summed up as "once a dwelling house, always a dwelling house".

76. Had this appeal been heard in George House, as originally scheduled, it would have been in a courtroom in a building which was built in Victorian times as a shop on the ground floor (now a pub) with dwellings above. Like many buildings in the centre of cities in Scotland (and the rest of the United Kingdom) residential areas have become commercial over time.

77. Whilst we do accept that previous use is a highly relevant factor when evaluating suitability, as the Upper Tribunal stated at paragraph 58(1) of *Mudan UT,* we note that in the same paragraph they also stated that*:*

> "The fact of previous use as a dwelling does not mean that a building remains suitable for use as a dwelling regardless of what happens to the building and regardless of the effluxion of time".

78. Had the Properties retained their identity as residential buildings? As can be seen, a great deal happened to the Properties in the period from 1920. When they were used as a nursing home, complete with an operating theatre, in the decades after 1920 we find that the Properties lost their identity as dwellings. Their use as offices for the Curia did not reinstate that identity. Although there was residential use between 1962 and 1976, it appears that there was mixed use since there was still office use. Both parties have accepted in correspondence that the use as a convent was not residential use for the purposes of section 59 LBTTA. Thereafter it was again office use.

79. Looking at the quotation from Lord Lewison at paragraph 69 of *Mudan CA* (see paragraph 71(11) above) since 1920 the Properties had not been "the sort of property that people live in". A passerby seeing the SCIAF logo etc on the windows and the external platform lift from the basement lightwell would assume that these were office premises.

80. In their original written submissions Revenue Scotland asked the Tribunal to uphold the Closure Notice. We were surprised by Revenue Scotland's reliance on, and quotation of, paragraph 129 of *Ball* in the Closure Notice because it reads:

> "129. We think that it is relevant that the Property had been a home for in excess of 350 years. The Savills brochure was targeted at a range of potential users including those looking to purchase a home and the Property clearly had a great many of the characteristics of a dwelling. We have narrated the work that had to be completed before the Appellants were able to move in and find that it did not amount to work that changed "the building's characteristics by making it usable as a single dwelling for the first time". The previous use of the Property as a home demonstrates that it had previously been suitable for use as a dwelling. Its period of use as offices was comparatively short. The repairs and renovations to the shower room and the Ceiling and the removal of the office accoutrements were completed in a matter of months, bearing in mind that Covid had delayed matters*."*

81. In particular, the last two sentences make it very clear why the facts in *Ball* should be distinguished from this case.

82. In this case, not only had the "office accoutrements" been removed long before the Appellant took ownership but there were no utilities in the Properties as at the effective date. In *Ball* although the Appellants chose not to use the shower room in the short term because they were worried about the 17th century ornamental ceiling there were functioning utilities. In this instance, the Properties had been stripped back to the bare walls.

83. The Local Authority was in no doubt that the authorised use was, and had been for several decades, as offices. Hence the planning history, the EPCs and the non-domestic rates demands.

84. We have no hesitation in unequivocally rejecting the argument in the Review Conclusion letter that, because the Report of Handling referred to the conversion of a townhouse and mews, that connoted their use as residential property. The whole tenor of the planning application and therefore the Report of Handling is conversion from office use to residential use.

85. Beyond that, Revenue Scotland seem to have ignored planning permission. The Appellant cited *Fitzgerald* in support of their argument that the planning position was relevant. In fact, the Tribunal in *Fitzgerald* relied extensively on the Upper Tribunal in *Ridgway* and in particular on paragraphs 64, 36 and 47 and then decided at paragraph 40 that:

> "…we are obliged to take the Planning Condition into account in applying the multi-factorial test but we must take account of all of the circumstances in determining how much weight to give to it."

86. We agree and we have. We observe that Lord Lewison in *Mudan CA* cited paragraph 36 of *Ridgway* with approval. Planning restrictions are certainly a relevant factor and the Properties could not have been used as a dwelling since, at the very least, 1998 if not for a long time before that.

87. Lastly, on planning, we also observe that in *Ball* planning permission for change of use to residential use had been granted before the effective date. As can be seen, that was certainly not the case in this instance.

88. At paragraph 66 of *Mudan CA Lord Lewison* stated

> "…The UT in effect decided that where works to property were required, it was a question of fact and degree whether the works were so extensive as to deprive a building of its character as residential property".

89. We find that the works required to convert the Properties into a nursing home, complete with an operating theatre, and the subsequent works required to build the Oratory and offices would have been sufficiently extensive as to deprive the Properties of their character as residential property. The land use let alone its occupation was not residential. The nexus was broken.

90. Turning to the effective date, we note that Lord Lewison concluded paragraph 66 by stating:

> "Reverting to *Boreh* (which I have cited above) Rimer LJ continued after the cited passage:
>
> > "I also agree with the recorder that, if the accommodation as it currently stands is unsuitable, it will be a matter of fact and degree as to whether any such proposed adaptations and alterations will be such as to make it suitable. At one extreme, the proposed adaptations may be simple, and easily and quickly effected: for example, the installation of a ramp for access purposes. At the other extreme they may involve the carrying out of such major works as to make the accommodation uninhabitable in the meantime: in such a case the property might well be regarded as unsuitable despite the proposal to carry out the works."

91. In this instance, as can be seen from, for example paragraphs 30 and 42(d) above, very extensive work was required to render the Properties habitable in any shape or form.

92. We are mindful that paragraphs 57 and 58 of *Mudan CA* mean that we must consider suitability for use with a view to the purpose of the legislation and the context. The context is the taxation of land transactions with a higher rate of tax for residential transactions (section 24 LBTTA and the Additional Dwelling Supplement provisions). The intention of Parliament, whether north or south of the border, was, and is, explicitly to levy a lower rate of tax on non-residential transactions. At the effective date, although the Appellant had an intention to convert the Properties into residential property, as had the previous owners, no application for planning had been made, and the outcome of a planning application was not guaranteed. No works had been or could be lawfully commenced.

93. Having lost a residential identity many decades previously, we find that, within the meaning of section 59(1) LBTTA, the Properties were not suitable for use as a dwelling at the effective date and accordingly the LBTT return should have been filed on the basis that it was a non-residential transaction.

## Decision

94. The appeal is allowed. Revenue Scotland's view of the matter in the Decision is cancelled. The repayment claim is allowed.

95. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has the right to apply for permission to appeal on a point of law pursuant to Rule 38 of the First-tier Tribunal for Scotland Tax Chamber (Procedure) Regulations 2017. In terms of Regulation 2(1) of the Scottish Tribunals (Time Limits) Regulations 2016, any such application must be received by this Tribunal within 30 days from the date this decision is sent to that party.

**ANNE SCOTT**

**President**

**RELEASE DATE: 20 May 2026**