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First-tier Tribunal (Tax)

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Neutral Citation Number: [2026] UKFTT 1478 (TC)
Case Number: TC10066
Appeal reference: TC/2025/02788

FIRST-TIER TRIBUNAL
TAX CHAMBER

Taylor House, London
Heard On: 8 October 2026
Judgment Date: 23 October 2026

B e f o r e :

TRIBUNAL JUDGE MICHAELA SNELDERS
NOEL BARRETT

Between:

INNGRAYS LIMITED **Appellant**

- and -

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

Representation:
For the Appellant: Michael Collins of counsel, instructed by McCarthy Denning
For the Respondents: Fiona Man, litigator of HM Revenue and Customs' Solicitor's Office

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HTML VERSION OF DECISION

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STAMP DUTY LAND TAX – whether property comprising five flats and an electrical substation is wholly residential or mixed-use – substation occupied by electricity company under a twenty year lease – whether land occupied by the substation formed part of the "garden or grounds" of the dwelling within section 116(1)(b) Finance Act 2003 – application of multi -factorial test derived from authorities

– substation exclusively occupied for a self-standing commercial function separate from and unconnected to the dwelling - substation held not to be part of the grounds — appeal allowed

DECISION

Introduction

1. This appeal concerns the SDLT treatment of the Appellant's purchase of 59 Fitzjohns Avenue, Hampstead, London NW3 6PH ("the Property") on 29 May 2024. The issue in dispute is whether the Property was wholly residential property or mixed-use property at the effective date of the transaction for Stamp Duty Land Tax ("SDLT") purposes. If the Property was mixed-use property at the effective date of the transaction it is subject to a lower rate of SDLT.

2. The Appellant contends that an electrical substation ("the Substation") at the rear of the garden does not form part of the garden or grounds of the dwelling and is therefore non-residential property making the Property a mixed-use property for SDLT purposes. The Respondents contend that the entirety of the Property remained residential property notwithstanding the presence of the Substation.

3. The difference between the higher rate SDLT that would be payable on this Property if it is entirely residential property and the lower rate SDLT payable if it is mixed-use property is £341,750, and that is therefore the amount in dispute in this appeal.

4. The documents to which we were referred were contained in a documents bundle of 307 pages. We also had the benefit of an authorities bundle of 316 pages, the Appellant's skeleton argument of 8 pages and the Respondents' skeleton argument of 14 pages.

5. We have carefully considered all the submissions that were made to us and all the authorities cited, although we have not referred to all of them in detail in our decision.

6. References below to schedules and section numbers are to schedules and sections of the Finance Act 2003 unless otherwise stated.

background and facts

7. The facts are largely not in dispute in this appeal.

8. The Appellant ("**Inngrays**") purchased 59 Fitzjohns Avenue, Hampstead, London NW3 6PH ("the Property") for £7,750,000. The contract, completion and effective date of the transaction were all 29 May 2024.

9. The Property comprises a substantial semi-detached period building arranged as five flats. At the effective date of the transaction four of those flats were subject to assured shorthold tenancies ("ASTs") and the fifth flat was vacant.

10. There is no dispute that each of the flats was used or suitable for use as a dwelling.

11. The freehold title to the Property is registered under title number NGL703423.

12. The Property includes land to the rear on which the Substation is situated. The Substation is a key facility within the electricity distribution network, changing voltage levels and enabling the safe transmission of electricity to end users. It is a brick structure with a metal door. The metal door has a sign on it which reads "DANGER OF DEATH". The substation is concealed at the side and the rear by a large tree and bushes.

13. The land occupied by the Substation is held under a separate registered leasehold title (NGL970777). It was previously demised to the London Electricity Board under a lease dated 12 November 1963 for a term of 40 years. We therefore find it more likely than not that the land has been separately occupied and used for electricity distribution purposes since at least 1963.

14. The current lease is granted to London Power Networks plc ("LPN"). It grants LPN exclusive possession of the demised land for a term of 20 years commencing on 24 June 2010 ("the Substation Lease"). The rent payable under the Substation Lease is an initial annual rent of £1,000 plus VAT, increasing to £1,250 plus VAT from 24 June 2015.

15. The Substation Lease permits the demised premises to be used only as an electrical transformer substation.

16. The Substation Lease also grants LPN easement rights over adjoining land and buildings to facilitate access to, and the operation, maintenance, repair and replacement of, the Substation, its cables and associated apparatus. Those rights are exercisable subject to requirements of reasonableness and to making good any damage caused in their exercise.

17. The landlord's right to re-enter the demised land is **limited** to circumstances in which "any material covenants on the part of the Tenant" are not performed, "despite the Landlord giving the Tenant notice of the breach and a reasonable period of time in which to remedy the breach". The Substation and all electrical plant, lines and other equipment remain the property of LPN.

18. The freehold title to the Property expressly records that it is subject to the Substation Lease and acknowledges that the freehold land is subject to the rights and obligations arising under it.

19. The contract under which the Appellant acquired the Property provided that the Property was sold subject to the existing tenancy agreements and subject to the Substation Lease.

20. On 11 June 2024 the Appellant submitted an SDLT return treating the acquisition as a mixed-use transaction. The return claimed Multiple Dwellings Relief and SDLT of £377,000 was paid. Multiple Dwellings Relief is not in dispute in this appeal.

21. Following an enquiry, HMRC concluded that the Property was wholly residential property and issued a closure notice amending the return. The additional SDLT assessed was £341,750.

The Statutory Framework

22. Section 42 imposes SDLT on land transactions.

23. A "land transaction" is defined by section 43 as any acquisition of a chargeable interest. Section 48 provides, so far as relevant, that a chargeable interest includes an estate, interest, right or power in or over land.

The amount of SDLT chargeable

24. Section 55 FA 2003 provides for the amount of SDLT chargeable on a transaction.

25. Where the relevant land consists entirely of residential property, the residential rates apply. Where the relevant land includes land that is not residential property, the mixed-use rates apply.

26. Section 55(3)(a) provides that, for these purposes, "the relevant land" is the land an interest in which is the main subject-matter of the transaction.

Residential property

27. Section 116(1) provides, so far as relevant, as follows:

> "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."

28. It follows that land forming part of the "garden or grounds" of a dwelling constitutes residential property for the purposes of SDLT. Any building or structure on such land is also treated as residential property.

Issue for Determination

29. It is common ground that the dwelling, which is comprised of five independent flats and the common parts, falls within section 116(1)(a). The issue for determination is whether, at the effective date of the transaction, the land demised by the Substation Lease formed part of the garden or grounds of the dwelling within section 116(1)(b). If it did, the Property was entirely residential property. If it did not, the Property included non-residential property and was a mixed-use transaction.

30. The burden of proof is on the Appellant to establish that the Substation does not form part of the garden or grounds of the dwelling. The standard of proof is the ordinary civil standard of the balance of probabilities.

Case Law

31. The authorities establish the following legal principles to be applied in determining whether a particular piece of land falls within the meaning of "garden or grounds" of a dwelling.

32. Judge McKeever stated in her decision in *Hyman v HMRC* [2019] UKFTT 469 TC ("*Hyman FTT*") at [62]:

> "'Grounds' is clearly a term which is more extensive than 'garden' which connotes some degree of cultivation."

33. No single factor is determinative and the significance of individual factors will depend on the facts of the particular case.

34. In paragraph [35] of *39 Fitzjohns Avenue Ltd v HMRC* [2024] UKFTT 28 (TC) ("*39 Fitzjohns*") Judge McKeever stated:

> "The Upper Tribunal in *Hyman and others v HMRC* [2021] UKUT 68 (TCC) held that the test to be applied when considering whether land forms part of the garden or grounds of a building is a multifactorial one. The Tribunal must take account of a wide range of factors. No one factor will be determinative. Different factors will be given different weight and the Tribunal must carry out an evaluation of all the factors and reach a balanced judgement. The Upper Tribunal also approved the list of factors set out in HMRC's guidance on the point in its SDLT manual (to which we return below). The Court of Appeal in *Hyman* and *Goodfellow v HMRC* [2022] EWCA CA Civ 185 endorsed this approach, refusing to formulate a more prescriptive test and stating that the "outer **limits**" of "coarse-grained words" like garden and grounds should be left to the courts and tribunals to work out."

35. The Upper Tribunal at [18] of its decision in *HMRC v Suterwalla* [2024] UKUT 188 (TCC) ("*Suterwalla UT*") cited with approval the summary of relevant factors for consideration which was set out by Judge McKeever at [37] of her decision in *39 Fitzjohns*. Paragraph [36] of that decision also gives helpful context as follows:

> "36. The cases, including *Hyman, Thomas Kozlowski v HMRC* [2023] UKFTT 711 (TC), *James Faiers v HMRC* [2023] UKFTT 297 (TC) and *The How*

Development 1 ***Limited*** *v HMRC* [2023] UKUT 84 (TCC) UK set out a number of factors which should be considered, along with any other relevant factors.

37. These may be summarised as follows:

(1) Grounds is an ordinary English word.

(2) HMRC's SDLT manual is a fair and balanced starting point (considering historic and future use, layout, proximity to the dwelling, extent, and legal factors/constraints).

(3) Each case must be considered separately in the light of its own factors and the weight which should be attached to those factors in the particular case.

(4) There must be a connection between the garden or grounds and the dwelling.

(5) Common ownership is a necessary condition, but not a sufficient one.

(6) Contiguity is important, grounds should be adjacent to or surround the dwelling.

(7) It is not necessary that the garden or grounds be needed for 'reasonable enjoyment' of the dwelling having regard to its size and nature.

(8) Land will not form part of the 'grounds' of a dwelling if it is used or occupied for a purpose separate from and unconnected with the dwelling.

(9) Other people having rights over the land does not necessarily stop the land constituting grounds. This is so even where the rights of others impinge on the owners' enjoyment of the grounds and even where those rights impose burdensome obligations on the owner.

(10) Some level of intrusion onto (or alternative use of) an area of land will be tolerated before the land in question no longer forms part of the grounds of a dwelling. There is a spectrum of intrusion/use ranging from rights of way (still generally grounds) to the use of a large tract of land, historically in separate ownership used by a third party for agricultural purposes under legal rights to do so (not generally grounds).

(11) Accessibility is a relevant factor, but it is not necessary that the land be accessible from the dwelling. Land can be inaccessible and there is no requirement for land to be easily traversable or walkable.

(12) Privacy and security are relevant factors.

(13) The completion of the initial return by the solicitor on the basis the transaction was for residential property is irrelevant.

(14) The land may perform a passive as well as an active function and still remain grounds.

(15) A right of way may impinge an owner's enjoyment of the grounds or even impose burdensome obligations, but such rights do not make the grounds any less the grounds of that person's residence.

(16) Land does not cease to be residential property, merely because the occupier of a dwelling could do without it."

The parties' Submissions

Inngrays' submissions

36. Mr Collins submits on behalf of **Inngrays** that the authorities support the proposition that land is not grounds of a dwelling if it is used for a purpose separate from or unconnected with the dwelling. It is clear that the Substation is not used or available for use with the flats, the owner of the Property is excluded from access to the Substation except in the event of a material breach of the Lease that is not rectified and the Substation is used by LPN for a commercial purpose separate from the flats.

37. Mr Collins distinguishes the facts of this appeal from those in the cases relied upon by HMRC as follows.

> (1) *Faiers v HMRC* [2023] UKFTT 297 (TC) ("*Faiers*") and *Bloom v HMRC* [2023] UKFTT 628 ("*Bloom*") are distinguishable because in those cases there was no material visible difference between the land beneath the cables or above the septic tanks and the rest of the owner's land and the affected land continued to be used by the owners in the same way as the surrounding ground.
>
> (2) *39 Fitzjohns* is distinguishable because the ventilation shaft in that case did not form part of the land acquired by the purchaser and there was found to be no separate use of the land surrounding the ventilation shaft for a commercial purpose.

38. Those facts are clearly distinguishable from the facts in this appeal where the land in question is inaccessible by the owner and has a physical substation on it, making it clearly different in use and appearance to the rest of the land. Also in this appeal the land on which the Substation sits forms part of the Property and is being used for a separate commercial purpose.

39. It follows from the above, in Mr Collins submission, that the land on which the Substation sits is not part of the garden or grounds of the property and is therefore non-residential property.

HMRC's submissions

40. Ms Man for HMRC accepts that the Substation was subject to a lease in favour of LPN but she submits that the authorities establish that neither the existence of third-party rights nor a commercial use is, without more, determinative of whether land forms part of the grounds of a dwelling.

41. Ms Man relies in particular on the multi-factorial approach which requires a balancing exercise in which all relevant factors are considered and weighed. She submits that the Substation is situated within the rear garden of an otherwise wholly residential property, is contiguous with the surrounding land and forms part of a coherent residential curtilage.

42. Ms Man places particular reliance on *Faiers*, submitting that the presence of electricity infrastructure serving a commercial electricity network in that case did not prevent the affected land from remaining part of the grounds of the dwelling. She contends that the level of intrusion caused by the Substation is modest when viewed against the Property as a whole and does not alter the essential residential character of the land.

43. She further submits that the rights granted to LPN under the Substation Lease are analogous to the sort of third-party rights considered in the authorities, which may impinge upon an owner's enjoyment of land without causing that land to cease to form part of the grounds of a dwelling.

44. Accordingly, HMRC contend that the Substation remains a structure situated on land forming part of the garden or grounds of the dwelling and that the Property was therefore wholly residential property for SDLT purposes.

Discussion and our view

45. The issue is whether the land occupied by the Substation forms part of the garden or grounds of the dwelling for the purposes of section 116(1)(b). As the authorities make clear, that is a fact-sensitive evaluative exercise requiring all relevant circumstances to be weighed in the round. No single factor is determinative.

46. We accept HMRC's submission that the existence of third-party rights does not necessarily prevent land from constituting grounds. The authorities recognise that rights of way and other burdens may impinge upon an owner's enjoyment of land without changing its essential character as residential grounds. Equally, the fact that a third party uses land for a commercial purpose is not of itself conclusive.

47. However, we consider that the present case goes materially further than the examples considered in those authorities. Consistently with the authorities, this is a multi-factorial evaluative exercise in which all relevant circumstances must be weighed in the round. The existence of a commercial use, the grant of a lease, the extent of any interference with the owner's enjoyment of the land, the physical characteristics of the land and the relationship between the land and the dwelling are all relevant considerations. The significance to be attached to any individual factor depends upon the facts of the particular case. It is the cumulative effect of the factors present here, rather than any single consideration viewed in isolation, which leads us to our conclusion.

48. The land occupied by the Substation has been separately occupied for electricity distribution purposes since at least 1963. At the effective date of the transaction it was subject to a lease in favour of LPN. The landlord was excluded from possession and use of that land save for very **limited** rights of re-entry in the event of breach of the terms of the Substation Lease. The occupiers of the flats had no rights over it at all. This is not a case of some **limited** intrusion into residential use. It is a case of complete exclusion.

49. Nor do we regard this case as analogous to *Faiers* or *Bloom*. In those cases the utility infrastructure was either overhead or underground and the affected land remained available for the same use as the surrounding grounds. By contrast, the Substation is a separate building occupying a defined area of land and preventing any residential use of that area.

50. We also consider the facts materially different from those in *39 Fitzjohns*. In that case the ventilation shaft itself was excluded from the land acquired by the taxpayer. The tribunal's task was therefore to consider whether the rights and restrictions associated with the shaft changed the character of the surrounding land which had been acquired. The tribunal concluded that they did not. The position was analogous to the sort of third-party rights which might restrict or impinge upon an owner's enjoyment of land whilst leaving that land fundamentally unchanged as grounds.

51. Here, by contrast, the Substation itself forms part of the Property acquired by the Appellant. The issue is not whether rights associated with a neighbouring structure affect the character of surrounding land. The issue is whether a separately occupied building, used exclusively for electricity distribution and subject to an exclusive lease, forms part of the grounds of the dwelling. In our judgment that is a materially different question.

52. We accept the proposition identified in *Linda Helen Myles-Till v HMRC* [2020] UKFTT 127 (TC) that, for adjoining land to constitute grounds, it must function as an appendage to the dwelling rather than have a self-standing function. The Substation does not support the use of the flats as dwellings and cannot properly be described as an appendage to them. Rather, it performs a distinct and self-standing function as part of a wider electricity distribution undertaking that is not compatible with residence.

53. The absence of any supporting function is not by itself determinative, it is, however, a factor which in the present case carries substantial weight when combined with the exclusive lease, complete exclusion of the owner, long-standing separate occupation and separate commercial function.

54. We also bear in mind the observation at [62] of *Hyman FTT* that:

> "Land would not constitute grounds to the extent that it is used for a separate, eg commercial purpose. It would then not be occupied with the residence but

would be the premises on which a business is conducted".

55. Whilst the authorities emphasise that the question is ultimately a multifactorial evaluative exercise, we consider the present facts to fall much closer to the quarrying example discussed in *Jessica Harjono & Yusdi Santosa v HMRC* [2014] UKFTT 228 at [72]-[77] than to the grazing, cable or septic-tank examples relied upon by HMRC.

56. Further this is not a case where a residential property has become subject to some recent or incidental interference. The evidence demonstrates that the land occupied by the Substation has been separately occupied for electricity distribution purposes for more than sixty years. That long-standing and continuous separate occupation strongly supports the conclusion that the land has, for many decades, had a distinct identity and function independent of the residential use of the Property.

57. Taking all relevant factors into account, we conclude that the Substation has a self-standing commercial function which is separate from, and unconnected with, the use of the flats as dwellings. It does not form part of the grounds of the Property for the purposes of section 116(1)(b).

58. The transaction therefore included land that was not residential property. It follows that the acquisition was a mixed-use transaction for SDLT purposes.

59. For all the reasons above we allow the appeal.

Right to apply for permission to appeal

60. 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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