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UT (Tax & Chancery) Case Number: UT/2024/000092

Upper Tribunal
(Tax and Chancery Chamber)

Hearing venue: Rolls Building
London
EC4A 1NL

Heard on: 23 June 2025
Judgment date: 06 October 2025

Stamp Duty Land Tax – high-value residential transaction – paragraph 5 Schedule 4A FA 2003 – whether chargeable interest acquired exclusively for the purpose of development or redevelopment and resale in the course of a property development trade – Annual Tax on Enveloped Dwellings – section 138 FA 2013 – whether single dwelling interest held exclusively for the purpose of developing and reselling the land in the course of a property development trade – whether FTT erred in law in identifying other purposes

Before

JUDGE JONATHAN CANNAN
JUDGE ANDREW SCOTT

Between

INVESTMENT AND SECURITIES TRUST LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Laurent Sykes KC, instructed by Wilson Wright LLP

For the Respondent: Ben Elliott and Stacey Cranmore of counsel, instructed by the General Counsel and Solicitor for His Majesty's Revenue and Customs

DECISION

Introduction

1. This is an appeal against a decision of the First-tier Tribunal (Tax Chamber) ("the FTT") released on 18 March 2024. It concerns the Appellant's liabilities to stamp duty land tax ("SDLT") at the higher rate for high-value residential transactions and to the annual tax on enveloped dwellings ("ATED"). The FTT held that the Appellant was liable to both, and confirmed an assessment to SDLT in the sum of £372,000 and assessments to ATED for periods ending 31 March 2015, 2018 and 2020 totalling £46,539.

2. The charge to a higher rate of SDLT pursuant to Schedule 4A Finance Act 2003 ("FA 2003") applies to high-value residential transactions in certain circumstances, including where the purchaser is a company. There is a relief from the charge where the subject-matter of the transaction consists of certain interests that are acquired exclusively for the purpose of development or redevelopment and resale in the course of a property development trade.

3. ATED pursuant to Part 3 Finance Act 2013 ("FA 2013") applies to certain interests in dwellings owned by various entities including companies. As its name implies, it is an annual tax on the taxable value of the interest in annual chargeable periods beginning 1 April. ATED is charged by reference to the number of days in the chargeable period on which certain conditions are satisfied. There is a relief from ATED where certain conditions are satisfied. In particular, a day in a chargeable period is relievable if on that day the person entitled to the interest is carrying on a property development trade and the interest is held exclusively for the purpose of developing and reselling the land in the course of that trade.

4. The Appellant acquired an option ("the Option") to purchase a residential property in St John's Wood, London ("the Property") on 27 March 2014 for a purchase price of £9,300,000 ("the Option Agreement"). The consideration for the grant of the Option was £4,650,000 ("the Option Sum") which was to be treated as part of the purchase price if the Option was exercised. The Option was exercised on 26 June 2019. A decision was then taken to sell the Property rather than develop it and it was sold for approximately £6,900,000.

5. The FTT found that the Appellant carried on a property development trade at all material times and intended to develop the Property on a commercial basis. However, the FTT went on to find that this was not the exclusive purpose for which it acquired and held the Option. In the circumstances, the Appellant was liable to SDLT at the higher rate and to ATED.

6. The issues on this appeal concern whether the FTT erred in law in its approach to whether the Appellant had acquired the Option interest and continued to hold the Option interest exclusively for the purpose of development in the course of its property development trade.

7. All references to statutory provisions are to the SDLT provisions in force at the time the Appellant acquired the Option and to the ATED provisions in force during the relevant chargeable periods.

Statutory provisions – SDLT

8. SDLT is chargeable on "land transactions", which are defined in section 43 FA 2003 as the "acquisition of a chargeable interest". A chargeable interest is defined in section 48 as any estate, interest, right or power in or over land. Section 43(6) provides that where FA 2003 refers to the "subject matter" of a land transaction it is a reference to the chargeable interest acquired:

43 Land transactions

(1) In this Part a "land transaction" means any acquisition of a chargeable interest.

As to the meaning of "chargeable interest" see section 48.

(2) Except as otherwise provided, this Part applies however the acquisition is effected, whether by act of the parties, by order of a court or other authority, by or under any statutory provision or by operation of law.

(3) For the purposes of this Part —

(a) the creation of a chargeable interest is —

(i) an acquisition by the person becoming entitled to the interest created, and

(ii) a disposal by the person whose interest or right is subject to the interest created;

…

(6) 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.

9. Schedule 4A makes provision for a higher rate of tax on certain transactions involving a "higher threshold interest" which is defined by paragraph 1 as an interest in a single dwelling if the chargeable consideration was more than £2m (since reduced to £500,000). A "high-value residential transaction" is defined in paragraph 2(2) as a transaction where the main subject-matter consists entirely of higher threshold interests. Paragraph 3 makes provision for a charge to SDLT where there is a high-value residential transaction by certain types of purchaser, including where the purchaser is a company. SDLT is chargeable at 15% of the chargeable consideration.

10. The present appeal is concerned with the effect of paragraph 5 which provides for relief from the higher rate as follows:

5 Businesses of letting, trading in or redeveloping properties

(1) Paragraph 3 does not apply to a chargeable transaction so far as its subject-matter consists of a higher threshold interest that is acquired exclusively for one or more of the following purposes —

(a) exploitation as a source of rents or other receipts (other than excluded rents) in the course of a qualifying property rental business;

(b) development or redevelopment and resale in the course of a property development trade;

(c) resale in the course of a property development trade (in a case where the chargeable transaction is part of a qualifying exchange);

(d) resale (as stock of the business) in the course of a property trading business.

(2) A chargeable interest does not count as being acquired exclusively for one or more of those purposes if it is intended that a non-qualifying individual will be permitted to occupy the dwelling.

(3) In this paragraph—

…

"property development trade" means a trade that—

(a) consists of or includes buying and developing or redeveloping for resale residential or non-residential property, and

(b) is run on a commercial basis and with a view to profit.

11. Paragraph 5G provides that where relief has been granted, it can be clawed back if certain requirements do not continue to be met for a period of three years after the effective date of the transaction:

5G Withdrawal of relief

(1) Sub-paragraph (2) applies where relief under paragraph 5 has been allowed in respect of a higher threshold interest forming the whole or part of the subject-matter of a chargeable transaction.

(2) The relief is withdrawn if at any time in the period of three years beginning with the effective date of the chargeable transaction ("the control period") a requirement in sub-paragraph (3) is not met.

(3) The requirements are that —

(a) the higher threshold interest (if still held by the purchaser) is held exclusively for one or more of the purposes mentioned in paragraph 5(1),

(b) any chargeable interest derived from the higher threshold interest that may be held by the purchaser is held exclusively for one or more of those purposes, and

(c) (if the higher threshold interest or a chargeable interest derived from it is held by the purchaser) no non-qualifying individual is permitted to occupy the dwelling.

(4) The requirements in sub-paragraph (3)(a) and (b) do not apply in relation to times when, because of a change of circumstances that is unforeseen and beyond the purchaser's control, it is not reasonable to expect the purposes for which the higher threshold interest was acquired to be carried out.

Statutory provisions – ATED

12. Section 94 FA 2013 provided for ATED to be charged in respect of a chargeable interest in land where the interest is in a single dwelling owned by a company and had a taxable value of more than £2m:

94 Charge to tax

(1) A tax (called "annual tax on enveloped dwellings") is to be charged in accordance with this Part.

(2) Tax is charged in respect of a chargeable interest if on one or more days in a chargeable period —

(a) the interest is a single-dwelling interest and has a taxable value of more than £2 million, and

(b) a company, partnership or collective investment scheme meets the ownership condition with respect to the interest.

(3) The tax is charged for the chargeable period concerned.

13. Section 138 FA 2013 provides a relief from ATED where the company owning the chargeable interest is a property developer:

> **138 Property developers**
>
> (1) A day in a chargeable period is relievable in relation to a single-dwelling interest if on that day—
>
> (a) a person carrying on a property development trade ("the property developer") is entitled to the interest, and
>
> (b) the interest is held exclusively for the purpose of developing and reselling the land in the course of the trade.
>
> (2) If the property developer holds an interest for the purpose mentioned in subsection (1)(b), any additional purpose the property developer may have of exploiting the interest as a source of rents or other receipts in the course of a qualifying property rental business (after developing the land and before reselling it) is treated as not being a separate purpose in applying the test in subsection (1)(b).
>
> (3) A day is not relievable by virtue of subsection (1) if on the day a non-qualifying individual is permitted to occupy the dwelling.
>
> (4) In this Part "property development trade" means a trade that —
>
> (a) consists of or includes buying and developing for resale residential or non-residential property, and
>
> (b) is run on a commercial basis and with a view to profit.
>
> (5) In this section references to development include redevelopment.

14. It can be seen that relief for property developers from the higher rate of SDLT for high-value residential transactions and from ATED share similar requirements in terms of the purpose for which the interest is acquired or held. When Finance Bill 2013 was before Parliament, an Explanatory Note described the new ATED provisions which were being introduced as follows:

> 465. The ATED will be payable by certain non-natural persons that own interests in dwellings valued at more than £2 million. This tax will come into effect on 1 April 2013. It is an annual tax, and returns and payments will be required annually.
>
> 466. The measure is part of a package of measures designed to ensure that individuals and companies pay a fair share of tax on residential property transactions and to reduce avoidance. Its aim was to dis-incentivise the ownership of high value residential property in structures that would permit the indirect ownership or enjoyment of the property to be transferred in a way that would not be chargeable to SDLT.
>
> 467. As part of the package, Finance Act 2012 package, Finance Act 2012 introduced a 15 per cent rate of stamp duty land tax on the acquisition by certain non-natural persons of properties costing more than £2 million. That Act provided only two exclusions from the higher rate charge; for companies acting solely in their capacity as trustees, and for property developers with a 2 year trading history.
>
> 468. The scope of the 15 per cent rate was included as part of the consultation on the annual tax on enveloped dwellings. In response to the consultation a number of reliefs are to be introduced in ATED and also further reliefs into the SDLT legislation. Where possible the two reliefs should operate in tandem; so if the 15% of SDLT is paid on an acquisition then the property will be within ATED. In particular there are to be reliefs for; property rental businesses, property developers, property traders,

trades that exploit a dwelling to generate income by providing access to a significant part of the interior, dwellings used to house employees or partners with a limited interest in the company or partnership, farmhouses, charities, social landlords, diplomatic property and sovereign and public bodies.

469. Relief will only apply if the property continues to satisfy the relevant qualifying conditions throughout the period of ownership. It is possible that a property could move into and out of the charge though out its ownership.

470. The intention of the measures is to stop or reduce the number of properties that will enter such complex ownership structures other than where the property is used in a genuine business (or owned by a specific category of person). For those who choose to continue to hold their property in such a manner, and are not relieved, there is to be a cost. Taken together with the introduction of the SDLT changes in Finance Act 2012 (and the changes in Finance Bill 2013) the ATED will result in a reduction in the number of high value properties owned in such structures.

FTT's Decision

15. The FTT made findings of fact at [5] – [26] and at various paragraphs in its discussion of the issues. The following is a summary of the FTT's findings of fact.

16. The Appellant was a subsidiary of Woolcastle Ltd with 99 of its 100 shares owned by Woolcastle Ltd. The remaining share was held by Ms Voice. Ms Voice owned 366 of the 616 ordinary shares in Woolcastle Ltd. The remaining 250 shares were held equally by her son, Mr Voice, and her daughter.

17. Ms Voice had been a director of the Appellant since 1993 and at all material times has remained a director. Mr Voice became a director in March 2013. He ran the Appellant from that date until he resigned in July 2019.

18. Mr Voice considered that prior to his appointment as a director the Appellant had been operating in a less than productive manner. Ms Voice had been drawing substantial funds from the Appellant, between £1m and £3m per year. In March 2014, Ms Voice had an overdrawn director's loan account in the sum of £636,955. At that time she had a pressing need for funds. She owned and resided at the Property. In 2014 the Property was in a state of disrepair and substantial funds would be required to refurbish the Property. The disrepair and Ms Voice's health issues contributed to her intention to sell the Property.

19. Mr Voice was aware that Ms Voice intended to sell the Property to "*ease her financial situation*". He decided that the Appellant should acquire the Property because it represented a good development opportunity. In particular, he considered that a basement redevelopment conversion could add significant value to the Property. However, the Appellant did not have funds to acquire the Property outright and he did not want to finance the purchase with debt as the Property would not be generating any income during what he anticipated would be a lengthy planning phase. As at March 2013, the Appellant had a cash balance of only £45,565.

20. Mr Voice obtained preliminary plans from a firm of architects for three redevelopment options. The options were: refurbishment with the addition of a large basement; refurbishment with the addition of a smaller basement; and refurbishment without the addition of any basement. He obtained an informal valuation of the current and projected values of the Property upon redevelopment. A formal business plan was also drawn up. The current value of the Property was put at £9.3m. The projected value following a refurbishment was put at £13m and the value if the Property was refurbished and enlarged was put at £15m.

21. There was a board meeting on 1 March 2014 at which Ms Voice and Mr Voice as directors decided to proceed by way of the Option Agreement and Mr Voice was instructed to prepare all the documentation. The price to be paid for the Option was £4,650,000 and the purchase price was £9,300,000. The price paid for the Option would form part of the purchase price if the Option was exercised. The Option was exercisable within a period of 3 months from a date 5 years after the date of the Option Agreement and was freely assignable by the Appellant. The Property was to be sold with vacant possession on completion following exercise of the Option.

22. There was no real risk that the Appellant would not exercise its rights under the Option Agreement. The effect of the Option was that Ms Voice would be able to access the funds comprising the Option Sum immediately whilst continuing to live at the Property.

23. The FTT accepted at [100] that the Appellant fully intended to develop the Property on a commercial basis. The Appellant was granted planning permission on 18 April 2017. However, it could not exercise the Option to acquire the freehold until 2019. By 2019, the property market had entered a state of decline. A new valuation report in March 2019 put the value of the Property at £7.5m in its existing state and £11m post-development. This meant that the proposed development was no longer viable.

24. The Appellant gave notice to Ms Voice exercising the Option on 26 June 2019 and completed the purchase of the freehold of the Property on 22 July 2019. The Property was then put on the market for £11m and was eventually sold on 3 January 2020 for £6.9m.

25. The Option Sum was payable to Ms Voice on the date of the Option Agreement "*by direct credit or such other means as the parties may agree*". In the event, it was left outstanding as a loan and drawn in instalments. If the Appellant had not paid some money up front, Ms Voice would have sold the Property on the open market. There was no reason to think that she could not have done so quickly.

26. In total, Ms Voice drew down £1,189,802 of the loan during the 12-month period immediately following the grant of the Option. A sum of £636,955 was drawn immediately to clear her overdrawn loan account. A further £552,847 was drawn in the following 12 months. The outstanding balance earned interest at 4% pa above the Barclays Bank base rate according to the terms of the Option Agreement.

27. The Appellant made an SDLT return on 14 April 2014 on the basis that it had acquired an interest in residential property. The return did not take into account any higher rate tax payable. HMRC subsequently enquired into the rate of tax on the acquisition and issued an assessment on the basis that the transaction was subject to the higher rate applicable to higher value residential transactions. They also raised the position in relation to ATED. The Appellant subsequently submitted ATED returns for the periods ending 31 March 2015, 2018 and 2020. In each case relief was claimed and the returns showed no ATED as due. Enquiries were opened into the ATED returns and closure notices were issued charging ATED on the basis that no relief was due, save that HMRC accepted that relief from ATED was due from 22 July 2019 onwards when the option was exercised. That was because HMRC accepted that for the period after 22 July 2019, the Appellant held the Property exclusively for the purposes of its property development trade. We understand that there were no assessments to ATED for periods ending 31 March 2016, 2017 and 2019 because of time limit issues.

28. It was common ground, recorded by the FTT at [68] and [100], that the Appellant carried on a property development trade between 27 March 2014 and 3 January 2020 for the purposes of paragraph 5(1)(b) Schedule 4A FA 2003 and section 138(1)(a) FA 2013. We understand that it was also common ground that when the Appellant acquired the freehold interest in the Property, it intended to develop

it on a commercial basis and qualified for relief from ATED. There were therefore two issues before the FTT recorded at [69] and both were relevant to SDLT and ATED:

> (1) Was the Option acquired (and held) exclusively for the purpose of the Appellant's property development trade?
>
> (2) Was Ms Voice "permitted" to occupy the Property within the meaning of paragraph 5(2) Schedule 4A FA 2003 and section 138(3) FA 2013?

29. The second issue was determined in favour of the Appellant at [112] – [121] of the Decision and there is no appeal by HMRC on that issue.

30. The FTT made findings as to the purposes for which the Appellant entered into the Option Agreement at [99] and [103] to [110]. It stated its overall findings at [99] as follows:

> 99. On the basis of the evidence and the findings of fact below, we have concluded that IST did not acquire or hold the interest in the Property for the exclusive purpose of its property development trade but also for the purposes of addressing Ms Voice's pressing need for funds, preventing the sale of the Property to a third party and providing IST with time to raise the funds to acquire and develop the Property. We accept that the additional purposes would readily fall within the ambit of a property development trade but, for the reasons set out below, have concluded that when the purposes are considered as a whole, pursuance of a property development trade was not the exclusive purpose.

31. The FTT went on to describe the three purposes in the following paragraphs:

> (1) Ms Voice's pressing need for funds at [103] - [106];
>
> (2) Preventing the sale of the Property to a third party at [107] and [108]; and
>
> (3) Providing the Appellant with time to raise funds to acquire and develop the Property at [109].

32. The FTT concluded at [111] that the existence of these other purposes meant that the Appellant had not acquired the Option exclusively for the purpose of development or redevelopment and resale.

33. In identifying the three other purposes the FTT relied on the purpose for entering into the Option Agreement (at [103]), the high Option Sum payable for the Option (at [108]) and the way in which the Option Agreement was structured (also at [108]).

34. Whilst the FTT found that three other purposes existed, it also found in [106] and [109] that one of the primary purposes of the Option Agreement was Ms Voice's pressing need for funds and to provide a means by which Ms Voice could draw funds from the Appellant. It is not clear to us why the FTT made findings as to the primary purpose of the Option Agreement. The provisions simply require a finding as to whether the Option was acquired solely for the purpose of development or redevelopment and resale.

35. The FTT also recorded at [106] its view that the Option Agreement was unusual in that it provided that the Option Sum was to be part of the purchase price rather than a separate payment:

> 106. We consider that the Option Agreement was unusual in that it provided that the Option Sum was stated to be part of the purchase price rather than a separate payment. When that point was put to Mr Voice, he professed to not know why that was the case and was unable to provide an answer. Mr Voice accepted in cross-examination that Ms Voice "*desired some funds*" but stated that no discussion was had between Mr Voice and Ms Voice regarding the rate of drawdown from the directors' loan account and he

accepted that Ms Voice could take the whole sum immediately. Accordingly, we find that one of the primary purposes of the Option Agreement was to address Ms Voice's pressing need for funds.

36. The FTT found that there were other reasons for the Appellant entering into the Option Agreement. At [107] and [108] it found that one reason was to prevent the sale of the Property by Ms Voice to a third party and also that there was an untypically high grant price for the Option:

> 107. Mr Voice's unchallenged evidence, which we accept, was that he wanted to ensure that IST did not miss the opportunity to secure the Property in order for IST to develop and/or sell. We accept that if IST had not entered into the Option Agreement, Ms Voice would have sold the Property on the open market. The Business Plan confirmed that "*The option agreement also allows the company to purchase the property without entering into a bidding war with rival developers.*" We further accept that a property development company, having identified a significant potential property development opportunity, would seek to prevent third parties from acquiring, developing and turning a profit in relation to that property. Some form of option agreement is not untypical in the property development industry and accords with standard commercial practice but in this instance an untypically high grant price of £4.65m (representing nearly 50% of the Property value) was paid by IST.
>
> 108. There was no evidence of any negotiations between IST and Ms Voice to agree a lower grant price (reflecting, in our judgment, the reality of Ms Voice's control of IST's parent company) nor any evidence that Mr Voice would have entered into a similar Option Agreement with an unconnected third party. We consider that, particularly in light of Mr Voice's experience in the property development trade, that the payment of the high grant price and way in which the Option Agreement was structured was intrinsically linked to the pressing need to provide drawable funds to Ms Voice rather than for the sole purpose of preventing the sale of the Property to a third party. Structuring the Option Agreement in this way provided IST with a source of funds such that during the option agreement period it could continue to make significant payments to Ms Voice that did not impact on IST's operating results nor create additional loans to a participator that would incur a tax charge under s455 Corporation Tax Act 2010.

37. At [109], the FTT found that another purpose of the Option Agreement was to provide the Appellant with time to raise funds to acquire and develop the Property but that the primary purpose was to provide a "pool of funds" from which Ms Voice could draw:

> 109. Mr Voice was clear in his evidence that he did not want IST to acquire the Property outright as he did not want to finance the purchase with debt as the Property would not be generating any income during the lengthy planning phase and "*Purchase by way of an Option secured the property, and the development opportunity, for the business and afforded the company more time to obtain the necessary planning permissions and to raise the necessary funds to fully purchase the property and to carry out the development works*." Mr Voice accepted in cross-examination that one of the reasons for the Option Agreement was to provide IST with more time to raise the funds. The unchallenged evidence of Mr Voice, as confirmed by the accounts, was that IST had insufficient funds to purchase the Property outright, it only held a cash balance of £45,565 at the time the Option was granted. We accept that, in isolation, providing IST with more time to raise funds to develop the Property would be considered as an integral part of the IST's trading activity and in accordance with standard commercial practice but we find this common commercial purpose undermined by the high option price paid which was in effect funding by way of 'internal debt' (a loan to Ms Voice). We find that, whilst the Option Agreement did provide IST with more time to raise funds, its primary purpose was to provide IST with a "pool of funds" from which Ms Voice was able to continue to draw down not insignificant sums on an annual basis.

38. The reference in the last sentence to providing the Appellant with a "pool of funds" is not entirely clear. The funds had to be generated by the Appellant before Ms Voice could draw upon those funds. The FTT must have meant that the primary purpose of the Option Agreement was to provide Ms Voice with an entitlement to draw sums from the Appellant, although in practical terms those withdrawals would be limited to the cash resources held by the Appellant.

39. At [110] the FTT found that providing Ms Voice with somewhere to live while she looked for new accommodation was not a purpose of the Option Agreement:

> 110. We agree with IST, and the evidence was clear on this point, that the Option Agreement did not grant Ms Voice somewhere to live as she continued to own the freehold of the Property and continued to occupy the Property as of right. That conclusion is correct as a matter of the law of Real Property.

40. The FTT expressed its conclusion at [111]:

> 111. In light of the conclusion we have reached at paragraphs 103. to 109. that IST also had three other purposes for acquiring the Property via the Option Agreement means that IST's appeal fails as the Property was not acquired "exclusively" for one of the specified purposes and we are not required to make a decision on whether Ms Voice was permitted to occupy the Property. However, as the matter was argued before us, we have proceeded to consider the matter and reach a conclusion on this alternative ground.

41. The FTT went on to consider at [112] to [121] whether Ms Voice was permitted to occupy the Property as a dwelling for the purposes of paragraph 5(2) and section 138(3). If so, the Option would not be treated as being acquired exclusively for the purpose of development or redevelopment and resale in the course of a property development trade. Given the FTT's finding in relation to the purposes for which the Option was acquired, it did not strictly need to address this issue.

42. In the event, the FTT found that the Appellant did not have any right to possession of the Property arising out of the Option and did not permit Ms Voice to occupy the Property. Ms Voice occupied the Property by virtue of her interest as the freeholder. As indicated above, HMRC do not challenge that finding. They do, however, challenge by way of cross-appeal the FTT's conclusion at [110] that another purpose of acquiring the Option was not to restrict her rights of occupation during the 5-year option period.

Ground of appeal

43. The FTT granted permission to appeal on a single ground which applies to both the SDLT assessment and the ATED assessments. The Appellant contends that the FTT erred in its approach to determining the purpose or purposes for which the Option was acquired or held. It is said that the statutory question is the purpose of the acquisition of the land interest for SDLT and the holding of the land interest for ATED and not the purpose of the payment made for that interest. It is not relevant that the Option Sum was high or structured in a way to suit Ms Voice.

44. The Appellant says that the FTT's analysis confused the purpose of acquiring and holding the chargeable interest with the purpose of the payment made for the chargeable interest. The FTT wrongly identified the purpose of the Option Agreement rather than the purpose for which the Option was acquired.

45. It is convenient to deal at this stage with a submission by HMRC that the Appellant's ground of appeal only challenges the FTT's finding that one of the purposes of acquiring the Option was to address Ms Voice's pressing need for funds. It is said that the Appellant has not challenged the FTT's finding that there were two other purposes, namely preventing a sale of the Property to a third party and providing the Appellant with time to raise funds to acquire and develop the Property. In the absence of such a challenge it is said that the Appellant's appeal could not succeed because there were two other non-qualifying purposes and the FTT was entitled to find that relief was not available because of the existence of those purposes.

46. We do not accept HMRC's submission as to the scope of the appeal. The Appellant's grounds of appeal state as follows:

> 11. The question is why the interest in the land was acquired and then held, not why the amount paid for it was paid. It is plain from the decision that the reason for the payment profile is what led the Tribunal to the view it took at §99 but that does not reflect the distinction between the acquisition of the interest in the land and the price paid for it.

47. We take that to be a challenge to the composite finding at [99] that the existence of three other purposes meant that the Option was not acquired exclusively for the purpose of development and resale in the course of the Appellant's property development trade.

48. HMRC also has a cross-appeal. They contend that the FTT erred in law in concluding that an additional purpose of acquiring and holding the Option was to abstain from interfering with Ms Voice's occupation of the Property during the period between the grant of the Option and its exercise. There is no challenge to the FTT's finding at [110] that Ms Voice occupied the Property by virtue of her rights as the freehold owner. However, it is said that the reason Ms Voice's right to occupy as freeholder was unrestricted was because the Option Agreement stipulated that the Option could not be exercised for five years. It is said that the FTT fell into error by conflating the purpose relating to Ms Voice's occupation with the question of whether the Appellant permitted Ms Voice to occupy the Property, which can be seen from the brevity of the reasoning at [110].

Discussion

49. We shall address the issues under the following headings: (1) the purpose and language of the statutory provisions for enveloped dwellings; (2) the Appellant's arguments in relation to the SDLT assessment; (3) the Respondents' cross-appeal; and (4) the Appellant's arguments in relation to the ATED assessments.

50. It is worth noting at the outset that the Decision was released prior to the judgments of Court of Appeal in *BlackRock Holdco 5 LLC v HM Revenue & Customs* [2024] EWCA Civ 330 and *JTI Acquisition Co (2011) Ltd v HM Revenue & Customs* [2024] EWCA Civ 652 in the context of unallowable purposes, and the decision of the Upper Tribunal in *Tower One St George Wharf Ltd v HM Revenue & Customs* [2024] UKUT 373 (TCC) in the context of SDLT group relief. Mr Elliott referred us to these cases. However, it does not seem to us that the principles described in relation to identifying the purpose of a transaction are relevant to the grounds of appeal in this case.

(1) Purpose and language of the statutory provisions

51. In construing the statutory provisions, we must have regard to the purpose of the provisions and interpret the language, so far as possible, in the way which best gives effect to that purpose. External aids to interpretation may assist in determining the purpose and meaning of a provision. However, they cannot displace the meaning conveyed by the words of a statute that, after consideration of the context, are clear and unambiguous and which do not produce absurdity: see *UBS AG v HM Revenue and Customs* [2016] UKSC 13 at [61]; *Rossendale BC v Hurstwood Properties (A) Ltd* [2021] UKSC 16 at [15] and [16] and *R (O) v Secretary of State for the Home Department* [2022] UKSC 3 at [30].

52. When Parliament enacted the higher rate charge to tax and subsequently the ATED regime it was clearly seeking to deter the acquisition of a chargeable interest in residential property through a company where, in broad terms, it was not being acquired for the ordinary commercial purposes of the company. Parliament was not intending to interfere with the ordinary commercial activities of companies carrying on property rental businesses, property trading businesses and property

development businesses. The ATED regime provided a fiscal incentive for existing structures to be reversed.

53. Paragraph 5(1) is concerned with the subject-matter of the chargeable transaction which is acquired. The chargeable transaction is the land transaction which in this case is the creation of the Option. Section 43(3)(a) provides that the creation of a chargeable interest is an acquisition by the person becoming entitled to the interest created. The Appellant in this case therefore acquired the Option. Section 43(6) provides that references to the subject-matter of a land transaction are to the chargeable interest acquired. Again, that is the Option.

54. Paragraph 5(1)(b) sets out one of the qualifying purposes, namely development or redevelopment and resale in the course of a property development trade. The chargeable interest must be acquired exclusively for that purpose. Mr Elliott is correct to say that only interests in land can be sold. However, the provision is plainly concerned with the development or redevelopment of the underlying land rather than of the interest in land. We agree with a submission of Mr Sykes KC that paragraph 5(1)(b) must be construed as referring to the acquisition of an interest in land for the exclusive purpose of developing or redeveloping the underlying land.

55. It is notable that the same point does not arise in relation to ATED where section 138(1)(b) specifically refers to holding the interest exclusively for the purpose of developing and reselling "the land". It is common ground that the SDLT provisions in Schedule 4A and the ATED provisions in FA 2013 were introduced to counteract the same mischief. The statutory question in SDLT is the purpose for which the interest is acquired. The statutory question in ATED is the purpose for which the interest is held. This reflects the fact that SDLT is a one-off tax on acquisitions of chargeable interests whilst ATED is an ongoing tax by reference to chargeable periods and the purpose for which those interests are held once they have been acquired.

56. Given that the SDLT charge and the ATED were intended so far as possible to "operate in tandem", using the words at [468] of the Explanatory Note, we are satisfied that what is required for the purposes of relief under paragraph 5(1)(b) is that the interest is acquired exclusively for the purpose of developing or redeveloping the underlying land for resale in the course of a property development trade.

57. The FTT referred to the purpose of the provisions at [98] and quoted the following passages from *Sergeant & Sims on Stamp Taxes* which we understand are common ground:

> The political determination to counter perceived widespread abuse of SDLT, or be seen to do so, fuelled by considerable media comment in the year or so preceding Budget 2012, led to the birth of a new tax, annual tax on enveloped dwellings ('ATED'), which most regard as a form of stamp tax due to its origin and interaction with SDLT, and to substantial changes to two others, SDLT and capital gains tax ('CGT').
>
> …
>
> The package of three measures (SDLT, ATED and ATED-related CGT) was designed to stop a particular type of practice connected with high-value residential property sales that the Government pejoratively refer to as 'enveloping': ie, acquiring a residential property using a company to act as a 'special purpose vehicle', then selling the shares in that company rather than the property to avoid SDLT being chargeable.

58. The purposes described here are broadly in line with our own view of the purpose of the provisions based on their clear language. The provisions were intended to counteract the practice of transferring land to a company with the intention of avoiding SDLT on a subsequent sale. Rather than a sale of the land, there is a sale of the company shares. ATED was subsequently introduced to deal with transfers to companies which had already taken place prior to the introduction of the higher rate SDLT charge. The relief in paragraph 5(1) for companies carrying on a property development trade on a commercial basis must be construed in the light of that mischief which the higher rate was intended to target.

59. One of the issues in this case is whether, as Mr Sykes submits, the purpose to be identified relates solely to the intended use of the underlying land. He says that relief is available if the sole intended use of the land is development and resale.

60. There would have been no linguistic difficulty if Parliament had wished the test to be framed solely by reference to the intended use of the underlying land rather than the purpose of acquiring the chargeable interest. Parliament would have been aware that a chargeable interest might be acquired for purposes in addition to use of the land in the course of a property development trade. The word "use" is conspicuously absent from paragraph 5. However, Parliament used straightforward language and clearly intended the statutory question to be answered by reference to the purpose for which the interest was acquired and then held.

61. It is true that the Explanatory Note states at [470] that the intention of the SDLT and ATED measures was to stop or reduce the number of properties that enter complex ownership structures other than where the property is used in a genuine business. However, it is important not to read Explanatory Notes as a substitute for the legislation or indeed to construe them as if they were legislation. The Explanatory Note in this case is a brief summary of the provisions. It is not intended to be read as describing the effect of the provisions in all circumstances

62. Parliament frames the conditions for various reliefs in Schedule 4A by reference to how the interest or the land will be used and adopts language accordingly. For example:

> (1) Paragraph 5B is a relief for trades which involve making a dwelling available to the public. The conditions include acquiring the interest "*with the intention that [the interest] will be exploited as a source of income in the course of a qualifying trade*".
>
> (2) In contrast, paragraph 5D is a relief for the acquisition of an interest in a dwelling for occupation by certain employees. The conditions include that "*the interest is acquired for the purpose of making the dwelling available … for use as living accommodation*".
>
> (3) Similarly, paragraph 5F is a relief for acquisitions of interests in farmhouses. The conditions include that it is a dwelling "*that is, or is to be, a farmhouse*" which is defined as a dwelling "*that forms part of land that is to be occupied, or continue to be occupied, for the purposes of a qualifying trade of farming*".

63. It is clear therefore that in Schedule 4A, where Parliament specifies a test by reference to the use or occupation of the land, it does so in terms.

64. In summary, the terms of paragraph 5 require consideration of the use to which the underlying land will be put, but also encompass the purpose or purposes for which the chargeable interest itself is acquired. That is clear from the language used by Parliament. There is no basis on which we can otherwise construe paragraph 5.

(2) The SDLT Assessment

65. It is common ground that the chargeable interest acquired by the Appellant was the Option. The Option was an equitable interest in land granted by the Option Agreement. The Appellant accepts that the transaction was a high value residential transaction within paragraph 3 Schedule 4A subject to the relief in paragraph 5(1). The issue before the FTT was whether paragraph 5(1) was engaged and, in particular, whether the subject matter of the chargeable transaction was acquired exclusively for the purpose of development or redevelopment and resale in the course of the Appellant's property development trade.

66. Put simply, the Appellant says that the FTT wrongly focussed on the Option Agreement and the purpose of the Appellant in paying the Option Sum when it ought to have focussed on the purpose for which the Option was acquired. Paragraph 5(1) requires consideration of whether the exclusive purpose in acquiring the Option was to develop the Property or whether there was another purpose which involved a different use for the Property.

67. HMRC submit that the relief requires that the acquisition of the chargeable interest must have been exclusively for one or more of the purposes set out in paragraph 5(1). It is not a main purpose test. Other provisions in Schedule 4A do not include an exclusive purpose condition for relief. The statutory question does not address the use to which it is intended the Property will be put. It addresses the purpose for which the chargeable interest is acquired. In other words, why was the Option acquired. The FTT rightly asked that question and subject to the cross-appeal was right to identify three non-qualifying purposes.

68. For the reasons given above in considering the purpose and language of paragraph 5, we accept HMRC's submission. It follows from our analysis of the purpose and language of the statutory provisions that if the Appellant had simply acquired the Property in 2017 on normal commercial terms then the acquisition would not have been subject to the higher rate of tax. However, the FTT clearly found that the Option was not acquired on normal commercial terms.

69. Mr Sykes submitted that the relief centred on the use which the company intended for the land, which has nothing to do with how the Option Sum was arrived at or the price paid for the land. If Parliament intended the purpose of the payment giving rise to the acquisition to be a relevant factor then it would have said so. He submitted that "*the focus is on the purpose for which the land acquired is intended*". The exclusive purpose in paragraph 5(1) is directed to the asset, not the chargeable interest. An option would be used exclusively for the purposes of a property development trade if it was intended to be exercised to acquire the land which was to be developed. The purpose for which something is acquired is the use to which it is intended to be put. Sub-paragraphs 5(1)(a) - (d) are all looking at intended future use. He says that the FTT wrongly reached its conclusion that the relief in paragraph 5(1)(b) was not available based on the price paid for the Option under the Option Agreement.

70. For the reasons given above in identifying the purpose of the provisions, we do not accept that submission. We agree with Mr Elliott that the Appellant is wrongly reframing the question in paragraph 5(1). The statutory question is what is the purpose for which the interest was acquired. The question is posed by reference to the interest in land and not by reference to the intended use of the underlying land.

71. Mr Sykes also referred us to paragraph 5G (set out above) which provides for relief from the higher rate to be withdrawn in certain circumstances. This was one of a number of amendments to

Schedule 4A introduced in FA 2013. The effect of the provision is that relief will be withdrawn if the higher threshold interest is not held exclusively for the purposes in paragraph 5(1) for three years after the effective date of the transaction.

72. Mr Sykes submitted that the concept of "holding" in paragraph 5G looks to the use to which the land is being put and not the historical price paid. He also submitted that the requirements in paragraph 5G(3)(a) and (b) do not apply in relation to times where, because of a change in circumstances that is unforeseen and beyond the purchaser's control, it is not reasonable to expect the purpose for which the higher threshold interest was acquired to be carried out. It was submitted that this also demonstrates that paragraph 5 is concerned with use of the land.

73. Again, for the reasons given above we do not accept these submissions. We cannot see that paragraph 5G sheds any light on the construction of paragraph 5(1). It requires the interest to be held for the same exclusive purpose as paragraph 5(1) for the 3 years following acquisition. There is no reference to use of the land. We can see that in many cases the purpose for which an interest in land is held will depend on the intended use of the land. However, that is not the language used in paragraph 5 or in paragraph 5G.

74. Overall, we do not accept that the statutory question in paragraph 5(1) is limited to a consideration of the intended use of the underlying land. The provisions are expressly concerned with the purpose for which the chargeable interest is acquired and the purpose for which it is held.

75. Mr Sykes posited a situation where land is acquired exclusively for the purpose of development and resale, but there is also a desire to put funds into the hands of the vendor so that the price paid is inflated. He submitted that the land was still acquired exclusively for the purposes of development and relief from the higher rate would still be available. That was the case even though the payment was not made exclusively for the purpose of acquiring the land. Such a transaction would not fall within the mischief for which Schedule 4A and ATED were introduced. He submitted that the fact there is an overpayment is irrelevant if the company intends to put the land to use in a property development trade.

76. The analogy is not helpful. Putting funds in the hands of a vendor is an inevitable and incidental consequence of an acquisition. It would not be seen as a purpose of the acquisition where the vendor is unconnected. Where there is a connected vendor, it will be a question of fact whether putting additional funds in the hands of the vendor was a purpose of the acquisition. In the context of options, if the reason for the creation of an option and the terms of the option are simply part and parcel of a commercial redevelopment then the exclusive purpose test could be satisfied. Parliament intended to provide relief only to property development trades carried on on a commercial basis. In this case a very valuable chargeable interest was created and acquired by the Appellant. The purpose of doing that was not simply to develop the land in the course of a property development trade. The FTT recognised that the Option was very unusual. It was not commercially priced, although the overall price paid and the business plan was commercial. The Option Agreement was untypical in that the Option Sum would be part payment of the consideration. The option could not be exercised for 5 years and it was inevitable that the Option would be exercised.

77. The Appellant says that the FTT wrongly had regard throughout its decision to "*both sides of the transaction*". Further, it wrongly focussed on "*the purpose of the Option Agreement rather than the purpose of the Option*". The high price in the Option Agreement was the means by which the Option was acquired, not the purpose of acquiring the Option. The Option Sum was not part of the Option

itself, but part of the Option Agreement. It did not flow from the Option or use of the Option. In short, it does not matter how the interest is acquired or what is paid for it. What matters is how it will be used and what the acquirer intends to do with it. The Appellant's submission appears to be that in asking why an interest was acquired, all aspects of the transaction other than the use to which it is intended to put the property are irrelevant. We do not accept that submission and the statutory language does not justify such a narrow construction.

78. Mr Sykes also argued that the Option is an equitable interest distinct from the contract which makes it enforceable. He referred us to a number of cases to this effect and submitted that the FTT wrongly asked itself what was the purpose of entering into the Option Agreement instead of what was the purpose of acquiring the Option.

79. We do not consider that the legal nature of an option is relevant to whether paragraph 5(1)(b) is satisfied on the facts of this case. It is sufficient that the Option in this case was an equitable interest in the Property which was a chargeable interest. The application of paragraph 5(1) does not depend on the nature of the chargeable interest, only that it is a chargeable interest. As we have said, paragraph 5 is intended to apply to chargeable interests acquired exclusively for the purpose of development and resale of the underlying land. We agree with Mr Elliott that whatever the relationship between the Option and the Option Agreement, the terms of the Option Agreement are relevant in answering the statutory question. Regard must be had to all background facts and the context in which the Option was granted in determining the purpose or purposes for which the Option was acquired.

80. It is true that paragraph 5(1) does not refer to the price paid for the interest acquired or the purpose of the agreement pursuant to which the interest is acquired. However, we do not agree that these factors are therefore irrelevant or that they can be excluded from consideration in determining the purpose for which the chargeable interest was acquired. In any particular case such factors may well shed light on the purpose or purposes for which the interest in land was acquired. The FTT does refer in parts of the Decision, for example at [102], to the "*purpose for entering into the Option Agreement*". We are satisfied that in doing so the FTT was correctly considering the purpose for which the Appellant acquired the Option.

81. In support of his submissions, Mr Sykes referred us to passages in the judgment of Oliver LJ in *Greater London Council v Holmes* [1985] 1 QB 989 at p994G to 995C, which involved construing the words "the purposes for which [land] was acquired". It is difficult to see how these passages support the Appellant's case on the construction of paragraph 5(1). The case concerned a different statutory provision in a very different context. Nor do we derive any assistance from various other statutory provisions relied on by Mr Sykes which refer to the "purpose" for which something is to be acquired, used or done. Both parties before the FTT relied on provisions in other statutory contexts and the FTT rightly derived no assistance from those provisions.

82. We were also referred to a decision of the FTT in *Consultus Care and Nursing Limited v HM Revenue & Customs* [2019] UKFTT 437 (TC). In that case the taxpayer acquired a freehold property and the question was whether the conditions in paragraph 5(1) were satisfied. We do not need to consider the facts of the case or the detailed reasoning of the FTT. In short, Mr Sykes relied on HMRC's submissions in the case which focused on the use of the land, and which he said are consistent with his submissions on this appeal that the FTT wrongly failed to focus on the intended use of the land.

83. We do not consider that *Consultus* helps the Appellant. It was a straightforward case in which it appears, although it is not expressly stated, that what was acquired was a freehold or long leasehold property. Relief was claimed pursuant to paragraph 5(1)(a) on the basis that it was acquired exclusively for the purpose of exploitation as a source of rents in the course of a qualifying property rental business. The focus was on the intended use of the property because the factual issues involved an intended use of enhancing other aspects of the taxpayer's business, namely the provision of training courses.

84. Mr Sykes also noted that the provisions for relief from ATED in FA 2013 look at the purpose for which the interest is held and, in particular, he says, the use of the asset. He submitted that this makes clear that the price paid for the asset is irrelevant. He relied on section 138 which applies to property developers, section 141 which applies to property traders and section 148 which applies to farmhouses.

85. In our view none of these provisions support Mr Sykes' submission. Section 138 looks at the purpose for which the asset is held and says nothing about the use to which it is intended to be put. Section 141 gives relief where the interest is held as stock in a property trading business. We accept that holding as stock implies that it is being held with the intention of resale, but there is no reference to intended use. Section 148 applies to farmhouses and requires occupation for the purposes of farming. We accept that it focuses on use of the dwelling, but it is simply the corollary of paragraph 5F Schedule 4A which we have already considered. It does not assist Mr Sykes' submission.

86. It is clear that the unusual nature of the Option Agreement and the high Option Sum were significant factors in the FTT's conclusion that development of the Property was not the exclusive purpose for acquiring the Option. For example, at [108], the FTT described the high option price as being intrinsically linked to Ms Voice's pressing need for funds. For the reasons given above the FTT was entitled to take these factors into account in finding that there were three other purposes for which the Appellant acquired the Option.

87. The FTT did find at [99] that the additional purposes "*would readily fall within the ambit of a property development trade*" but concluded "*that when the purposes are considered as a whole, pursuance of a property development trade was not the exclusive purpose*".

88. We do find this this passage difficult. It is not clear to us why preventing the sale of the Property to a third party and providing the Appellant with time to raise the funds to acquire and develop the Property might fall outside the ambit of a property development trade. There is nothing in the facts or circumstances to suggest that they did so. To this extent we consider that the FTT did err in law in concluding that the existence of those two purposes somehow meant that the Appellant did not acquire the Option with the exclusive purpose of developing and reselling the Property in the course of its property development trade.

89. However, we are satisfied that the FTT was entitled to conclude that addressing Ms Voice's pressing need for funds was a purpose of acquiring the Option which did fall outside the ambit of the Appellant's property development trade. As such the FTT was entitled to conclude that relief pursuant to paragraph 5(1)(b) was not available and was correct to dismiss the appeal against the SDLT assessment. There is no reason for us to interfere with that decision. We do not accept the Appellant's submission that on a correct construction of paragraph 5 the FTT was bound to find that the exclusive purpose of acquiring the Option was to redevelop and resell the Property in the course of its property development trade.

(3) HMRC's cross-appeal

90. HMRC say that the FTT erred in law in not concluding that an additional purpose for acquiring the Option was "*to abstain from interfering with Ms Voice's occupation of the Property*" during the period between the grant of the Option and its exercise. It is said that the FTT approached this solely as a question of law. HMRC accept that the FTT was correct to find at [110] that as a matter of law Ms Voice occupied the Property by virtue of her rights as the freehold owner. However, they say that the FTT conflated the issue as to whether this was another purpose for acquiring the Option with the separate question under paragraph 5(2) of whether it was intended that Ms Voice would be permitted to occupy the Property. As a result, the FTT made no finding as to whether or not one purpose of acquiring the Option was to abstain from interfering with her occupation of the Property.

91. In the light of our conclusion on the Appellant's appeal in relation to the SDLT assessment it is not necessary for us to deal with HMRC's cross-appeal and we prefer not to do so. Even if the FTT did err in law as alleged, it would not be necessary for us to remake the decision or remit the appeal to the FTT for further findings.

(4) The ATED assessments

92. Section 138 FA 2013 relieves the charge to ATED in relation to any day in a chargeable period where a person carrying on a property development trade is entitled to the interest and the interest is held exclusively for the purpose of developing and reselling the land in the course of that trade.

93. The Appellant submits that the purpose for which the Option was held was to acquire the Property. Any purpose of making funds available to Ms Voice because of her pressing need would have been "spent" once the option had been granted. That is why HMRC accepted that once the option was exercised and the land was held by the Appellant outright, there was no longer any charge to ATED.

94. The Appellant also relied on the same arguments we have rejected in relation to the SDLT assessment to the effect that the statutory question refers only to the Appellant's intended use of the Property once the Property was purchased. There is no need for us to repeat those arguments and we reject them for the same reasons as set out above.

95. HMRC say that the term "land" in section 138(1) must necessarily be interpreted as meaning the interest over land given that it is not possible to resell land, only an interest in land. We reject that submission. One might also make the point that an interest in land cannot be redeveloped. For the reasons given above, paragraph 5(1)(b) is concerned with development or redevelopment of the underlying land. The same must be true of section 138.

96. HMRC's principal submission was that the holding of an interest in land is a consequence of its acquisition. The purpose of holding an interest is inextricably linked to and encompasses the purpose of its acquisition. The statutory question pursuant to section 138(1)(b) requires consideration of whether the purpose of acquisition has been superseded or supplemented by a new purpose for retaining the interest.

97. We do not accept that submission. The statutory question is not whether the purpose of the acquisition has been superseded or supplemented by a new purpose. It is simply a question of identifying the purpose for which the chargeable interest is being held on any particular day.

98. It is common ground that where possible section 138 and paragraph 5 are intended to operate in tandem. Section 138 clearly focusses on the period following the acquisition and particular days in a chargeable period. The question is for what purpose is the interest in land being held on any particular day. It follows that there is a separate question to be asked in relation to each day, and the subjective purpose of the company holding the interest may change. For example, a company may initially have an intention to develop the land but subsequently decide not to do so. Equally, a company may acquire an interest without any intention of developing the land but subsequently decide to do so. The Explanatory Note records at [469] what we consider to be inherent in section 138 that a property can move into and out of the charge throughout a period of ownership.

99. We acknowledge that, as a matter of evidence, a company might have to demonstrate that its purposes have changed where an interest in land is not initially acquired solely for the purpose of development or redevelopment. However, that is a matter of fact to be decided on the evidence. The circumstances of acquisition may well be relevant in determining at a subsequent point in time the purpose or purposes for which an interest is held.

100. HMRC also submitted that the benefit to Ms Voice of the funds provided under the Option Agreement was an ongoing benefit. In particular, they note the FTT's finding at [108]:

> 108. … Structuring the Option Agreement in this way provided IST with a source of funds such that during the option agreement period it could continue to make significant payments to Ms Voice that did not impact on IST's operating results nor create additional loans to a participator that would incur a tax charge under s455 Corporation Tax Act 2010.

101. The FTT did not deal separately with the question of whether, following the acquisition, the Appellant held the Option exclusively for the purpose of developing and reselling the land in the course of its property development trade. We infer that the FTT adopted HMRC's argument before us that the purpose of holding an interest is inextricably linked to and encompasses the purpose for its acquisition. In doing so we are satisfied that it erred in law. The FTT ought to have focused on the period following the acquisition and identified, based on the evidence, the purpose or purposes for which the Appellant held the Option.

102. We agree with Mr Sykes that the purpose of acquisition is simply of evidential value in determining whether on any particular day the company held the interest in land exclusively for the purpose of developing and reselling the land. The statutory question is why is the company holding the interest in land. On the present facts the Appellant's purpose in acquiring the Option was not just for the purpose of development and resale. It also had the purpose of addressing Ms Voice's pressing need for funds. Once the Option had been granted, that need for funds had been addressed. In theory the Appellant could have assigned the Option to a third party, effectively selling the interest. Ms Voice would still have had access to the balance of the Option Sum which remained unpaid. If the Appellant continued to hold the Option, Ms Voice would have had access to the same sum. Ms Voice's pressing need for funds prior to the grant of the Option had been satisfied and it could not have been a purpose for continuing to hold the Option.

103. The other two purposes identified by the FTT were similarly unaffected by whether the Appellant continued to hold the Option. In any event for the reasons given above they fell within the ambit of the Appellant's property development trade.

104. Even if HMRC could have established that another purpose for the acquisition of the Option was to abstain from interfering with Ms Voice's occupation of the Property, that would not have been a purpose of continuing to hold the Option. The holder of the Option would have no right to interfere with Ms Voice's occupation of the Property.

105. In the circumstances we are satisfied that the FTT erred in law in failing to find that the Appellant held the Option, after it had been acquired, exclusively for the purpose of developing and reselling the Property in the course of its property development trade. To that extent we allow the appeal against the FTT's decision.

Conclusion

106. For the reasons given above we allow the appeal in part. We set aside the FTT's decision in so far as it relates to the ATED assessments and remake that decision so as to allow the Appellant's appeal against the ATED assessments. The appeal against the SDLT assessment is dismissed.

JONATHAN CANNAN ANDREW SCOTT

UPPER TRIBUNAL JUDGES

RELEASE DATE: 06 October 2025