Tax Chamber
First-tier Tribunal for Scotland

[2026] FTSTC 3

Ref: FTS/TC/AP/2025/0019

Land and Buildings Transaction Tax – Additional Dwelling Supplement (ADS) – whether residential or non-residential – whether suitable for use as residential property – Mudan* considered – *yes – appeal dismissed

DECISION NOTICE

IN THE CASE OF

LMT Property Investors Ltd

Appellant

- and -

Revenue Scotland

Respondent

TRIBUNAL: ANNE SCOTT, President
CHARLOTTE BARBOUR, Member

The Tribunal determined the appeal, at a hybrid hearing, at George House, Edinburgh on 18 March 2026 with Mr David Towers, Solicitor of Revenue Scotland and the Tribunal in person, and Mrs Laura Titman attending for the Appellant by video.

DECISION

Introduction

1. This is an appeal against a decision by Revenue Scotland contained in a Closure Notice issued under section 93 of the Revenue Scotland and Tax Powers Act 2014 ("RSTPA") dated 7 August 2025.

2. It was upheld in a Review Conclusion letter dated 8 October 2025 (together "the Decision").

3. The Decision was to the effect that the property in Selkirk (the "Property") purchased by the Appellant, was properly to be treated for Land and Buildings Transaction Tax ("LBTT") purposes as a residential property at the effective date which was 7 February 2025.

4. The consideration was £110,000 and the tax, consisting of Additional Dwelling Supplement ("ADS"), of £8,800 was paid on the basis that the LBTT return filed with Revenue Scotland on 14 February 2025 stated that the Property was a residential property.

5. An amended LBTT return was filed with Revenue Scotland on 10 June 2025 on the basis that the Property was a non-residential property as it was not suitable for use as a dwelling on the effective date. Repayment of the ADS was claimed.

6. We had a hearing bundle extending to 349 pages, an authorities bundle extending to 129 pages and the Appellant's bundle extending to 38 pages. In addition, there was the Appellant's Formal Written Response to Revenue Scotland's Statement of Case dated 30 December 2025. We also had an Agreed Statement of Facts. The parties agreed that the witness statements stood as oral evidence and were unchallenged as to matters of fact.

Preliminary Issue

7. In the Appellant's Formal Written Response there were a number of inaccurate references to case law and one citation of paragraphs 42 to 45 in a non-existent case called *Grahame v Revenue Scotland* [2018] FTSTC 11. Revenue Scotland pointed out these issues. On the balance of probability, it seems likely that the Appellant had used AI to assist in preparing the appeal. We accept that that was done in good faith. However, we draw attention to that because, whilst it can be helpful, AI can be unreliable and can produce "hallucinations" (ie non-existent cases as in this instance) and also cite cases that are not authority for the propositions that they purport to establish.

8. Recently in *Your Home Partners v Kellichan and Hood* [2026] SC KDY 34, Sheriff MacRitchie, at paragraphs 16 to 22, considered whether a failure by a lay person to check references generated by AI could amount to contempt of court. The Irish Court of Appeal in *Guerin v O'Doherty* [2026] IECA 48 has just issued guidance stating that lay persons are under a duty to check references generated by AI (and state that they have used AI). Since the Appellant did not ultimately rely on *Grahame* and had acted in good faith, we simply point out to readers of this Decision the potential risks when using AI.

9. All decisions of the Tribunal are published in full on the Tribunal website and can be checked there.

The facts

10. The Appellant is part of a group that has an interest in investing in properties and was provided with particulars of the Property by a deal source company, Property Oracle, which offered to act as an intermediary in return for a fee. The Appellant was told that it would be put in touch with a local agent ("the middleman") who would manage the renovation of the Property, if the transaction proceeded, and would then manage the resale through a local estate agent.

11. The Property was being sold by public auction by Auction House Scotland. Property Oracle's website particulars stated that Auction House Scotland could provide further information but that:

> *"Property Oracle says*
>
> ….The property's most striking feature is its need for modernisation. The images reveal dated interiors, including outdated wallpaper, carpets, and fixtures …
>
> The overall condition suggests a significant refurbishment would be required. This renovation would potentially include updating bathrooms, kitchen appliances, flooring and redecoration…
>
> The asking price of £125,000…appears to reflect the property's condition and requirement for renovation. Overall, the property presents a potentially valuable investment for buyers comfortable undertaking substantial renovation work; however, potential purchasers should be mindful of the significant refurbishment needed before it would be ready to occupy. In summary this property is a fixer-upper and requires considerable financial investment to fully realize its potential."

12. There was a disclaimer stating: "Do your own research". Apart from some financial statistics there were 17 pictures of the Property both internally and externally and a floorplan. The floorplan made it clear that the Property had originally been two properties as there were two front doors and two vestibules. Apart from those it comprised a dining room, kitchen, bathroom and two stores in the extension and three bedrooms, a WC and a living room in the main body of the Property.

13. The Appellant obtained the Home Report but otherwise did no research and did not view the Property. The fees were paid and the Property was purchased from Auction House Scotland for £110,000 with an effective date of 7 February 2025. The Disposition to the Appellant discloses that the actual seller was the executor of the deceased owner of the Property and Confirmation had only been granted on 12 September 2024. Mrs Titman sent the keys to the middleman who installed a lock box at the Property.

14. The Appellant chased the middleman for quotations for the necessary works but having originally received an estimate of around £22,000, after approximately six weeks the middleman sent a handwritten note of the work that he believed was required (along the lines of what Property Oracle had identified) at a cost of approximately £45,000.

However, he also said that he was very busy and could, or would, not commit to when the work would be done. The upshot was that the fees were refunded.

15. Mrs Titman then sourced an alternative contractor on Facebook ("the Contractor"). He said that he had a team of about six men, that he could recommend other local tradesmen and that he could project manage the renovation. He was engaged.

16. Mrs Titman met with the Contractor at the Property on or about the end of March 2025. He has since left the UK and was not available to give evidence. They went around the Property to discuss her expectations in relation to the renovation.

17. From the exterior, looking at the side elevation, it could be seen that the skylight on the roof of the lean-to extension was cracked and there was some "bowing" of the roof. The ceiling of the dining room around the skylight was Artex and the ceiling was sagging. Mrs Titman was told that the skylight and Artex should be removed as a priority as it was unsafe and the cause of the sagging should be identified.

18. Initially the intention was to check whether it was simply a question of replacing the skylight which, in any event, appeared to be too heavy for the roof and appeared to have not been fitted properly or whether more was required.

19. On removing the Artex, rotten timbers were identified and Mrs Titman received a message recommending that the roof on the extension be removed. That was done by the Contractor's team and the extension made wind and watertight very quickly. Since walls were due to be removed and windows and doors changed in the context of the renovation, work commenced on those and other issues.

20. During the Easter school holidays Mrs Titman and her family spent a long weekend in Selkirk and met the various specialist tradesmen and obtained quotations for those trades. At that juncture, the team were still "gutting", for lack of a better word, the Property. The photographs filed with the Tribunal by the Appellant were taken over a period of time. The Contractor liaised with Mrs Titman via Facetime providing updates on progress.

21. As at the date of the hearing, the Property was on the market and comprises a kitchen and bathroom in the extension, and three bedrooms (with one ensuite), two hallways and a living room in the main body of the Property.

22. On 5 May 2025, Mrs Titman emailed Revenue Scotland asking how she could seek a refund of the ADS. Revenue Scotland responded on 14 May 2025 telling her that an amended return could be filed within 12 months and asking for the reasons for the amendment.

23. On 29 May 2025, Mrs Titman formally emailed Revenue Scotland requesting a repayment of overpaid LBTT in terms of section 37 of the Land and Buildings Transaction Tax (Scotland) Act 2013 ("LBTTA"). She enclosed a copy of the original LBTT return and the missives.

24. On 3 June 2025, Revenue Scotland emailed Mrs Titman asking her to clarify why a repayment was being sought. She responded stating that the Property was uninhabitable as at the date of purchase and therefore it was not suitable for use as a dwelling in terms of section 59 LBTTA.

25. On 10 June 2025, the Appellant's agents filed the amended LBTT return.

26. On 27 June 2025, Revenue Scotland issued a Notice of enquiry under section 85 of RSTPA. It stated that no repayment would be made at that juncture because the enquiry related to the amended return. Reference was made to Revenue Scotland's guidance LBTT4010 – Residential Transactions and LBTT4012 – Non-residential Transactions – Derelict – Uninhabitable Properties. Revenue Scotland went on to ask that extensive information about the purchase of the Property be provided by 27 July 2025.

27. On 9 July 2025, Mrs Titman replied. She argued that the decision of the Court of Appeal in *Mudan v HMRC* [2025] EWCA Civ 799 ("Mudan CA") was in point and that the Property was not suitable for use as a dwelling.

28. She explained that:

(a) According to Council records, the Property had been vacant for more than 12 years. No one had been able to move into the Property since the effective date.

(b) There was a skylight which was unsafe and the roof in that area of the house (which included the kitchen and bathroom) had had to be demolished since it was unsafe.

(c) There was significant damp affecting all of the exterior walls.

(d) The electrical company had condemned the electrics deeming them unsafe as at the effective date; there was no other means of heating the Property.

(e) Scottish Water had stated that the water supply was contaminated with lead and unsafe.

29. She enclosed copy title deeds and missives, the Home Report (which she stated was "completely untrue") and photographs. The photographs showed the Property with workmen's tools and equipment and in a state of considerable disrepair.

30. In the course of the enquiry she furnished a number of external reports.

The External Reports

<u>The Home Report</u>

31. This was prepared by Shepherd, Chartered Surveyors, and referred to an inspection on 17 September 2024. It confirmed that the Property was a detached bungalow with all accommodation at ground floor level comprising an entrance hallway, living room, kitchen, dining room, three bedrooms, bathroom and a WC compartment. It stated that it had been built approximately 130 years previously, albeit it had been altered at later dates when converted from two properties into one and extended to the rear. It stated that, at the time of inspection, the Property was fully furnished. It was situated within an "established residential area of similar style properties".

32. In fact, we observe from the Disposition to the Appellant that it was built in approximately 1896 as a dwelling house and shop.

33. The Home Report included a summary of the condition of the Property divided into three categories, namely:

(a) Category 3 which reads "Urgent repairs or replacement are needed now. Failure to deal with them may cause problems to other parts of the property or cause a safety hazard. Estimates for repairs or replacement are needed now".

(b) Category 2 which reads: "Repairs or replacement requiring future attention, the estimates are still advised."

(c) Category 1 which reads: "No immediate action or repair is needed".

34. There were no entries for Category 3.

35. Of the other two categories, it stated that:-

(1) Category 1 – there was evidence of settlement/movement which was long standing. There was no evidence of problems with rainwater fittings.

(2) Category 2 – above average damp readings were obtained and a precautionary survey was recommended prior to purchase. The chimney stacks required repair. It was also recommended that the roofing be checked. Some of the external render required repair as did some of the windows. A cracked skylight was noted within the dining room and it required repair. Pointing required repair. A check of the electrical installation was recommended since it was "dated".

36. The Mortgage Valuation Report included in the Home Report valued the Property at £165,000 in its then present condition and stated that:

"At the time of inspection the property was found to have been generally adequately maintained having regard to its age and character. The valuation below reflects the fact that some items of maintenance type repair, modernisation and upgrading may be required.".

Council Tax

37. On 21 January 2026, in response to a telephone call from Mrs Titman the previous day, Scottish Borders Council wrote to the Appellant to confirm that in relation to Council Tax, "…the last date that [the Property] was occupied was 31st May 2012.".

Scottish Water

38. A letter from Scottish Water dated 6 May 2025 confirmed that a sample dated 1 May 2025 did not meet the standard for lead. They explained that water could be used for cooking or drinking if the cold tap was run for a couple of minutes before use.

Richardson & Starling (the damp and building preservation report)

39. The Richardson & Starling survey report was dated 18 March 2025. The Property was surveyed on 14 March 2025 to investigate damp issues. It stated that the Property was a detached bungalow built in circa 1919. The photographs attached included one of what appeared to have been a kitchen but was in the course of being stripped out.

40. Their quotation for what was described as a "Disruptive survey" and asbestos check was £1,461.12 (VAT incl). It was noted that there was no damp proof course ("DPC"), defective pointing, guttering and flashing. Repairs would be required to prevent penetrating damp.

Cleghorn Electrical Services Ltd

41. The Electrical Danger Notification letter dated 4 March 2025 made it clear that a prompt and full rewire of the Property was required because of the risk of electric shock. The electrics had been isolated and switched off with immediate effect on that day to prevent further damage or a possible fire.

The Conclusion of the Enquiry

42. On 7 August 2025, a Closure Notice under section 93 of RSTPA was issued to the Appellant. That concluded that, as at the effective date, the Property was suitable for use as a dwelling and was therefore residential property in terms of section 59(1)(a) LBTTA.

43. Whilst Revenue Scotland accepted that it was unlikely that the Property could have been occupied at the effective date, it was argued that that was not determinative in itself, albeit it was a relevant factor. In summary, although the Property needed significant work to make it habitable because the barriers to living in it at the effective date included dampness, unsafe electrics and lead pipes, nevertheless, it had all the characteristics which would render it usable as a single dwelling.

44. On 11 August 2025, the Appellant requested a review. She pointed out that the Home Report had failed to state, or take into consideration, the fact that the Property was unoccupied and had been vacant for over 12 years as at the date of sale. Although it had previously been classified as a dwelling, as at the date of sale, the home report had not taken the long vacancy into account.

45. On 25 August 2025, Revenue Scotland issued their View of the Matter letter and asked if there was any further information which should be taken into account.

46. On 4 September 2025, the Appellant replied, relying again on section 59 LBTTA and referring Revenue Scotland to three cases, namely:

(a) *Fiander & Brower v HMRC* [2021] UKUT 156 (TC) ("Fiander") which she argued supported the propositions that

(i) "suitable" must mean fit for use as a dwelling at the effective date and not merely capable of being made suitable,

(ii) that is an objective test, and

(iii) basic living needs, such as sleeping, washing and cooking, must be capable of being met safely at the date of completion. Future adaptation or potential suitability are irrelevant.

(b) *Ball & Torokoff v Revenue Scotland* [2024] FTSTC 6 ("Ball") which she argued supported the propositions that:

(i) Revenue Scotland must assess the condition of the Property on the effective date and not its historic or intended use, and

(ii) although a property may have previously been used as a residence, that fact alone is insufficient if, at the date of completion, it lacked the facilities and condition required for immediate habitation.

(c) *Mudan CA* which she stated provides authoritative guidance on the meaning of "suitable for use". She argued that it was authority for the propositions that:

(i) there is a critical distinction between a property that could be made suitable and one that is suitable,

(ii) if a building has suffered serious disrepair, long-term vacancy, or the absence of essential utilities, it would have lost its identity as a residential property,

(iii) the correct approach is to evaluate the physical state of the Property as at the effective date.

She argued that the three cases provided a clear framework which was that, objectively, any property must be habitable and safe at the effective date in order to be categorised as a residential dwelling.

47. In addition to the facts that she had already provided, she pointed out that on attempting to turn on the power, her husband had received an electric shock so the electricity had had to be immediately disconnected for safety reasons. In terms of structural issues, the roof had collapsed exposing the interior to weather and decay and significant damp and rot had affected the flooring throughout the Property which had required large sections to be ripped out for safety reasons. There were no safe or functional kitchen or bathroom facilities.

48. On 8 October 2025, Revenue Scotland issued a Review Conclusion letter upholding the decision relying primarily on the Upper Tribunal decision in *Mudan.* Although Revenue Scotland did not cite the passage, part of the text is in fact, paragraph 58 in the *Mudan UT* decision and that is replicated in full at paragraph 54 of *Mudan CA*.

49. The Appellant appealed to the Tribunal on 26 October 2025.

The Legislative framework and the arguments thereon

50. Revenue Scotland's Statement of Case included an Appendix with what were described as the "Relevant Statutory Provisions" but with no explanation. We had a bundle

of Authorities which included some of those Statutory Provisions and also included others which were not in the Appendix.

51. In oral submissions, Mr Towers advanced an argument, which had not been presaged in Revenue Scotland's Statement of Case, that there were two issues before the Tribunal namely:

(1) whether the Property was treated as residential or not in terms of section 24 LBTTA, and

(2) whether the ADS that had been paid was repayable.

He argued that both issues depended on the same facts and the Decision of the Tribunal did not simply turn on section 59 LBTTA, albeit the test in section 59 was the applicable test.

52. The first argument was that section 24 LBTTA provided for two tax rate bands and the relevant band was decided by the application of section 59 LBTTA. Since, on the facts in this appeal, the consideration was below the LBTT threshold, no LBTT was payable. Therefore, the question of whether or not the Property was residential in terms of section 59 LBTTA, which defines the meaning of residential property, was not relevant. Those sections were included in both the Joint Bundle of Authorities and the Appendix.

53. The second argument related to Schedule 2A LBTTA. The only paragraph of Schedule 2A that was included in both the Joint Bundle of Authorities and the Appendix was paragraph 2. That paragraph provides for ADS being payable on transactions relating to second homes. Mrs Titman questioned this as there was no doubt that the Property was not a second home.

54. Section 26A LBTTA, which provides for ADS, is headed "Additional amount: transactions relating to second homes etc." and that is also the heading for Schedule 2A.

55. Since the Appellant is a company, and therefore in the words of LBTTA a "non-individual", it is paragraph 3 of Schedule 2A that applies as the Appellant falls into the category of "etc". Paragraph 2 is irrelevant.

56. Insofar as relevant, paragraph 3 of Schedule 2A reads:

"*Transactions where buyer is a non-individual etc*

3 (1) this schedule applies to a chargeable transaction if the following conditions are satisfied-

(a) the subject matter of the transaction consists of or includes the acquisition of ownership of a dwelling,

(b) the relevant consideration for the transaction is £40,000 or more, and

(c) the buyer-

(i) is not an individual…".

57. Ultimately, the argument advanced by Mr Tower was that paragraph 3 (and also paragraph 2 which was his original argument) of Schedule 2A makes no reference to whether a "dwelling", being the term used in that paragraph, is residential or not and therefore that means that section 59 LBTTA has no application.

58. Therefore, the definition of a dwelling at paragraph 20(2) Schedule 2A is relevant and that reads:

> "Part 6 of schedule 5 (what counts as a 'dwelling') applies for the purpose of this schedule as it applies for the purposes of schedule 5."

Sadly, neither that paragraph nor any paragraph from Part 6 of Schedule 5 were included in either the Joint Bundle of Authorities or the Appendix.

59. Mr Tower referred us to paragraph 25 Part 6 of Schedule 5 which reads:

> "25. A building or part of a building counts as a dwelling if —
>
> (a) it is used or suitable for use as a single dwelling,
>
> (b) it is in process of being constructed or adapted for such use."

60. Paragraph 26 is also relevant and should be read with paragraph 25 and it reads:

> "26. Land that is, or is to be, occupied or enjoyed with a dwelling as a garden or grounds (including any building or structure on such land) is taken to be part of that dwelling."

61. We say that because, insofar as relevant section 59 LBTTA reads:

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

62. It is correct to say that section 24 LBTTA specifies that there will be differing tax bands for residential and non-residential property transactions.

63. Paragraph 1 of Schedule 2A explains that the Schedule makes provision about an additional amount of tax chargeable in respect of certain chargeable transactions. As we have explained, paragraph 3 then provides that transactions involving non-individuals will attract an additional tax charge which is the ADS.

64. Paragraph 4(1) of Schedule 2A reads:

"Where this schedule applies to a chargeable transaction, the amount of tax chargeable in respect of the transaction (as determined under section 25(1) or 26(1)) is increased by the additional amount."

65. Section 25 LBTTA was in the Joint Bundle of Authorities and makes it clear that ADS is an additional amount of LBTT.

66. Paragraph 4(2) and (3) of Schedule 2A go on to provide:

"(2) The additional amount is an amount equal to 8% of the relevant consideration.

(3) The relevant consideration is—

(a) in a case where the transaction is a residential property transaction, the chargeable consideration for the transaction, or

(b) in a case where the transaction is a non-residential property transaction, so much of the chargeable consideration for the transaction as is attributable, on a just and reasonable apportionment, to the acquisition of ownership of the dwelling (including any interest or right pertaining to ownership of the dwelling) that is or forms part of the subject-matter of the transaction."

67. As can be seen, however this appeal is approached, the core issue is whether the Property is to be treated as residential or non-residential and that the test in that regard was whether the Property was suitable for use as a residential property.

The case law

68. The wording in section 59 LBTTA is identical to the Stamp Duty Land Tax ("SDLT") provisions at section 116 of the Finance Act 2003. 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. At paragraphs 18 to 31 in *Mudan CA*, Lord Lewison reviewed the body of case law on the scope of section 116 which had been built up in the First-tier and Upper Tribunals. Apart from *Mudan* in the Tribunals, that review included *inter alia PN Bewley Ltd v HMRC* [2019 UKFTT 65 (TC) ("Bewley") and *Fiander* to which both parties had referred but also *HMRC v Ridgway* [2024] UKUT 00036 (TCC) ("Ridgway") upon which Revenue Scotland relied. All three were in the Joint Bundle of Authorities.

70. Mrs Titman was correct to say that *Mudan CA* provides authoritative guidance on the meaning of "suitable for use". Therefore to the extent that there is perceived by the parties to be any conflict with the Tribunal decisions, the approach in *Mudan CA* is to be preferred.

71. 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.'"

72. 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

73. As we have indicated at paragraph 46 above, at the heart of the Appellant's case is the argument that, considered objectively, the Property had to be habitable and safe at the effective date and that it was not.

74. The problem for the Appellant is that that is not the test. Lord Lewison made it absolutely explicit at paragraphs 58, 61 and 66 of *Mudan CA* that there should be no snapshot as at the effective date, or for that matter on any particular date. The legislative test focuses on the fundamental characteristics and nature of a building over a period of time, rather than a snapshot of habitability, at the effective date.

75. The decision in *Ball* is not binding on the Tribunal as it is, like this Decision, a decision at first instance. However, since we were the Tribunal in *Ball* we can unequivocally confirm that it certainly was **not** authority for the propositions that it is only use at the effective date that is relevant or that if a property lacked the facilities and condition required for immediate habitation, it could not be suitable for use as a dwelling. *Ball* turned on completely different facts, and arguments but nevertheless the Tribunal in *Ball* found that although the property in that instance had no functional bathing facilities and required renovation and upgrading, it still retained the characteristics of a dwelling. Furthermore, *Ball* was decided before the decision in *Mudan CA*. *Ball* does not assist the Appellant.

76. We must consider all of the factors addressed in *Mudan CA.*

77. We find as fact that the Property was marketed as a residential property, albeit in need of significant modernisation. At the point of purchase, it was fully furnished and had

been used solely as residential accommodation for many years. It is situated in a residential area surrounded by similar properties. It looked like a residential property both before and after the effective date. We find that it meets the test articulated in paragraph 68 of *Mudan CA.*

78. We have had regard to paragraph 58(1) of *Mudan UT*. The Property has been a dwelling house for many decades.

79. The fact that it had been unoccupied for 12 years is noted but, as we have recorded at paragraph 13 above, the executors of the deceased owner had only obtained Confirmation a few months before the effective date. In any event, paragraph 60 of *Mudan CA* means that we must consider land use and not occupation.

80. The Property has obviously previously been suitable for use as a dwelling. We must therefore assess the repairs and renovations.

81. It was argued that the removal of the roof on the extension meant that the Property simply could not have been suitable for use as a dwelling. Firstly, paragraph 58(2) of *Mudan UT* the Upper Tribunal accepted that if a building was an empty shell with no main roof it was unlikely to be suitable for use as a dwelling, whereas if it was dilapidated and required updating it was more likely to be so. In this case, the Property was not an empty shell, the roof on the main building was intact and once the roof on the lean-to extension was removed (within a day) it was made wind and water tight very quickly.

82. The removal of the kitchen and the "gutting" of the Property was in large part because of the reconfiguration for the renovation. That was the choice of the Appellant. The Property was being upgraded and, in light of paragraph 63 of *Mudan CA*, its internal fit out is not a relevant factor; it is the Property as a whole that we must consider.

83. We accept that the water supply did not meet the current standards for lead content. However, the letter from Scottish Water is unequivocal in its terms and recommended running the water for a period before using it for drinking or cooking. It could be used. It was not condemned. Although we also accept that Mrs Titman would not wish to do that and considered that unacceptable, nevertheless it was an issue that could be, and was, remedied, or fixable, as part of the renovation. That meets the test in paragraph 58(4) of *Mudan UT.*

84. The position with electricity is slightly different. As paragraph 58(5) of *Mudan UT* makes clear the Electrical Danger Notification is undoubtedly a relevant factor but would not of itself render the building unsuitable for use as a dwelling. However, we caveat that by noting that the Upper Tribunal referred to that in the context of occupation as at the effective date, but Lord Lewison made it clear at paragraph 60 of *Mudan CA* that we must be concerned with land use. We say that because we must consider whether the wiring was fixable and it was. Revenue Scotland argued that the rewiring simply restored the previous functionality of the Property and we accept that argument.

85. As the Upper Tribunal pointed out at paragraph 58(4) in *Mudan UT* we have to have considered *Bewley* and whether the works would be so dangerous or hazardous as to prejudice their viability. Rewiring would be almost routine in a property of this age and is not of itself dangerous and nor would it affect the structural integrity of the Property.

86. For completeness, we observe that the Electrical Danger Notification was issued on 4 March 2025 and that was before Mr and/or Mrs Titman visited the Property so we treat the suggestion that Mr Titman suffered an electrical shock as being a neutral factor given the terms of the Notification.

87. For the avoidance of doubt, as *Mudan CA* makes clear, the decision as to whether a building is suitable for use is a multi-factorial evaluative exercise and no one factor is determinative. We have considered all of the facts and circumstances that have been brought to our attention.

88. We accept that, exactly as Property Oracle stated, the Property required significant refurbishment and that included the consequences of the problems with damp and the general dilapidation in addition to the roofing, electricity and water issues. However, we find that those works were not so extensive as to deprive the Property of its character and identity as a dwelling house and nor did that happen in the course of the building work.

89. At paragraph 61 of *Mudan CA,* Lord Lewison used the example of a property which required rewiring, replumbing and the renewal of a kitchen and bathroom and yet would be a residential property. In the words of Property Oracle the Property was indeed a "fixer-upper". It was, and remained, suitable for use as a dwelling.

Decision

90. For all the reasons given, we find that the purchase of the property was correctly originally returned for LBTT purposes as a residential transaction, that the ADS was correctly calculated, that Revenue Scotland were correct to amend the amended return to the original version and to refuse the claim for repayment of the ADS.

91. Accordingly, the appeal is dismissed.

92. 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: 1 May 2026