



**TC 04596**

Appeal number: TC/2014/00490 and  
TC/2014/00491

*CAPITAL GAINS TAX – principal private residence – move to new house  
built in grounds of former house – whether building plot within grounds of  
original house is within garden or grounds of new house – no – appeal  
dismissed – s222(1) TCGA 1992*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MRS D FOUNTAIN AND MR I FOUNTAIN**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY'S  
REVENUE & CUSTOMS**

**Respondents**

**TRIBUNAL: JUDGE ALEKSANDER  
S AKHTAR**

**Sitting in public at Bedford Magistrates Court on 21 January 2015**

**J Harrison of Whiting & Partners, chartered accountants for the Appellant**

**M Foster, an officer of HM Revenue and Customs, for the Respondent**

## DECISION

5 1. These are appeals by Mr and Mr Fountain against closure notices dated 1 July 2013 following an enquiry into their self-assessments for the tax year 2009-10. The closure notices were subject to a statutory review, and decision letters dated 19 December 2013 upheld the closure notices. The tax in dispute is £5590.44 for Mrs Fountain and £5716.44 for Mr Fountain.

10 2. The tax in dispute relates to the sale of a building plot. Mr and Mrs Fountain assert that the gain arising on the sale is exempt from CGT by virtue of the principal private residence relief. HMRC assert that the relief does not apply.

15 3. Mr and Mrs Fountain were represented at the hearing by their accountant, Mr Harrison. HMRC were represented by Mr Foster of HMRC's Appeals and Reviews Unit. Neither Mr nor Mrs Fountain attended the hearing, but we had the benefit of a brief witness statement from Mrs Fountain, which was not challenged by HMRC. In addition a bundle of documents was produced in evidence.

### Law

4. Section 222(1) Taxation of Chargeable Gains Act provides as follows:

20 This section applies to a gain accruing to an individual so far as attributable to the disposal of, or of an interest in—

(a) a dwelling-house or part of a dwelling-house which is, or has at any time in his period of ownership been, his only or main residence, or

25 (b) land which he has for his own occupation and enjoyment with that residence as its garden or grounds up to the permitted area.

5. Section 223 TCGA gives relief from capital gains tax to gains falling within section 222.

30 6. The question in this appeal is whether the gain on the disposal of the building plot falls within paragraph (b) of section 222(1). It is agreed that the area of the land sold is within the "permitted area".

### Background facts

7. Mr and Mrs Fountain used to live at 31 Doddington Road. Doddington Road runs roughly east-west, and 31 Doddington Road is on the north side of the road. An area behind the house (accessed via a driveway to one side of the house) was used for business purposes. This comprised a workshop and parking area used by Mr and Mrs Fountain for their haulage business. Behind the parking area and workshop were two fields (one of 1.31 acres and one of 1.80 acres) which were farmed.

8. At some point following the closure of the haulage business, part of the property was divided into five building plots.

9. Plots 1 and 2 comprised land fronting onto Doddington Road. Plot 1 was immediately adjacent to the house on its western side, and included the driveway that led to the (former) business area. Plot 2 was to the west of Plot 1.

10. We were told by Mr Harrison that Plots 1 and 2 were formed from the gardens of 31 Doddington Road. The only evidence supporting this statement is a very short witness statement given by Mrs Fountain. As Mrs Fountain did not attend the hearing, we did not have the benefit of her oral evidence. Her witness statement states as follows:

“I can confirm that the area constituting plot 2 has at no time during the period of our ownership been used for business purposes and has always been used and enjoyed with and part of our principal private residence.

To a certain extent the area has always been separated from the main dwelling house firstly by our drive and then by establishment of a separate dwelling and accessed only by a private drove. Whilst accepting that the extent of our use did diminish in the latter period we continued to use the area for our domestic use and enjoyment.”

11. Plots 3, 4 and 5 were behind plots 1 and 2. They were accessed from Doddington Road by a new road (Fountain Drive) that was constructed along the western boundary of Mr and Mrs Fountain’s land. Plot 3 was at the back of Plots 1 and 2. Plot 4 was immediately to the north of Plot 3, and Plot 5 was to the north of Plot 4.

12. Plot 1 (the plot facing Doddington Road and adjacent to 31 Doddington Road) and Plot 5 (the plot furthest from Doddington Road) were sold in March 2006. Plot 5 was sold together with the 1.31 acre field.

13. Plot 3 was gifted by Mr and Mrs Harrison to their son in June 2006.

14. Mr and Mrs Fountain built a new home on Plot 4, into which they moved in January 2007.

15. In February 2007, 31 Doddington Road was sold together with the 1.80 acre field).

16. Plot 2 (the subject of this appeal) was sold in December 2009.

17. At the time Plot 2 was sold, the plot had been levelled. Included in the bundle was a copy of a photograph of the plot taken from the “Zoopla” web site. The photograph shows a levelled plot of land fenced off from the adjacent Plots 2 and 3. It appears that the ground is covered with hardcore – but the quality of the copy photograph is poor. The plot is certainly not cultivated. We were told by Mr Harrison that Plot 2 had been used for the storage of building materials used for the construction of the new house on Plot 4, and that Mr and Mrs Fountain had used the

plot for parking their caravan, however we had no evidence to support Mr Harrison's statement. We were also told by Mr Harrison that Plot 4 and Plot 2 were on the same "title deed".

- 5 18. Plot 3 is located between Plot 2 and Plot 4. The only way in which Plot 2 can be accessed from Plot 4 is by exiting from Plot 4 onto Fountain Drive, walking along Fountain Drive past Plot 3, and then entering Plot 2.

### Issues in the appeal

19. The issue to be determined in this appeal is whether Plot 2 forms part of the garden or grounds of Mr and Mrs Fountain's principal private residence.

- 10 20. At the time Plot 2 was sold, Mr and Mrs Fountain's only residence was the new house that they built on Plot 4. So the question is whether Plot 2 formed part of the garden or grounds of Plot 4. The High Court in the case of *Varty v Lynes* (1976) 51 TC 419 decided that for the relief to apply, the land must form part of the garden or grounds of the taxpayer's residence at the time of the sale. So the fact that Plot 2 may  
15 have formed part of the garden or grounds of 31 Doddington Road is not relevant to the determination of this appeal. The question to be determined is whether at the time Plot 2 was sold, was it part of the garden or grounds of the new house constructed on Plot 4?

- 20 21. Neither "garden" nor "grounds" are defined for the purposes of the TCGA. These terms must therefore bare their ordinary and natural meaning.

22. The relevant definition of "garden" on the Oxford Dictionaries web site is as follows:

A piece of ground adjoining a house, used for growing flowers, fruit, or vegetables:

- 25 23. The relevant definition of "grounds" on the Oxford Dictionaries web site is as follows:

An area of enclosed land surrounding a large house or other building:

- 30 24. Although both definitions contemplate that a garden or grounds adjoin or surround a house, HMRC's manual contemplates that it is possible for land physically separated from a residence to be part of that residence's garden or grounds. CG64367 states:

- 35 TCGA92/222 (1) (b) provides relief for land which the owner "has for his own occupation and enjoyment with the residence as its garden or grounds". Therefore the land which qualifies for relief must be the garden and grounds of the residence, not land which simply happens to be in the same ownership as the residence. Usually the garden and grounds will be the land which surrounds the residence and is enclosed with it. Land which is separated from the residence by other land which is not in the same ownership will not normally be part of the  
40 garden and grounds of the residence.

5 However if the facts show that land which is physically separated from the residence is naturally and traditionally the garden of the dwelling house and it would normally be passed on as such on conveyance, relief should be allowed. For example, in some villages it is common for the garden to be across the street from the dwelling house. This separation should not be regarded as a reason for denying relief if it can be shown that the land was naturally and traditionally the garden and grounds of that house.

10 Conversely, a keen gardener may buy a plot of land some distance from their dwelling house because the dwelling house itself may have an inadequate garden. Even though the plot of land may be fully cultivated and regarded as part of the garden by the owner, it will not qualify for relief.

15 25. We also note that CG64360 states that land which has traditionally been the garden and grounds of the residence but at the date of sale is unused or overgrown should not be excluded from the garden and grounds,

26. Mr Harrison submits that Plot 2 forms part of Plot 4's garden or grounds for the following reasons:

- 20 (1) Plot 4 and Plot 2 formed (at the time of the sale) part of the same title.
- (2) Plot 2 formed part of the garden of 31 Doddington Road, and continued to be used by Mr and Mrs Fountain for their domestic use and enjoyment. When Mr and Mrs Fountain moved from 31 Doddington Road to their new home on Plot 4, Plot 2 became part of the garden or grounds of Plot 4.
- 25 (3) The fact that Plot 2 was not cultivated at the time of the disposal was not relevant to the determination of whether it was garden or grounds (and we were referred to CG64360 cited above)
- (4) The fact that Plot 2 did not adjoin or surround Plot 4 was also not relevant to the determination (and we were referred to CG64367).

30 27. Mr Foster submits that Plot 2 did not form part of Plot 4's garden or grounds for the following reasons:

- (a) The question had to be determined at the time of the disposal
- (b) Although Plot 2 may have formed part of the garden or grounds of 31 Doddington Road, at the time of the disposal, 31 Doddington Road was not Mr and Mrs Fountain's residence.
- 35 (c) Plot 2 never became part of the garden or grounds of Plot 4. It was not adjacent to Plot 4 and it was not cultivated. It was separated from Plot 4 by another house (Plot 3) and by fencing.
- (d) At the time of the disposal, Plot 2 was just a bit of land that Mr and Mrs Fountain happened to own. It was a levelled site that Mr and Mrs Fountain used for storage and parking. It did not form part of the garden or grounds of Plot 4.
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## Conclusions

28. We find that Mr and Mrs Fountain are not entitled to claim principal private residence relief in respect of their disposal of Plot 2. We therefore dismiss the appeal.

29. Our reasons are as follows.

5 30. The fact that Plot 2 may have formed part of the garden or grounds of 31 Doddington Road is not relevant to the issues under appeal. Given the decision of the High Court in *Varty v Lyne*, the question we have to consider is whether, at the time Plot 2 was sold, did it form part of the garden or grounds of Plot 4?

10 31. Indeed we have no evidence before us that Plot 2 was ever part of the garden of 31 Doddington Road. The only evidence on this point is Mrs Fountain's witness statement, and that does not address whether the land was ever a garden – only that it was used for “domestic use and enjoyment”. However given the dictionary definition of “grounds” as “an area of enclosed land surrounding a large house or other building”, we are prepared to find (and so find) that Plot 2 originally formed part of  
15 the “grounds” of 31 Doddington Road.

32. But it does not follow that because Plot 2 once formed part of the grounds of 31 Doddington Road, it then became part of the grounds of Plot 4 when Mr and Mrs Fountain moved to their new house.

20 33. The fact that Plot 2 and Plot 4 may have been part of the same title registered with HM Land Registry is irrelevant. The way in which HM Land Registry chose to register title to land does not affect whether the land can be described as a residence or garden or grounds of a residence. The tribunal is aware of a house and its garden being registered with multiple titles at HM Land Registry - for example if a garden is enlarged by the acquisition of adjacent land – and the fact that part of a garden may  
25 have a separate registered title is irrelevant to the question of whether it forms part of the garden of a residence.

34. The issues of fact that are key to our decision are that at the time of the sale:

(1) Plot 2 had been levelled, and was uncultivated.

30 (2) Plot 2 was separated from Plot 4 by Plot 3 (which at this point had a house built on it), and Plot 2 was fenced off from Plots 1 and 2.

35 35. The dictionary definition of “garden” contemplates that a garden adjoins a residence. Plot 2 never adjoined Plot 4. Although HMRC's manual states that it is possible for a garden to be separated from a residence by a road or a right of way, this is unusual. In this case there was no evidence before us that Plot 2 was ever cultivated as a garden that was used with Plot 4. Indeed, given the limited nature of the evidence before us, we have no basis for determining whether Plot 2 ever formed part of the garden of 31 Doddington Road. We find that Plot 2 was never part of the garden of Plot 4.

36. The dictionary definition of “grounds” contemplates that grounds surrounds a house or building. Plot 2 does not surround Plot 4. Plot 2 is separated from Plot 4 by Plot 3 and is fenced off from Plots 1 and 3. We find that Plot 2 never formed part of the grounds of Plot 4.

5 37. Mr Harrison referred to the statement in the HMRC manual that the fact that a garden was unused or was overgrown was not a reason for determining that the land was not part of a garden or grounds. But the statement in the manual referred to land which traditionally had been part of the garden or grounds of a residence, and the facts in this case point to Plot 2 having traditionally formed part of the grounds of 31  
10 Doddington Road, but not that the plot had ever formed part of the garden or grounds of Plot 4.

38. Mr Harrison asserts that Mr and Mrs Fountain have parked their caravan on Plot 2, and used Plot 2 for storing building materials, make Plot 2 part of the garden or grounds of Plot 4. We had no evidence to this effect. But even if the statement is  
15 true, it does not follow that Plot 2 formed part of the garden or grounds of Plot 4 because of this usage.

#### **Decision**

39. We find that Mr and Mrs Fountain are not entitled to claim principal private residence relief in respect of their disposal of Plot 2. We therefore dismiss the appeal.

20 40. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to  
25 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

30 **NICHOLAS ALEKSANDER**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 24 AUGUST 2015**