Neutral Citation: [2026] UKFTT 01138 (TC)

Case Number: TC 09979

FIRST-TIER TRIBUNAL
TAX CHAMBER

Taylor House, London

Appeal reference: TC/2024/03198

STAMP DUTY LAND TAX – building previously used as dwelling in need of renovation and repair at time of completion of purchase – whether building "suitable for use as a single dwelling"

Heard on: 21- 22 July 2026
Judgment date: 05 August 2026

Before

TRIBUNAL JUDGE STAPENHURST
MR L HOWARD

Between

OAKWOOD GREAT OAK LTD

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Ross Birkbeck, of Counsel, instructed by Quastels LLP

For the Respondents: Dr Jeremy Schryber, litigator of HM Revenue and Customs' Solicitor's Office.

DECISION

INTRODUCTION

1. This appeal concerns the SDLT treatment of the acquisition by the Appellant of "Great Oak", Prowse Avenue, Bushey Heath ("the Property")

2. The Property was acquired by the Appellant on 29 November 2022 for consideration of £2,400,000. The effective date of the transaction ("EDT") was therefore 29 November 2022.

3. On 13 December 2022 the Appellant submitted an SDLT return treating the transaction as non-residential.

4. HMRC opened an enquiry on 7 September 2023 and subsequently issued a Closure Notice dated 22 December 2023 concluding that the Property was residential property within s. 116(1)(a) Finance Act 2003 ("FA 2003").

5. Following review, HMRC upheld that conclusion in a Review Conclusion Letter dated 2 May 2024.

6. The Appellant appealed to the Tribunal on 30 May 2024.

ISSUES

7. The Tribunal must determine whether the Property was residential property within s. 116(1)(a) FA 2003 at the EDT. More specifically:

(1) What is the correct legal approach to determining whether a building is "suitable for use as a dwelling" for the purposes of s. 116(1)(a) FA 2003?

(2) Applying that approach, what were the condition, characteristics and identity of the Property at the EDT?

(3) Having regard to those characteristics and all other relevant circumstances, was the Property suitable for use as a dwelling at the EDT?

RELEVANT LAW

8. Section 116(1) FA 2003 provides, so far as material:

> "In this Part 'residential property' means—
>
> (a) a building that is used or suitable for use as a dwelling, or is in the process of being constructed or adapted for such use..."

9. Schedule 4ZA provides for higher rates of SDLT to be chargeable in respect of purchases of dwellings in certain specified situations. The definition of "dwelling" in para 18, Schedule 4ZA is in the same terms as the definition of "residential property" in s. 116(1)(a) FA 2003, save that it applies to a "single" dwelling.

10. Guidance on the meaning of that phrase is provided by the Court of Appeal in *Mudan v HMRC* [2025] EWCA Civ 799 ("*Mudan COA*"), upholding the decision of the Upper Tribunal in *Mudan v HMRC* [2024] UKUT 307 (TCC) ("*Mudan UT*"). *Mudan UT* and *Mudan COA* are collectively referred to as "*Mudan*".

11. In *Mudan COA*, the Court rejected the submission that a property must be capable of immediate occupation in order to be "suitable for use as a dwelling". Lewison LJ observed:

> "Mr Firth's argument requires the phrase 'suitable for use' to be interpreted as if it read 'suitable for immediate use' ... But that, quite simply, is not what the definition says."

12. The Court further observed that the enquiry is directed more broadly to the nature and characteristics of the property. Lewison LJ stated:

"the phrase 'suitable for use as a dwelling' is more likely to be focused on the fundamental characteristics and nature of a building which is the subject matter of the transaction than on a snapshot classification by reference to habitability at the effective date."

13. The Court recognised that where a building has previously been used as a dwelling, its prior identity is a relevant consideration. Lewison LJ stated:

> "where the property in question had a previous identity, one highly relevant question is whether on the relevant date it has lost that identity."

14. The Court of Appeal also observed that, in considering whether a property is residential property, it is relevant to consider what an ordinary speaker of English would characterise as residential property, namely the sort of property in which people live.

15. In *Mudan UT*, the Upper Tribunal observed at para [58] that the following points should be considered in determining the impact of the works needed to a building on its suitability for use as a dwelling. The passage is replicated below:

> "(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 in *Fiander UT*, 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). 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."

16. The Upper Tribunal stressed that no single factor is determinative and that the issue requires an evaluative assessment of all the relevant circumstances, expressly stating at [57] that "it is necessary to keep in mind the determination of suitability for use as a dwelling is a multi-factorial assessment, and the need for repairs, if any, is only one factor in that assessment"

17. At [59] the Upper Tribunal specifically declined to set out more specific guidance or to formulate the test by reference to some measure of fundamentality.

18. The Court of Appeal endorsed the seven considerations identified by the Upper Tribunal at [58] in *Mudan UT* and approved the Upper Tribunal's overall approach to the interpretation of the phrase "suitable for use as a dwelling". Lewison LJ concluded at [69] that the general principles identified by the Upper Tribunal were "practical, workable" and reflected Parliament's intention.

19. We were also referred to *HMRC v Ridgway* [2024] UKUT 36 (TCC), in which the Upper Tribunal emphasised that no gloss should be placed on the statutory language and that the question remains one of evaluative judgment having regard to all the circumstances.

20. The Tribunal was referred to a number of First-tier Tribunal decisions, including *P N Bewley Ltd v HMRC* [2019] UKFTT 65 (TC) ("*Bewley*"), *Fish Homes Ltd v HMRC* [2020] UKFTT 180 (TC) and *Henderson Acquisitions Ltd v HMRC* [2023] UKFTT 739 (TC). Those decisions turn on their particular facts and do not establish separate legal tests. They may nevertheless provide illustrations of the application of the statutory test to properties in differing states of repair and condition.

21. The question for this Tribunal is therefore whether, having regard to all relevant circumstances and applying the guidance in *Mudan*, the Property was suitable for use as a dwelling at the effective date of the transaction.

EVIDENCE AND SUBMISSIONS

22. The Tribunal heard oral evidence from:

(1) Mr Jay Levy, a director of the Appellant; and

(2) Mr Sam Scoffield, an asbestos consultant.

23. The Tribunal was referred to, amongst other documents:

(1) structural survey reports prepared by Geared Consulting Partnership dated October 2022 and February 2023 (the "Geared Reports");

(2) costings report prepared by MPG Shreeves dated October 2022 (the "Shreeves Costing Report");

(3) report prepared by the Morton Partnership for Hertsmere Borough Council dated 5 June 2023 (the "Morton Report");

(4) asbestos survey report prepared by BPS Asbestos Services dated November 2023 ("Asbestos Report");

(5) removal of asbestos works report prepared by Rilmac Insulation dated April 2024 ("Rilmac Document");

(6) asbestos demolition survey prepared by Apollo Environmental dated November 2025 ("Apollo Asbestos Survey")

(7) planning and demolition documentation;

(8) photographs of the Property; and

(9) witness statements and accompanying exhibits.

24. At some points, evidence was incomplete. In particular in relation to the removal of asbestos. We have addressed this in paragraphs 42 and 106 below.

Mr Levy

25. In cross-examination, Mr Levy accepted that he regarded the Property as a development opportunity from the outset and that it had always been the Appellant's intention to seek planning permission to demolish the existing house and redevelop the site with two new houses. He accepted that the Geared Reports and the Shreeves Costing Report were commissioned after that intention had been formed and as part of the evidence-gathering process for the planning application. He further accepted that the Appellant never intended to carry out the remediation works that had been costed and that his views as to the economic viability of renovation reflected his own assessment of the position. Mr Levy's evidence on this point was not challenged.

26. In relation to the asbestos, Mr Levy accepted that the Asbestos Report did not state that the asbestos could not be removed. He also accepted that asbestos remediation works were in fact carried out before the Property was demolished. He was taken to documents suggesting that one aspect of the remediation works had involved approximately four hours on site, specifically the Rilmac Document. Mr Levy stated that he did not know whether further work had been undertaken and could only refer to the documents before the Tribunal. He accepted that the Apollo Asbestos Survey appeared to show that the remediation work had been completed and that no asbestos had been detected following testing. However, Mr Levy also

stated that, in his view, the significance of the asbestos contamination was not limited to the process of removal itself. He said that the removal of the asbestos-containing materials would necessitate the removal and replacement of associated systems and facilities within the Property and that, as a consequence, the Property would require further reinstatement works before it could be occupied. In his view, if the Appellant had intended to renovate rather than re-develop, the remediation would leave the Property requiring the replacement of those elements before it could again function as a dwelling.

27. In re-examination, Mr Levy was asked about the Rilmac Document relied upon in cross-examination, which had referred to asbestos remediation work at a specific external location involving pipe insulation. Mr Levy explained that the work had been undertaken by a specialist subcontractor engaged by the contractor. He stated that his understanding, based on the Asbestos Report, was that the asbestos contamination identified at the Property extended beyond pipe insulation and was present in a wider range of locations throughout the building.

Mr Scoffield

28. Mr Scoffield, the author of the Asbestos Report, gave evidence that asbestos-containing materials were present in numerous locations throughout the Property, including the basement, ground floor, service boxing and roof void. He explained that the survey process involved the use of a material assessment algorithm which assessed the condition and characteristics of asbestos-containing materials and assisted in determining the regulatory category of the works required, including whether works were licensed, non-licensed or notifiable. He described the asbestos contamination as widespread throughout the Property. In his view, the materials fell within the highest category of risk because of the damaged and dilapidated condition of the building. For that reason, the recommendation was that access to the Property should be restricted immediately.

29. Mr Scoffield further explained that remediation would have required the use of licensed asbestos contractors, the establishment of enclosed work areas operating under negative air pressure, air monitoring and clearance certification. He said that individual areas of contamination would have required separate enclosures and that the remediation would have needed to be carried out in stages within separate zones of the Property, particularly given the size of the basement. He also stated that the set-up alone for some licensed asbestos removal works could take a day.

30. In cross-examination, Mr Scoffield accepted that his report did not state that the asbestos could not be removed. He agreed that the asbestos could be dealt with and removed, provided that the work was carried out in accordance with the applicable regulatory requirements and by appropriately licensed contractors.

Appellant's Submissions

31. The Appellant submitted that the Property was not residential property within the meaning of s. 116 FA 2003 because, at the EDT, it was not suitable for use as a dwelling. Whilst accepting that the Property had historically been used as a dwelling, the Appellant contended that its condition at the effective date was such that it had ceased to possess the characteristics of a dwelling and had become, in substance, a development site requiring demolition.

32. Mr Birkbeck submitted that the authorities, including *Mudan*, recognise that there is a degree of dilapidation capable of changing the character of a property. He argued that the assessment is not confined to physical condition alone but requires a broader multifactorial evaluation, including legal, economic and safety considerations. He submitted that the commercial viability of restoring a property was capable of forming part of that assessment

and relied on *Ridgway* as demonstrating that suitability for use as a dwelling is not determined solely by physical features.

33. Turning to the evidence, Mr Birkbeck relied on the photographic evidence, submitting that it demonstrated the Property to be in a very poor state of repair. He referred to evidence that the Property had proved difficult to sell, including at auction, and had continued to deteriorate while on the market. It was ultimately sold approximately three years after first being marketed. Mr Birkbeck submitted that the market's response to the Property was relevant to the assessment of the extent of the property's deterioration and the practicality of remediation. .

34. A substantial part of the Appellant's case concerned the Geared Reports, Morton Report, Shreeves Costing Report and the Asbestos Report. Mr Birkbeck submitted that neither the Geared Reports nor the Morton Report had been challenged as to the honesty or professionalism of their authors. Although the reports reached different conclusions as to whether remediation was feasible, he argued that it was more helpful to focus on their areas of agreement than their differences. In his submission, both the Geared Reports and the Morton Report identified serious structural issues affecting the Property, including cracking, damp, mould and concerns relating to the retaining wall and foundations. Whilst the Geared Reports approached the matter from the perspective of redevelopment and the Morton Report from the perspective of heritage preservation, both reports identified substantial defects affecting the building.

35. Mr Birkbeck submitted that the Geared Reports identified extensive structural defects, cracking and subsidence which rendered the building unsuitable for occupation without significant remedial works. He argued that the Geared Reports raised concerns that structural works could themselves create risks to the building. He submitted that there was no basis upon which the Tribunal should discount the Geared Reports merely because they had been commissioned in support of the planning process.

36. With regard to the Morton Report, Mr Birkbeck accepted that it was more optimistic about the prospects of remediation. However, he submitted that the Morton Report nevertheless accepted many of the same underlying factual matters identified by the Geared Reports and acknowledged issues relating to cracking, damp and the retaining wall. He further noted that the Morton Report identified the removal of part of the building as a potential solution. He argued that the principal difference between the reports was not the existence of defects but their opinions as to the viability, risks and desirability of remediation.

37. Mr Birkbeck accepted that the Shreeves Costing Report was a broad-brush exercise rather than a precise valuation of remediation costs. However, he submitted that HMRC's criticism of the figures as inflated was unsupported by evidence.

38. He submitted that the significance of the report lay not in the precision of its figures but in what it demonstrated about the condition of the Property. The report estimated remedial works costs at approximately £2.25 million and, in his submission, translated the extensive deterioration and remediation requirements into financial terms, illustrating the exceptional scale of the works that would have been required. He further argued that it supported the conclusion that remediation was not commercially viable and that demolition was the only realistic option. He submitted that the report should therefore be treated primarily as evidence of the extent of the deterioration and intervention required rather than as a precise costing exercise.

39. He also noted that, while the Morton Report criticised aspects of the costing exercise, it nevertheless recognised the uncertainty involved and expressly stated that the Shreeves Costing

Report did not include any allowance for asbestos clearance costs, meaning that the true cost of renovation could be even greater than suggested by the competing analyses.

40. Overall, Mr Birkbeck's submission was that the Shreeves Costing Report should be treated as evidence of the extent of the property's deterioration, the scale of the intervention required and the economic impracticality of repair, rather than as a document whose importance depended on the accuracy of any particular figure within it.

41. The Appellant further relied upon the Asbestos Report. Mr Birkbeck submitted that the survey of the Property relied on in preparation of the Asbestos Report was the only intrusive investigation carried out at the Property and that it identified twenty-one separate occurrences of asbestos throughout the building. He relied upon Mr Scoffield's evidence that asbestos-containing materials were present in numerous locations, including the basement, ground floor, service boxing and roof void. He submitted that the contamination had been assessed at the highest category of risk, that immediate restriction of access had been recommended and that remediation would have required licensed contractors, negative-pressure enclosures, monitoring, clearance certification and phased removal works. In his submission, the asbestos contamination was both extensive and significant.

42. Mr Birkbeck submitted that HMRC placed undue weight on documents suggesting that asbestos remediation had involved only four hours' work. He argued that the Rilmac document related to a limited aspect of the works concerning pipe insulation and did not represent the wider remediation identified in the Asbestos Report. In his submission, the evidence did not support the conclusion that all of the asbestos contamination identified in the survey had been addressed during a brief operation of that nature. He relied upon the fact that the Asbestos Report identified asbestos-containing materials in numerous locations throughout the Property and on Mr Scoffield's evidence that the remediation would have required multiple negative-pressure enclosures, with the set-up of a single enclosure potentially taking up to a day.

43. The Appellant accepted that Mr Levy had identified the Property as a development opportunity at an early stage and had intended to pursue demolition and redevelopment. However, Mr Birkbeck submitted that the relevance of that evidence was limited. He argued that the issue was not why the Appellant wished to demolish the Property but whether the objective evidence demonstrated that demolition was the only viable option. In his submission, the expert reports and asbestos evidence demonstrated that it was.

44. Applying the seven considerations identified by the Upper Tribunal in *Mudan UT* and subsequently endorsed by the Court of Appeal, Mr Birkbeck submitted that they pointed decisively towards the conclusion that the Property was not suitable for use as a dwelling at the EDT.

45. In relation to the first consideration, he accepted that the Property had previously been used as a dwelling. However, he submitted that its residential history was not determinative in circumstances where it had been vacant for several years and had undergone substantial deterioration during that period.

46. In relation to the second consideration, he submitted that the Property lay much closer to the "empty shell" end of the spectrum identified in *Mudan* than to a desirable but dilapidated house requiring updating. He relied upon the significant structural defects, deterioration, asbestos contamination and unsafe condition of the Property, as evidenced by the reports..

47. In relation to the third consideration, Mr Birkbeck submitted that the works required were directed towards rendering the Property capable of occupation rather than making it a more pleasant place to live. He argued that the necessary intervention went well beyond ordinary renovation or remediation.

48. In relation to the fourth consideration, he submitted that the Tribunal was required to consider not merely whether the defects were theoretically remediable, but whether remediation was a viable proposition in the circumstances. He argued that viability necessarily included financial viability and that the scale of the structural works, asbestos remediation and projected costs demonstrated that repair was not a viable option. He further relied on the concerns identified in the Geared Reports regarding the consequences of intrusive remedial works.

49. In relation to the fifth consideration, Mr Birkbeck submitted that occupation at the EDT would have been unsafe and that this was a significant factor pointing away from the Property being suitable for use as a dwelling.

50. In relation to the sixth consideration, he accepted that the distinction between minor and fundamental repairs did not constitute a separate legal test. However, he submitted that the scale and nature of the works required illustrated that this was far removed from a case involving ordinary repairs or refurbishment.

51. In relation to the seventh consideration, Mr Birkbeck submitted that the cumulative effect of the structural defects, deterioration, asbestos contamination and extensive remedial works required was that the Property had ceased to possess the characteristics of a dwelling. In his submission, it had become a development site containing a dangerous and dilapidated building requiring demolition and had therefore lost its residential character by the EDT.

52. Mr Birkbeck further relied upon *Bewley*. He submitted that the decision remained good law and demonstrated that asbestos contamination may be relevant to whether a property has ceased to be suitable for use as a dwelling, particularly where the contamination and the works required to address it form part of a wider picture of disrepair. He argued that the present case was at least as strong as *Bewley* because the asbestos contamination was widespread, existed alongside significant structural defects and contributed to a cumulative picture showing that the Property had ceased to possess the characteristics of a dwelling.

53. He submitted that the fact asbestos remediation was ultimately carried out did not answer the statutory question. The relevant issue was whether, viewed objectively at the EDT and together with the other defects affecting the Property, the contamination and the works required to address it meant that the Property was no longer suitable for use as a dwelling.

54. In reply, Mr Birkbeck submitted that HMRC had failed to identify any principled boundary between a residential property and one which had ceased to be residential. He argued that HMRC's submissions effectively suggested that a building remained residential unless it had physically collapsed, or was incapable of being fixed such that it would physically collapse if necessary repairs were attempted. He submitted that this could not be correct and that the evidence demonstrated that the Property's fundamental character at the effective date was derelict, hazardous and non-residential. He further argued that the references in *Mudan* to viability could not sensibly exclude financial considerations and that the Tribunal should assess all relevant factors cumulatively rather than in isolation. On that basis, he submitted that the appeal should be allowed.

55. The Appellant also relied on policy considerations. Mr Birkbeck submitted that if HMRC's approach were correct, a purchaser acquiring a severely dilapidated building as a development opportunity would nevertheless be required to pay SDLT at residential rates. He argued that such an interpretation would create a perverse incentive for vendors and purchasers to arrange for demolition before completion and would not accord with commercial reality or the purpose of the legislation. He submitted that there must be a point at which a building becomes so derelict and so costly to remediate that it ceases to retain its residential character.

HMRC's Submissions

56. HMRC submitted that the correct approach was that set out by the Court of Appeal in *Mudan*, namely a multifactorial assessment directed towards whether the Property retained the fundamental characteristics of a dwelling at the effective date of the transaction. The question was not whether the Property was habitable or capable of immediate occupation, but whether it had retained its residential identity and character. HMRC submitted that both the ordinary meaning of "residential property" and the statutory test pointed to the same conclusion: the Property remained residential at the effective date.

57. Dr Schryber submitted that the Appellant was a property developer which had identified a large dilapidated house situated on a substantial plot of land and viewed it as a development opportunity. The issue for the Tribunal was whether the house was residential property when acquired, not what use the purchaser intended to make of it thereafter.

58. Relying on *Mudan*, Dr Schryber submitted that the focus should be on the fundamental characteristics of the building rather than its immediate habitability at the EDT. He submitted that the Court of Appeal had rejected any requirement for immediate occupation and had also rejected the notion that a property ceased to be residential merely because substantial repairs were required. The need for repairs was only one factor within the overall multifactorial assessment.

59. Dr Schryber submitted that the authorities directed attention primarily towards the structure of the building. He submitted that the building should be understood as the physical framework and structure rather than its internal fittings, services, wiring or pipework. He argued that the Property remained recognisable as a house and continued to possess the fundamental characteristics of a dwelling.

60. A central theme of HMRC's submissions was that economic viability formed no part of the statutory test. Dr Schryber submitted that there was nothing in *Mudan* to suggest otherwise. Whilst he accepted that commercial considerations might not be wholly irrelevant, they were not part of the approach prescribed by either the Upper Tribunal or the Court of Appeal. He submitted that HMRC's published guidance reflected that position. Referring to SDLTM00385, he noted that the guidance had been amended over time to reflect the developing case law and had been updated following the Court of Appeal's decision in *Mudan*. He submitted that the guidance sought to reflect the Court of Appeal's approach and did not treat commercial viability as a consideration. In HMRC's submission, if a defect was capable of remedy then it was "fixable" for the purposes of the authorities, irrespective of cost.

61. Dr Schryber also submitted that economic viability was inherently difficult to assess. Questions of profitability depended upon matters such as acquisition cost, redevelopment potential, market conditions and subjective commercial judgments. He submitted that Mr Levy's evidence as to viability was no more than his personal opinion and that the Appellant had never seriously investigated remediation as an alternative option. There was no evidence of the value of a refurbished property and no proper evidence upon which the Tribunal could assess whether remediation was economically viable.

62. HMRC further submitted that a number of the documents relied upon by the Appellant had been obtained for the purpose of persuading the local authority to grant planning permission and should therefore be approached with caution. Dr Schryber noted that the local authority had not simply accepted the evidence produced on behalf of the Appellant - the Geared Reports and the Shreeves Costings Report. Instead, it had commissioned the Morton Report to provide an independent assessment. He submitted that this reduced the significance to be attached to the Geared Reports and the Shreeves Costing Report.

63. Dr Schryber invited the Tribunal to read the Geared Reports with care. He submitted that many of their conclusions were expressed in speculative terms and concerned what might happen in the future rather than the actual condition of the Property at the EDT. In particular, he submitted that the reports did not state that the retaining wall was on the point of collapse or that there were immediate safety concerns arising from the structure of the building. Rather, they identified potential future risks. In his submission, evidence of possible future problems was insufficient to establish that the Property had ceased to possess the characteristics of a dwelling.

64. Dr Schryber submitted that both the Geared Reports and Morton Report identified cracking and defects but that the most serious issues related to the extensions rather than the main house. He argued that the Morton Report concluded that the principal structure remained generally sound, that there were no significant deficiencies in the roof structure and that much of the cracking identified was superficial. He further submitted that the Morton Report should carry particular weight because it had been obtained independently and was not produced to support a planning application.

65. HMRC also criticised the Shreeves Costing Report. Dr Schryber submitted that the figures appeared broad-brush, lacked detail and had been obtained in support of the Appellant's planning case. For those reasons, he submitted that caution should be exercised before placing significant weight upon them.

66. Turning to the asbestos evidence, Dr Schryber submitted that the Asbestos Report established only that asbestos was present, not that it was incapable of removal. He argued that the evidence demonstrated that asbestos remediation was possible and had in fact been carried out. He relied on documents which indicated that pipework asbestos had been removed in approximately four hours and that subsequent testing identified no asbestos. In his submission, those documents illustrated that the asbestos contamination was capable of successful remediation.

67. Addressing the Appellant's application of the seven *Mudan* factors, HMRC submitted that the property had been vacant for only approximately three and a half years, which was insufficient to cause it to lose its residential character. HMRC disagreed with the Appellant's contention that the property was structurally unsound and maintained that the proper focus was whether the defects were capable of remedy. It was submitted that the plans of a property developer should not determine the characterisation of the property and that the fact demolition might be commercially attractive did not mean it was the only viable option.

68. HMRC accepted that the property was unsafe for occupation at the effective date and that asbestos represented a hazard. However, Dr Schryber submitted that those matters were only factors within the overall assessment and were not determinative. He argued that the defects were capable of remedy, the asbestos had proved capable of remediation, and there was no evidence that repair works were impossible or so dangerous as to prejudice their viability.

69. In relation to *Bewley*, HMRC submitted that the decision was of limited assistance. Dr Schryber argued that the facts were materially different. In *Bewley*, asbestos was said to permeate the structure of the bungalow to such an extent that demolition was effectively the only option. By contrast, the asbestos identified in the present case was capable of removal and was ultimately removed. He submitted that any similarity between the cases was superficial and that the reasoning in *Bewley* had in any event been overtaken by the subsequent guidance provided in *Mudan*.

70. In conclusion, HMRC submitted that the evidence supported a finding that the main house remained structurally sound, that any defects were capable of remedy, that the asbestos problem was capable of being and was in fact remedied, and that the property remained

recognisable as a house. It was submitted that the building retained its essential residential character at the effective date and that the evidence fell short of establishing that demolition was the only realistic option. HMRC therefore contended that the property was residential property within the meaning of s. 116 FA 2003 and that the appeal should be dismissed.

Findings of Fact

The Property

71. The Property, known as "Great Oak", Prowse Avenue, Bushey Heath, was originally constructed in the 1930s as a substantial detached dwelling house. It comprised a basement, two principal storeys and a timber roof structure. A two-storey extension was added in the 1960s.

72. There is no evidence before us that the Property was ever used for any purpose other than residential occupation. We find that it was designed, constructed and used as a dwelling house for many years.

73. The Property was purchased by the Appellant on 29 November 2022 for consideration of £2,400,000.

74. At the date of acquisition, the Property had been vacant for a number of years. The evidence suggests that it had not been occupied for approximately three to four years before the transaction.

75. The marketing particulars described the Property as “a unique large four bedroom east facing detached house with extension potential”. The particulars referred to an entrance hall, kitchen, reception room, dining room, study, utility room, four bedrooms and bathroom facilities.

76. Prior to acquisition, the Appellant had obtained professional advice regarding the condition of the Property and had begun to consider redevelopment proposals for the site.

77. We accept Mr Levy's evidence that, by the time of acquisition, the Appellant's preferred outcome was demolition of the existing building and redevelopment of the site. However, we do not regard that intention as determinative of the statutory question before us.

General Condition of the Property

78. It is common ground that, by the effective date of the transaction, the Property was in a poor and substantially deteriorated condition.

79. The photographic evidence and contemporaneous reports demonstrate widespread deterioration throughout the Property, including:

(1) damp and mould growth;

(2) evidence of water ingress;

(3) cracking affecting various parts of the building;

(4) deterioration of internal finishes;

(5) boarded or damaged windows in certain areas;

(6) defects affecting building services and utilities; and

(7) the presence of asbestos-containing materials.

80. We find that the Property showed signs of prolonged vacancy and lack of maintenance. Photographs and survey evidence recorded peeling wallpaper, mould growth, damp staining, deterioration of joinery and evidence of vandalism or unauthorised access.

81. We are satisfied that substantial works would have been required before the Property could have been occupied.

82. We further find that the Property was not suitable for immediate occupation at the effective date.

83. The condition of the Property extended beyond ordinary dilapidation resulting from age or lack of modernisation. The evidence demonstrates a building which had experienced substantial deterioration affecting numerous elements of its fabric and services.

Structural Condition

84. The parties relied upon competing evidence concerning the structural condition of the Property. The Appellant relied principally upon the reports prepared by Geared Consulting Partnership, whilst HMRC relied upon the report prepared by the Morton Partnership for Hertsmere Borough Council.

85. We accept that the Geared Reports were obtained in support of the Appellant's efforts to secure planning permission for demolition and redevelopment of the site. Equally, however, the Morton Report was commissioned by Hertsmere Borough Council in circumstances where the Council wished to assess whether demolition of a building regarded as having heritage value was justified. The experts were therefore instructed in the context of parties whose objectives were, at least broadly speaking, opposed.

86. We do not consider that this fact undermines the independence or reliability of any of the reports. There is no suggestion that either expert acted otherwise than professionally or honestly. We found no basis for impugning the integrity of either the Morton Report nor the Geared Reports. We therefore accept each report as a genuine expert attempt to assess the condition of the Property. In our view, the principal differences between them concern the significance and implications of the defects identified rather than the existence of those defects themselves.

87. Indeed, notwithstanding the different conclusions reached as to the future of the Property, each report identified a building suffering from significant deterioration, damp, cracking, structural movement and other defects requiring substantial remedial works.

88. The Geared Reports identified significant damp, cracking and structural movement throughout the Property. They expressed concerns regarding the long-term condition of the building and the risks associated with extensive remedial works. They concluded that the Property was not habitable in its then condition.

89. The Morton Report likewise identified numerous defects and areas of deterioration but drew a distinction between the principal dwelling and later additions and extensions. It concluded that the main house was structurally reasonable and that there was no evidence of subsidence requiring underpinning. However, the report did not suggest that the Property was free from significant defects or that only limited works would be required.

90. In particular, both the Geared Reports and the Morton Report identified serious concerns relating to the rear terrace and retaining wall. Both recognised movement affecting those structures and both contemplated that substantial remedial works would be required. Whilst the Geared Reports expressed a more pessimistic view of the risks arising from that movement, the existence of the issue itself was also recognised in the Morton Report.

91. Likewise, each report identified significant defects affecting the two-storey extension. Although Morton considered the main house to be structurally reasonable, it described the extension as being in poorer condition and stated that it could properly be considered for removal.

92. We regard these matters as significant areas of agreement. They demonstrate that substantial elements of the Property required major intervention and that the dispute between the structural engineers was not whether defects existed, but whether those defects justified demolition of the Property as a whole rather than extensive remediation.

93. The evidence establishes that substantial intervention would have been required to address cracking, damp ingress, deterioration and defects affecting the retaining wall, terrace and extension.

94. We do accept that some of the concerns identified in the Geared Reports related to future risks and potential consequences of remediation works rather than imminent structural collapse.

95. We are not satisfied that the Property was at risk of immediate structural failure at the effective date.

96. Nor are we satisfied that the evidence establishes that repair was physically impossible.

97. Nevertheless, we find that the works required were extensive and intrusive and extended well beyond ordinary refurbishment or modernisation. The scale of intervention required reflected the cumulative effect of years of deterioration and neglect affecting both the building and associated structures.

98. The significance of those findings lies not merely in the existence of defects but in the extent of the intervention required to address them. The works identified were directed to structural and fabric defects affecting significant elements of the Property rather than to matters of decoration, modernisation or routine maintenance.

Asbestos

99. It is common ground that asbestos-containing materials were present within the Property at the effective date of the transaction.

100. We accept the evidence of Mr Scoffield and find that asbestos-containing materials were identified in numerous locations throughout the Property, including the basement, service areas, roof void and other internal locations.

101. We further accept his evidence that the asbestos present included materials falling within the category of licensable asbestos works and that, by reason of their condition and distribution, they posed a significant risk if disturbed.

102. We find that the asbestos contamination was not confined to a single isolated area of the Property. Rather, it was present across a number of locations and affected elements of the building's mechanical and plumbing infrastructure.

103. We accept Mr Scoffield's evidence that unrestricted occupation of the Property would have been unsafe and that specialist remediation would have been required before occupation, remediation or intrusive works could safely proceed.

104. We further accept his evidence that remediation would have required appropriately licensed contractors, controlled working environments, air monitoring, environmental cleaning and clearance certification before the building could safely be reoccupied.

105. We find that, at the effective date, occupation of the Property would have required substantial asbestos remediation and the completion of the relevant regulatory procedures before the Property could safely be used.

106. HMRC relied upon documentation suggesting that asbestos remediation works undertaken subsequently involved approximately four hours of work on site. We do not regard

that evidence as establishing either the true extent of the contamination or the totality of the remediation works required. The Rilmac Document appears to relate to a specific element of asbestos removal, namely pipe insulation. It does not purport to describe all of the asbestos-containing materials identified within the Property, nor the entirety of the remediation process that was ultimately required.

107. We therefore reject the suggestion that the asbestos issues affecting the Property can properly be characterised by reference to a single operation of relatively short duration.

108. Having considered the Asbestos Report, the locations in which asbestos-containing materials were identified, and Mr Scoffield's oral evidence regarding the requirements of licensed asbestos removal works, we find that the remediation required was likely to have been substantially more extensive than the limited works recorded in the Rilmac document.

109. We accept Mr Scoffield's evidence that remediation would have involved the establishment of controlled working zones, negative-pressure enclosures, specialist removal procedures, environmental cleaning, monitoring and certification. We further accept his evidence that licensed works of that nature would ordinarily require significant preparatory and containment measures in addition to the physical removal itself.

110. We also accept Mr Levy's evidence that the significance of the asbestos issue extended beyond the simple act of removing asbestos-containing materials.

111. The evidence demonstrates that a substantial proportion of the asbestos-containing materials were associated with existing services and infrastructure within the Property. Removal of those materials would necessarily have involved the removal or disturbance of associated building elements and service installations.

112. Asbestos remediation would not simply have rendered the Property safe for occupation whilst otherwise leaving it intact. Rather, it would have required the removal of existing materials, systems and installations, thereby creating a need for extensive reinstatement works thereafter.

113. In practical terms, successful remediation of the asbestos contamination would have left the Property in a materially more stripped-out condition than before the remediation works were undertaken, requiring substantial reinstatement of services and associated building elements before it could again function as a dwelling.

114. Although we accept that the asbestos contamination was remediable and that remediation was ultimately carried out, we do not regard that fact as determinative. The significance of the asbestos lay not merely in the fact that it could be removed, but in the scale, complexity and consequences of the works required to achieve that result. The fact that those works were ultimately undertaken does not diminish their relevance to the assessment we are required to undertake. The statutory question concerns the condition and characteristics of the Property at the EDT and the works then required before it could again function as a dwelling. We therefore do not discount the asbestos remediation from our assessment merely because the Appellant subsequently carried it out.

115. Taking all of the evidence together, we find that the asbestos contamination formed a significant component of the overall condition of the Property at the effective date. The contamination necessitated substantial specialist remediation before either occupation, remediation or demolition could safely proceed and materially contributed to the scale and intrusiveness of the intervention required.

Cost of Remediation

116. The Appellant relied upon the Shreeves Costing Report, which estimated remedial works costs of approximately £2.25 million.

117. We accept HMRC's submission that the report was prepared on a broad-brush basis and was not intended to be a precise quantity-surveying exercise.

118. We do not consider the figure identified in the report to have been established with sufficient certainty to justify detailed findings as to the exact cost of remediation.

119. However, we consider the report to be persuasive evidence of the scale of intervention that would have been required.

120. We note that the Morton Report criticised aspects of the costing exercise but did not suggest that remediation would have been inexpensive. Indeed, it observed that asbestos remediation costs had not been included within the Shreeves Costing Report.

121. We find that any realistic remediation of the Property would have involved expenditure of an exceptional magnitude.

122. We further find that the likely cost of remediation and asbestos removal was extraordinarily high when considered together with the nature and extent of the defects affecting the Property.

123. We do not treat economic viability as a separate legal test. However, the scale of the projected expenditure is relevant evidence of the extent of the deterioration affecting the Property, the severity of the defects present and the scale of the works required before the Property could again function as a dwelling.

Summary of Factual Findings

124. Drawing the evidence together, we find that at the effective date:

(1) the Property had been vacant for approximately three to four years;

(2) it was affected by significant damp, mould, water ingress and deterioration;

(3) it suffered from substantial structural and fabric defects requiring extensive remedial works;

(4) it contained widespread asbestos-containing materials requiring specialist remediation before occupation could take place;

(5) it was not safe for occupation in its existing condition;

(6) remediation would have required extensive and intrusive works together with very substantial expenditure; and

(7) whilst we do not find that remediation was physically impossible, the evidence establishes that aspects of the proposed structural intervention carried a risk of causing further damage or deterioration to elements of the existing structure.

125. Although the building physically remained standing and retained a recognisable residential layout, we find that by the effective date it was a severely deteriorated structure requiring extensive structural works, asbestos remediation and consequential reinstatement before it could again function as a dwelling.

DISCUSSION

The correct approach

126. The parties agreed that the correct legal approach is that set out by the Upper Tribunal and subsequently endorsed by the Court of Appeal in *Mudan*.

127. The question is not whether the Property was capable of immediate occupation at the EDT. As the Court of Appeal made clear, the statutory language is directed to whether a building is "suitable for use as a dwelling", not whether it is suitable for immediate occupation.

128. Nor is the issue determined simply by the presence of defects, disrepair, asbestos contamination or health and safety concerns. Equally, the fact that substantial works are required before occupation can occur does not necessarily mean that a property has ceased to be suitable for use as a dwelling.

129. Rather, the Tribunal must undertake an evaluative assessment of all relevant circumstances in order to determine whether, viewed objectively at the EDT, the Property retained the characteristics and identity of a dwelling.

130. In carrying out that assessment, we have had particular regard to the guidance provided by the Upper Tribunal in *Mudan UT* and endorsed by the Court of Appeal. However, no single factor is determinative and the exercise remains a multifactorial one directed to the statutory language.

131. We also bear in mind the Court of Appeal's observation that, where a property has previously been used as a dwelling, a highly relevant question is whether it had lost that identity by the effective date of the transaction.

Previous use and physical character

132. There is no dispute that the Property was designed, constructed and used as a dwelling house for many years.

133. At the EDT, the Property remained physically standing and retained a recognisable residential layout. It continued to contain the layout and rooms ordinarily associated with a dwelling house and remained externally recognisable as a substantial detached residence.

134. These matters weigh in favour of HMRC's position. Previous residential use is a highly relevant consideration and the continued existence of a recognisable residential form and layout points towards the retention of residential character.

135. However, previous use is not determinative. As recognised in *Mudan*, a building which was once suitable for use as a dwelling may deteriorate to such an extent that it no longer possesses the characteristics and identity of a dwelling at the relevant date.

136. The issue is therefore whether the extent of deterioration affecting the Property at the EDT was such that it had crossed that line.

Condition, disrepair and remediability

137. We have found that by the EDT the Property had been vacant for approximately three to four years and had undergone substantial deterioration. It suffered from widespread damp, mould, water ingress, deterioration of finishes, defects affecting services and utilities, extensive asbestos contamination and significant structural and fabric defects requiring substantial intervention.

138. We accept that the Property was not suitable for immediate occupation and that substantial works would have been required before occupation could realistically occur. However, as the Court of Appeal made clear in *Mudan*, immediate habitability is not the statutory test.

139. We also accept that the Property was not at risk of imminent collapse and that repair was not physically impossible. The Property remained standing and retained a recognisable residential form and layout.

140. HMRC submitted that these factors pointed strongly towards the conclusion that the Property remained suitable for use as a dwelling because the identified defects were capable of remediation.

141. We accept that remediability is a highly relevant consideration. We further accept that the ability to undertake repairs and remedial works weighs in favour of the Property retaining its residential character.

142. However, we do not accept that the statutory question is answered simply by asking whether a property can theoretically be repaired.

143. In our view, the discussion in *Mudan* concerning whether defects are capable of remedy cannot sensibly be reduced to the question of whether some form of repair is theoretically possible in the abstract. Almost any standing structure can be said to be capable of repair if one assumes the availability of unlimited time, resources and expenditure. Such an approach risks depriving the statutory assessment of meaningful content.

144. If the mere theoretical possibility of repair were determinative, a building would retain its residential character regardless of the extent of its deterioration, contamination or dereliction, provided only that it had not yet reached the point of physical collapse. We do not consider that such an approach can be reconciled with the multifactorial assessment endorsed by either the Upper Tribunal or the Court of Appeal in *Mudan*.

145. The authorities plainly contemplate that there are buildings which, despite remaining physically standing and despite being theoretically capable of repair, have nevertheless deteriorated to such an extent that they no longer possess the characteristics and identity of a dwelling.

146. Nor do we consider that the assessment of whether defects are capable of remedy requires the Tribunal to disregard the practical consequences of the works required. Those matters are capable of informing the ultimate question identified in *Mudan UT* at [58(7)], namely whether the works of repair and renovation needed to the building are such that it no longer possesses the characteristics of a dwelling at the effective date.

147. The Appellant relied upon evidence indicating that extensive expenditure would have been required to remediate h the Property. We do not make findings as to the precise cost of remediation. However, we accept that the evidence demonstrates that the projected expenditure was exceptionally substantial and reflected the exceptionally extensive and intrusive nature of the intervention required.

148. In the present case, the evidence established not merely that extensive works were required, but that the proposed intervention was exceptional in scope. Significant structural works, extensive asbestos remediation, consequential reinstatement works and major repairs would all have been required before the Property could again function as a dwelling. The significance of those works lay not merely in their cost, but in their scale, extent and cumulative effect upon the condition and character of the Property at the EDT.

149. We also take into account our finding that aspects of the proposed structural intervention carried a risk of causing further damage or deterioration to elements of the existing structure. Whilst we do not find that remediation was impossible, we do not regard this as a straightforward case of repair or refurbishment.

150. The physical possibility of repair therefore weighs in HMRC's favour. However, viewed in the context of the nature, extent and consequences of the works identified, it cannot be determinative. As *Mudan* makes clear, the question remains whether the Property retained the characteristics and identity of a dwelling at the EDT.

Asbestos

151. The asbestos contamination forms a particularly significant feature of the present case.

152. We have found that asbestos-containing materials were present throughout the Property in numerous locations and that unrestricted occupation of the Property would have been unsafe.

153. We accept Mr Scoffield's evidence that substantial licensed asbestos remediation would have been required before occupation, repair or intrusive works could safely proceed.

154. We also accept that the contamination was not limited to a single isolated feature of the Property but affected multiple areas and systems throughout the building.

155. HMRC emphasised that the asbestos could be removed and, indeed, was ultimately removed.

156. We accept that evidence. We do not find that asbestos remediation was impossible.

157. However, we do not regard that fact as determinative. The significance of the asbestos contamination lies not merely in the fact of its existence but in the scale, complexity and consequences of the remediation required.

158. The same remediation would also have been necessary before demolition could lawfully proceed. However, that does not reduce its significance for present purposes. The need for the remediation arose from the condition of the Property itself and formed part of the overall package of works required as at the EDT.

159. In our judgment, the asbestos contamination formed an important component of the overall condition of the Property and substantially contributed both to its unsafe condition and to the extent of the works required before it could again function as a dwelling.

Demolition and redevelopment

160. We accept that the Appellant regarded the Property as a development opportunity and intended from an early stage to pursue demolition and redevelopment.

161. We also note that planning permission for demolition and redevelopment was ultimately granted.

162. However, we attach limited weight to those matters.

163. The statutory question is an objective one directed to the condition and characteristics of the Property at the EDT. The intentions of the purchaser, and the planning decisions subsequently made in relation to the site, do not determine whether the Property was suitable for use as a dwelling at the relevant date.

164. At most, those matters form part of the wider factual background.

Overall assessment

165. Standing back and considering all of the evidence in the round, we recognise that a number of factors point towards the Property retaining its residential character. It was originally designed and constructed as a dwelling, had been used as a dwelling for many years, remained physically standing at the EDT and retained a recognisable residential layout. We also find that neither structural remediation nor asbestos remediation was physically impossible.

166. Those are all matters which weigh in favour of HMRC's position and we have given them appropriate weight.

167. However, by the EDT the Property had been vacant for several years and exhibited extensive deterioration. It was affected by significant damp, mould and water ingress, defects affecting the retaining wall and terrace, deterioration affecting the extension, widespread asbestos contamination, defects affecting services and infrastructure and conditions rendering occupation unsafe.

168. The works required extended far beyond matters of updating, decoration or ordinary refurbishment. Significant remediation was required before occupation could lawfully or safely occur and substantial intervention was required before the Property could again perform the ordinary function of a dwelling.

169. We accept that remediation was theoretically possible. However, we do not regard the question of whether a property is capable of remedy as being answered simply by establishing that some form of repair could be undertaken regardless of the scale, consequences and practical implications of the works required. As we have already stated, we do not consider that such an approach is consistent with the multifactorial assessment required by *Mudan*.

170. We do not treat economic viability as a separate legal test. However, evidence concerning the extent and projected cost of the works is relevant insofar as it illuminates the severity of the defects present and the scale of the intervention required. In the present case, the evidence demonstrated that extensive asbestos remediation, substantial structural intervention and significant reinstatement works would all have been necessary. Those matters form part of the wider factual assessment of whether the Property retained the characteristics and identity of a dwelling at the EDT.

171. We attach significance to the fact that the Property constituted a hazard at the EDT. We have found that unrestricted occupation would have been unsafe and that extensive licensed asbestos remediation would have been required before occupation, repair or intrusive works could safely proceed. Whilst that fact is not determinative, it is expressly recognised in *Mudan* as a relevant consideration in the overall assessment.

172. Significantly, the asbestos remediation did not simply eliminate a hazard whilst leaving the Property otherwise intact. The remediation formed a substantial component of the works required as a consequence of the condition of the Property at the EDT. The fact that such remediation would also have been necessary before demolition could lawfully proceed does not mean that it should be disregarded when assessing the nature and extent of the works required. Whether the objective was renovation or demolition, the asbestos contamination necessitated substantial specialist intervention. Moreover, the remediation process itself required the removal of asbestos-containing materials together with associated services, installations and building elements. It therefore did not of itself restore the residential functionality of the Property. Rather, the remediation process generated a need for substantial further reinstatement works before the Property could again function as a dwelling.

173. It is important to consider these matters cumulatively rather than individually. Viewed in isolation, none of the identified defects is necessarily decisive. Viewed together, however, they present a materially different picture.

174. This was not merely a dwelling awaiting renovation. Nor was it simply an unmodernised property requiring substantial refurbishment. Rather, by the EDT, the combined effect of prolonged vacancy, extensive deterioration, widespread asbestos contamination, significant structural defects, safety concerns, the fact that aspects of the necessary structural intervention carried a risk of causing further damage or deterioration to elements of the existing structure, and the exceptional scale and intrusiveness of the intervention required had fundamentally altered the character and identity of the Property.

175. Applying the multifactorial assessment required by *Mudan*, we are satisfied that the cumulative effect of those matters was that the Property had ceased to possess the characteristics and identity of a dwelling at the EDT. This conclusion is not based upon any single feature of the case, nor upon the economic desirability of redevelopment, but upon the cumulative effect of the conditions we have identified.

176. Although it remained externally recognisable as a former dwelling and although some form of remediation was theoretically possible, we conclude that by the EDT the Property had crossed the line contemplated in *Mudan* and was no longer suitable for use as a dwelling within the meaning of s.116(1)(a) FA 2003.

177. We therefore find that the Property was not residential property at the EDT.

DISPOSAL

178. The appeal is allowed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

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

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05 August 2026