



TAX ON REAL PROPERTY APPEALS PANEL

CASE NO. 0053/2013

THE TAX ON REAL PROPERTY APPEALS TRIBUNAL

NORMANDY VIEW LTD AND MARTEL MAIDES AUCTIONS LTD

The Appellant

-v-

THE STATES OF GUERNSEY TREASURY
AND RESOURCES DEPARTMENT

The Respondent

JUDGMENT OF THE TAX ON REAL PROPERTY APPEALS TRIBUNAL

A. The Tribunal members

Martin Johnson (Chairman)
Stuart Le Maitre
John Weir

Clerk to the TRP Appeals Panel: Mrs N K Allison

B. The persons representing the parties

Mr Clive Maides and Mr Nick Renny appeared for the Appellant.

Mr Mike Burton appeared for the Respondent.

C. Legislation considered or quoted

The Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007 as amended ("the 2007 Ordinance").

D. Dates

The Notice of Appeal was dated 28th December 2012.

The hearing of the appeal took place on 22nd April 2013.

This judgment is dated 30th April 2013.

E. Summary of grounds of appeal

The Appellant in exercising an appeal under Section 31 of the 2007 Ordinance has alleged that, pursuant to Section 31(2) of the 2007 Ordinance that the decision of the Respondent made under Section 30 of the 2007 Ordinance is wrong.

In summary the issue between the Appellant and the Respondent was that the category assigned to part of the property (38-44 Cornet Street St Peter Port) by the Respondent was inappropriate for the two and a half storey element of the building (the granite barn) and that there was a more appropriate category. The Appellants view is that 'Warehouse' was a more appropriate categorisation than 'Retail'.

F. The position and arguments of the Appellant

The Appellant relied on the following documents and details:-

- An oral presentation as to the activities of an Auction House, the uses of the 'granite barn', the range of possible outcomes for items brought into the 'granite barn' and the widely varying length of time such items might reside there.
- An oral presentation to explain the different natures of activity between the formal Auction Rooms and the 'granite barn'
- Copies of all letters, photographs and rental agreement included in the Appeal document pack reference TRP 0053-01 to TRP 0053-39

Although all arguments put forward have been considered by the Tribunal, whether they are mentioned specifically in this judgment or not, the Appellant's submissions, arguments made the following key points:-

1. The nature of the business taking place in the 'granite barn' was distinct from the auction activity
2. That members of the public were not allowed access to the 'granite barn'
3. That one and a half floors of the 'granite barn' were only accessible through a separate entrance and not via the auction room operation
4. That the length of time that items were stored in the 'granite barn' and that a reasonable proportion of those items did not go to auction but instead passed through probate to beneficiaries demonstrated that the area was more akin to storage and therefore warehousing than a retail operation's store-room facility

G. The position and arguments of the Respondent

The Respondent relied on the following documents:-

- An oral presentation as to the visit by Cadastre members to review the 'granite barn' as it was not possible to adequately assess the categorisation from the standard aerial review process.

- An oral presentation to explain the approach taken by the Department when a site with a single ownership or tenancy was being categorised highlighting that, for example, a flat above a shop was easily separately categorised but that it would be inappropriate to break down a shop's various activities into stores, retail floor, administration offices etc...and separately assess those categories and as such a decision had been taken that in such cases the primary use would be applied to the whole site.
- Copies of all letters, photographs included in the Appeal document pack reference TRP 0053-01 to TRP 0053-39

Although all arguments put forward have been considered by the Tribunal, whether they are mentioned specifically in this judgment or not, the Respondent's submissions, arguments made the following key points:-

1. That the activity of the auction house operation did spread across the whole of the site including the 'granite barn', including the safe for valuables and that the auction room office
2. That during their visit they was no evidence of defined areas for each aspect of the various activities undertaken by the Appellants at the site
3. That one floor of the 'granite barn' was accessed through the Auction Room but accepted the point that other aspects did have a separate entrance

H. Findings of fact by the Tribunal

Having considered all submissions, documentation the Tribunal found as follows:-

1. That the different uses of 'granite barn' could not be distinguished with sufficient objectivity from each other to allow a separate categorisation to be considered
2. The primary use of the property was as a site at which professional services were provided be they the business of auctioneering or the business of valuation and disposal guidance

I. The relevant law

Having considered all submissions of the parties the Tribunal found the following provisions of the 2007 Ordinance were applicable to this appeal:-

1. Section 28 (b) a decision as to the property reference into which any real property falls].
2. Schedule 1 Part Three on the interpretation of categories.

J. The decision applying the law to the findings of fact

The Relevant Decision made by the Department was considered from two aspects:

- 1 Whether it was appropriate to categorise the whole building under a single category because it was occupied by a single organisation,
- 2 Whether if the commercial usage area were to be distinctly categorised what that category would be.

In considering Point 1 the Panel took the view that if the activities within an area could not be reasonably differentiated then the Department had to take the pragmatic decision – consistent with the intention that TRP should be a straight-forward legislative process – that the apparent primary or dominant activity should define the entire property category. If a building which was occupied by an organisation alone or in collaboration with other businesses was used to carry on significantly different activities independent of each other such that they had potentially different categorisations then if the organisation(s) established clear lines of demarcation between those activities within the assessed area then the Department should be able to assess uses separately. In this particular case the test of clear demarcation either physical or based on legally distinct organisations was not considered to have been met in the evidence presented to the Panel.

The Panel then considered Point 2 of the Department's Relevant Decision as the usage considered in arriving at a decision on Point 1 would have a significant impact if Point 2 was to become relevant. The Appellant detailed its business of auctioneering and valuation in detail and a key element of the business was the holding of third-party owned chattel to subject them to the professional service of valuation and advice on suitable sales outlets: the outlet might ultimately be the associated Auction Rooms but this is by no means certain. The profession being applied is this valuation/outlet advice and hence 'retail' would be the categorisation under which the space would be assessed where 'retail' is defined as a wide-ranging category in the Schedule 1 to the Ordinance. The concept of the 'granite barn' being categorised as a 'warehouse' was rejected as this category is for the 'storage, transfer or distribution of goods...' whilst the goods in the 'granite barn' are subject to additional value-added services, however limited it may be for some items, an action which differentiates the usage from that of purely warehousing.

K. Costs

Each party to pay their own costs

L. Conclusion

The appeal is rejected.

There is no award of costs as set out above.



Martin Johnson (Chairman)
Stuart Le Maitre
John Weir

30th April 2013