



TAX ON REAL PROPERTY APPEALS PANEL

APPEAL NO: 006/2008

THE TAX ON REAL PROPERTY APPEALS TRIBUNAL

MR T D BACON & MRS V J BACON

The Appellants

of Le Courtil Griffin, Rue des Cottés, St Sampson

-v-

THE STATES OF GUERNSEY TREASURY
AND RESOURCES DEPARTMENT

The Respondent

JUDGMENT OF THE TAX ON REAL PROPERTY APPEALS TRIBUNAL

A. The Tribunal members

Mr. John Weir (Chairman)

Mr. Martin Johnson

Mrs. Sheelagh Evans

B. The persons representing the parties

Mr K.Tydeman appeared for the Appellant.

Mr M.Burton and Mr C.Wall appeared for the Respondent

C. Case law and precedents cited

No case law or precedents were cited

D. Legislation considered or quoted

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

E. Dates

The Notice of Appeal was dated 16th April 2008

The hearing of the appeal took place on 15th December at Les Cotils

This judgment is dated 5th January 2009

F. Summary of grounds of appeal

In summary the issue between the Appellant and the Respondent was the Property Reference Entry of their cattery in Category B4.1 Hostelry and food outlets.

G. The position and arguments of the Appellant

The Appellant relied on the following documents:-

Letter dated 11th February 2008 from Mr Bacon to States Cadastre

Letter dated 16th April 2008 from Mr Bacon to States Cadastre

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 and arguments made the following key points:-

- Part III.1.(a) The definition of " hostelry " means any tourist property from which food is provided for consumption on the premises (whether indoors or outdoors). The cattery is for local cats so is not a tourist facility
- the occupants are animals not humans
- the cattery is constructed of timber hutting and mesh on a concrete floor
- very basic accommodation
- Animal food is distributed twice a day
- there are no bars or restaurants
- there is no appropriate category for a cattery
- there is no dispute on the plan area

H. The position and arguments of the Respondent

The Respondent relied on the following documents:-

Map and schematics 006/1-3

Initial assessment 006/4&5

Correspondence with the appellant 006/6-8

Relevant decision and extracts 006/9-12

Guidance on TRP Ordinance and definitions 006/13-22

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 and arguments made the following key points:-

- The Treasury & Resources Board is entitled to classify property by business
- The original assessment was for general business retail
- Several kennel business complained of this category
- There are a minimal number of tariff categories in the 2007 Ordinance
- CategoryB4.4 Retail is the catch all for service providers
- The Treasury & Resources Board on 19th February 2008 looked at the nature of the business of a kennels/cattery and decided it was an hotel for cats or dogs

- The Treasury & Resources Board made a Directive to change the Category from Retail to Hostelry

I. Findings of fact by the Tribunal

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

1. That the Reference Entry Category B4.1. hostelry and food outlets is not commensurate with the business and nature of a cattery.

The purpose of a cattery is not to provide a tourist property even if its use is probably but not exclusively a consequence of the tourist activity of the animals' owners. This interpretation is fully supported and consistent with the further interpretation in Part III of the Interpretation of Schedule I to the Ordinance of 'tourist property' as '(a) means any dwelling house in respect of which there is in force for the time being a boarding permit issued under the Tourist Law, 1948...'

The 'food outlet' category interpretation in Part III of the Interpretation of Schedule I to the Ordinance related to a real property used for the provision of food as a business either wholly or as a primary purpose. This is not considered to be the primary purpose of a cattery business.

2. That a cattery is more commensurate with the Reference Entry Category B4.7 Recreational and Sporting premises because that category includes buildings used for the activity of stabling, i.e. the business of the care and housing of animals.

The business of a cattery is not itself for recreational or sporting purposes. Indeed the interpretation in Part III of the Interpretation of Schedule I to the Ordinance with regard to the B4.7 category does not exclusively require that premises in this category are used primarily for purposes ancillary to sport.

3. It is the Tribunal's opinion that a new sub-section is created for catteries, possibly as a subset of stabling, and suggests that the inclusion of kennels should be considered at the same time

J. 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 3 & 4 Schedule 1 Part 1.a The property reference was incorrect
2. Section 35.1.b The relevant decision should be quashed and the matter referred to the Department to reach a decision in accordance with the Tribunal's decision

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

The Tribunal found that the category B4.1. was inappropriate. In accordance with Section 35 of the Ordinance the Tribunal hereby quashes the relevant decision and directs the Treasury and Resources Department to reconsider and to place the property which is the subject of this Appeal in a new Reference Entry Category for Catteries, possibly as a sub set of Stabling under B4.7. The effective date of such change is to be no later than the date of this judgment.

This decision was unanimously agreed by the Tribunal

L. Costs

Each side is to be responsible for its own costs.

M. Conclusion

The Appeal is hereby granted

There is not an award of costs as set out above.

Mr John Weir
Chairman
The Tax on Real Property Appeals Tribunal

Date 5th January 2009