



TAX ON REAL PROPERTY APPEALS PANEL

CASE NO. 0054/2013

THE TAX ON REAL PROPERTY APPEALS TRIBUNAL

PIETTE LIMITED

-v-

THE STATES OF GUERNSEY TREASURY

AND RESOURCES DEPARTMENT

JUDGMENT OF THE TAX ON REAL

PROPERTY APPEALS TRIBUNAL

A. The Tribunal Members

Caroline Latham (Chairman)
Stuart Le Maitre
John Weir

Clerk to the TRP Appeals Panel: Mrs N K Allison

B. The persons representing the parties

Advocate P Ferbrache and Advocate S Duerden appeared for the Appellant.

Mr Robin Gist appeared for the Respondant

C. Witnesses

For the Appellant:

Mr R Smith
Mr M Watts

For the Respondent

Mr M Burton
Mr C Wall

D. Dates

The Notice of Appeal was dated 31 December 2012.

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

This judgement is dated 14 August 2013.

E. The Subject Property

The subject property is Unit B1, St Georges Place, 15 St Georges Esplanade, St Peter Port.
Cadastre Reference A108030000.

F. The Law

The Law referred to in this decision:

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

The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law 2000 (the "Fiduciaries Law").

G. 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 B6.1, "Office and ancillary accommodation (regulated finance industries)" assigned to the property was wrong. The Appellant's view is that category B4.5 'Warehouse' was a more appropriate categorisation'.

In addition, the Appellant challenges the figure of 1287 assessable units and that the correct figure should be 1260 units, which at the Hearing, the Respondent accepted as the correct measurement.

H. The position and arguments of the Appellant

Although all arguments, both oral and by way of documents have been considered by the Tribunal, whether they are specifically mentioned in this judgement or not, the Appellants relied on the following:-

1. The subject property is owned by Piette Limited and has been occupied by Nerine Trust as tenant under a Lease dated 01 June 2008.
2. The property is used as a storage facility for financial records, data and archives as well as administrative tasks associated with the actual use.
3. The property comprises 2 floors with large filing rooms including unloading and access facilities.
4. The majority of the first floor is used to archive storage as part of Nerine Trust's long term planning. Currently approximately half of the floor is empty. The empty space is used on an occasional basis (10 days per annum) for training staff. The empty space will be used for archiving during the currency of the existing lease as the volume of data increases.
5. The unloading facilities on the ground floor have an access door and an unloading area used for storage. Approximately 10% of the ground floor is used as offices and the remainder, being the majority of the space is used for filing and administrative tasks (filing clerk and messenger room) associated with the use of the building as a warehouse. In addition there are washroom and kitchen facilities.
6. Prior to the decision of the Department, the subject property had been assessed as category B4.5 – warehousing in accordance with Schedule 1 of "the 2007 Ordinance" and this category remains applicable.
7. The permitted use of the building under the Island Development (Use Classes) Ordinance, 1991, the building can only be used for the storage of data and archives.

8. The neighbouring property, also occupied by Nerine Trust, is used as offices for its fiduciary business. The subject property can be accessed from the offices but that should be disregarded for the purposes of the property classification under Schedule 1 of "the 2007 ordinance". The subject property should be assessed independently from the adjoining offices in the light of the activities carried out on the premises.
9. For the period from the commencement of the current Lease to 2010, the property remained categorised as B4.5 warehousing in accordance with Schedule 1 of "the 2007 Ordinance".
10. The Department had not issued any notice under section 14(2) of "the 2007 Ordinance"; notify the owner of its intention to amend the Register or a notice under section 14(3) notifying the owner that the property now falls into a different property reference.
11. The owner had not notified the Respondent of a change of use for the property as required by section 15 of the 2007 Ordinance because no such change had taken place.
12. The Respondent has failed to have regard to the actual activities carried on in the building, which were confirmed when cadastre officers inspected the site. It has wrongly taken into account the fact that the subject property's proximity to the adjoining and separate property where Nerine Trust carries on its fiduciary business which is a regulated finance business as defined in the 2007 Ordinance. Schedule 1 of the Ordinance describes category B6.1 as "office and ancillary accommodation". The subject property is used for storage and therefore the definition of "warehouse" in accordance with Part III of the 2007 Ordinance is more appropriate.

I. The position and arguments of the Respondent

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 Respondent clarified its position with regard to letters written on 8th July, 16th July and 22nd December 2011 (the document bundle refers at tabs E, F and H), and is prepared to submit to an order whereby:

"The decision of 1st March 2012 as reviewed on 3rd December 2012 (being the relevant decision to which the appeal relates) shall be and hereby quashed.

The matter is hereby remitted to Treasury and Resources for consideration with specific direction that the Department has regard to and takes into account the provisions of section 45 of The Taxation of Real Property (Guernsey and Alderney) Ordinance 2007

No order as to costs."

2. The Respondent accepts that the correct measurement for the property is 1260 units.
3. The subject property is occupied by a licensed fiduciary within the meaning of the "Fiduciaries Law" and as such is to be classified under Property Reference B6.1 *Office and ancillary accommodation (regulated finance industries)*. Part III of The 2007 Ordinance provides a definition of "regulated finance business".
4. Any building occupied by a licensed fiduciary business must fall to be categorised as B6.1. The Respondent relies on the 2007 Ordinance alone.
5. The alternative categorisation of B4.5 warehousing, as suggested by the Appellant, is not appropriate because the subject property is not used for the storage, transfer or distribution of goods for the purposes of a business, trade or undertaking as defined in Part III of the 2007 Ordinance.
6. The Appellant's reliance on the conflict between the categorisation of the subject property under the 2007 Ordinance and its classification under the Island Development (Use Classes) Ordinance, 1991 is incorrect and the Tribunal should have regard to the appeal of *Alliance Cash and Carry Ltd*.

J. Findings of fact by the Tribunal

Having considered all submissions, oral evidence, documentation and an inspection of the subject property, the Tribunal found as follows:-

1. The subject property is owned by Piette Limited and occupied under a Lease by Nerine Limited, a regulated finance business as defined in the 2007 Ordinance.
2. The property is a 2 storey modern building with large roller shutter garage style doors to the entrance. It has been adapted to allow access to an adjoining building, also occupied by Nerine Limited.
3. The first floor of the subject property is used for a) the archiving of documents, which were stored in cardboard archive boxes stored on purpose built shelving and b) an area which is used for occasional training of staff.
4. The ground floor is used for a) loading facilities, b) messenger's room, c) kitchen and toilet facilities, d) "live/current" filing in system where files are easily accessed and being used by staff from the adjoining offices, and e) an area with empty desks and chairs arranged in office style (but apparently not used) situated at the rear of the ground floor.

K. Conclusions

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

2. The Tribunal finds that it needs to have regard to the 2007 Ordinance with regard to the property reference and description of the subject property. In this case it was placed in category B6.1 in the Schedule referred to in Schedule 1, Section 3 of the 2007 Ordinance. The subject property is adjacent to and used/occupied in conjunction with an adjoining property that is accepted by the Appellant to fall within category B6.1 of the 2007 Ordinance. There is a physical internal connection and access between the two properties allowing the occupier to use the subject property as part of and in conjunction with the accepted regulated business in the adjacent property.
- 3 The Respondent argued that as the subject property is occupied by a regulated business, as defined by the 2007 Ordinance and the Fiduciaries Law 2000, this fact was sufficient to allow the respondent to categorise the property under B6.1 of the 2007 Ordinance, irrespective of the actual use. In other words, it needs only to rely on the 2007 Ordinance to determine the categorisation of the subject property and as the occupier is a regulated business then it must follow that category B6.1 must apply. The Tribunal prefers to rely on the actual use of the property rather than the Respondent's assertion that the categorisation is determined solely by the legal status of the occupier. The issue for determination is therefore, is the subject property used as an ancillary part of a regulated business. The actual use of the subject property and its business relationship with a regulated business is crucial to the Tribunal's determination rather than the legal status of the occupier.
4. The definition of category B6.1 as defined by the 2007 Ordinance was considered and whether the subject property falls within that definition. The 2007 Ordinance is quite clear in that it defines the category to include "Office and ancillary accommodation". The Tribunal considered whether the subject property falls within this definition. The property did not accommodate the principal offices of Nerine Limited. However it has been adapted to accommodate the needs of the business conducted in the adjoining premises including physical alterations to the premises. The facts found in this particular case are that whilst there was archiving and storage including provision for future archiving on the first floor, the ground floor was found not to be primarily used for this purpose and is clearly integrated into and used as part of the occupier's regulated business. The issue as to whether the occupier is making full and efficient usage of the space is not relevant to the Tribunal.
5. From its inspection of the property, the Tribunal observed staff walking through from the adjacent property to the subject property to access and use "live/current" files in part of the ground floor area. The other ground floor areas were occupied by messengers, kitchen and washroom facilities, and an area to the rear of the subject property where desks and chairs were arranged in a conventional office layout and not used primarily for the purposes associated with archiving. The Tribunal finds that from its own observations on site that the ground floor of the subject property is by its very actual use "ancillary accommodation" to a regulated business occupying the adjoining property and from/to which there is internal physical access. The subject property is used and occupied by staff from Nerine Limited on a sufficiently regular basis as to consider it to be used in conjunction with a regulated business.

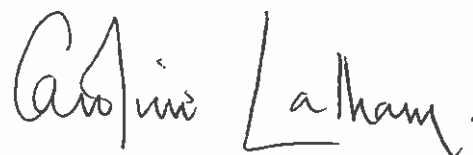
6. The Tribunal also considered whether the activities undertaken in the subject property could be specifically differentiated from the activities undertaken by a regulated finance business. In considering the subject property, it is reasonable for the Respondent to take the pragmatic decision that the primary or dominant activity, use and occupation of the property should define the entire property category. There is archiving and associated activities on approximately half of the first floor with the remaining area, by the Appellants own admission, being used occasionally for training purposes. There was no evidence from the actual use of the remainder of the property that it was used (including those areas not being fully utilised) for any other primary reason than activities associated with a regulated finance business.
7. The Tribunal has adopted the principles set out in the appeal decision of *Alliance Cash and Carry Limited (Appeal No. 0007/2008)* where it was confirmed that there is no conflict between the Island Development (Use Classes) Ordinance, 1991 and the 2007 Ordinance has therefore disregarded any argument in this respect.

L. Decision

The Appellant claimed that category B6.1 for the subject property was wrong within the meaning of the Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007. The Tribunal considered all the written and oral evidence presented by both parties together with its own observations as a result of an inspection of the subject property. Having due regard to all the facts the Tribunal dismisses the appeal.

M. Costs

Each party to pay their own costs



Caroline Latham (Chairman)

Stuart Le Maitre

John Weir

14 August 2013