

# TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

**Appellant:** Mr Darran Watts (Owner)

**Appellant's Address:** The Greenhouse, 1A Esperanto Way, Newport  
NP19 0RD

**Appeal number:** 693533246482/285NV17/10

**The Matter Appealed against:** 2017 Rating List

**Date of Hearing:** 11 September 2019

**Appearances:** Mr D Watts (Appellant)  
Mrs T S Davies for the respondent Valuation Officer (VO)

**Date of Decision:** 3 October 2019

**Decision of Tribunal:** Appeal dismissed

**Members of the Tribunal:** Mr H Pattrick (Chairperson), Mrs M Jones & Mr W D Weeks

**Tribunal Clerk:** Mrs S Gwilliam

## **Introduction:**

1. Mr Watts contended, in a proposal to alter an entry in the 2017 Rating List received by the VO on 19 January 2019, that the Rateable Value (RV) of The Greenhouse was inaccurate and should be reduced from £40,000 to £15,000 with effect from 1 October 2018, for the following reasons:

*The property has been empty for a long period of time, approximately 18 months. The property is quite specific in nature and layout and only suits certain types of businesses, which is why it has remained unoccupied. The rating list should take into account that whilst the property is largely office accommodation with storage at the rear, it is located within an industrial area and should be evaluated to suit.*

2. This is a summary of the case and is not intended to be an exhaustive record of the proceedings. However, the parties can be assured that all the evidence was fully considered by the Tribunal when it arrived at its decision. Consequently, the absence of reference to any statement, or evidence, should not be construed as being overlooked.

## **Summary of the Case**

3. Mr Watts explained that he lodged the appeal after it became apparent that the property was attracting very little interest from the Market, as a consequence of the quoted rental and business rates level associated with the property.

4. The property was constructed during 2011/2012 as the base for a construction and engineering company. The property accommodated the general administration and management staff and storage of materials.
5. The company ceased trading in April 2014 and the property remained vacant until September 2015 when a three-year lease was agreed with Babcock International at a rental of £48,000 pa. Babcock International remained at the property until September 2017 but left a year early with the property remaining empty ever since. Consequently, Mr Watts stated that the property has received gross rentals of £96,000 over a 5-year period, which he equated to an average of £19,200 pa.
6. During the early part of 2018, a security company Openview Ltd pulled out of discussions to take on a new lease after the site was invaded by travellers. Mr Watts explained that the travelling community has blighted the local industrial area for the last 3-4 years, but that issue will form part of a separate appeal regarding a material change of circumstances.
7. With the prospect of receiving no rental for the property, Mr Watts examined the RV ascribed to the property and discovered during discussions with the VO that the office element of the property had been valued at a much higher rate than that of the surrounding properties, although he maintained, the floor space within adjoining properties was almost identical. He explained that the office element had been valued in comparison with Langstone Business Park rather than more local comparable properties.
8. In support Mr Watts provided the Tribunal with summary valuations for Wastesavers Resource Centre and Glenside Commercials (Iveco) both are which are located on Esperanto Way and have considerable office space which was valued at £40.80m2.
9. The Appellant explained that whilst discussions with Mrs Davies and the former VO, had resulted in the VO acknowledging that the appeal property differed in location to Langstone Business Park a 10% adjustment to the initial rate had been offered. The previous VO caseworker offered a revised RV of £31,786 as opposed to Mrs Davies who offered a reduction to RV £33,000. This, he believed, demonstrated an inconsistency in approach to the valuation.
10. In addition, Mr Watts stated that the basis of valuation undertaken by the VO is fixated upon the date of April 2017 and the corresponding lease which was in place at that time. However, this procedure did not take into account the rent achieved over a reasonable period of time, either side of this date, which he maintained, would surely provide a fair and balanced valuation.
11. The Appellant explained that the difference of opinion boiled down to the rate used to calculate the RV of the office element within the appeal property. Using the lessor of the two assessments as detailed previously, the first two floors of the appeal property were assessed using £70m2, as compared to the neighbouring properties at £40.80m2, an increase of £29.20m2 or a 71.56% price difference. This, Mr Watts maintained, was

very unfair and created a distinct disadvantage when he was actively marketing the property with a view to attracting new tenants.

12. Mr Watts considered that more similar properties exist within the immediate locality and referred to council offices in Telford Street, Newport. He explained that whilst larger in scale, these offices are similar in appearance and operation to that of the Greenhouse, yet the rate applied to the office area is just £26.40m<sup>2</sup>. In addition, the internal mezzanine storage is listed at £11m<sup>2</sup> as opposed to £16.57m<sup>2</sup> at the Greenhouse.
13. Similarly, a property referred to by the VO at 19 East Bank Road, Felnex Industrial Estate, Newport had all its offices assessed at below £40m<sup>2</sup>.
14. To conclude, the Appellant explained that if no further reduction of rates was attained, he will consider demolishing the property, which would not only be financially detrimental to himself but also to Newport City Council. Consequently, Mr Watts asked the Tribunal to confirm a reduction of £40.80m<sup>2</sup> for the office area which resulted in an overall revised RV of £22,290.56.
15. In support of his appeal, Mr Watts provided:
  - Photographs showing the location of the Greenhouse and neighbouring properties – Wastesavers and the recently developed Glenside Iveco;
  - Internal and external photographs of the Greenhouse showing the office area and internal warehouse;
  - An email from Knight Frank dated the 10 May 2018 informing Mr Watts and others that a potential tenant would not be proceeding;
  - Photographs depicting the location of Langstone Business Park with close proximity to the M4 and A449 and internal photographs showing the improved quality of those offices;
  - An aerial photograph showing the location of the Council Offices in Telford Street, Newport;
  - Summary valuations for 19 East Bank Road, Felnex Ind Estate, Wastesavers and 2b Esperanto Way.
  - Mr Watts also included the summary valuations for the Greenhouse which was assessed by the VO at £70m<sup>2</sup> and £73.50m<sup>2</sup> and a comparison of valuations with the Appellant's revised valuation of £22,290.56 RV compared to that of Mrs Davies £33,061.88 RV and the former caseworker at £31,758.68 RV.
16. In response to questions, Mr Watts confirmed that the Glenside Commercials Iveco property was demolished and recently redeveloped.

17. Mrs Davies described the Greenhouse as a three storey, brick under a pitched tile roof, purpose-built office with an ancillary warehousing/storage area which measured 610.83m<sup>2</sup> overall and is located in Esperanto Way, Newport. In support she provided the Tribunal with external photographs, maps detailing the property's location and plans which depicted its layout together with the VO's survey details.
18. The Greenhouse was entered into the 2017 Rating List £40,000 RV with effect from the 1<sup>st</sup> April 2017. The VO explained that the basis of valuation for the appeal property had been defined under Paragraph 2(1) Schedule 6 of the Local Government Finance Act 1988 (LGFA 1988) as –
- 2(1) The rateable value of a non-domestic hereditament [none of which consists of domestic property and none of which is exempt from non-domestic rating] shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions-*
- (a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;*
  - (b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;*
  - (c) the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above.*
19. The Antecedent Valuation Date (AVD) was specified as the 1<sup>st</sup> April 2015 under Paragraph 2(3)(b) of Schedule 6 of the LGFA 1988 as the day by reference to which the rateable value of non-domestic hereditaments are to be determined for the purposes of the local and central non-domestic rating lists which were compiled for Wales on the 1<sup>st</sup> April 2017.
20. Mrs Davies explained that the issue before the Tribunal was whether the tone adopted by the VO was correct and whether the property had been correctly determined as an office and associated storage for rating purposes.
21. In accordance with the case of *Lotus and Delta v Culverwell (VO) & Leicester City Council (1976)*, the VO clarified that on the 1 April 2017 the appeal property was let on a three year 10 month Full Repairing and Insuring (FRI) lease at £48,000 pa which commenced on the 11 September 2015. She explained that as no adjustments were required to the actual rent, she had applied substantial weight to this evidence.
22. Mrs Davies then analysed the aforementioned rent by the analysed equated area, and this resulted in £91.52m<sup>2</sup> as compared to £90m<sup>2</sup> which the VO had used to value the main accommodation of the office area.

23. Further, the VO explained that when considering the Appellant's contentions, she had regard to several properties within the Newport vicinity which she believed were comparable in terms of mode of occupation.
24. In relation to the mode and category of use, rebus sic stantibus (as things stand), Mrs Davies stated that the hereditament must be considered subject to the matters set out in Schedule 6 para (7) of the LGFA 1988 as at the material day, and in this case the pertinent matters were:
- a) Matters affecting the physical state or physical enjoyment of the property
  - b) The mode or category of occupation of the hereditament.
25. She clarified that in the case of Williams (VO) v Scottish & Newcastle Retail Ltd and Allied Domecq Retailing Ltd, the principle of rebus sic stantibus was established. To consider rebus sic stantibus two limbs must be considered.
- a) Physical Limb – the hereditament must always be valued as it stands in its physical state. The question is, what alterations is it permissible to envisage an incoming tenant would reflect in the rental bid? In the case detailed above, the Lands Tribunal referred to the physical limb in the following terms –  
'the correct approach is to look at the totality of the works in the context of the hereditament and then ask the question: are those works minor? It is essentially a matter of impression and common sense: would a reasonable man, looking at the hereditament as it stands at the material date and the proposed alterations, describe those alterations as minor?'
  - b) Use Limb – having regards to Fir Mill test (Fir Mill Ltd v Royton UDC and Jones (VO) (1960)), it was noted that  
'a dwelling house must be assessed as a dwelling house; a shop as a shop, but not as any particular kind of shop; a factory as a factory, but not as any particular kind of factory' and having regards to the principle characteristics of use'.
26. Consequently, whilst she appreciated that the property is currently empty, as at the material day, it was occupied as an office with associated warehousing. This, she believed, was supported by agents' particulars which marketed the Greenhouse as an office with a warehouse/store. Therefore, she was unable to agree an office tone in line with neighbouring units on Esperanto Way as these are in a different mode and category of occupation and are in their nature industrial units with the office accommodation ancillary to the main space and as such the office values are lower. However, if these came onto the market as individual self-contained offices they would be valued as offices.
27. Mrs Davies explained that the appeal property was initially valued in line with similar age offices located on Langstone Business Park which varied £70-£130m2, however a 10% allowance was attributed to the Greenhouse due to its location on an industrial estate.

28. Upon further investigations the VO agreed with the Appellant that the appeal property should not be compared to those on Langstone Business Park and felt that the office matrix for properties located in secondary locations within Newport was more appropriate.
29. In support of her contention, Mrs Davies referred the Tribunal to an assessment summary of offices based in secondary locations with values which varied from £70m2-£107.50m2. she explained that these offices were older and, apart from one, were not purpose built. Based upon this information, the VO believed that the appeal property should be valued at £73.50m2 as it had the benefit of a lift whereas none of the others had this facility. In addition, the Greenhouse also had the advantage of car parking and storage yard.
30. In accordance with the Appellant's opinion that the appeal property should be valued in line with neighbouring industrial properties, for completeness Mrs Davies considered the values ascribed to industrial properties which included those properties referred to by the Appellant. The VO stated that these industrial type properties have been assessed at values between £30-£43m2 and are straight forward industrial units.
31. The VO also explained that alterations to survey details meant that there should be a reduction in RV from £40,000 to £33,000 effective 1 April 2017.
32. Mrs Davies clarified that as the property had recently been split into three in the 2017 Rating List, should the Tribunal determine that a further reduction was warranted that she would amend the three entries accordingly.
33. *At this point, Mr Watts informed the VO that whilst the property did have a lift shaft it did not have a lift. In response to this information, Mrs Davies amended her valuation for the Greenhouse based on £70m2 to £31,750 RV and clarified that she had not had regard to the car parking and storage yard which could potentially add to the value of the property.*
34. In response to questions, Mrs Davies stated:
- The appeal property was purpose built as an office with storage and had planning permission for B1/B2 and B8 (offices; general industrial and storage) whereas the neighbouring industrial properties only had B2/B8;
  - She had considered the rent passing on the property in 2015, a basket of rents and appeal settlements before believing that £70m2 was not excessive;
  - She did not consider that the Council Offices in Telford Street were comparable
  - Where properties are partly occupied for a short period of time, the ratepayer has the opportunity of applying to the local authority for a discretionary partly occupied relief in accordance with 44a of the Local Government Finance Act 1988.

35. To conclude, the VO explained that she considered the property was correctly assessed as an office with warehouse storage and requested the Tribunal allow the appeal in part and confirm an amended Rateable Value £31,750 for the Greenhouse, 1a Esperanto Way, Newport with effect from the 1 April 2017 .

36. At the conclusion of the hearing, the Tribunal decided to reserve its decision.

### **Reasons for Decision**

37. Having considered all the evidence placed before it the Tribunal decided as follows:

38. In his proposal Mr Watts contended that the Rating List was inaccurate and that the appeal property's assessment should be reduced to £15,000 RV with effect from the 1<sup>st</sup> October 2017.

39. Initially the Tribunal considered the issue of whether the Greenhouse should be assessed as an office with associated warehousing or valued in accordance to the values applied to nearby industrial properties with offices.

40. The Tribunal noted that the property was purpose built as an office with storage, and, at the material day of the 1 April 2017 was occupied as such. The properties referred to by the Appellant were industrial properties with office areas. Whilst the Tribunal appreciated that some of these industrial properties had similar sized offices to that of the appeal property, it was clear that there was considerably more warehousing areas within these properties than office space therefore it was apparent to the Members that the VO was correct in her assertion to value the Greenhouse using an office matrix. In addition, the Greenhouse also had the benefit of planning permission for B1/B2 and B8 offices; general industrial and storage whereas the neighbouring industrial properties only had B2/B8. It was also observed that the appeal property was marketed by two agents as an office with warehouse/store.

41. The Tribunal then considered the issue of the price per m<sup>2</sup> as applied by the VO to the property. The VO valued the property using a matrix for offices located within secondary locations within Newport. These offices, apart from one, were not purpose built, smaller and were older. The values within this scheme provided a tone of values from £70m<sup>2</sup> to £110m<sup>2</sup>. Whilst the Tribunal appreciated that the appeal property is situated on an industrial estate, it was noted that the VO had valued it at the lowest rate of £70m<sup>2</sup> available within that matrix. This figure compared favourably to the rent passing on the property in September 2015 of £48,000 which analysed to £91.25m<sup>2</sup>.

42. In addition, it was noted that Mrs Davies had not considered the car parking or storage yard available at the Greenhouse.

43. Consequently, in view of the above, the Tribunal determined that the £70m<sup>2</sup> adopted by Mrs Davies in her valuation of the appeal property was fair and reasonable. With this in mind, the Tribunal confirmed Mrs Davies' revised assessment of £31,750 with effect from the 1 April 2017.

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