

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Mr K Batty agent for Evadx Ltd (Occupier)

Appellant's Address: Unit 9, Tir Llwyd Enterprise Park, Kinmel Bay, Rhyl
LL18 5JZ

Appeal number: 690529784455/541NV17/3

The Matter Appealed against: 2017 Rating List

Date of Hearing: Thursday 20 February 2020

Appearances: Mr K Batty
Mr Owain Wynn-Cowell for the respondent Valuation Officer

Date of Decision: 09 April 2020

Decision of Tribunal: Appeal Dismissed

Members of the Tribunal: Mr D Subacchi (Chairperson)
Ms M Griffith
Ms S Wheldon

Tribunal Clerk: Mrs C Jones

Introduction:

1. Mr Batty made a proposal to alter an entry in the 2017 Non-Domestic Rating List in relation to the appeal hereditament which was a workshop and premises. The Valuation Officer (VO) received the proposal on 26 September 2017 and in making his proposal, the agent sought a reduction in the appeal hereditament's entry in the Rating List from £91,500 to £1 with effect from the 1 April 2017.
2. The following 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 Appellant's Case

3. Mr Batty told the Tribunal that the appeal had previously been adjourned at a Tribunal hearing on the 18 December 2019. The parties were directed to hold a joint inspection, this had taken place on the 7 February 2020 and areas were now agreed between the parties.

4. Mr Batty stated that the disputed matters were concerning the removal of a foot plate area of 24.05 sqm being a structural low wall within the main workshop and secondly what quantum allowance should be made for fragmentation within the appeal property. He was contending that a 5% allowance should be made.
5. He explained to the Tribunal that the appeal property was situated in a cul-de-sac location on a business park with units of varying sizes. The unit was located on the outskirts of Kinmel Bay in a semi-rural location and access was off a country road which connected Rhyl with the A55.
6. The property was built circa 1995 and was constructed around a steel frame clad entirely with profile metal sheeting including the office section. The sheeting continued over on to various pitched roofs and there was a lean to roof in sections. Internally the workshops had concrete block walls to 1.6 metre height with cladding above. The office accommodation had fair faced concrete block walls and acoustic tiled ceilings. Externally the appeal property had a circulation area with hard surfaced fenced land of 1,018 sqm. The premises were in good structural order and good internal order.
7. Mr Batty contended that the appeal property had been over assessed and that little or no consideration appeared to have been given to the following factors: -
 - Adjustments required to the rate applied to the offices because the walls were unplastered less 5% and no full heating 2.5%
 - The current rental on the premises was £62,500 and he understood that a review was due in 2019.
 - The foot plate of the low structural wall in the main workshop should for the purpose of valuation be removed because it was an area incapable of any beneficial use.
 - The low wall was a clear impediment to the full and unrestricted use of the main workshop – it impeded forklift trucks; impeded pedestrian access and prevented full use of the floor area – these were in a warehouse/workshop, engineering company situation. Vital factors considered when a rental bid was made and no other property that we have been able to investigate on the Tir Llwyd Enterprise Park suffer from this disability.
 - Concern at the denial made by the VOA caseworker that these matters did not justify an end allowance. In support of that we attach a decision on appeal number 135026463538/539N10. This was only one instance where this allowance has been granted.
8. Mr Batty referred to both his own valuation and the VOA's valuation, stating that the differences between them were shown in bold, as copied below: -

VOA Valuation	Agent's Valuation
GF Workshop 820.8 @ £39.00 £32,011	GF Workshop 1,578.02* @ £39.00 £61,543
GF Workshop 729.6 @ £39.00 £28,454	GF Workshop 308.8 @ £36.12 £11,154
GF Office 84.7 @ £46.80 £ 3,964	GF Rec/Ent 7.38 @ £44.46 £ 328
GF Rec/Ent 7.4 @ £46.80 £ 346	GF Office 84.73 @ £45.60 £ 3,864
GF Works Office 28.8 @ £39.00 £ 1,123	FF Office 84.73 @ £45.60 £ 3,864
GF Ext Storage 28.8 @ £29.25 £ 842	FF Mess/Staff 41.04 @ £35.28 £ 1,448
GF Ext Storage 9 @ £29.25 £ 263	GF Office/Store/Toilet 51.41 @ £41.04 £ 2,110
GF Ext Storage 14.4 @ £29.25 £ 421	GF Port Office 27.01 @£25,000 £ 675
FF Office 84.7 @ £46.80 £ 3,964	GF Port Office 27.01 @£25,000 £ 675
FF Mess/Staff 46.6 @ £21.45 £ 1,000	GF Ext Storage 28.8 @ £25.00 £ 720
GF Workshop 376.52 @ £39.00 <u>£14,684</u>	GF Ext Storage 9.0 @ £25.00 £ 225
£87,072	GF Ext Storage 14.4 @ £25.00 £ 360
Add hard surf land 1,018 @ £2.93 £ 2,983	FF Int Storage 11.34 @ £36.12 <u>£ 410</u>
Add P&M <u>£ 1,692</u>	£87,376
£ 91,747	
	Add hard surf land 1,018 @ £2.93 £ 2,983
	Add P & M <u>£ 1,692</u>
Say £91,500 Rateable Value	£92,051
	Less allow for removal of wall 24.05 @ £39.00 (£ 938)
	Less disability of wall & structural steelwork projecting downwards restricting 5% of main workshop £61,543
	Less £938 - £60,605 <u>(£3,030)</u>
*this is the overall figure inc wall thickness	£88,083
	Say £88,000 Rateable Value

9. The agent drew the Tribunal's attention to page 12 of his evidence which was a plan of the unit with the pink line indicating the dwarf concrete block wall. He also referred to photographs on pages 14 to 20 indicating that the dwarf wall could be seen in the top photograph on page 19. He reiterated the point that the present rental was £62,500 (2014) with five-year reviews.

10. In conclusion of his evidence Mr Batty said he believed that he had demonstrated that the appeal property had been over assessed and that a reduction in RV was warranted. He stated that the rental value was £62,500 and the current RV was £91,500.

Summary of the VO's Case

11. Mr Wynn-Cowell told to the Tribunal that following the recent joint inspection of the appeal property it was realised that the original measurements for workshop were incorrect. He referred the Tribunal to his revised valuation in his evidence pack, as copied below: -

COMPONENT PARTS OF THE PROPERTY					
Ref	Floor	Description	Area m ² /unit	£ per m ² /unit	Value (£)
1.1	Ground	Workshop - Main Space	1580.05	39.00	61,622
1.2	Ground	Workshop - Lean-To	311.69	39.00	12,156
1.3	Ground	Reception / Entrance	7.38	44.46	328
1.4	Ground	Office Block	84.73	46.80	3,965
1.5	First	Office Block	84.73	46.80	3,965
1.6	Mezzanine	Office	15.81	39.00	617
1.7	Mezzanine	Mess/Staff Room	19.98	39.00	779
1.8	Mezzanine	Internal Storage	13.80	19.50	269
1.9	Ground	Internal Storage	51.41	39.00	2,005
1.10	Ground	Portable Office Building	27.01	29.25	790
1.11	Ground	Portable Office Building	27.01	29.25	790
1.12	Ground	External Storage	28.80	29.25	842
1.13	Ground	External Storage	9.00	29.25	263
1.14	Ground	External Storage	14.40	29.25	421
ADDITIONAL FEATURES OF THE PROPERTY INCLUDED IN THE VALUATION					
		Hard Surfaced, Fenced Land	1018.00	2.93	2,983
		Plant and Machinery			1,692
valuation sub-total					93,487
The total of all the elements above is £93,487, which we have rounded down to a rateable value of £93,000.					

12. Mr Wynn-Cowell explained that applying a tone value of £39.00 to the workshop measurements in his revised valuation was now working out at £93,487. He had rounded down this figure to £93,000. He pointed out that he had attributed a slightly different value to the office than Mr Batty.
13. Mr Wynn-Cowell referred the Tribunal to extracts from the RICS Code of Measuring Practice included in his evidence. This clarified what was included in the Gross Internal Area (GIA) method of valuation for

warehouses and premises. He explained that GIA was the basis of measurement in England and Wales for the rating of industrial buildings, warehouses, retail warehouses, department stores, variety stores, food superstores and many specialist classes valued by reference to building cost (area with a headroom of less than 1.5m being excluded except under stairs).

14. The VO stated that it was his opinion that neither of the allowances contended by the agent should be made. He said that in any industrial premises you will see walls. He saw no disability in terms of the wall and explained that the current occupier had retained it. He believed the wall could have easily been removed by the current occupier if it was causing such a disability.
15. Mr Cowell referred to the Valuation Tribunal England case quoted by the agent, which was Edmundson Electrical Ltd v Mr R Roberts (VO). He drew the Tribunal's attention to an external photograph of the property in this decision in order to demonstrate that it was not 'like for like' with the appeal property. The photograph showed 2 units in a terrace and not a property in its own curtilage. In his opinion the decision was of no use to the Tribunal as in this case there was a structural dividing wall between the two units.
16. In summing up his evidence, Mr Wynn-Cowell stated that he was asking the Tribunal to confirm his revised RV of £93,000 on the basis that he had agreed the areas with the agent. He contended that there should be no deduction made for the area of the wall and no reduction made for the perceived disability as it had been retained by the current occupier.
17. In summing up his case, Mr Batty stated that he was of the opinion there was a clear disability in the operation of this unit. The situation with the wall, columns and bracing could not be overcome. He stated that there were no other properties on the Tir Llwyd Enterprise Park with this disability. The appeal property was not on all fours with other properties on the Park, hence why he had included an end allowance in his valuation. He contended that a 5% allowance should be made for this disability and therefore asked the Tribunal to reduce the RV of the appeal property to £88,000 with effect from the 1 April 2017.
18. At the conclusion of the hearing, the Tribunal decided to reserve its decision.

The Reasons for Decision

19. Having considered all the evidence placed before it, the Tribunal decided as follows.
20. It made its decision having regard to the prevailing legislation: Schedule 6 of the Local Government Finance Act 1988.

21. Mr Batty had contended that the Rating List was inaccurate and that the RV for the appeal property should be reduced to £88,000. In cases such as this higher court authorities had accepted that the burden of proof rested with the appellant on the basis that 'he who asserts must prove.' Moreover, it was an accepted tenet of law that any assertions made before a Tribunal should be underpinned by evidence. Therefore, in the case under consideration the persuasive burden of proof rested with the appellant ratepayer and not the respondent VO by virtue of a statutory duty to prepare and maintain the Rating List.
22. The Tribunal believed the agent had not been able to sustain his argument that the VO's revised assessment was incorrect. He had not, with reference to evidence, undermined the VO's valuation of the property. It believed Mr Wynn-Cowell had correctly valued the property considering the whole workshop area, on the assumption that the hereditament was vacant and to let.
23. The Tribunal was of the opinion that the VO had been correct to value the property on an overall basis using GIA measurements and had followed the RICS Code of Measuring Practice fully in his revised valuation.
24. Having examined the evidence presented regarding the main contention in this appeal, which was the low wall within the main workshop, the Tribunal was not convinced that a disability was present that would affect the rent payable. It did not believe that any hard evidence had been provided to justify such a reduction in the property's rateable value.
25. In view of the foregoing the Tribunal noted that the VO had a duty to maintain the correctness of the Rating List and therefore orders the VO to amend the RV of Unit 9, Tir Llwyd Enterprise Park, Kinmel Bay, Rhyl from £91,500 to £93,000 with effect from the date of this decision.

Certified a true copy on 09 April 2020