

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Mr E Tannen

Appeal Property Address: Units 5A & 6A Ewenny Industrial Estate, Bridgend, CF31 3EX

Appeal numbers: 681533767173/285NV17/5 & 681534023206/285NV17/6

The Matter Appealed against: Non-Domestic Rating Appeal

Date of Hearing: 17th August 2021

Appearances: Mr E Tannen (For appellant) & Mr A Davies (For respondent)

Date of Decision: 11th October 2021

Decision of Tribunal: Dismissed

Members of the Tribunal: Mr E G L M Moore (Chairperson), Mr A Hincliff & Mr W J T Powell

Tribunal Clerk: Mr J Evans

Introduction

1. These appeals followed two proposals made by Mr E Tannen on behalf of the appellant ratepayer. The Rating List alterations the appellant pursued in the proposals was that the Valuation Officer (VO) should have reduced the Rateable Value (RV) of the two properties to nil with effect from 1st April 2017. Upon receipt of the proposals, the VO decided to remit the details of the proposal to the Valuation Tribunal for Wales.
2. At the hearing Mr Tannen represented the appellant ratepayer, whereas the respondent Valuation Officer was represented by Mr A Davies. Mr Davies assumed the dual role of advocate and expert witness.
3. The appeal properties, both described as Warehouse and Premises, appeared as entries in the 2017 Rating List as follows –
 - a. Unit 5A, Ewenny Industrial Estate, Bridgend, CF31 3EX at Rateable Value (RV) £47,500 with effect from 1st April 2017.
 - b. Unit 6A, Ewenny Industrial Estate, Bridgend, CF31 3EX at RV £36,500 with effect from 1st April 2017.
4. Amongst those facts which were not in dispute, the tribunal found that the subject hereditaments were –
 - a. located at Ewenny Industrial Estate, which lies approximately 3km south-east of Bridgend and approximately 30km to the west of Cardiff.
 - b. Situated amongst a cluster of industrial estates including Waterton Industrial Estate which lies approximately 600m immediately east and Bridgend Industrial Estate which was approximately 600m to its north.

- c. The appeal hereditaments were located to the south of the Ewenny Industrial Estate with the Ewenny River located to its rear.
5. It was also a fact that the properties were unoccupied for some considerable time, had fallen into disrepair and had been the subject of vandalism.
6. With regard to Unit 5A, Mr Tannen explained that the estimated costs of the works were £300,000. The estimated rental value for the unit once repaired was £45,000 per annum.
7. Details of the repairs were broken down as follows –
 - a. Full roof replacement
 - b. New roller shutter doors
 - c. Cladding repairs
 - d. Repairs to concrete floor
 - e. Office refurbishment
 - f. Resurfacing of yard.
8. With regard to Unit 6A, Mr Tannen explained that the estimated costs of repairs were £150,000. The estimated rental value for the unit once repaired was £32,500 per annum.
9. Details of the repairs were broken down as follow s-
 - a. Site clearance
 - b. Roof repairs
 - c. Cladding repairs
 - d. New doors and windows
 - e. Repairs to concrete floor
 - f. Office and toilet refurbishment
 - g. Repairs to fence
 - h. Resurfacing of yard
10. Whilst this document is a summary of the case it is not intended that it be considered an exhaustive record of the proceedings.
11. The legislation which underpinned valuations undertaken for rating purposes was prescribed by Schedule 6 (2) (1) of the Local Government Finance Act 1988, as amended. This schedule stated –

The rateable value of a non-domestic hereditament none of which consists of domestic property and none of which is exempt from local 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.

For the purposes of sub-paragraph (6) above the material day shall be such day as is determined in accordance with rules prescribed by regulations made by the Secretary of State.

(7) *The matters are —*

(a) matters affecting the physical state or physical enjoyment of the hereditament,

(b) the mode or category of occupation of the hereditament,

(c) the quantity of minerals or other substances in or extracted from the hereditament,

(cc) the quantity of refuse or waste material which is brought onto and permanently deposited on the hereditament,

(d) matters affecting the physical state of the locality in which the hereditament is situated or which, though not affecting the physical state of the locality, are nonetheless physically manifest there, and

(e) the use or occupation of other premises situated in the locality of the hereditament.

12. The day by day to which reference should be made during the course of a valuation for non-domestic rating purposes was prescribed by the Rating Lists (Valuation Date) (Wales) Order 2014. This date is known as the Antecedent Valuation Date (AVD). For the purpose of this appeal, the AVD was 1st April 2015. Whilst matters referred to in Para 2(7) above are to be taken at the Material Day (1st April 2017) all other matters including those economic in nature are taken at the AVD.

13. Mr Tannen referred to Schedule 6 (2) (1) (b) of the Act to support his contention for £0 RV for the two properties. This part required that a hereditament must be assumed to be in a state of reasonable repair immediately before the tenancy was due to commence; although one should exclude from that assumption any repairs which the reasonable landlord would consider uneconomic to undertake. He also referred to the material day provisions as set down in Schedule 6 of said Act.

14. In support of his case, Mr Tannen referred to the following judgments –

a. *Princess Street Ltd (Ipswich) v Bond (VO) [2002]*

b. *Thomas and Davies v Denly (VO) [2014]*

15. With regard to these cases, Mr Tannen said that the usual method of estimating whether the repairs were economic is to compare the cost of the repairs to the number of years of the rent obtainable for the repaired hereditament. In *Princess Street Ltd*, the court took the view that any reasonable landlord would look at the local property market, consider the location of the premises, assess the likelihood of finding a tenant for the actual property and consider the likely length of any lease. The reasonable landlord would also contemplate whether further tenancies were likely and determine the length of time the landlord would be prepared to spread repair costs over. For prime property in a buoyant market Mr Tannen envisaged a longer period of occupation and as a consequent amortisation could be

expected to be over a similar period. For a very poor property, where similar properties were vacant, only a year might be expected

16. Mr Tannen said that the circumstances in the Upper Tribunal judgement of *Barber v CEREP III TW Sarl [2015] UKUT* were similar to those of the appeal hereditaments. “The rating hypothesis required that the physical nature of the property in question and surrounding properties and circumstances to be reflected”. Redevelopment plans should be taken into consideration and therefore “the hypothetical landlord would have no confidence that investment in the repairs would yield much, if any, profit and accordingly for the purposes of paragraph (2) (1) (b), a reasonable landlord would consider them uneconomic”. The repair costs in that case amounted to less than two years rent.

17. With regard to the property at Unit 5A, Mr Tannen explained that –

- a. It had been vacant since 2013
- b. It was in disrepair and boarded up; a point not disputed by the respondent.
- c. That services had been disconnected and meters were removed.
- d. Large holes were present in the roof and asbestos was exposed.
- e. Cost of repairs were budgeted at £374,850 in April 2020. The works were not improvements and would not have produced a building of a wholly different character.
- f. Based on Costmodelling Limited building price index, the resultant figure at the material day would have been £349,720 and £339,250 at the AVD.
- g. At the current RV of £47,500, this would amount to 7 years’ rent.
- h. At the VOA’s suggested reduced RV of £39,500, this would amount to almost 9 years’ rent.
- i. Neither the appellant’s costs nor those advanced by the VO, included VAT, professional fees, prelims, costs of reconnecting services or finance costs which would have to be taken into account by the hypothetical landlord.
- j. The VOA’s costs are at AVD but should be at the material day.
- k. While the unit costs are provided, the VOA have not stated which or what index they had based their costs on.

18. Mr Tannen said the following in respect of Unit 6A –

- a. Has been vacant since 2010
- b. Was in a state of disrepair and boarded up and not disputed by the Valuation Office Agency.
- c. Services had been disconnected and meter was removed
- d. Cost of repair is at £247,000 in April 2020. The works were repairs not improvements and will not produce a building of a wholly different character
- e. Based on cost modelling limited building price index this will equate to £230,441 at the material day and £223,542 at the AVD
- f. At the current RV of £36,500 this would amount to more than six years rent.
- g. At the VOA’s suggested reduced RV of £30,500, this would amount to more than seven years rent.
- h. Whilst Mr Tannen admitted that he was not a surveyor or an expert, his background in management and construction led him to believe

that it was inconceivable that a complete roof could be patch repaired for £1,846.05 as the VOA had suggested. In any event the roof is already at the end of its useful life and patch repairs would only be a temporary measure. He considered that the roof would need to be replaced in the future.

19. An important area under dispute involved the costings the VOA had attributed to the cost of repairs to the roof. Moreover, the VOA had not factored into its costs matters such as scaffolding and internal safety netting.
20. Mr Tannen explained that his costings had varied significantly with those advanced by the VO's surveyor. Moreover, he queried why the VO had omitted details about scaffolding and internal safety netting and failed to understand why the adjustments in costs were calculated at the AVD rather than at the material day. Whilst he admitted that he was not an expert in this particular field, he pointed out that he had relied heavily on the advice provided to him by his surveyor.
21. Mr Tannen said that the VOA was unsighted to a number of issues that related to the costs of certain overheads and profits. The costs to which he referred included professional fees, the costs of reconnecting services and finance costs for construction. He said that an adjustment of at least 25% had to be factored in to reflect these costs.
22. Mr Tannen referred to set of costings for both properties which Mr Richard Saunders MRICS MCIOB C.Build E MCABE had prepared on his behalf. With regard to 5A, the costs amounted to £375,000. Once adjustments were made for inflation and taken at the Material Day, then the cost would be £350,000. If the figure was taken at the AVD it would be just under £340,000. With regard to Unit 6A, the costs amounted to £247,000. After adjustments to reflect inflation, the figure was revised to £230,000 at the Material Day or to £223,000 for the AVD.
23. The difference between his costs and those of the VOA's was £190,000. One area in which a significant disparity in terms of costs for repairs was in respect of the roof where the VO believed that the roofs could be repaired for under £2,000 whereas Mr Tannen believed the true cost would be around £21,000. Moreover, the VO did not appear to have made an adjustment in his costs to reflect scaffolding or safety netting.
24. Mr Tannen said that the VO had queried how the ratepayer's costings had been calculated. Whilst they provided a rate, the VO had failed to state on what index or on what basis that rate had been derived. He said that his surveyors had based their calculations on the RICS' dilapidations handbook but was keen to understand how the VO had addressed this point as well as matters that concerned areas in the warehouse and the removal of asbestos (which the VO had undervalued), in their calculations. He also pointed out that the VO had added a 10% uplift to reflect contractors, profits and overheads. Moreover, there appeared little justification as to why a sum of £60,000 in the case of Unit 5A and £70,000 for Unit 6A would have enabled one to place the industrial units into a lettable condition given that at the material day their condition was very poor.
25. A planning application to redevelop the site and two joining sites was submitted on 3rd June 2015 and approved on 2nd March 2018 he accepted

that this was past the material day. However, on 7th January 2016, which predated the Material Day, Bridgend County Council had made a provision to approve the scheme of redevelopment provided the parties entered into a S106 agreement.

26. With reference to his plan, Mr Tannen referred to a number of units situated near to the subject properties but had remained vacant pending the outcome of the planning.
27. With reference to *Barber v CEREP III TW Sarl*, Mr Tannen had identified features that were similar to those in the matters now under consideration. In that case the court found that no hypothetical landlord would have spent a lot of money on works given that had development could commence at any moment.
28. With reference to *Thomas and Davies v Denly (VO) [2014]*, Mr Tannen explained that this case was more germane to properties that were in disrepair and discussed whether the costs necessary to put into a state of reasonable repair were economic for the landlord to undertake. Whilst he accepted that the VO might rely on this case, he pointed out that a tenant existed in the property and it was believed that it could be used for a number of years. Moreover, no proposals for redevelopment existed at the site and it was estimated that the property in question had an assumed life of 60 years. The tribunal in that case held that undertaking repairs for a little over five years was not considered economic.

Summary of the Valuation Officer's Case

29. In his expert witness report, Mr Davies referred to the Condition Survey Report undertaken on the subject hereditaments by Mr Richard Saunders MRICS MCIOB C.Build E MCABE of RS Building Consultancy on 23rd April 2020 and highlighted budget costings which had been derived through the BCIS Dilapidations Price Book, 25th Edition. The total budget cost for Unit 5A for repairs came to £374,850 and £247,000 in respect of Unit 6A.
30. The minimum return on the initial refurbishment budget was around 12 years based on an anticipated rental value of £3.25/sq ft which were grounded in costs of approximately £375,000 (Unit 5A) and eight years for Unit 6A based on an anticipated rental value of £31,500 per annum grounded in costs of £250,000.
31. For the purposes of these appeals, the VOA had employed the services of Mr Peter Tomkinson B.Sc MRICS who is a Chartered Building Surveyor employed with the Built Environment and Mineral Surveyors team of its National Valuation Unit. Mr Tomkinson undertook a costing survey to determine how much it would take to bring the hereditaments into a lettable condition as at the AVD (1st April 2015).
32. Whilst the Tribunal had been given a detailed account of the costings in Mr Davies' evidence, the estimated refurbishment cost for Unit 5A was £111,667.36 and £56,558.46 in respect of Unit 6A. Mr Tomkinson considered that the proposed work provided the type of maintenance typical of occupying premises such as these, would secure beneficial occupation for approximately 20 years.

33. To support his revised valuations of the subject property, Mr Davies itemised the rental particulars of other comparable hereditaments located in the area. The rental evidence was derived from other properties within the same mode and category of occupation. He also referred to settlement evidence derived from settlements between the VOA and ratepayers (and/or their representatives). These settled appeals were also in regard to hereditaments within the same mode and category of use as those presently under consideration.

34. In view of the foregoing, Mr Davies' valuation of the appeal properties were set out as follows-

Unit 5A

Floor	Description	Area m2/unit	Price per m2/unit	Value (£)
Ground	Warehouse	1171.10	28.00	32790.80
Ground	Internal storage	16.40	28.00	459.20
Ground	Office	95.80	33.60	3218.88
Ground	Office	24.20	33.60	813.12
Total		1307.50		37282.00

Additional details		Area m2/unit	Price per m2/unit	Value (£)
Description				
Hard surfaced, fenced land		686	3.5	2,401.00
Total				2,401.00
Total value				£39,683.00

Unit 6A

Floor	Description	Area m2/unit	Price per m2/unit	Value (£)
Ground	Workshop	267.77	27.50	7363.68
Ground	Office	9.19	33.08	304.01
Ground	Office	30.12	33.08	996.37
Ground	Warehouse	426.34	27.57	11752.54
Ground	Works Office	15.06	27.57	415.15
Ground	Store	10.77	27.57	296.89
Ground	Store	53.61	27.57	1477.82
Ground	Workshop	79.05	27.57	2179.10
Ground	Staff W.C	18	27.57	496.19
Total		909.91		25299.28

Additional details

Description	Area m2/unit	Price per m2/unit	Value (£)
Hard surfaced, fenced land	1500	3.5	5,250.00
Total			5,250.00
Total value			£30,549.00

35. In his rebuttal of the zero RV sought for by the appellant in his proposals, Mr Davies explained that the LGFA 1988 mandated that hereditaments are assumed to be in a reasonable state of repair immediately prior to the commencing of the hypothetical tenancy.
36. With regard the second assumption which involved “excluding from this any repairs which a reasonable landlord would find uneconomic”, Mr Davies drew to the Tribunal’s attention what was meant by the word “repair”. To this end he drew attention to the Land Tribunal judgment of *Lurcott v Wakeley (1911)* which described “repair” as meaning “restoration by renewal or replacement of subsidiary parts or the whole”. The court distinguished repair from “renewal” as meaning reconstruction of its entirety. As the question of repair was a matter of fact and degree, Mr Davies focussed on the proportionality of the proposed works or those which were undertaken. Consequently, where works largely affected the whole and materially altered it, then this would fit with the meaning of renewal.
37. In continued reference to case law, Mr Davies said that “reasonable repair” in relation to a property might be such condition that a property might be found in had it been managed by a reasonably minded owner (*Anstruther – Gough – Calthorp v McOscar [1924]* and *Thomas Davies (Merthyr Tydfil) Ltd v Denly (VO)*).
38. Mr Davies considered that elements of repair should be such that would be required to be put right and would have been undertaken during the lifetime of its occupation by a reasonably minded owner. The test as to what comprised “repair” was explored further in *McDougall v Easington District Council [1989]* which found that –
- Whether alterations went to the whole or substantially to the whole or to only a subsidiary part.
 - Whether the effect of the alterations was to produce a building of a wholly different character to that which had been let.
 - What were the costs of the works in relation to the previous value of the building and what effect did it have on its life span?
39. In view of the foregoing, Mr Davies considered that the proposed works were predominately to the hereditament’s component parts and that some parts, for example the replacement of the roof, repairs to hardstanding, service roads and car parking, were extensive and arguably superfluous to the definition of reasonable repair. However, details of measurements or unit costs had been provided with regard to service roads and he was unclear as to whether they were within the demise of the hereditament or part of a larger estate.
40. Mr Davies considered that the cyclical and periodic nature of repairs that would have been undertaken by a reasonable owner had not been

undertaken and the work proposed by Mr Tannen did not meet the statutory requirements.

41. To support his view, Mr Davies referred to comparable properties in the vicinity of the appeal property of differing ages and specifications which were used to value it. He said that if the proposed works had been completed by the ratepayer then they would have been materially superior to the comparable properties which had been relied upon to value the subject property. Moreover, the VO would have contemplated making an adjustment to their respective valuations to reflect these improvements.
42. The works proposed by the ratepayer were considered to be improvements rather than repairs and went further than what the statute required in terms of a hereditament being placed in a state of reasonable repair. As an alternative, Mr Davies considered that the works proposed by Peter Tompkinson B.Sc., MRICS complied more closely with the framework for assessing costs. The costings Mr Davies relied upon were against unit costs and measurements and the costings taken at the AVD as mandated by statute.
43. Mr Davies said that without either unit costs or measurements it was difficult task to strip out what it would cost to bring the property back into a similar state of repair. However, the price indexing relied upon by the ratepayer in his cases were compiled some five years after the AVD. Consequently, Mr Davies concluded that he could not attach much weight to this evidence.
44. Mr Davies referred to the leading case of *Thomas & Davies (Merthyr Tydfil) Ltd v Denly (VO)* (2014) in which the court found that the hypothetical landlord would not consider it unreasonable to undertake costs of repair that exceeded 5.64 times the Rateable Value of a hereditament with an anticipated life of 60 years.
45. The correct treatment of evidence was established in *Lotus and Delta Ltd v Culverwell (VO)* and *Leicester City Council* [1976]. As a corollary Mr Davies referred to a schedule of rental evidence which he believed supported his revised valuations allocated to the subject properties.
46. The comparable properties relied upon, in respect of Unit 5A were –
 - a. Unit A1, York Park Bridgend Industrial Estate
 - b. Compton Engineering Ltd, Cheapside, Bridgend
 - c. Celtic Tyres, Princes Way, Bridgend Industrial Estate
 - d. Storewithus, Unit C5, North Road, Bridgend Industrial Estate
47. The comparable properties relied upon in respect of Unit 6A were –
 - a. Unit 6 Horsefair Road, Waterton Industrial Estate, Bridgend
 - b. Unit A2 York Park, Bridgend Industrial Estate
 - c. Biotec at Central Park, Western Avenue, Pencoed, Bridgend
 - d. Unit 3, Waterton Industrial Estate, Bridgend
 - e. Glazing Services (ABS) Ltd, North Road, Bridgend Industrial Estate
 - f. Unit C8 & C9, York Place, Bridgend Industrial Estate
 - g. Units 35 and 36 Bennett Street, Bridgend Industrial Estate

48. Mr Davies separated Unit A1 at York Park (in respect of Unit 5A), Unit 6 Horsefair Road and Unit 2 York Park (in respect of Unit 6) as being more informative of value that ought to be allocated to the appeal properties. In these cases, Mr Davies had identified properties which he deemed superior to that of the appeal properties but whose values (£34.85/m², £31.65/m² and £35/m², respectively) were very much within the same range as that attributed to them. With this in mind, he did not consider that the levels of underlying value proposed for the appeal properties were excessive.
49. The other comparable properties Mr Davies relied upon were used as a check to ensure that the values for the subject properties were not excessive. Mr Davies also referred to the agreements of appeals in Appendix 10 of his submissions. Such an approach was endorsed by the afore mentioned "Lotus and Delta Ltd" case.
50. For the purposes of Unit 5A, Mr Davies considered that agreements made in respect of Unit 1, Kingsway Buildings, Bridgend; Units 1-4 North Court, North Road and SMF (Sheet Metal Work), North Road, were persuasive pieces of evidence. He said that Unit 1 had been refurbished in 2007 and was of a similar specification to the Unit 5A. The parties agreed a revised rateable value of £43,500 derived from an underlying value of £28/m².
51. With this in mind, Mr Davies determined that the underlying level of value he had adopted in respect of Unit 5A should be £28/m². He believed this value reflected the hereditament's age, location and other similar properties located in the vicinity. As a corollary, Mr Davies considered that the existing Rating List entry was excessive and should be reduced from £47,500 to £39,500.
52. The settlement evidence relied upon by Mr Davies in respect of Unit 6 also had a number of advantages and disadvantages and this was reflected in their established underlying levels of value. Mr Davies explained that the settlement evidence demonstrated that age was a factor in the locality, and this explained why the underlying level of values had settled for values between £29/m² - £35/m².
53. In view of the foregoing, Mr Davies considered that existing value of £36/m² for Unit 6 was excessive and proposed a value of £29/m². He believed that the costs advanced by his expert witness (Mr Tompkinson) of £56,558.46 were more representative for the representative for determining the property's Rateable Value. He said that following the completion of the requisite works, it was anticipated that the period of beneficial occupation would be in the order of no less than 20 years. The payback period would represent 1.85 times the proposed RV and was within the parameters of the judgment made in respect of *Thomas & Davies (Merthyr Tydfil) Ltd v Denly (VO) [2014]* and would not be considered unreasonable by the hypothetical landlord.
54. Mr Davies reminded the Tribunal of the Material Day provisions as they are established by Paras 2(7) of Schedule 6 to the Local Government Finance Act 1988 and drew to its attention the matters that must be considered on that day. This point is made in rebuttal to the appellant's contention that pending redevelopment work meant that proposed works would be deemed uneconomic.

55. In this case, the Material Day for both appeal properties was 1st April 2017. In this case, the matters which must be addressed at the Material Day and to which Mr Davies referred to in particular were –

- Matters affecting the physical state of the locality in which the hereditament is situated or which, though not affecting the physical state of the locality, are nonetheless manifest there, and
- The use or occupation of other premises situated in the locality of the hereditament.

56. On the Material Day neither permission nor demolition of the appeal properties, nor planning permission for development had been granted. Consequently, it was this aspect that had to be considered at the Material Day.

57. Mr Davies also pointed out that the extent of the proposed redevelopment covered an area wider than which the hereditament was situated and also included a number of actively trading businesses. For these purposes he assumed that if the additional premises were in occupation and trading after the Material Day (of this appeal) then it was likely they were there on the Material Day.

58. Mr Davies explained that the circumstances referenced by the appellant in *Barber (VO) and Cerep III TW Sarl [2015]* differed to those at the appeal properties because at the Material Day of the appeal it was stated that all units were vacant within the redevelopment area. With reference to *Dawkins (VO) v Ash Bros & Heaton Ltd [1969]* Mr Davies explained that it was not the actions of the actual landlord that took precedence here but those of the hypothetical landlord. Moreover, caselaw had expounded in and again in *Coppin (VO) v East Midlands Airport Joint Committee [1971]* that it could not be assumed that the actual landlord of part would be the landlord of other parts that extended beyond the extent of the hereditament. This was poignant because the appellant had ascertained planning permission in respect of the redevelopment area.

59. In view of the foregoing neither appeal hereditament was at the Material Day the subject of a demolition order nor a compulsory purchase order and it could not be said that the hereditaments were “doomed to demolition”.

60. At the conclusion of the hearing, the Tribunal retired to consider its decision.

Decision of the Tribunal

61. The appeal hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions as set out in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988 (The Act). Schedule 6 (2) (7) sets out a list of factors that must be taken at the Material Day. For the purposes of these appeals the Material Day was 1st April 2017. Factors not referred to in (2) (7), are to be taken at the AVD. The date of the hypothetical rent was 1st April 2015 (antecedent valuation date or AVD).

62. The issues before the Tribunal were twofold: firstly, as the appellant contended, that the appeals should be reduced to £0 RV with effect from 1st

April 2015, and secondly if they should not be reduced to nil, that the existing level of RV should be reduced as set out above. If the Tribunal found that the properties should not be reduced to £0, then the Tribunal intended to allow the appeals but only to the extent sought for by the respondent Valuation Officer.

63. The justification for the £0 RV valuations advanced by Mr Tannen was that the condition of the appeal properties was beyond the limit of economic repair. In cases of this nature, the statutory basis is predicated on the fact that immediately before the tenancy was due to commence, the hereditaments were to be considered in a state of reasonable repair but excluding those repairs which a landlord would find uneconomic.
64. In arriving at its decision, the Tribunal found the costings of proposed works stipulated by the VO was more persuasive because he had only contemplated works that went no further than putting the property into a state of repair which came about as a result of on-going maintenance undertaken during the life-time of the hereditament by a reasonable landlord. With his use of case law, Mr Davies had carefully separated the vexed question as to what constituted repair and what was renewal. He had correctly identified works that were component repair and also separated elements that were superfluous to the definition of reasonable repair. In light of this, the Tribunal was not persuaded that the appellant's cost demonstrated that the proposed works were beyond that which the reasonable landlord would consider uneconomic. The Appellant's costings were produced five years after the AVD and there was insufficient evidence presented to assist the Tribunal to reconcile this information against those costings which would have prevailed at the AVD.
65. The Tribunal did not consider that the circumstances in *Barber (VO) v Serep III TW Sarl* were germane to those in the cases now under consideration. The simple reason for this was that the other units in the vicinity (and within the planned redevelopment scheme covered by the planning proposals) were occupied.
66. No weight was attached to Mr Tannen's argument that a future tenancy of the appeal properties would have been influenced by the proposed planning applications that had yet to be submitted. Whilst the Tribunal accepted that significant steps had been taken by a number of interested groups to progress the planning process, it was self-evident that no demolitions had taken place. Moreover, there was evidence of other lettings within a short distance from the appeal properties which were also situated within the area primed for development. The Tribunal accepted that the existence of a Compulsory Purchase Order or land "Doomed to demolition" would have presented a different situation to that which was actually before the Tribunal. As a corollary, the Tribunal was not persuaded how this aspect of the appellant's case could persuade it in its wider consideration of the material facts before it, that the nil RV's should be adopted for the appeal properties.
67. Since case law had established that in cases of this nature, the burden of proof rested upon the appellant and not with the respondent. It was the Tribunal's considered view that Mr Tannen had not provided evidence of sufficient quality to help it succeed in persuading it to find that £0 Rateable Value was correct for the appeal properties. As the Tribunal had rejected Mr

Tannen's case for nil RV for the two properties, it had no alternative but to allow the appeals to the extent conceded for by Mr Davies in his submissions.

68. In light of the foregoing the Tribunal held as follows –

Unit 5A, Ewenny Industrial Estate, Bridgend – Rateable Value £39,500

Unit 6, Ewenny Industrial Estate, Bridgend – Rateable Value £30,500