

# TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

**Appellant:** CEPF II Meteor Investments S.A.R.L. (Owner)

**Appeal Property:** Roxburgh House, 12 Hill Street, Wrexham LL11 1SN

**Appeal number:** 695529462941/541NV17/10

**The Matter Appealed against:** Non-domestic Rating List 2017

**Date of Hearing:** 9 November 2021

**Appearances:** Mr J Marsden of Savills (agent for owner) accompanied by Mr L Barlow  
Mrs T S Davies (the respondent Valuation Officer) accompanied by Ms T Parsons

**Date of Decision:** 25 January 2022

**Decision of Tribunal:** Appeal Dismissed

**Members of the Tribunal:** Mr D Evans (Chairperson), Mr S Hancock & Mr J Roberts

**Tribunal Clerk:** Mrs C Jones accompanied by Mrs L Hopwood & Ms E Thomas

## Introduction

1. The appeal followed a proposal made by Savills on the 27 July 2017 which sought to alter an entry in the Non-Domestic Rating List in line with Paragraph 2(1) Schedule 6 of the Local Government Finance Act 1988 and The Rating List (Valuation Date) (Wales) Order 2014 (SI 2014/1370 W139). The proposal sought a reduction in the appeal property's existing rateable value (RV) of £99,500 to £1, with effect from the 1 April 2017. In making the proposal Savills referred to the following grounds: -

*The Rateable Value is excessive, wrong and bad in law. It has been vacant for in excess of 5 years, it is a former college who relocated to new purpose built site. Internally is still fitted out for the college and it is uneconomic to carry out repairs which will require removal of asbestos.*

2. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all the evidence presented was fully considered by the Tribunal before it came to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as having been overlooked.

## Summary of the case

3. The appeal property was a self-contained office unit dating from the 1960's, situated on Hill Street, Wrexham next to the Little Theatre and opposite the Victoria Centre. It comprised of a ground floor reception and first, second and third floor offices. The accommodation on the second and third floors was fitted out in an old college style with solid carpet tiled floors, plastered papered walls, suspended tiled ceilings with inset strip fluorescent lighting, single glazed aluminium framed windows and electrical wall heaters. The second floor consisted of 25 partitioned rooms with a corridor down the centre whereas the third floor comprised 21 partitioned rooms with corridors to one side and between individual meeting rooms.
4. The whole building was last occupied in 1998, although part of the second floor and the third floor were let for a period of one month, which ended on the 29 August 2016. Mr Marsden and Mrs Davies inspected the property jointly on the 7 November 2019. The parties did not dispute that the property was in a poor state of repair.
5. Savills' main contention was that the property was beyond reasonable economic repair and should therefore be valued at £0, with effect from the 01 April 2017. The condition of the property was very poor, particularly on the second floor where a large amount of water ingress had caused the suspended tiled ceiling to collapse and damage to wall and floor coverings. The lighting and electrics needed replacing, asbestos removing and the lift repairing as it was out of order.
6. A purchase report by Malcom Hollis LLP Surveyors dated 11 October 2016 detailed works totalling £82,940 that were required in year one of any purchase. A subsequent report post purchase detailed a cost of £440,000 to remedy the defects in the building including removal of asbestos, repairing the roof, fixing the lift, and stripping to shell. An asbestos report detailed the asbestos that needed removing prior to any work commencing. The appeal property then required re-instating to enable a tenant to occupy, including new electrics, radiators, lighting.
7. To estimate the cost of putting the appeal property in a reasonable state, Mr Marsden had used the BCIS guide, which in his opinion equated to around £1.275 million. He believed no reasonable hypothetical landlord would consider spending nearly £1.8 million, which equated to 18 times the rateable value, to put the property in a condition capable of being occupied.
8. Mr Marsden also contended that the duration of any prospective tenancy for the building would be restricted due to its current Energy Performance Rating of G. Moreover, the building did not comply with the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015. He believed the lowest Energy Performance Rating possible would have deterred prospective occupiers from renting the property at the AVD.

9. No offers had been received for the appeal property despite a rent based on £8 per square foot being quoted and the Marketing Agent had confirmed that there was no demand for the appeal property. The poor market conditions were evidenced by the actual purchase price of £0 in January 2017 by the current owner.
10. Mr Marsden sought a Rateable Value of £0, whereas Mrs Davies requested that the appeal be dismissed, as in her opinion, the current Rateable Value of £99,500 was fair and reasonable. Both valuations proposed that the respective alterations should take effect from 1<sup>st</sup> April 2017.
11. To address the issue of what the hypothetical landlord would do in circumstances such as these, Mrs Davies referred to the judgement of **Brighton Marine Palace & Pier Co v Rees (VO) [1961]**. This decision considered the condition of the property taking into account its age and location, alongside the costs of putting the premises into reasonable repair, had they been managed by a reasonably minded owner.
12. In Mrs Davies' opinion it would be likely a reasonable landlord would invest in the property and undertake some repairs. In **Thomas & Davies (Merthyr Tydfil) Ltd v Denly (VO) [2014]** the court had found it was reasonable that 5.5 YP was a reasonable period in which an investment could be recouped. With continued reference to this case, she stated that when looking at repair cases like this, the three main factors that needed to be considered was whether the hypothetical landlord would: -
  - 1) carry out all the repairs required to command a full market rent,
  - 2) carry out the basic repairs for a reduced rent, or
  - 3) carry out no repairs and accept a substantially reduced rent.
13. Mrs Davies explained that Savills had advised her that repairs were required to the roof, concrete & mosaic tiles, and the windows although these related to the upper floors only. A total cost of £83,640 was derived from the following, roof repairs (£50,000), concrete & mosaic tile repairs (£25,000) & window repairs (£38,640) to make the property wind and watertight and to reduce any further damage internally. Further costs provided were, strip out of asbestos (£59,671), scaffolding and new roof covering (£175,000) and re-cover the roof & pump out the water in the lift shaft (£8,000).
14. Mrs Davies contended that stripping out asbestos, may not be regarded as true repairs but acknowledged that tenants may decide not to move into a property that contained asbestos. She pointed out however, that offices which had undisturbed asbestos could be occupied. Upon reflection Mrs Davies considered that any reasonable landlord would take the opportunity to remove from the property in order safeguard any future investment or tenancy. Mrs Davies had discounted scaffolding, surveyors' fees, and

report fees, because under the rating hypothesis she could only consider actual repair costs.

15. Mr Marsden had estimated that the cost attributable to roof repairs would be in the order of £175,000. However, since he had failed to provide a breakdown for the repairs, Mrs Davies had attributed half this cost (£87,500). The final element within the breakdown provided by the agent, which could be attributed to repair in her opinion was the recovering of the roof and pump out of the water in the lift shaft, which amounted to £8,000. This provided a total cost of £155,171 and equated to 1.31 x the current RV. If Mrs Davies then added this figure to the £83,000 (for the 1<sup>st</sup> year cost to bring the building into a wind & watertight condition) it gave a total of £238,811, which equated to 2.4 x the current RV.
16. Whilst it was contended by Mr Marsden that the appeal property had been vacant for 20 years there was evidence that it had been let in 2016 for a short period. Mrs Davies asserted that this evidence supported her opinion that the property was capable of beneficial occupation.
17. Mrs Davies stated she appreciated that outdated offices were difficult to let, but she had to have regard to the facts as they were at the material day. She referred to the judgement in ***Telereal Trilium v Hewitt (VO) [2019]***, which required that occupation of other large units at the material day had to be considered. She quoted the following properties that were occupied at the material day: -
  - Guildhall, Lampit Street, Wrexham, LL11 1AR – 6698.67m<sup>2</sup>, 1961 building refurbished in 1992, valued at £60psm
  - Benefits Office, 15-17 Grosvenor Road, Wrexham, LL11 1BS – 5319m<sup>2</sup>, 1977 building valued at £57psm
  - Jobcentre, 16 Lord Street, Wrexham, LL11 1LS – 1679.19m<sup>2</sup>, Victorian building refurbished in 1992 building valued at £65psm
  - Ashgrove, 30 Grosvenor Road, Wrexham, LL11 1BU – 777.74m<sup>2</sup>, Victorian building refurbished in 1998 valued at £70psm
  - Halkyn House, Rhosddu Road, Wrexham, LL11 1NF – 710.91m<sup>2</sup>, occupied as of 1st April 2017, valued at £60psm
18. Mrs Davies acknowledged that several offices located at Wrexham Technology Park were valued at a higher rate than those at the town centre. She concluded that properties located in the town centre were less desirable than those located in the Technology Park. The established tone for large offices in Wrexham was £65pms. She had reflected the poor condition of the appeal property with a 10% end allowance which provided a rate of £56.50pms.
19. At the conclusion of the hearing, the Tribunal decided to reserve its decision.

## Decision and Reasons

20. The appeal hereditament must be valued for the purpose of non-domestic rating based on the rent at which it might reasonably be expected to let from year to year on several 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 this appeal the Material Day was 1<sup>st</sup> April 2017. Factors not referred to in (2) (7), are to be taken at the AVD. The date of the hypothetical rent was 1<sup>st</sup> April 2015 (antecedent valuation date).
21. The Tribunal was not persuaded that Mr Marsden had adequately fulfilled the burden of proof in his assertion that the Rating List entry for the appeal property was incorrect. Consequently, the Tribunal confirmed that the existing List entry should remain unamended.
22. In arriving at its decision, the Tribunal was not persuaded by Mr Marsden's assertions that there was no demand for larger office premises in the locality. There was indeed evidence of other properties in the locality, comparable to the appeal property, being in occupation at the Material Day. There was also evidence of the appeal property being let in 2016 albeit that it only transpired for a short period of time. The foregoing contradicted Mr Marsden contention that the appeal hereditament was obsolete.
23. The Tribunal was mindful that a property's rateable value was determined by the statutory definition as prescribed by Para 2(1) of Schedule 6 to the Act. In cases such as this the definition reminds us in its second assumption 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*".
24. In this regard the Tribunal found further assistance in the judgement of ***Thomas & Davies (Merthyr Tydfil) Ltd v Denly (VO) [2014]*** in which the three tests were introduced. It also took account of the competing costings that the parties had advanced in pursuit of their respective positions. In view of the foregoing, the Tribunal believed the hypothetical landlord could undertake some repairs and accept a reduced rent. The option of subdividing the accommodation was also a possibility, letting it in smaller parts in line with what was happening in the market in Wrexham.
25. The Tribunal agreed with the VO's contention that the condition of the appeal property at the 1 April 2017 was down to poor maintenance and repair schedule. It could reasonably be argued that the landlord had not maintained the investment. It appreciated the fact that the appeal property was transferred for £0 for the upper floors in 2017, and when it was purchased it was transferred in the same condition. Therefore, the Tribunal concluded that both the current and previous landlords had failed to maintain the property to a reasonable standard.

26. Moreover, the figures that Mrs Davies had relied upon were taken from the Hollis Report and from Savills themselves. Even if the removal of asbestos was undertaken, which increased the repair bill, this only represented 2.4 times the level of the existing RV. This was well inside the threshold put forward by ***Telereal Trilium v Hewitt (VO) [2019]***. This contrasted with that presented by Mr Marsden who, despite having been asked, had not provided a full breakdown of his costings and whose financial estimation of the repairs reflected a property that had deteriorated over time. No consideration was given by the agent to the possibility and cost of improving the appeal property's low Energy Performance Rating.
27. In the final analysis, the Tribunal was satisfied that the respondent had addressed the issues raised by the proposal and the agent's subsequent submission and had made an appropriate allowance of 10% to reflect its condition. In view of the foregoing, the Tribunal was not persuaded that the list entry for the appeal property required any alteration and dismissed the appeal.