

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Bimeda (Occupier)

Appellant's Address: Unit 2, Bryn Cefni Industrial Estate, Llangefni,
Anglesey LL77 7XA

Appeal number: 680530077935/192NV17/56

The Matter Appealed against: 2017 Rating List

Date of Hearing: Wednesday 5 December 2018

Appearances: Mr P Willmore of Rupert David Ltd agent for Bimeda
Mr O Wynn-Cowell for the respondent Valuation Officer

Date of Decision: January 2019

Decision of Tribunal: Appeal Allowed

Members of the Tribunal: Mr J H Owens (Chairperson)
Mr W P Bagnall
Mr C Newman

Tribunal Clerk: Mrs C Jones

Introduction:

1. Rupert David Ltd made a proposal to alter an entry in the 2017 Non-Domestic Rating List (Rating List) in relation to the appeal hereditament, warehouse and premises, Unit 2, Bryn Cefni Industrial Estate, Llangefni. The Valuation Officer (VO) received the proposal on 15 November 2017 and in making his proposal, the appellant sought a reduction in the appeal hereditament's entry in the Rating List from £95,000 to £82,000 Rateable Value (RV) with effect from the 1 April 2017.
2. The Clerk reported that prior to the hearing the VO had questioned the agent Rupert David Ltd's authority to act on behalf of Bimeda the occupiers of the appeal property. The Clerk clarified that Mr Willmore on behalf of Rupert David Ltd had shown her the official authority to act letter from Bimeda and that she was happy to proceed with the hearing.
3. Following the introduction of the appeal proposal by the Clerk, the VO made a request to have the appeal set for a Pre-Hearing Review in order to provide directions, as per the VTW Best Practice Protocol 1C. The reasons specified for this request were that the agent had not provided him with a valuation or any agreed statement of facts. This was also the first NV17 appeal to be heard on a large warehouse and no 'tone' of value had yet been established. He explained that he required primary rental evidence before he could fully consider the RV and referred to the case law *Futures London Ltd v David Lloyd Stratford (VO) RA/47/2005* to

substantiate this point that without reference to any rental evidence no tone could be set.

4. The Clerk asked Mr Willmore for his response to the VO's request for a Pre-Hearing Review. He stated that without going into the case too much, the VO was aware that the rent passing on the subject property was a Pension Company Rent, so it could not be used in the valuation as it wasn't a true open market rent. He explained that despite many attempts initially from his colleague Mr Allison and then himself to get an explanation from the VO as to why the appeal property's RV stood out from all the other units on the Bryn Cefni Industrial Estate, it had not been forthcoming. The material facts had been agreed as had the measurements. He indicated that he was ready to present his case if the Tribunal decided so.
5. The Tribunal withdrew to consider the VO's request. When the Tribunal reconvened, it was announced to the parties that the Tribunal did not agree to the request and it proceeded to hear the case.
6. 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

7. Mr Willmore distributed copies of his evidence pack and stated that the issue before the Tribunal concerned the correct level of RV attributed to the appeal property, as at the 1 April 2017. Mr Willmore said that the physical facts of the property had been accepted as agreed between the parties, namely the floor areas.
8. Mr Willmore explained that the Bryn Cefni Industrial Estate was in the centre of Anglesey, approximately one mile south east of Llangefni. Unit 2 was one of nine units of similar age and construction on the estate. The property was a detached modern portal framed warehouse built in the 1990's comprising of two bays, integral offices, attached plant room and yards front and rear.
9. He told the Tribunal that his client's assessment had increased from an agreed 2010 RV figure of £82,000 to a 2017 RV figure of £95,00, which represented an approximate increase of 15.8% between the two Lists.
10. The agent stated that in view of the VO's own admission that rental evidence for this size of industrial property on Anglesey was scarce, he could not understand why his client's property had been singled out for such a large increase when compared not only to others on the same industrial estate but also to other large industrial properties on Anglesey

within the same valuation scheme. He referred the Tribunal to his table in Appendix 5 of his evidence, as reproduced below:

Bryn Cefni Industrial Estate						
	Address	Total Area	2010RV	2017RV	%increase	
1	Unit 11	366.20	17,750	18,750	6%	
2	Unit 1	1478.18	49,500	52,500	6%	
3	Unit 5	1493.40	45,750	48,500	6%	
4	Unit 14	1580.90	50,000	53,500	6%	
5	Unit 9	2037.20	62,000	66,000	6%	
6	Unit 8	2084.50	62,500	66,500	6%	
7	Unit 7	3087.30	85,500	84,500	-1%	
	Unit 2	3450.60	82,000	95,000	15.80%	Appeal Property
8	Unit 4	5366.00	121,000	120,000	-1%	
Other Large Industrials on Anglesey within the same scheme 417256						
9	Building 1 Telford Place	3002.00	61,000	61,000	no increase	
10	Units 2, 2A,7+ Gaerwen	3119.00	61,500	61,500	no increase	
	Unit 2	3450.60	82,000	95,000	15.80%	Appeal Property
11	Anglesey Timber	3594.90	62,500	62,500	no increase	same location
12	Aluminium Powder Holyhead	3586.10	96,000	92,000	-4.20%	
13	Glambia Cheeses Llangefni	6163.00	73,500	72,500	-1%	Same location
14	Rehau Ltd Amlwch	7513.9m2	78,500	77,500	-1%	
15	Unit 1 Ffordd Beibio Holyhead	8139.53m2	123,000	123,000	no increase	

11. In Mr Willmore's opinion, having looked at all the comparable evidence, his client's assessment should at the worst be at the same level of value as the 2010 List i.e. £82,000 RV or at best a slight decrease in value of say 1% to give a figure of £81,000 RV. Having looked at all the available evidence, his client's assessment had been unfairly singled out for a large increase in the 2017 Rating List compared to the 2010 List.

12. In conclusion of his evidence, he stated that in the interest of fairness and equity to his client he believed that the appeal property should be valued in line with the rest of the units on the estate. He therefore requested that the Tribunal confirm the RV of £82,000 with effect from the 1st April 2017.

Summary of the VO's Case

13. Mr Wynn-Cowell introduced himself and stated his qualifications and experience. He explained his role as Advocate and Expert Witness.
14. He informed the Tribunal that he had vague knowledge of the RV for this Industrial Estate on the previous 2010 Rating List. The level of value was set at between £25 to £28 per m².
15. Mr Wynn-Cowell stated that he could not offer an opinion on whether the £28m² was correct. He quoted the case law *Vines Ltd v De Mauny (VO) LC [2011] RA 128* which proffered guidance that it was for the appellant to demonstrate that the existing assessment was incorrect and not for the Valuation Officer to prove that it was right.
16. The VO expressed to the Tribunal that in his opinion it would be more beneficial to all parties to have the appeal adjourned with specific orders issued by the Tribunal for a comprehensive analysis of rents on the estate to be undertaken.
17. At the conclusion of the hearing, the Tribunal decided to reserve its decision.

Reasons for Decision

18. Having considered all the evidence placed before it, the Tribunal decided to allow the appeal and in arriving at its decision, the Tribunal gave the following reasons.
19. Although Mr Wynn-Cowell had been invited to present a case before it, the Tribunal regretted that on this occasion he had been unable to do so. Mr Wynn-Cowell had advanced an application for an adjournment of the case, but the Tribunal was satisfied that ample time had been afforded the parties to prepare and present a case in the eventuality that the case could not be settled.
20. In cases of this nature, case law held that there are two aspects to the burden of proof: the persuasive or legal burden, which is general and is surmised in the maxim he who asserts must prove: and the evidential burden which is specific and requires a party wishing to put a fact before the Tribunal to prove it, usually by evidence.

21. On the facts presented, the Tribunal was satisfied that the appellant had been able to demonstrate that the VO's uplift of some 15% was not replicated for warehouses and premises within the vicinity of the appeal property. Although Mr Wynn-Cowell had not been able to show why his valuation of the appeal property supported an underlying level of value of £28/m², Mr Willmore had by contrast produced information that demonstrated that the RV had not increased for most large warehouses in the same valuation scheme.
22. Mr Willmore produced evidence that showed either no change in value between rating lists had occurred or that values had decreased by between 1% and 4%. There was no evidence to support an increase in value of 15.8%. Although Mr Willmore suggested a reduction in the appeal property's value to RV £81,000, the Tribunal decided to determine a RV of £82,000.
23. In view of the foregoing, the Tribunal allowed the appeal and orders the Valuation Officer to alter the Rating List to accord with this decision.

Certified a true copy on 29th January 2019