THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; Day nursery and premises; Unadjusted rate excessive; rental evidence; comparable properties; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Appeal allowed in part.

Re: 22 Saffrons Road, Eastbourne, East Sussex BN21 1DU

APPEAL NUMBER: CHG100077367

BETWEEN:	Copperfields Day Nursery Limited	Appellant
	and	
	Ms Dawn Bunyan (Valuation Officer)	Respondent

PANEL: Dr John Johnson (Chairman)
Mr James Percival (Member)

CLERK:	Mr Duncan Adamson
REMOTE HEARING 1	14 May 2021
PARTIES PRESENT	Mr Joseph Baruwa of Altus Group - Appellant's representative (Advocate and Expert Witness)
	Mr David Sinden - Respondent's representative for the Valuation Office

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Summary of decision

1. The appeal was allowed in part. The panel determined that the unadjusted rate should be £140m^2 giving a Rateable Value (RV) of £35,000 for the appeal property effective from 1 April 2017.

Introduction

2. The appeal was brought in respect of 22 Saffrons Road, Eastbourne, East Sussex BN21 1DU (the appeal property). It is a detached house converted into a "day nursery and premises" with unrestricted all day parking and is located on a residential road within a short

walking distance from local amenities. There is no dispute over the size of the property at 253.63m^2 in terms of main space (ITMS).

3. This is a 2017 Rating List appeal and the Rateable Value is £40,250.

4. The property was held on a new 20 year lease from 1 April 2012 with 5 yearly reviews. The lease had three years expired at 1 April 2015, the antecedent valuation date (AVD) for the 2017 rating list, with a rent of £36,000 per annum (p.a.) analysing at £160 per m^2.

5. At the first review on 14 March 2017, two years after the AVD, the rent was increased to £62,400 p.a. analysing at £248 per m^2.

6. On 27 February 2019 a proposal was submitted by Altus Group on behalf of the appellant to reduce the RV to £22,500, analysing at £90.00 per m^2, against the 2017 RV assessment of £40,250.

7. The appeal was later revised to an RV of £26,250 analysing at £105 per m^2.

8. The challenge decision notice was dated 22 October 2020. The Notice stated that the challenge was not well founded as the rating list entry was considered reasonable and no alteration to the list was made.

9. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5) (arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.

10. Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated “remote hearings” as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal’s Consolidated Practice Statement has been amended to reflect this.

11. Mr Baruwa appeared on behalf of the appellant in a dual role as Surveyor advocate and as expert witness. In view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), his declaration of truth included a statement that he was instructed on a contingency fee basis. He declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would comply with this as well as the requirements of his professional body, regardless of whether or not the evidence supported the client’s cases.

12. The panel accepted this expert witness evidence on the above basis as the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations, and was allowable due to the Tribunal’s rules on admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial). The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

13. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by me before coming to my

decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

14. Whether the unadjusted rate for the appeal property should be reduced from £160.00/m² and an RV of £40,250 to £105.00/m² and an RV of £26,250.

Evidence and submissions

15. The evidence bundle comprised all of the documents exchanged between the parties as part of the challenge process: Valuation Officer's challenge case decision notice; rental evidence summaries; appellant's challenge submission; photographs and location plans of the appeal property and comparable assessments and an email exchange between the parties.

16. Mr Baruwa, the appellant's representative, sought a reduction in the rating assessment as he contended that the appeal property's basic rate was excessive at £160.00/m^2 and was not in line with assessments on comparable properties in the locality, looking at the physical attributes between the properties.

17. Mr Baruwa contended that the true nature of the rental agreement was as a 'connected party' and may have included a 'goodwill' element. The owners of the property ran the nursery, sold it and it was then let back to the previous manager. The rent of £36,000 agreed in 2012 was not tested on the open market and was some years from the AVD. Further, the increase of rent to £62,400 at first review was also not tested on the open market and, again, was away from the AVD. He therefore contended that neither rental agreement was of assistance when establishing the tone at the AVD.

18. Mr Baruwa provided rental evidence of properties that he felt were comparable in the locality of the appeal property:-

12 The Avenue
The Form of Return (FOR) showed that there was a nil increase at rent review in July 2015 with a passing rent of £24,000 p.a. On an area of 197.61m^2 (ITMS) this devalued to £121/m^2.

93 Enys Road
The Form of Return (FOR) showed that the property was let from July 2014 with a passing rent of £18,000 p.a. On an area of 179.22m^2 this devalued to £100/m^2.

131A Stapley Road
The Form of Return (FOR) showed that the property was let from September 2015 with a passing rent of £14,000 p.a. On an area of 144.45m^2 this devalued to £157/m^2.

19. Mr Baruwa contended that the current tone for the 342345 scheme used by the valuation officer in the appeal property's valuation, ranging from £140/m2 to £200/m^2, was excessive and that the valuation office had not provided any evidence that such a high valuation was appropriate.

20. He further stated that the best rental evidence is that of 12 The Avenue and 93 Enys Road and, given that there would be some upward growth between 2014 and 2015, he therefore contended that it is reasonable to apply £105/m^2 for the appeal property.

21. Mr Baruwa further stated that other properties proposed as comparable were not relevant for the following reasons:

    Children's nursery at The Saffrons
    The property was built on former squash courts with the tenant then spending £150,000 on conversion costs to a nursery. These costs were reflected in the low rental figure. The current rent of £15,420 p.a. for the property with an RV of £47,500 is not reflective of the open market and no weight should be placed on this evidence.

    25 Terminus Road
    This is a deleted assessment and does not appear in the 2017 rating list.

22. The respondent, Mr Sinden, contended that the current assessment of 22 Saffrons Road was not unreasonable. In response to Mr Baruwa's contention that the appeal property's rental evidence did not reflect the market as the owner and tenant were connected, Mr Sinden stated that he is unable to ignore an almost triple increase of rent for the appeal property at rent review and that this is the best evidence available to support the current RV.

23. Mr Sinden stated that he had, prior to the hearing, offered to reduce the RV to £35,000, analysing at 140/m^2, which was an amount less than the rent in 2012 on the appeal property, but that this was rejected by Mr Baruwa.

24. Mr Sinden stated that, in his opinion, 12 The Avenue is in a different location to the appeal property and is of a sufficiently different layout for it not to be useful as a comparable property. There had also been no increase at its rent review in 2015, compared to the large increase at the appeal property.

25. Further, Mr Sinden opined that the appeal property is a superior property to those offered as comparable as it is a detached property located on a residential road with unrestricted all day parking that is very convenient for commuters. The appeal property is situated in an area near to "The Meads", an area known for its high residential property prices.

26. However, Mr Sinden stated that he was keen to find a resolution to the matter and therefore was prepared to offer a revised assessment for the appeal property of £35,000 rateable value with effect from 1 April 2017.

Decision and reasons

27. The main issue in dispute concerned the level of value to be adopted for the appeal property.

28. The term 'rateable value' is defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (as amended):

    "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".

29. In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

30. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 1 April 2017.

31. Both parties had referred to *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This Lands Tribunal judgment provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

32. The panel noted that the valuation officer had offered to reduce the unadjusted rate from £160/m^2 to £140/m^2 for the appeal property but this had been rejected by the appellant's representative.

33. The appeal property was situated in a good residential area, more favourable than the submitted comparable properties and the panel was satisfied that the increase in rent at review did reflect the market, there could even be an argument that the reviewed rent may actually be at the low end of market levels.

34. The panel felt that the rent review evidence on the appeal property could not be disregarded and provided very good evidence of the value of the property in the locality.

35. The panel was aware that the nearest comparable property at The Saffrons was subject to an unadjusted rate of £140/m^2 but that the valuation officer had offered to reduce this to £120/m^2.

36. The valuation officer had also offered to reduce the unadjusted rate on the appeal property to £140/m^2 but this had been rejected. This rate was higher than the offer for The Saffrons but would, at the higher rate, reflect the superiority of the appeal property. Less weight was placed on the other comparables due to their location and different types of building.

37. In appeals of this nature the burden of proof rests on the appellant to prove his case for a reduction. The panel concluded that the appellant's representative had failed to produce

sufficient evidence to justify his claim for a further reduction to the unadjusted rate of £105/m^2 but that there was evidence that the appeal property is at the high end of the current scheme rate and the current rate does not reflect its value appropriately.

38. The panel was therefore satisfied that a fair and reasonable rateable value would be £35,000 based on an unadjusted rate of £140/m^2.

Order

39. The appeal was allowed in part. The Tribunal orders, pursuant to Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, S.I. No. 2269 2009, that the Valuation Officer, within two weeks of the date of this order, shall alter the 2017 list in respect of Copperfields Day Nursery Limited at 22 Saffrons Road, Eastbourne, East Sussex BN21 1DU to £35,000 with effect from 1 April 2017.

40. A refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 13 June 2021

Appeal number: CHG100077367