THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; Day nursery and premises; level of value; rental evidence; comparable properties; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; appeal dismissed.

Re: 13 Harbet Road, London W2 1AJ

APPEAL NUMBER: CHG100090445

BETWEEN: Merchant Square Day Nursery Appellant

and

Mr A Ricketts Respondent

(Valuation Officer)

BEFORE: Mr A Backway (Senior member)

CLERK: Mrs S Morgan

REMOTE HEARING: Friday 14 May 2021

PARTIES PRESENT: Mr Stewart Carter of Altus Group – Appellant's representative (Advocate)

Mr Robert Shepherd of Altus Group – Appellant's representative (Expert Witness)

Mr Andrew Mckillop – Valuation Officer's representative

Summary of decision

1. The appeal was dismissed. I made no change to the appeal property's existing assessment of £67,000 rateable value (RV), effective from 1 April 2017.

Introduction

2. 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.

3. 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.

4. Mr Shepherd appeared on behalf of the appellant 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.

5. I 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). I therefore considered the expert evidence and attached such weight to it as it saw fit.

6. The appeal was brought in respect of 13 Harbet Road, London (the appeal property). The appeal property is a "day nursery and premises" situated within a mainly residential area, with some office space, and provides first floor accommodation. The property was built in 2014 and measures 360.88m^2 or 335.49m^2 in terms of main space (ITMS). It forms part of the Merchant Square development in the Paddington area, close to Edgeware station in London.

7. The property is held on a new 30-year lease from 1 September 2014, at a rent of £60,000 per annum (pa), with 5 yearly rent reviews and a rent-free period for the first year. There was an increase in the fifth year to £65,000 pa. There is an option to renew a new 15-year tenancy at the end of the first 15 years.

8. This is a 2017 Rating List appeal. The proposal was submitted by the Altus Group on 16 April 2019, against the 2017 RV assessment of £100,000. The challenge decision notice was dated 30 November 2020. The assessment was reduced to £67,000 RV, with effect from 1 April 2017. However, the appellant's representative sought a further reduction to £50,500 RV.

9. In accordance with the tribunal's business arrangements, I have been authorised to consider and determine this appeal alone.

10. 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

11. The appellant's representative contended that the rate adopted for the appeal property was excessive. He sought a reduction to £152.00/m² whilst the Valuation Officer (VO) contended that £200.00/m² was reasonable.

Evidence and submissions

12. The 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; a copy of the lease pertaining to the appeal property; photographs and location plans of the appeal property and comparable assessments and an email exchange between the parties.

13. Mr Carter, as advocate, introduced the case on behalf of the appellant**.**

14. The subject property is part of valuation scheme 396965, where the values range between £200.00/m^2 to £300.00/m^2 depending upon size, location and other physical factors. This value is applicable to Day Nurseries in Westminster. The unadjusted rate applied to the appeal property was £200.00/m^2, before any adjustments were taken into account.

15. Mr Shepherd sought a reduction in the rating assessment, as he contended that the appeal property was not in line with assessments on comparable properties in the locality, looking at the physical attributes between the properties. Furthermore, he contended that the basic rate was excessive when considering the subject rent, which analysed to £152.00/m^2. Due to the lack of comparable properties in the locality, Mr Shepherd was of the opinion that greater weight should be given to the subject rent.

16. Based on the subject rent, Mr Shepherd believed that £150.00/m^2 was more appropriate, taking a stand back and look approach, as the final part of this valuation. He sought a revised valuation of £50,500 RV with effect from 1 April 2017.

17. A summary of 2014/2015 rental evidence was provided by the respondent, which included four other properties where £300/m^2 had not been challenged. All four properties were located in the Westminster area. The analysed rent for these properties ranged from £39.62/m^2 to £514.82/m^2.

    32A Lupus Street, London was a period property over three floors. This property was situated approximately three miles away from the subject property. It measured 111.09m^2 (ITMS). The Form of Return (FOR) for this property showed a 2014 rent of £67,171 pa over a term of 38 years, which analysed to £329.47/m^2.

First Floor R/O Swallow House, Barrow Hill Estate, London was a much smaller property, situated in a residential block of flats approximately one and half miles away from the appeal property. It measured 56.43/m^2 (ITMS). The 2014 rent passing on this property according to the FOR was for 10 years at £6,756 pa, which analysed to £103.58/m^2.

1st Floor, Boscobel Street, London. This property is situated within industrial/office space. The 2015 rent passing on this property according to the FOR was for a term of 10 years at £70,000 pa, which analysed to £514.82/m^2.

Rear Building, Essendine Primary School, Essendine Road, London. This is the largest comparable property. It is twice the size of the subject property and is part of a primary school. This property measured 631.03m^2 (ITMS). According to the FOR this 2014 rent was for a term of 25 years 3 months at £25,000 pa. This analysed to £39.62/m^2.

18. In addition, a schedule of comparable properties provided by the respondent showed settlement evidence by way of a decision notice or agreement following a 2017 challenge and included the following:

46 Bromley Road, London was a converted domestic dwelling situated on a busy road. This property measured 181.77m^2 (ITMS) and it had a base rate £150/m^2.

Peques 2 Anglo Spanish Nursery School, Fulham Baptist Church, Dawes Road, London. This nursery school is situated in the basement of the church and is used between 8am-6pm. At the end of the day everything is cleared away to allow others to use the premises. This property measured 153.48m^2 (ITMS) and it had a base rate of £145/m^2.

Bst and Gnd Floor, 14 West Smithfield, London. This property measured 398.58m^2 (ITMS) and its base rate was £200/m^2.

59, Balham Grove, London measured 180.44m^2 (ITMS) and had a base rate of £175.00/m^2.

2 Knightley Walk, London measured 383.43m^2 and it had a base rate of £256.50/m^2. This is a newly built property, in a new development south of the river Thames. There is ongoing development in this location, which is not dissimilar to the appeal property.

19. In summary, Mr McKillop believed that the appeal property was located in a better location compared to the comparable properties. Furthermore, in view of the rents/settlements, he valued the subject premises towards the top end of the range of values. However, bearing in mind the rent, he was of the opinion that £200/m^2 before any adjustments were made was reasonable. Mr Mckillop was not convinced that there was strong enough evidence to support a further reduction than that already given in view of the basket of rents. He therefore sought a dismissal of the appeal.

20. Mr Shepherd argued that the comparable properties which had been submitted covered a wide variant in terms of value from a wide location. He provided details and photographic evidence for each of the comparable properties and commented on their non-suitability as comparable properties. He understood that Swallow House and 32 Lupus Street had annual index linked rent reviews, so they held less weight when considering the rents at review. Furthermore, Swallow House had a charitable occupier in a communal building. The landlord is Westminster council and therefore there may be an element of a concessionary rent with this property. Rear Building, Essendine Primary School is a large nursery in a primary school setting and the low rent could also indicate this to be a concessionary rent. 1st Floor, Boscobel Street, London had been subject to changes to a community centre, so the rent should be treated with some caution.

21. In terms of the settlement evidence, Mr Shepherd contended that the properties in Smithfield Way and Knightley Walk were settled at figures below their 2010 rateable value. Furthermore, they were not located in Westminster itself. However, Mr McKillop stated that it was the adjustments not the base rate that made the 2017 assessments lower than their 2010 rateable values for these inner-city units.

Decision and reasons

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

23. 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;
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> 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".

24. 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).

25. 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.

26. 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.

27. The appellant's representative had contended that the best evidence was the rent for the subject property and therefore he had adopted the analysed rental figure of £152.00/m^2 (rounded to £150.00/m^2) in his revised assessment for this property. This rent was the closest to the AVD and it was a new letting. The respondent, on the other hand, argued that based on the wider basket of rents, £200.00/m^2 was reasonable.

28. I was aware that the rent on the appeal property was as the *Lotus and Delta* case found, to be the starting point. This was a September 2014 rent of £60,000 pa, which devalued to £152.00/m^2. However, in view of the certain increases and the length of the lease, I treated this rent with some caution. I was also aware that after the rent on the appeal property it was important to consider the whole basket of evidence when assessing a rateable value.

29. The respondent had provided a rental summary for a number of comparable properties. Accepting the differing locations, the analysed rents on the comparable properties ranged between £39.62/m^2 and £514.82/m^2 against the adopted base rate of £300.00/m^2. The comparable properties were all part of the same valuation scheme covering the Westminster area. I found that the adopted value of £200.00/m^2 on the appeal property was not unreasonable. It was the lowest value within that particular valuation scheme and reflected the rent passing within the basket of rents applied to the other day nurseries.

30. In relation to the settlement evidence, I found the best example was 2 Knightley Walk. This property was similar in size to the subject property and was located in an up and coming location. A base rate of £265.50/m^2 had been applied to this property which supported the base rate applied to the appeal property.

31. Having considered all the evidence presented at the hearing, I determined that the assessment should not be reduced. The price per m^2 that had been applied to other day nurseries of £300/m^2 on the same valuation scheme supported the level of value adopted of £200.00/m^2 for the appeal property. This was at the lower end of the price per m^2 range for properties of this nature. With this in mind, I was not persuaded to reduce the level of value any further for the appeal property.

32. In appeals of this nature the burden of proof rested on the appellant's representative to prove his case for a reduction. However, in the case before me, I concluded that the appellant's representative had failed to produce sufficient evidence to justify his claim for a reduction in the level of value. Consequently, I was satisfied that the grounds for the appeal were not substantiated and the appeal was dismissed.

Date: Friday 28 May 2021

Appeal number: CHG100090445