THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; The Valuation for the hereditament is not reasonable; Rental evidence; Base rate £m^2; Tone and comparable properties; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Appeal allowed.

Re: The Wolds Day Nursery, Shepherds Corner, Stragglethorpe, Nottingham NG12 2JZ (the appeal property).

APPEAL NUMBER: CHG100146821

BETWEEN:	The Wolds Day Nursery	Appellant
	and	
	The Valuation Officer	Respondent

PANEL:	Miss Alison Griffiths	(Chair)
	Mrs Fiona Duggan	(Member)
CLERK:	Mr Duncan Adamson	
REMOTE HEARING 2	13 September 2021	
PARTIES PRESENT	Mr Henry Pitt of Altus	Appellant's representative (Advocate and Expert Witness)
	Mr Joe Chan	Respondent's representative

Summary of decision

1. The appeal was allowed. The Rateable Value was reduced from £18,500 to £12,500 for with effect from 1 April 2017.

Introduction

2. The appeal was brought in respect of Wolds Day Nursery located in Nottinghamshire between Radcliffe-On-Trent and Cotgrave and situated behind The Shepherds Restaurant in Stragglethorpe.

3. It is a single storey, purpose-built facility providing a secure environment with an area of 213.76m^2. There is a large parking area and a “park and ride” with regular buses going to West Bridgford and Nottingham.

4. The challenge submission date was 19 November 2019 with the challenge being completed on 17 November 2020.

5. The appellant sought a reduced rateable value of £12,500 based on a base rate of £56.25 per m^2 because of the locational disadvantages of the property when compared to other day nurseries in the locality.

6. The respondent contended that the current rateable value assessment of £18,500 at a rate of £85 per m^2 was reasonable based on the evidence and information available.

7. 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.

8. 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.

9. Mr Pitt appeared on behalf of the appellant in a dual role as 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 his client’s case.

10. 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 they saw fit.

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

Preliminary matter

12. The respondent had raised what he felt was a preliminary issue in that the appellant's representative had previously submitted additional new evidence in the form of an expert witness report. However, the appellant's representative submitted that none of that report contained any new evidence, it was simply a summary of the case for the purposes of the tribunal hearing.

13. The panel considered some examples submitted by the respondent but were satisfied that, indeed, it was not new evidence and could therefore be referred to in the hearing.

Issue

14. The rateable value of the appeal property.

Evidence and submissions

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

16. The appellant's representative stated that the property was in a quiet rural area away from any significant residential areas on a quiet road with no visibility from passing vehicles and was relatively inaccessible without the use of a car. Further, that it was a modular building and not a full quality structure like most nurseries and so required higher maintenance and upkeep costs.

17. The property was formerly a play barn owned by The Shepherds Corner pub and let to the current occupiers, an existing nursery operator, on a 10 year lease with 3 months' rent free from 21 March 2013 at an agreed rent of £12,500.

18. The property was converted in 2013 and a new lease was taken on 1 June 2015 with a 6 month rent free period, 4 year break clauses and at a stepped rent of £12,500 p.a. for a period of ten years. The appellants' representative submitted that the case of Lotus and Delta v Culverwell requires that the rental evidence on a property should be taken as the primary evidence and starting point for the valuation of a property. The two leases were agreed on the open market by two experienced operators and are therefore the best evidence in respect of its rateable value valuation.

19. The respondent contended that the property's rental evidence is not the sole evidence but that rents of similar properties should also be considered. Comparables were given and the respondent stated that they supported the current rateable value as they were in the locality of the Wolds Nursery and that the Wolds nursery was not remote but in a catchment area very similar to his comparables submitted.

20. The respondent further stated that the appellant had only given one comparable property, that of 83-85 Smithhurst Road, Giltbrook and that was not relevant as it was some distance away from the Wolds Day Nursery and had been leased on a rent 2 years prior to the 1 April 2015, the antecedent valuation date.

Decision and reasons

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

22. 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".

23. 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).

24. 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.

25. Both parties had referred to the Lotus and Delta v Culverwell and Leicester Lands Tribunal judgment which 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.

26. The panel noted both parties' comments in respect of the location of the appeal property but found that it was in a poor location for access and visibility and did not sit within a residential area unlike the comparables that had been submitted by the respondent.

27. The panel were also presented with evidence of Consent Orders that had been made in respect of other nurseries within the general wider area and that those rateable values had been reduced in the light of rental evidence.

28. The panel noted that the respondent did not make reference to the appeal property lease which commenced 1 June 2015 and he said that this was because it was agreed after the AVD.

29. However, the panel found that that lease was relevant, as was the previous 2013 lease, as they were both open market leases and very good evidence in support of the appellants' contention for the rateable value to be £12,500 particularly because of the close proximity of the 2015 lease to the AVD.

30. The panel found that this was in line with the authoritative judgment of Lotus and Delta v Culverwell and Leicester and good solid primary evidence for the valuation of the appeal property and attached a great deal of weight to it.

31. The panel also noted that the respondent's comparables did not have a great deal in common with the appeal property and found that they were not helpful in the required valuation and therefore attached little weight to them.

32. In appeals of this nature the burden of proof rests on the appellant to prove his case. The panel concluded that the appellant's representative had produced sufficient evidence, particularly in respect of rental evidence, to justify a reduction in the rateable value to £12,500.

33. The appeal was therefore allowed.

Order

34. 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 rateable value in the 2017 list in respect of The Wolds Day Nursery, Shepherds Corner, Stragglethorpe, Nottingham NG12 2JZ to £12,500 with effect from 1 April 2017.

35. 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: 27 September 2021

Appeal number: CHG100146821