THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list; compiled list appeal; day nursery and premises; rental evidence; comparable properties; the panel determined that the best evidence on which to determine the appeal property's assessment was the basket of available rents and the assessments of comparable properties; appeal dismissed.

Re: Active Kids Nursery, 8 West Way, Hove, East Sussex BN3 8LD

APPEAL NO: CHG100175142

BETWEEN:	Amin Group Ltd	Appellant
	and	
	Ms D Bunyan (Valuation Officer)	Respondent

PANEL: Mr J M Imperato (Senior Member)
Mr S M Hooberman

CLERK: Mrs A Keohane

HEARING: Remote Hearing No. 1 on 23 June 2022

APPEARANCES: Mr A Bacon of JMA Chartered Surveyors on behalf of the appellant as advocate and expert witness
Mr U Javed representing the Valuation Officer as advocate and expert witness

---

Summary of decision

1. Appeal dismissed. The appeal property's assessment was confirmed at £32,500 rateable value (RV) with effect from 1 April 2017.

Introduction

2. This appeal is a 2017 rating list appeal brought in respect of Active Kids Nursery, 8 West Way, Hove, East Sussex BN3 8LD (the 'appeal property'). The property was entered into the 2017 rating list as a Day Nursery and Premises, at £48,250 RV based on £225/m^2, with effect from 1 April 2017.

3. JMA Chartered Surveyors, on behalf of the appellant, submitted a challenge proposal that was received by the Valuation Officer on 9 March 2020. The proposal sought a reduction in the appeal property's assessment to £19,000 RV based upon the rent of the subject. After a reconsideration of the evidence and having regard to the value applied to the adjoining property, the Valuation Officer altered the rating list to show an

assessment of £32,500 RV, based on £150/m^2. The appeal property's assessment incorporated an element for plant and machinery, (colour CCTV) of £1223.

4. As the assessment had not been altered in accordance with the proposal, an appeal was made to the Valuation Tribunal on 29 November 2021 on the grounds that the valuation for the hereditament was not reasonable.

5. The appeal property is situated in a mainly residential area in the Hangleton district of Hove. It comprises a single storey semi-detached building occupied as a children's nursery with an outside activity and play area. The Valuation Officer's records indicate that the building is from the 1950s and was refurbished in 1985. The property has a total significant area of 219.34m^2, giving an area in terms of main space (ITMS) of 209.79m^2.

6. Mr Bacon appeared on behalf of the appellant in the dual role of advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Bacon confirmed that he was instructed under a contingency fee arrangement. 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 the evidence supported the client's case.

7. It was therefore appropriate for the panel hearing the evidence to consider the "expert" evidence and assess what weight, if any, to give it in the context of the matters in issue before it.

8. This decision document 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 reaching its decision. The absence of a reference to any statement or item of evidence placed before it by the parties should not be construed as it being overlooked by the panel.

Issue

9. Mr Bacon argued for an assessment based on the property's adjusted rent, which equated to a rate of around £100/m^2. The Valuation Officer maintained that £150/m^2 was correct based on the basket of available evidence.

Evidence and submissions

10. A bundle of evidence comprising the information exchanged between the parties during the challenge process was provided for consideration. This included location plans; a photograph of the appeal property; a photograph and details of properties cited as comparable; a rental summary; and the lease in respect of the appeal property dated 4 July 2013, giving a rent commencement date of 4 September 2013. Reference was also made to:
    - *Lotus and Delta Ltd v Culverwell (VO) & Leicester City Council* [1976] RA141
    - *Specialeyes Plc v Felgate (VO)* [1992] RA 387

11. In brief, Mr Bacon queried the relevance of the comparable properties submitted by the Valuation Officer as the majority were in more upmarket areas that would attract higher rents. He considered that the appeal property within a less upmarket area should be valued in line with its rent, which reflected a new letting on a full repairing and insuring basis. The lease commenced in July 2013 and rent was payable from

September 2013. In accordance with the Lands Tribunal decision in *Lotus and Delta,* Mr Bacon contended that this rent was at the top of the hierarchy of evidence. Although the rent between 2013 and 2018 was stepped, Mr Bacon had adjusted this via a straight-line approach to establish a rental figure of £21,000 per annum for the appeal property as at the AVD. He considered this to be reasonable, particularly as the Valuation Officer's evidence showed that little rental growth had occurred in the area around this time.

12. Using his rental estimate, which roughly equated to £100/m^2, and adding £1223 for plant and machinery, Mr Bacon sought a rounded down assessment of £22,000 RV for the appeal property with effect from 1 April 2017.

13. Mr Javed argued that the appeal property's stepped rent was not the best evidence, given that it did not accord with the rating hypothesis and required adjustment. He considered the most reliable evidence to be the basket of rents for properties described as 'Day Nursery and Premises' within the BN1, BN2, BN3 and BN41 postcode areas of Hove and Brighton. These rents had been set between 2014 and 2018 and analysed to between £114.14/m^2 (the appeal property's 2018 rent) and £580.81/m^2. Other than the subject, the comparable properties had assessments based on unit prices of between £175/m^2 and £275/m^2. In some instances, the unit price adopted for a property was higher than its analysed rent, in other cases the unit price was lower.

14. Mr Javed accepted that it was important to consider the propositions for weighting evidence as set out in *Lotus and Delta.* However, whilst the rent of a property was one of the propositions, he noted that another was that, where rents of similar properties were available, they too should be considered to confirm or otherwise the level of value indicated by the actual rent of the subject property. Having regard to the basket of rents, Mr Javed considered the appeal property's current assessment was reasonable and sought dismissal of the appeal.

Decision and reasons

15. The appeal hereditament must be valued for the purposes of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions detailed in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988. The date of the hypothetical rent was 1 April 2015 (antecedent valuation date or AVD). Matters affecting the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 (material day) for this appeal.

16. Both parties had referred to the Lands Tribunal judgment of *Lotus and Delta*, which had established six propositions for the weighting of evidence, namely:

   '(1) Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.

   (2) The more closely the circumstances under which the rent is agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of Gross Value in s.19(6) of the General Rate Act 1967 the more weight should be attached to it.

(3) Where rents of similar properties are available they too are to be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.

(4) Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.

(5) In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attributed to the differing types of evidence depending on the one hand on the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.

(6) In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but in such circumstances it would be clearly more difficult to reject the evidence of the actual rent.'

17. *Lotus and Delta* outlined that the starting point was consideration of the actual passing rent. In this case, the appeal property had been subject to a lease with effect from July 2013, with rental payments commencing in September 2013. However, this was a stepped rent and therefore required some adjustment. Mr Bacon had used a straight-line approach based on the 2013 and 2018 rents to establish a rent as at the AVD. On balance, the panel did not find this evidence to be the most persuasive, given the distance of these dates from the AVD. As the rent required a degree of adjustment to bring it in line with the rating hypothesis, attention was paid to the third proposition from *Lotus & Delta* which required examination of the rents passing on comparable properties. The panel considered the correct approach in this appeal was to examine the whole basket of evidence before arriving at a reasoned decision.

18. During the hearing, Mr Bacon questioned Mr Javed on whether the forms of return (FOR) on which he was relying were available for perusal, given the decision reached by the President of the Valuation Tribunal for England. Mr Bacon did not identify the decision he referred to in full but did refer to the '*Kent Hall Hotel'* decision. The President had issued a decision in *Kadimah Carmel Hotel Ltd and Kent Hall Hotel v Jackson (VO)* in which a preliminary point had been addressed over whether the Valuation Office Agency (VOA), in order to meet the requirements of Regulation 17 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (as amended), had to produce the original FOR. Ultimately, it was decided that there was no legal requirement for the VOA to provide a copy of the actual FOR. If at a hearing the accuracy of the information provided was disputed, then it would be for panels to decide what weight to give to the evidence.

19. Whilst Mr Bacon had challenged the veracity of the Valuation Officer's rental evidence because of the lack of corroboration of the specific details, the panel considered this evidence as it related to day nurseries within the Hove and Brighton area and, looking at the basket of rents overall, would indicate rental levels around the AVD. However, the panel did note Mr Bacon's contention that some were in more upmarket areas than the appeal property and would therefore have a higher rental potential.

20. Observing the basket of rents, the panel accepted that a number appeared to be high and others low. Mr Bacon had suggested that some of the details contained in the Valuation Officer's rental schedule were incorrect and had found the sizes provided for

208 Preston Road and 126 & 128 New Church Road to be wrong. The panel considered this was likely, given that the rents for these properties set in October 2015 and March 2015 appeared high for their quoted sizes and when analysed had produced £527.36/m^2 and £580.81/m^2 respectively. In light of this, the panel placed less weight to the evidence of these two comparable properties.

21. Having regard to the remaining rental evidence, the panel noted that it related to rents set between 1 May 2015 and 1 July 2018, which had analysed to between £114.41/m^2 and £410.38/m^2. The five rents set closest to the AVD in 2014, 2015 and 2016 had analysed to £132.14/m^2, £183.80/m^2, £182.54/m^2, £115.20/m^2 and £326.34/m^2. The panel did not consider that this evidence demonstrated the £150/m^2 adopted in the appeal property's assessment to be excessive.

22. The panel also had particular regard to the rent (set in May 2014) of 44 Cromwell Road, which at 190.42m^2 ITMS was close in size to the appeal property. This was a converted residential building and its inherent character with accommodation over a number of floors could, in the panel's opinion, be viewed as less desirable for a day nursery than a single storey building with substantial outside space, such as the appeal property. 44 Cromwell Road also appeared to have double yellow lines to two sides, which suggested that it had less favourable parking than the appeal property, which was said to benefit from good on-street parking. The panel accepted that 44 Cromwell Road was in a better location; however, the appeal property's assessment was based on £150/m^2, in effect, lower than the analysed rent of this comparable property (£183.80/m^2), and substantially lower than the £225/m^2 unit price on which the comparable property's assessment was based. On balance, the panel found the unit price adopted in the appeal property's assessment to be fair and reasonable and reflective of its location.

23. The assessments of the comparable properties included in the Valuation Officer's schedule had been based on unit prices of £175/m^2, £225/m^2, £235/m^2 and £275/m^2. In the panel's view, the appeal property's assessment based on £150/m^2 was not shown to be excessive. The subject appeal was therefore dismissed.

Date: 22 July 2022
Appeal number: CHG100175142

Right of Appeal
Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.