THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; accuracy of the rateable value in the list as at 1 April 2017; day nursery and premises; rental evidence; comparable assessments; appeal allowed in part.

RE: Ground Floor, 4 Millennium Way West, Nottingham NG8 6AS

APPEAL NUMBER: CHG100279941

BETWEEN:	Phoenix Park Nursery Ltd	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

PANEL: Mr M J Imperato (Presiding Senior Member)
Mr J Rockliff (Senior member)

CLERK: Mrs H Beresford

REMOTE HEARING ON: 15 February 2022

APPEARANCES: Mr M Bates (Appellant's representative)
Mrs S Howson (for the Valuation Officer)

Summary of decision

1. The appeal was allowed in part, the assessment was reduced to rateable value (RV) £37,500 with effect from 11 June 2019.

Introduction

2. This appeal has been brought in respect of the following: Ground Floor, 4 Millennium Way West, Nottingham NG8 6AS (the 'appeal property'), which was entered in the 2017 rating list as 'office and premises' at RV £42,250, effective from 11 June 2019, this figure had been reduced to RV £38,000 following the appellant's challenge.

3. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Mr Bates made an appeal to the Valuation Tribunal for England (VTE) on behalf of Phoenix Park Nursery Ltd. The appeal was made because the Valuation Officer decided not to alter the 2017 rating list following the appellant's check and challenge. The appellant had originally sought a reduction to RV £27,750 with effect from 11 June 2019, however at the hearing he stated that he now sought a reduction to RV £34,750.

4. The appeal to the VTE was made on the grounds that the valuation for the appeal property was not reasonable, as the Valuation Officer had not made any alteration to the rating list in his challenge decision notice.

5. The subject property is a Day Nursery located within a purpose-built office building on Phoenix Office Park, Millennium Way West.

6. The appellant's representative, Mr Bates, when appearing as expert witness, stated that he was not on a conditional fee arrangement. However, he also stated that he understood and accepted that his first duty was to the VTE in giving his evidence, whether or not the evidence supported his client's case.

7. The President of the 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. In accordance with that Practice Statement, the VTE conducted the hearing of this appeal remotely via a Microsoft Teams conference call using an audio/video-link.

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 the panel when coming to its 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 base level of value adopted for the appeal property was not agreed. The Valuation Officer has adopted £130/m^2 in respect of the appeal property, but the appellant sought a reduction to £120/m^2. The inclusion of car parking spaces in the assessment and the extent to which the property was air-conditioned.

Evidence and submissions

12. Mr Bates, the appellant's representative, had submitted evidence provided by both parties which included: the grounds of appeal; the challenge document; the Valuation Officer's response and decision notice; and a copy of an email outlining the areas in dispute.

13. Mr Bates stated that the rating assessment of £130/m^2 on the subject property had been based on a passing rent of £50,000 per annum which was agreed on 1 September 2016. However, he stated that the rental analysis included an addition for 14 car parking spaces which may attract a value of £1,000 per parking space, but he believed this amount should be removed resulting in a rent of £34,750 and a UAR of £120/m^2. Mr Bates also argued that the value of the subject property should not be higher than the £120/m^2 adopted for 1st Floor, 4 Millennium Way West, Nottingham.

14. With regard to 6 Millennium Way West, Nottingham, Mr Bates argued that the UAR adopted for this property was flawed because whilst it reflected the rent passing, the property was much larger than the subject property. He stated that he had been advised that a size-based matrix was used in the calculation of UAR's, if this was the case a larger property should not have a higher UAR. Mr Bates argued that the best comparable was Unit G3A Phoenix Centre which supported a tone of £120/m^2. Mr Bates also referred to Best Day Nursery, Denton Green, Nottingham, NG8 6GD as a better comparator. This comparable property was valued at £95/m^2 which the appellant had originally adopted as a base rate for the subject, with a 5% uplift for air-conditioning.

15. Mr Bates also argued that the kitchen, public toilets and internal storage areas had been valued as air-conditioned and this was not the case. Furthermore £66 had been added to the valuation for plant and machinery which the valuation Officer had failed to give an explanation for. He asked the panel to confirm an RV of £34,750.

16. Mrs Howson responded arguing that the offices on the first floor did not have a lift and therefore a lower rate of £120/m^2 had been adopted to reflect this; the car parking was a part of the assessment and had been correctly included in the rent; and plant and machinery included in the assessment was for closed circuit television.

17. Mrs Howson argued that Mr Bates had failed to take into account the rent passing on the property in making his appeal a rent which she believed supported a UAR of £130/m2 for the subject property. Mrs Howson asked the panel to confirm an RV for the appeal property of £38,000.

Decision and reasons

18. The panel had to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree, as at the AVD,1 April 2015. The common date was used to ensure that every property was treated in a consistent way.

19. The term 'rateable value' is defined in 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"

20. The Lands Tribunal judgment in *Lotus and Delta* v *Culverwell (VO) and Leicester City Council* [1976] RA 141 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.

21. The panel noted that both parties agreed that there was rental evidence for the subject property, a rent of £60,000 with effect from 21 October 2019, however, this was a connected party, sale and leaseback transaction, which had been disregarded in this valuation. However, the panel was aware that the previous rent from the subject property was an open market letting. The same occupier had rented the property for £50,000 with effect from 1 September 2016 on a five-year new lease. As per Lotus and Delta, the panel attached significant weight to this rent which it found supported a UAR of £130/m^2.

22. The panel considered the comparable evidence referred to by the Valuation Officer. It did not accept Mr Bates' argument that the properties supported £120/m^2 for the subject property. 1st Floor, 4 Millennium Way West had a UAR of £120/m^2, however, it was at a disadvantage as it was on the first floor and there was no lift, furthermore the Valuation Officer's scheme allowed for a reduction on 1st floor offices, hence a UAR of £120/m^2. It also found that the rent of £91,923 justified a UAR of £135/m2 for 6 Millennium Way West, which was larger than the subject property at 202.97m^2, measuring 449.60m^2. Equally the rent of £38,000 for Unit G3A Phoenix Centre supported a UAR of £128.29/m^2 for this property. Mr Bates had also argued that the Valuation Officer had failed to supply a size based matrix, however, on this point the panel found that there was insufficient detailed evidence to establish a pattern.

23. Mr Bates had referred to Best Day Nursery, Denton Green, Nottingham, NG8 6GD as a suitable comparator, this property was located approximately one mile Southeast of the subject and in a residential locality which the panel found to be of a lower value than the commercial area which the subject was situated in, hence a UAR of £95/m^2.

24. With regard to the matter of car parking spaces Mr Bates had conceded that the appellant used the car parking spaces and agreed that they were part of the rating assessment and were included in the rent. The panel accepted Mrs Howson's explanation that the £66 included in the assessment for plant and machinery was in respect of closed-circuit television as Mr Bates had not disputed the matter.

25. The panel turned to the matter raised by Mr Bates regarding the fact that 5% had been added to the kitchen, internal store rooms and public toilets for air-conditioning. Mr Bates stated that he had inspected the property and these areas were not air-conditioned. Mrs Howson stated that she was unaware as to whether these areas were air-conditioned. The panel found that it would be unusual for such areas to be air-conditioned and as Mr Bates had inspected the property, it accepted his argument and found that the 5% uplift for air-conditioning in these areas should be removed.

26. In cases of this nature the burden of proof is on the appellant to satisfy the Tribunal that the appeal should be allowed. In this case the panel was not persuaded by the limited evidence and arguments put forward by the appellant's representative that a reduction in the UAR should be allowed or that the valuation of the subject property was unreasonable. Having regard to the above findings and based on the evidence provided the panel held that a UAR of £130/m^2 was fair and reasonable for the subject property. However, it found that the 5% uplift for air-conditioning in the kitchen, internal store rooms and public toilets should be removed resulting in an RV of £37,500 the appeal was therefore allowed in part.

Order

27. Under the provisions of regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to amend the entry in the rating list to show a revised assessment of £37,500 RV for the appeal property, with effect from 1 April 2017

28. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

29. The appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process

Date: 24 February 2022

Appeal number: CHG100279941