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 dismissed.

Re: 7 Gayford Road, London, W12 9BY

APPEAL NUMBER: CHG100317641

BETWEEN:	Mark Dodd T/a Stepping Stones	Appellant
	and	
	Mr Andrew Ricketts (Valuation Officer)	Respondent

PANEL: Mrs M J Cole (Senior Member)

Miss L Sharkey

CLERK: Mr J Massey

REMOTE HEARING 3: 2 February 2023

PARTIES: Mr P Rabbette of Rabbette Chartered Surveyors - Appellant's representative (Advocate and Expert Witness)

Ms R Roopra - Respondent's representative for the Valuation Office

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Summary of decision

1. The appeal was dismissed. The panel determined that the amended rateable value (RV) of £53,000 effective from 20 February 2018 proposed by the respondent was fair and reasonable.

Introduction

2. This is a 2017 Rating List appeal brought in respect of 7 Gayford Road, London, W12 9BY (the "subject property). The Rateable Value (RV) was £67,500 with effect from 20 February 2018 based on a main space rate of £250 per m^2. Following a check carried out by the appellant, a challenge was submitted by Rabbette Chartered Surveyors on behalf of the appellant on 15 June 2020 seeking a reduction in the RV of the subject property to £19,250 based on a main space rate of £75 per m^2.

3. The challenge decision notice was dated 9 March 2021. The notice stated that the challenge was not well founded but that the current entry was unreasonable and proposed a revised RV

of £53,000 based on a main space rate of £200 per m^2 and revised survey areas of the subject property. An appeal against this decision was made on 7 July 2022.

4. The subject property was 19th Century three storey town house which had been converted to a community centre and more recently to a children's' day nursery. It is located in the London Borough of Hammersmith and Fulham on a mainly residential street off Askew Road, which contains a number of retail premises. The nearest underground station is Stamford Brook, located approximately 1 mile away, whilst the nearest overground station is Turnham Green, approximately 1.1 miles away.

5. 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 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

6. The correct rateable value for the subject property.

Evidence and submissions

7. 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; appellant's submission; photographs and location plans of the appeal property and a copy of the lease for the subject property.

8. Mr Rabbette 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 conditional 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 case.

9. 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.

10. It was Mr Rabbette's opinion that the subject property should be valued at £75 per m^2 in accordance with scheme 360175 in which it had previously been placed. This scheme is for community centres built prior to 1971 located in central London. He maintained that the subject property still fulfilled the criteria set out in this scheme, which he contended included a number of children's nurseries located across London. He did not consider that it should have been moved to the current scheme, 408016 which is specific to day nurseries in the London Borough of Hammersmith and Fulham. He stated that all 19 assessments within this scheme were private day nurseries, with those valued at £250 per m^2 being located much closer to the centre of the borough and to transport links.

11. He stated that the subject property is located on the outskirts on the London Borough of Hammersmith and Fulham and close to the London Boroughs of Brent and Ealing, in which day nurseries are valued much lower. He did not consider that the borough in which a nursery is located is fully determinative of its value and other locational factor should also be taken into account.

12. He provided a number of properties which were located close to the subject property which were in its original scheme that he considered to be comparable and supported a lower rate for the subject property:

- **Day Centre, Fulham Palace, Bishops Avenue, SW6 6EA**: rent £60,000 effective 1 September 2013, ITMS 184.11m2, rent analyses to £325.89 per m^2. Assessed at £75 per m^2 - RV £13,750 (Community Centre and Premises).
- **58A, Bulwer Street, W12 8AP**: rent £20,000 effective from March 2012 is a percentage of open market value as it is subsidised by a charity and analyses to £90.46 per m^2. Area 299.30 m^2, assessed at £75 per m^2 - RV £16,750 (Community Centre and Premises).
- **Sure Start Children's Centre, Ground Floor, 58 Bulwer Street, W12 8AP**: Stepped rent (between connected parties) from March 2012, analyses to £85.11 per m^2. Area 311.4 m^2, assessed at £75 per m^2 - RV £19,250 (Community Centre and Premises).
- **Hungry Caterpillar Nursery, East Acton Lane, W3 7LJ**: Day Nursery and Premises, better location than subject property. Rent effective from 2013 is subsidised by the council and analyses to £104.37 per m^2. Area 88.4m^2, assessed at £125 per m^2 - RV £10,500.
- **The Garden Nursery, 131 East Acton Lane, W3 7HB**: Day nursery and premises, better location than subject property. Area 147.5 m^2, assessed at £150 per m^2 – RV £19,500
- **Play Centre, Cathnor Park Children's Centre, R/O 49, Cathnor Road, W12 9JB**: Purpose built play centre. Area 161.8m^2 assessed at £75 per m^2 – RV £10,000
- **Sands End Playhouse, Langford Road, SW6 2LF:** Modern purpose built nursery school 4.4 miles from subject. Area 111m^2 assessed at £75 per m^2 – RV £7,400 (Community Centre and Premises)
- **TBAP Academy, The Greswell Building, Greswell Street, SW6 6PX:** Purpose built school 2.8 miles from subject. Area 583.75m^2 assessed at £75 per m^2 – RV £32,250 (Community Centre and Premises)
- **Step by Step, Basement & Ground Floor, 1 Bridge Avenue, W6 9JA:** Day nursery located in a superior building in Hammersmith 1.7 miles from subject. Area 107.30m^2 assessed at £75 per m^2 – RV £4,650 (Community Centre and Premises)
- **Montessori Nursey, 9 Willow Vale, W12 0PA**: Purpose built nursery, much better located than the subject property. Area 74.1m^2 assessed at £85 per m^2 – RV £5,900.
- **Little Eves, 7-11 Armstrong Road, W3 7JL**: located approximately 0.5 miles from subject property – not assessed
- **Tara House Montessori Nurser, Station Approach, Wilson Walk, W4 1TP**: Modern single storey nursey, adjacent to Stamford Brook railway station – not assessed
- **Montessori by Busy Bees, Warple Way, W3 7FW**: Modern building located 0.4 miles from subject close to Acton Park Industrial Estate – not assessed.

- **Mini Miners Nursery School, All Saints Church, Bollo Bridge Road, W3 8AZ**: Better location than subject adjacent to South Acton Park and nearby access to transport hubs – not assessed.

13. He considered that the evidence provided demonstrated that nurseries in a similar location to the subject property, which were being used as day nurseries, were being assessed at a much lower rate, or in some cases, not at all. He considered that this factor gave these competing nurseries an unfair advantage over the business operating from the subject property.

14. Mr Rabette did not consider that the subject property should be valued any higher than Hungry Caterpillar Nursery, which although located in London Borough of Ealing, was less than half a mile from the subject property. As a compromise, Mr Rabbette had made a 'with prejudice' offer to settle the appeal at an unadjusted rate of £150 per m^2 which he stated resulted in a RV of £40,000. This was in line with the assessment of The Garden Nursery, also located in LB Ealing, less than half a mile from the subject property but benefitting from a garden and playing field.

15. On behalf of the respondent, Ms Roopra stated that the subject property had been adapted as a day nursery and premises which was reflected in the rating list from 20 February 2018, and the value of £250 per m^2 was adopted to reflect its new mode and category. Whilst the valuation scheme provides information as to how the property has been valued its rateable value is reached by an estimate of the annual rent it might be reasonably expected to achieve at the AVD. She stated that there are 22 day nurseries in the London borough of Hammersmith and Fulham which are assessed at £250 pounds per m^2 and she provided details of rents on day nurseries which she considered supported this rate.

Address	Total Area	Rent and effective date	Analysed Rent (£ per m^2)	Unit rate (£ per m^2)	RV
Bst & GF, ADJ 144 Dalling Rd, W6 0EU	228.14m^2	£75,000 18 Aug 15	£371.36	£250	£53,000
30-40 Dalling Rd, W6 0JB	318.1m^2	£73,915 1 Mar 2016	£251.39	£250	£70,500
142 Sinclair Rd W14 0NL	51.8m^2	£16,555 1 April 2015	£548.96	£250	£7,400

16. She stated that the majority of the assessments referred to by the appellant are not day nurseries when considered vacant and to let and would therefore not be comparable to the subject property. She referred to most of these assessments being community centres or schools. With regard to the Fulham Palace Day Centre, she stated that this was currently being assessed as a community centre, but due to the available rental information, the assessment of this property was being reviewed.

17. Ms Roopra considered that the subject property was well located in a residential area and in the vicinity of local schools and shops although she conceded it was further from the major transport hubs than her comparable properties. She considered that this factor was reflected in the respondent's proposed 20 percent reduction to £200 per m^2 as detailed in the challenge decision.

Decision and reasons

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

19. 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 –
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> 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".

20. 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 AVD of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

21. 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.

22. The Lands Tribunal judgment *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.

23. The panel noted that there is no rental evidence for the subject property as it is owned freehold by the appellant. It therefore went on to consider the rental and assessment evidence provided by the parties.

24. Having considered the mode and category of the subject property, the panel was satisfied that vacant and to let, it was a day nursery, and its rent would be agreed by the hypothetical tenant and landlord on this basis. Whilst some of the appellant's comparable properties were being used as some sort of childcare facility or play centre, the panel noted that on the whole these were assessed vacant and to let as community centres and would therefore attract a different hypothetical tenant. The panel therefore considered that most weight should be given to those properties which are assessed as day nurseries.

25. The closest of the appellant's comparable properties which had been assessed as day nurseries were The Garden Nursery and Hungry Caterpillar, which were both located on East Acton Lane in the London Borough of Ealing. They had been assessed at £125 and £150 per m^2 respectively which the panel considered provided a guide to values prevailing in that location. Whilst the appellant had argued that being in a different borough would not necessarily affect rental values of such properties the panel considered that the rent achieved on 144 Dalling Road in particular indicated that rents were higher in the London Borough of Hammersmith and Fulham. This rent had been agreed on a new letting just four months after the AVD and had analysed to £371.36 per m^2. The panel also considered that the rents on 30-40 Dalling Road and 142 Sinclair Road provided a clear indication that £250 per m^2 was not excessive for day nurseries in those locations.

26. The appellant had pointed out the relative disadvantage of the subject property being located further from transport links than the respondent's comparable properties. Whilst the panel considered that this would be a factor, it also considered that other factors such as parking close to a nursery are also important. However, considering the location of the subject property in relation to the appellant's comparable properties and those of the respondent it was of the opinion that the reduced rate of £200 per m^2 proposed by the respondent reflected the difference in location and was fair and reasonable.

27. The panel noted that there was a dispute with regards to the inclusion of the area to the front of the subject property described as hard surfaced, fenced land. This extended to $18.82m^2$ and was considered by the respondent to be part of the children's play area and had been valued accordingly at £15 per m^2. Mr Rabbette argued that this was located to the front of the property and was unsuitable for use as an outdoor play area. The panel noted from the photograph of the subject property that this area was accessible via double glazed doors from one of the classrooms and was enclosed by a wall and gate. It was therefore satisfied that during school hours it was suitable for use as an outdoor area and should be included in the assessment.

28. 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 that the subject property should be valued at £75 per m^2 resulting in an RV of £19,250.

29. The panel was therefore satisfied that a fair and reasonable rateable value would be £53,000 based on a rate of £200 per m^2. The appeal was therefore dismissed.

Date: 1 March 2023

Appeal number: CHG100317641

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.