THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Lotus and Delta v Culverwell (VO) [1976] RA 141; *day nursery and premises; main space price; appeal dismissed.*

RE: Nursery, 85 Wembley Park Drive, Middlesex HA9 8HE

APPEAL NUMBERS: CHG100320491

BETWEEN:	Learning Stars Limited	Appellant
	and	
	Ms D Bunyan (Valuation Officer)	Respondent

BEFORE: Mr P Hickson (Presiding Senior Member)
Mr S Kandola (Senior Member)

CLERK: Mr R Gath IRRV Hons

REMOTE HEARING 4 on 13 September 2021

APPEARANCES: Mr W Secrett from Altus Group (Appellant's representative)
Mr J Fitzgibbon from Altus Group (Appellant's representative)
Mr R Das (Valuation Officer's representative)

Summary of Decision

1. Appeal dismissed. The panel made no change to the rateable value.

Introduction

2. The appeal property was entered in the 2017 rating list as 'Day Nursery and Premises' at rateable value £38,000 based on an unadjusted rate of £150/m^2. It is a two-storey detached former residential dwelling which had subsequently been converted to a day nursery with office space above. It had an area of 311.48m^2 and was owned by the appellant company. The VO had agreed to reduce the RV down to £31,750, based on an unadjusted rate of £125/m^2 however, the appellants representative requested a revised RV at £24,000 based on an unadjusted rate of £94.86/m^2. The rating list has subsequently been amended to reflect the new RV of £31,750.

3. 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.

4. 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 position.

5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Mr Lang made these appeals to this Tribunal because he disagreed with the current RVs. The appeals to this Tribunal had been made on the grounds that the valuation for the appeal properties was not reasonable[1].

6. This was a compiled list appeal so the material day is 1 April 2017. The appeal to this Tribunal was made on 10 May 2021 following the Valuation Officer's Decision Notice of 16 April 2021, in respect of the appeal property (hereditament).

7. Mr Secrett who was acting as expert witness had declared that his firm is on a contingency fee basis. 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 understood and accepted that his duty is to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports their client's case.

8. The panel accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and is 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).

9. The absence in this decision of a reference to any statement or item of evidence placed before the panel by the parties should not be construed as it being overlooked.

Issues

10. The issue for determination was the rateable value of the appeal property.

Evidence and submissions

11. The appellant had provided the Tribunal with both parties' written submissions. The evidence included the following: the appellant's statement of case, a map of the locality, a plan of the building, photographs of the appeal property, details of both parties comparable properties, the proposed valuation, a copy of the challenge proposal, the Valuation Office Agency's

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[1] Regulation 13A(2) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

(VOA) challenge decision notice, copies of correspondence that had passed between the parties and extracts of a number of judgments including *Lotus and Delta v Culverwell (VO)* [1976] RA 141 and *K Shoe Shops v Hardy (VO) and Westminster City Council* [1983] RA26 CA

12. Mr Secrett argued that the unadjusted rate of £125/m^2 was excessive and that the appeal property should be valued at £94.86/m^2. To support this value, he provided the following comparable property:

Property	Total Area	Main space rate	Rent
Jennings Hall, Slough Lane	329.42m^2	£94.86/m^2	£31,250

13. This comparable assessment and the appeal property had both been valued at £100/m^2 in the 2010 rating list and therefore he argued that the appeal property should also be valued at the same rate in the 2017 rating list.

14. In response to the VO's comparable properties he argued that they were not comparable for the following reasons:
   a) 120 Preston Hill, Harrow, the lease was between connected parties and was therefore not a reliable rent;
   b) 5 Lakeside Way, Wembley the unit was a shell and it was fitted out to the tenants specifications comparable to a new nursery; and
   c) 17 Oakington Manor Drive the rent was not reliable as it was an annual accelerator rent which also included a domestic flat.

15. Given the above, he argued that the appeal property should continue to be assessed using the same main space price as Jennings Hall and he asked the panel to allow the appeal.

16. Mr Das was representing the VO as advocate. He contended that the appeal property was not comparable to Jennings Hall and provided the following comparable assessments to support the proposed main space price of £125/m^2:

Property	Total Area	Main space rate	Rateable value
120 Preston Hill, Harrow	172.01m^2	£150/m^2	£22,750
5 Lakeside Way, Wembley	249.07m^2	£150/m^2	£37,250
17 Oakington Manor Drive, Wembley	62.80m^2	£125/m^2	£7,300

17. Given this evidence, Mr Das argued that it supported the unadjusted rate of £125/m^2 and he asked the panel to dismiss the appeal.

Decision and reasons

18. The task for the panel was to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree as at the antecedent valuation date (AVD) of 1 April 2015. The common date was used to ensure that every property was treated in a consistent way; otherwise similar properties would have different rateable values if numerous dates were used as rental values fluctuated over time.

19. There is another important date for rating appeals and that is known as the 'material day.' This is the date on which the physical factors had to be taken into account. In this appeal, the material day was 1 April 2017.

20. 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 –
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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; and
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> 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".

21. The Lands Tribunal judgment in *Lotus and Delta v Culverwell* provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property is considered to be the correct starting point but, where available, rents on similar properties are also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence can then be weighted.

22. As the appeal property was held freehold, to determine the appeal, the panel first considered the rents on the comparable properties. It considered Mr Das' comparable properties. and applied less weight to 17 Oakington Manor Drive as the rent included domestic accommodation and it was substantially smaller at $62.80m^2$. Although 120 Preston Hill was between connected parties, the panel noted that the main space price was the same as 5 Lakeside Way and therefore applied some weight to that rent. It also noted that 5 Lakeside Way was not comparable in terms of location as it was closer to Wembley station.

23. Turning to Mr Secrett's comparable property, Jennings Hall, the panel noted that it was similar in size to the appeal property, however, it did not consider that property to be comparable in terms of build and location as it was nearly two miles away from the appeal property. However, it noted that the rent was £31,250 which was similar to the VO's proposed RV.

24. As the appeal property was in a better location and the photographs of it showed that it was a more impressive building, the panel concluded that it would achieve a higher rent than Jennings Hall and therefore the appeal property should have a higher main space price.

25. Given that the panel had concluded that the unadjusted rate should be higher than £94.86, unfortunately Mr Secrett had not provided any other comparable properties in which to assist the panel to determine the RV. Therefore, in the absence of any substantial evidence to prove otherwise, the panel concluded that the unadjusted rate of £125/m^2 was correct as it was lower than the main space price for 5 Lakeside Way which reflected its superior location and concluded that the RV of £31,750 was correct and dismissed the appeal.

Date: 27 September 2021

Appeal number: CHG100320491