THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; Local Government Finance Act 1988; surgery and premises; method of valuation; Gallagher (VO) v Dr M Read & Partners & Dr J Poyser & Partners (RA/31/2012); Doctors' Rent and Rates Scheme; contractor's test; appeal allowed.

RE: Simply Fertility Limited, Essex Healthcare Park, West Hanningfield Road, Great Baddow, Chelmsford, CM2 8FR

APPEAL NUMBER: CHG100448148

BETWEEN:	The Fertility Partnership Ltd	Appellant
	and	
	Dawn Bunyan (Valuation Officer)	Respondent

PANEL:	Mrs T Watson (Presiding Senior Member)
	Mrs MJ Cole
CLERK:	Ms N Shepherd
REMOTE HEARING 1:	Wednesday 31 May 2023
APPEARANCES:	Mr M Clayton, of Altus Group on behalf of the Appellant as advocate and expert witness
	Mr J Kent, on behalf of the Respondent

Summary of decision

1. Appeal allowed. The rateable value (RV) of Simply Fertility Limited, Essex Healthcare Park, West Hanningfield Road, Great Baddow, Chelmsford, CM2 8FR (the "appeal property") was reduced to £31,500 rateable value (RV), with effect from 1 April 2017.

Introduction

2. This is a 2017 rating list appeal brought in respect of the appeal property, which had been entered into the rating list as 'Surgery and Premises' at £128,000 RV with effect from 1 April 2017.

3. The appellant had made a challenge against the accuracy of the compiled list assessment in the 2017 Rating List, by way of a proposal that he served on the Valuation Officer (VO) on 16 November 2020. After considering the proposal and evidence submitted during the challenge period, the Valuation Officer decided that the proposal was not well founded and refused to alter the existing assessment of £128,000 RV. A decision notice to that effect was served on the appellant on 28 February 2022. Subsequently, the appellant's representative then appealed the VO's decision to the tribunal on 25 May 2022, on the grounds that the current valuation for the hereditament was not reasonable, under Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009.

4. The appeal property is a purpose-built fertility clinic built in 2017 located on Essex Healthcare Park, Great Baddow, Chelmsford. Essex Healthcare Park also includes a private hospital and a specialist cancer hospital.

5. As Mr Clayton appeared on behalf of the appellant as both advocate and expert witness and in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), he confirmed that he was aware that in giving his evidence his duty was to the Tribunal and that he would comply with this as well as the requirements of his professional body. Furthermore, he confirmed that he was not instructed under a conditional fee arrangement or any other success related fee.

6. This hearing was held remotely via Microsoft Teams.

7. This document is not and does not purport to be a full verbatim record of proceedings.

Issue

8. The issue in dispute was the appropriate method by which the appeal property should be valued. The appellant's representative contended that the appeal property should be valued on the contractor's method and the RV should be reduced to £31,500. The respondent argued that the appeal property should be valued on the rentals method and that the appeal should be dismissed.

Evidence and submission

9. The evidence before the panel comprised all of the information and documents which had been disclosed and exchanged as part of the challenge process.

Decision and reasons

10. When arriving at its decision, the panel is governed by rating legislation laid down by Parliament. The appeal hereditament must be valued for the purpose of nondomestic 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 (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988 as amended, for the statutory definition).

11. The material date on which to consider the property was 1 April 2017, the date of the entry in the 2017 rating list. The value must be considered as at the antecedent valuation date (AVD) of 1 April 2015.

12. The panel had regard to the leading Lands Tribunal case of *Lotus & Delta v Culverwell (VO) & Leicester City Council* [1976] RA 141. The panel was aware that this case set out six propositions for weighting evidence for rating purposes. The first proposition was where the hereditament in question was actually let, that rent should be taken as the starting point. The second proposition stated that the more closely the circumstances under which the rent is agreed both as to time, subject matter and conditions relate to the statutory definition of rateable value, the more weight should be attached to it.

13. Mr Kent submitted that the rent passing on the appeal hereditament was the best evidence. This was for an amount of £136,025 per annum and the lease had commenced in March 2017. Therefore, the rent chargeable supported the current RV of £128,000.

14. The panel had regard to the second proposition in *Lotus & Delta* and found that the terms of the lease were too far removed from the statutory definition of rateable value and therefore attached little weight to this evidence. Furthermore, the panel noted that the valuation scheme (385556) to which the appeal hereditament had been assigned was “applicable to surgeries, clinics and health centres in the Local Authority of Chelmsford valued on the rental’s basis. (Not purpose built and pre-date 1980)’”. As the appeal property was purpose built after 1980, the panel did not consider this to be the correct valuation scheme.

15. Mr Clayton submitted that the appeal property had been incorrectly valued on a rental’s basis and instead the correct method of valuation was on a contractor’s basis, which was in accordance with “The Memorandum of Agreement NHS Primary Healthcare Surgeries 2017”. which had been agreed with representatives of NHS England.

16. Mr Kent contended that the memorandum affected only NHS surgeries and therefore could not be considered to be applicable to the appeal hereditament, which provided private healthcare. He submitted that there were three companies detailed as tenant parties in the lease for the appeal hereditament and none of these appeared to have any affiliation with the NHS or with providing services for the NHS.

17. The panel considered Mr Kent's point, however during questions it was confirmed by both parties that the other two properties located on Essex Healthcare Park were valued using the contractor's method, in accordance with the NHS memorandum. These properties both had large rents and the same landlord as the appeal hereditament, and both were private hospitals not affiliated with the NHS. The panel could not identify any discernible difference between the appeal hereditament and these two hospitals which could have led to them having differing methods of valuation.

18. The panel had regard to had regard to the Upper Tribunal decision in *Gallagher (VO) v Dr M Read & Partners & Dr J Poyser & Partners* (RA/31/2012), which had been referred to by Mr Clayton. This was concerned with the correct valuation approach on properties occupied under Planning Use Class D1 in relation to doctors' premises, which accepts that, while the best evidence would be evidence of lettings of comparable premises in the open market, use of the rental's method would depend on 'sufficient, appropriate and reliable comparable evidence being available from the marketplace'.

19. The 'current market rents' derived from the Doctors' Rent and Rates Scheme (DRRS) are unreliable for rating valuation purposes as they do not accord with the rating hypothesis. As the aforementioned memorandum states at part 4.2.2, 'this includes lease rents on GP surgeries, lease rents on Primary Care Health Centres and lease rents on other healthcare uses in shared premises where it is evident that they too are affected by the DRRS rents'.

20. The panel also noted that Part 4.1 of the memorandum stated that "the method of valuation employed will be determined by the reliability of the rental evidence available in respect of the type of Primary Care Centre or Drs surgery under consideration".

21. No comparable rental evidence had been provided by the VO. However, Mr Clayton had provided evidence of 25 different surgeries which were a combination of both private and NHS healthcare. These were all situated within the same locality as the appeal hereditament, and all had been valued using the contractor's method.

22. Using the contractor's method based upon the guide stipulated in the NHS memorandum, Mr Clayton valued the hereditament at £31,500 RV. Mr Kent did not suggest there was any fault in these calculations and had not carried out his own valuation exercise using the contractor's basis, it being his case that it was not the appropriate method. The panel was satisfied that, if applying the contractor's basis, Mr Clayton's proposed rateable value is based on correct calculations.

23. The panel attached most weight to assessment of the other two hospitals located on the same healthcare park as the appeal hereditament. As these properties had been valued on the contractor's basis, following *Gallagher v Read*, the panel held that it was reasonable to adopt the same approach for the appeal property. The panel also considered that the other properties

presented by Mr Clayton supported the contractor's basis as the correct method of valuation given the lack of reliable rental evidence and relevant assessment evidence in the locality.

24. In conclusion, the panel decided that Mr Clayton had successfully demonstrated why the appeal property should be valued according to the contractor's method, rather than the rental's based approach adopted by the VO.

25. The panel determined a revised assessment of £31,500 RV with effect from 1 April 2017, and therefore the appeal is allowed.

Order

26. 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 as follows:

    To rateable value £31,500 with effect from 1 April 2017.

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

Date: 29 June 2023

Appeal Number CHG100448148

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.