THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rates; 2017 rating list appeal; material change in circumstances; change of use; shop and premises; mode and category of occupation; rental evidence; comparable properties; appeal dismissed.

RE: 29-30 Church Street, Seaham, County Durham SR7 7HQ

APPEAL NO: CHG100591292

BETWEEN:	Playdates CIC	Appellant
	and	
	Ms A Hitchings (Valuation Officer)	Respondent
PANEL:	Mr M H Smith (Senior Member) and Mr M Nwosu	
CLERK:	Mrs L Horne	
REMOTE HEARING:	Thursday 14 July 2022	
APPEARANCES:	Ms C Clish, Founder and Managing Director of Playdates CIC (the appellant)	
	Mr I Paschos representing the Valuation Officer	

Summary of decision

1. The appeal was dismissed; the appeal property’s assessment remained unaltered at £17,000 Rateable Value (RV) with effect from 27 June 2019.

Introduction

2. This appeal had been brought in respect of the following: 29-30 Church Street, Seaham, County Durham SR7 7HQ, which was entered in the 2017 Rating List as shop and premises at £17,000 RV, effective from 27 June 2019.

3. The appellant's challenge to the Valuation Officer was made on 6 February 2021. It sought a reduction to £12,000 RV on the grounds that there had been a material change in circumstances: the property was no longer occupied as a retail area, but as a café/child day centre.

4. The Valuation Officer issued a challenge case decision notice on 20 October 2021, which stated that the rating list entry was reasonable based upon the evidence and information available

5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received on 10 January 2021.

6. The appeal hereditament comprises the ground floor of a two-storey, mid-terraced building, located within a retail parade on Church Street in Seaham. The total area of the property is 259.41 m^2 and the present valuation of £17,000 RV is based upon a Zone A price of £160 per m^2 and an end allowance of 20% for quantum.

7. The hearing of this appeal was conducted remotely via Microsoft Teams conference call using audio/video-link. Due to technical issues, Ms Clish was unable to access the hearing by video-link, but was able to join via her mobile phone. For the avoidance of any doubt, the panel was satisfied that those present at the hearing were able to fully participate in the proceedings.

8. In order to assist Ms Clish and with the agreement of the parties, the panel varied its model procedure and invited the Valuation Officer's representative to present his evidence first.

9. 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.

Issues

10. The issues to be determined were the correct mode or category of occupation and the level of value to be adopted in the valuation.

Evidence and submissions

11. The 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 challenge submission and additional evidence. Mr Paschos confirmed that there was no objection to the appellant's additional submission.

12. In a submission which accompanied the challenge, Ms Clish stated that her reasons for disputing the RV were two-fold:

i. Church Street was no longer a retail dominated high street in Seaham, as in 2007, Byron Place shopping centre had been built on the seafront The units at Byron Place had been valued according to various base rates, some of which were less than the appeal property.
ii. The decision to take on the five year lease was based on research that the rates would be revalued to around £12,000 and qualify for small business rate relief. Ms Clish was critical of advice received in a telephone call from the Valuation Office Agency and she provided a call transcript as part of her evidence.

13. In her additional submission, Ms Clish questioned the Valuation Officer's approach in adopting gross internal area (GIA) and various base rates for units at Byron Place: Unit 4 at £65 per m^2, Unit 9 at £160 per m^2, and Unit 12 at £75 per m^2. She cited the valuation of a local community centre in Seaham at £22.50 per m^2 and an art gallery in Church Street valued at £57.29 per m^2 in support of her proposed valuation of £12,000 RV as a community interest company (CIC) which would benefit from small business rate relief.

14. On behalf of the Valuation Officer, Mr Paschos defended the valuation of the appeal property as a shop and premises at an adopted Zone A price of £160 per m^2. He contended that vacant and to let, the subject property held the characteristics of a shop and had therefore been valued in line with that approach.

15. Mr Paschos provided a response to the issues raised by the appellant. He explained that there had been two rating lists since Byron Place had been built and therefore the rents prevailing at the antecedent valuation date (AVD) of 1 April 2015 would reflect any changes in the local economy. The units valued at a lower price per m^2 at Byron Place were valued overall, not on a zoned basis; comparison with an art gallery or community centre was not relevant to the valuation of a retail premises.

16. In response to Ms Clish's statement that she had been provided with false information from the Valuation Office Agency, Mr Paschos argued that it had been made clear that the only way to have certainty of the RV would be for the landlord to request a split of the premises.

17. Rental evidence scheduled in the Regulation 17 Notice was presented in support of the adopted price of £160 per m^2. The basis of valuation for rating was outlined and the following case law cited in support of the present mode or category as a shop and premises:

Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141.

Fir Mill Ltd v Royton UDC and Jones (VO) [1960] 53 R&IT 389

Williams (VO) v Scottish & Newcastle Retail Ltd and another [2001] RA 141.

Decision and reasons

18. The appeal hereditament must be valued for the purpose 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 (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015, the AVD. Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at the material date for a material change of circumstances appeal. For the 2017 rating list, this is the date when the ratepayer confirmed the accuracy of the check. The material date for this appeal is therefore 14 October 2020.

19. The panel had been referred to the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, which set out six propositions to be followed when considering the weighting of evidence:

    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 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 differing types of evidence depending on the one hand 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.

20. In the subject appeal a new lease had been agreed with effect from 27 July 2019 at a rent of £10,800 per annum. As this was four years after the AVD, the Valuation Officer submitted that no weight should be attached to it. The panel held that the subject rent was too remote from the AVD to be of any assistance.

21. Before turning to the scheduled rental evidence, the panel considered the main issue in dispute, which related to the mode and category to be adopted in the valuation.

22. The panel had to have regard to the appeal property vacant and to let and considered what had been the correct mode or category of occupation as at the material date. When determining the issue of mode or category of occupation, the panel had to consider the appeal property physically as it stood or *rebus sic stantibus*.

23. The panel was aware that there were two limbs to the *rebus sic stantibus* rule, which must be treated separately. The first rule being that the physical state of the property had to be regarded as at the material day (14 October 2020). The only alterations permitted were minor alterations of a non-structural character. On this point, the panel had not been presented with any evidence to suggest there had been any major physical changes to the premises. As such, any alterations made would have been minor in nature and would not offend the *rebus* rule. There had been a change of planning use from A1 to D1, however, in *Williams (VO) v Scottish & Newcastle Retail Ltd and another* it was agreed that the use classes order was not determinative of the mode or category of use.

24. The second limb of the *rebus sic stantibus* rule was that it had to be assumed that the hereditament could only be occupied for a purpose within the same mode or category of purpose as that for which it was being occupied on the material day. Any prospective change of use outside that mode or category should be ignored. As such, the question to be addressed was in what mode or category of use did the appeal property's actual use place it on the material day. It was not disputed that the appeal property was in use as a children's play centre, which had a wider offering of new parent support workshops.

25. The panel referred to the internal and external photographs provided by the Valuation Officer following an inspection on 14 March 2022. The panel noted the glazed shop front and the position of the appeal property within a terrace of retail properties. It was clear that while the mode and category of use had changed, in the absence of any major physical changes, vacant and to let the appeal property remained a retail unit. The appellant would be competing with other retail users, and therefore the hypothetical landlord would not accept a reduced rental bid for an alternative use as a children's play centre.

26. Having regard to the above conclusions, the panel determined that vacant and to let the appeal property was a retail unit and should be valued as such.

27. The panel then turned to the rental evidence presented in support of the adopted Zone A price of £160 per m^2. The regulation 17 Notice scheduled four properties from Church Street and one from Byron Place.

28. Mr Paschos contended that most weight should be attached to the rent in respect of 64 Church Street, a shop and premises with a total area of 92.75 m^2 or 45.21 m^2 in terms of Zone A (ITZA). The rent of £8,000 effective from 1 March 2015 analysed at £160.10 per m^2. As a new letting one month before the AVD the panel held that this was strong evidence in support of an adopted Zone A price of £160 per m^2.

29. Another rent effective from 1 March 2015 in respect of 8 Church Street demonstrated that the adopted Zone A price of £160 per m^2 was reasonable. This was a shop and premises with a total area of 130.37 m^2, or 53.08 m^2 ITZA. The rent of £10,000 analysed at £178.97 per m^2.

30. The two remaining rental transactions from Church Street, albeit further away from the AVD, demonstrated to the panel that an adopted tone of £160 per m^2 was reasonable. The rent for 15 Church Street a shop and premises of 249.63 m^2, or 72.74 per m^2 ITZA analysed at £164.97 per m^2; Ground & First Floors 28 Church Street, a shop and premises of 124.3 m^2 or 52.33 m^2 ITZA analysed at £163.39 per m^2.

31. The final piece of rental evidence was in respect of Unit 3B Byron Place, a shop and premises with a total area/ITZA of 93.1 m^2. The rent of £28,500 with effect from 11 August 2015 analysed at £288.63 per m^2. The adopted price of £275.00 per m^2 reflected the superior nature of the location. While Ms Clish had cited units within Byron Place at much lower values, they were not relevant for comparison with the appeal property as they were larger properties which were valued on an overall basis.

32. With regards to the appellant's claim that she relied and acted upon false information provided by the Valuation Office Agency, this was not an issue that the panel could take into consideration.

33. The panel found no evidence had been presented to demonstrate that the Zone A price of £160 per m^2 was excessive. Accordingly, the existing assessment of £17,000 RV with effect from 27 June 2019 was confirmed and the appeal dismissed

Date: 26 July 2022

Appeal number: CHG100591292

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.