THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list; compiled list appeal; adventure park and premises; limited rental evidence; comparable properties; the panel determined that the available evidence did not show the appeal property's assessment to be excessive; appeal dismissed.

RE: Leo's Play Den, 3 Pevensey Road, Eastbourne, East Sussex BN21 3HJ

APPEAL NO: CHG100694368

BETWEEN:	Peter Brown T/a Leo's Leisure	Appellant
	And	
	Mrs D Bunyan (Valuation Officer)	Respondent

PANEL: Mr J M Imperato (Senior Member)
Dr P A R Thomson

CLERK: Mrs A Keohane

HEARING: Remote Hearing No. 1 on 13 October 2022

APPEARANCES: Mr D Sinden on behalf of the Valuation Officer

Summary of decision

1. Appeal dismissed. No change was made to the appeal property's current entry in the rating list.

Introduction

2. This appeal is a 2017 rating list appeal brought in respect of Leo's Play Den, 3 Pevensey Road, Eastbourne, East Sussex BN21 3HJ, (the 'appeal property'), which was entered into the 2017 rating list as Adventure Park and Premises, £36,750 RV with effect from 1 April 2017.

3. The Appellant submitted a challenge proposal, received by the Valuation Officer on 12 May 2021, which sought a reduction in the appeal property's assessment to £21,600 RV. The Valuation Officer did not agree to amend the assessment in accordance with the challenge proposal and issued a decision notice on 25 March 2022. The Appellant's appeal against the decision notice was received by the Tribunal on 27 April 2022 on the grounds that the valuation for the hereditament was not reasonable.

4. The appeal property is a children's adventure park and premises located on Pevensey Road in the centre of Eastbourne. It has an area of 739.95m^2 in terms of main space (ITMS). The property was previously part of 'De Luxe Bingo Club' which housed both the bingo hall and the play den under the same hereditament. This has now been split into two separate hereditaments to reflect the two separate businesses. Following the split, both premises had been re-valued reflective of their respective uses.

5. The Appellant indicated that he would not be in attendance at the hearing of this appeal but requested that the hearing continue in his absence. The panel agreed to determine the appeal in this way.

6. This decision document 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 reaching its decision. The absence of a reference to any statement or item of evidence placed before it by the parties should not be construed as it being overlooked by the panel.

Issue

7. The correct rating assessment for the appeal property. The Appellant sought a reduction to £21,600 RV. The Valuation Officer contended that the current assessment of £36,750 RV was reasonable.

Evidence and submissions

8. A bundle of evidence comprising the information exchanged between the parties during the challenge process was provided for consideration. This included: location plans; a photograph of the appeal property and site/floor plans; rental and assessment summaries; the challenge proposal; the Valuation Officer's decision notice; and a lease for the whole property dated 27 January 2012. Reference was also made to:

   - *Lotus and Delta Ltd v Culverwell (VO) & Leicester City Council* [1976] RA 141.
   - *Garton v Hunter (VO)* [1969] 15 RRC 145 CA.

9. In brief, the Appellant's grounds of appeal were as follows:

   i. Prior to the split in the assessment, the RV for the whole building (bingo hall and play den) was £54,000 RV. Following the split, the RV ascribed to the two separate assessments was over 60% higher with effect from 1 April 2017. The Appellant considered this to be unreasonable as the hospitality industry had suffered more than most from the effects of the Covid-19 pandemic. The Appellant believed that businesses should be supported by local government and not penalised for having the determination to remain in business and plan for the future. Central government had given assistance by way of furlough payments to aid with the retention of staff, together with other grants and loan schemes, all of which had been to encourage businesses to carry on.

   ii. The Appellant's businesses spanned the south coast and his other operations worked the same model, for example buildings with a bingo hall on one floor and a cinema on the other. The Appellant pointed out that the hospitality industry standard for buildings shared in this way was a 60/40 split on shared utilities, rent, etc. The increase in the assessments for both the appeal property and the bingo hall gave a total of £80,750 RV, against the original £54,000 RV.

He considered the appeal property should be assessed at £21,600 RV and the bingo club at £32,400 RV, which retained the original £54,000 RV.

iii. The Appellant had applied for a split in the original single assessment to enable an application to be made for grants for businesses with a RV lower than a certain level, which would have applied if the 60/40 split had occurred. Grants would have been available for both businesses to help them survive in the future. Applications had been refused for these businesses as it had not been accepted that they were separate, which was now the case and had been recognised by the Valuation Office. The Appellant's other businesses, as referred to above, had been given grants in March 2020. The play den and the bingo hall very much needed these grant payments at this time.

10. As a result of the above, the Appellant sought confirmation from the panel that the combined RV for the building should be £54,000, broken down to £21,600 RV for the play den and £32,400 RV for the bingo club. He also asked for local government to reconsider the validity of the application for the business grants for both businesses for the first lockdown period of March to June 2020. The Appellant considered that placing an assessment of £36,750 RV on a business with a turnover of £47,953 in 2019/2020 and £80,860 in 2018/2019 served no purpose at all.

11. Mr Sinden was in attendance as advocate but confirmed that he had inspected the appeal property. He confirmed that the building in which the appeal property was situated had been a former cinema; however, changes had occurred and a bingo hall was now on the first/second floor and the basement/ground floor was the children's play area. The bingo hall had been valued by the receipts method and its valuation had been challenged and reduced from £44,000 RV to £40,000 RV.

12. Mr Sinden confirmed that the play area had been valued on a different basis to the bingo club, in fact, the rentals method with the application of £50/m^2. Mr Sinden considered this rate to be reasonable when regard was had to the supporting evidence, which included the rent agreed for the appeal property following a rent review in January 2017.

Decision and reasons

13. Within his evidence the Appellant had referred to the assessment of the bingo club and local government grants relating to the Covid-19 pandemic. The panel wished to point out that the appeal before it related to the accuracy of the rating assessment of Leo's Play Den. Thus, the panel could not consider any evidence relating to the assessment of the bingo club. In addition, the panel had no jurisdiction to address the application of Covid-19 grants.

14. The appeal hereditament must be valued for the purposes 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 detailed in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988. The date of the hypothetical rent was 1 April 2015 (antecedent valuation date or AVD). Matters affecting the physical state or enjoyment of the property, or the locality were to be taken as at 1 April 2017 (material day) for this appeal.

15. Within the Valuation Officer's evidence was reference to the Lands Tribunal judgment of *Lotus and Delta*, which had established six propositions for the weighting of evidence, namely:

> '(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 is 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 value of the appeal hereditament, the weight to be attributed to the differing types of evidence depending on the one hand on 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.'

16. *Lotus and Delta* outlined that the starting point was consideration of the actual passing rent. In this case, the appeal property's rent had been reviewed in January 2017, some 21 months after the AVD. The Valuation Officer had taken the rent to be £56,000, which reflected a 60/40 split of the total rent of £140,000 as per the industry standard. This rent had adjusted and analysed to £80/m^2. The panel found this to be a good starting point but considered that this level of value should be tested against any other available rental evidence and comparable property assessment evidence.

17. Observing the rental evidence, the panel found that only one other rent was referred to, that of Go Bananas play barn in Kent. This play barn was within a farm setting and less than half the size of the appeal property. The rent had been set in September 2016 and when adjusted and analysed produced £70.92/m^2. The assessment of this property was based on a unit price of £30/m^2. Upon consideration, the panel was not persuaded that the rental evidence of this out-of-town property over 50 miles from the appeal dwelling carried any weight.

18. The panel then had regard to the assessment evidence provided by the Valuation Officer for properties in a similar use class within the East Sussex area. Within this evidence, the Valuation Officer had also referred to rental evidence. Mr Sinden could not confirm whether these rents had been included in the regulation 17 schedule, and therefore the panel had regard to the assessment evidence only.

i. 3-4 Commercial Road, Eastbourne, BN21 3HJ, a playcentre and premises of 704.08m^2 (gross internal area). It was close to the appeal property, being 0.5 miles away but further from the town centre and within an industrial location. Its assessment of £35,000 RV was based on a rate of £50/m^2.

ii. Unit A at 5 School Road, Hove, East Sussex, BN3 5HX, a play centre and premises of 853.87m^2 ITMS, that had been demolished in 2019. This property's assessment of £51,000 RV was based on £60/m^2 with adjustments being made for its location on an industrial site with inadequate parking.

iii. 53A The Beacon, Eastbourne, BN21 3NW, an adventure park and premises, also in close proximity to the appeal property but closer to the major shopping area. It was a new entry in the rating list and at 1,263m^2 was just under twice the size of the subject. This property was assessed at £94,500 RV, which was based upon a unit price of £75/m^2.

19. The appeal property was located on the edge of the town centre and without dedicated parking. The 2017 rent quoted was for the play area only and was based on a 40/60 industry split. Although this had been set 21 months after the AVD, the panel considered that the £80/m^2 this rent analysed to, did not show the £50/m^2 applied in the appeal property's assessment to be excessive. Also, the assessments of the comparable properties were based on unit prices of £50/m^2 to £75/m^2, the highest rate being applied to a larger property in a better location. In the panel's view, the appeal property's assessment based on the lowest rate of £50/m^2 was not shown to be excessive. The subject appeal was therefore dismissed.

Date: 11 November 2022

Appeal number: CHG100694368

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.