THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeals; 2017 Rating List; Children Centres; Accuracy of compiled list entries; Subject properties found to be in a distinct Mode and Category of Children's Centre; Insufficient rental evidence; Should be valued using contractor's basis; one appeal allowed in part and the other dismissed.

RE:	Little Gems Children Centre Lawn Road, Northfleet, Gravesend, Kent, DA11 9HB (1) Little Pebbles Children Centre at Chantry CP school, Ordnance Road, Gravesend, Kent, DA12 2RJ (2)
APPEAL NUMBERS:	CHG100710387(1) and CHG100684602(2)

BETWEEN: Kent County Council — Appellant
Represented by Wilks, Head and Eve LLP

And

Dawn Bunyan — Respondent
(Valuation Officer)

PANEL:	Mr K Everett (Presiding Senior Member) Mr K Sutch (Senior Member)
CLERK:	Mr J Massey
HEARING:	Remote hearing No.3 on 6 June 2023
APPEARANCES:	Mr M McMullan (advocate) and Ms A Denyer (expert witness) of Wilks Head and Eve LLP for the appellant Mr B Leahy (advocate and expert witness) and Ms S Saloranta (expert witness) - Valuation Officer's representatives

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Summary of decision

1. The appeal for Little Gems Children's Centre Lawn Road, Northfleet, Gravesend, Kent, DA11 9HB ('Little Gems') was dismissed. The appeal for Little Pebbles Children's Centre at Chantry CP school, Ordnance Road, Gravesend, Kent, DA12 2RJ ('Little Pebbles') was allowed in part. The panel determined that they were correctly assessed by the valuation officer (VO) in a separate mode and category of "Children's Centre".

2. The panel further determined that there was insufficient rental evidence to determine the correct RV using the comparable method and that the valuations proposed by the VO using the contractor's basis for both subject properties were reasonable.

Introduction

3. These appeals have been brought in respect of Little Pebbles which was entered in the 2017 rating list at RV £20,000 with effect from 1 April 2017 and Little Gems which was entered in the rating list at RV £23,000 with effect from 1 April 2017.

4. The appellant had made proposals to the VO as follows:

- On 16 April 2021 on the grounds that the entry for Little Pebbles shown in the rating list on 1 April 2017 was wrong and that it should be reduced to RV £8,400.
- On 15 July 2021 on the grounds that the entry for Little Gems shown in the rating list on 1 April 2017 was wrong and that it should be reduced to RV £3,500.

5. The VO considered the challenge in respect of Little Pebbles was not well founded but that the current RV was unreasonable, and initially made an offer to reduce the RV to £9,300. However, this offer was subsequently rescinded, and the VO issued a challenge decision notice on 25 May 2022 with a proposed revised RV of £17,250.

6. Little Pebbles Children Centre is located next to Chantry CP School and is a portable building with a net internal area (NIA) of 222.85 m^2. Prior to the challenge it was assessed in line with Day Nurseries in Kent at £90 per m^2, however the VO had amended the method of valuation to the contractor's basis which had resulted in the reduced RV of £17,250.

7. The VO considered the challenge in respect of Little Gems was not well founded but that the current RV was unreasonable and issued a challenge decision notice on 22 August 2022 altering the list to RV £14,000.

8. Little Gems Children Centre is a single-story modular building built in 2009, with a NIA of 224.8m^2. It is situated within Lawn Community Primary School in Northfleet. Prior to the challenge it had been assessed using the contractor's basis with a building replacement cost of £1,700 per m^2 however this had been reassessed at £800 per m^2 which resulted in the VO's revised RV of £14,000.

9. In accordance with the regulations[1], appeals were made to the Valuation Tribunal for England (VTE) on 29 September 2022 and 1 December 2022 respectively on the grounds that the valuation for the appeal properties were not reasonable.

10. The panel noted that appeal reference CHG100654602 for Little Pebbles had been incorrectly registered in the name of the appellant's representative, Aurora Denyer. It was satisfied that the appellant in this appeal was Kent County Council and authorised the correction of the appellant's name on the Tribunal's records accordingly.

11. This hearing was held remotely via Microsoft Teams.

[1] The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, regulation 13A.

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

Issue

13. The issue in dispute concerned the rateable value of the appeal properties. The appellant contended that they should be assessed on the basis that they were community centres. The respondent asserted that the subject properties should be assessed using the contractor's basis.

Evidence and submissions

14. The appeals to this Tribunal included correspondence between both parties and the evidence which they had exchanged. It included:

    - challenge proposals which disputed the assessments of the appeal properties.
    - the VO's initial responses and challenge decisions.
    - the appellant's appeals to this Tribunal and supporting evidence statements.
    - The VO's expert report on the valuation of Children's centres.

15. As Ms Denyer appeared on behalf of the appellant as expert witness, the clerk asked if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson* (VO) [2018] UKUT 0253 (LC).

16. It was established that Ms Denyer's company would receive a conditional fee or some other success related arrangement if the rateable value was reduced as a result of the panel's decision. However, Ms Denyer declared that she understood and accepted that her duty was to the Tribunal in giving her evidence and that she would comply with this as well as the requirements of her professional body regardless of whether or not the evidence supported the client's case.

17. 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.

18. Mr Leahy appeared in a dual role of advocate and expert witness for the Valuation Officer. He stated that his primary duty in giving expert evidence was to the Tribunal and that he was not instructed under a conditional fee arrangement or other success related fee. Ms Saloranta also appeared in the role of expert witness for the Valuation Officer in relation to the aspects of Contractors Basis valuations for the two subject properties. She was also not instructed under a conditional fee arrangement or other success related fee.

19. Mr McMullen contended that both Little Gems and Little Pebbles should be assessed in line with community centres and village halls in the locality. He considered that Little Pebbles should be assessed in accordance with scheme reference 356497 in line with what he considered to be comparable children's centres:

- Sure Start Centre At Edenbridge County Primary School, High Street, Edenbridge, Kent, TN8 5AB
- Newlands Childrens Centre, Dumpton Lane, Ramsgate, Kent, CT11 7AJ
- Catkins Pre-School, Adj 44, Catkin Close, Walderslade, Chatham, Kent, ME5 9HP

20. He proposed a rate of £42 per m^2 along with a 10% adjustment for quality. In support of this adjustment, he referred to two guest houses in Canterbury for which an adjustment of 33% had been applied for quality. He considered that these adjustments indicated that an adjustment of 10% was reasonable for Little Pebbles based on the quality of the building.

21. With regard to Little Gems, Mr McMullen contended that it should be assessed in accordance with scheme reference 359513 at a main space rate of £24 per m^2, which resulted in a RV of £3,500. This was in line with the following comparable children's centres which had all been assessed at £24 per m^2 under that same scheme;

- Sure Start Maypole Children's Centre, Franklin Road, Dartford, DA2 7UZ
- Kings Farm Family Centre (Next Steps Children's Centre), Windsor Road, Gravesend, Kent, DA12 5BW
- Sure Start Knockhall Childrens Centre, Eynsford Road, Greenhithe, Kent, DA9 9RF

22. In support of the comparisons made, the appellant had provided excerpts from the websites of the subject properties and the comparable children's centres, detailing their facilities and the services provided. He considered that the fact that comparable children's centres had been included in the schemes for community centres demonstrated that the subject properties should also be valued under these schemes. There was a wide range of types of community centre within these schemes and he considered that any alterations to comply with the requirements of a children's centre were minimal and would not change the mode and category of use.

23. Mr Leahy explained the general nature of children's centres, which were brought into being by the Childcare Act 2006 to provide support to children under five years old and their families. This includes early education, guidance on access to childcare, health services provided by midwifes and health visitors, parenting and family support and assistance for parents on benefits, training and employment. These centres are provided by local authorities or by other organisations on their behalf and are often located within areas of high deprivation.

24. He stated around 3,500 Sure Start Children's Centres had been established by 2010, located in a wide variety of properties ranging from purpose built, traditional or modular buildings to converted buildings. They generally contain children's toilets and internal and external play areas along with other facilities, such as kitchen facilities, meeting/interview rooms and office space depending on the specific services provided. They are often located within or adjacent to schools or within the same building as nurseries.

25. He considered that due to the statutory requirement to provide space for the required services, such as parenting skills and wider family health and social care services, the configuration of children's centres is fairly standard and they have different physical requirements to community centres and day nurseries and were therefore not comparable.

26. In valuing children's centres, Mr Leahy argued that the valuer must consider the mode or category on the material day, ie use for the same general purpose as the existing use and

any value attributable to their use for another purpose has to be disregarded. He referred to the Court of Appeal decision *Williams (VO) v Scottish and Newcastle Retail and Allied Domecq* [RA 2001 P 41) in which it was decided that the alterations required to convert a licensed premises to a shop went beyond minor alterations. He stated that the works required to change a community centre into a children's centre would include the installation of children's toilets, modular offices, administration and reception areas, secure doors and cameras. He considered these to be more than minor alterations and they should therefore be valued as children's centres rather than community centres.

27. He explained that the majority of children's centres have traditionally been valued in line with day nurseries using the rental method. However, due to the non-profit nature of children's centres, and lack of rental evidence for children's centres, it was considered that the most appropriate method of valuation was the contractor's basis. He considered that this provided the most consistent method by which to value such properties, and it had been decided to reassess all children's centres in areas where there was no meaningful rental evidence using this method.

Decision and reasons

28. The main crux of these appeals related to the respondent's assessment of the subject properties under the separate mode and category of use as children's centres.

29. The panel noted that the subject properties were both children's centres as defined by the Childcare Act 2006 and provided services in line with the provisions of this Act. Little Pebbles had initially been valued at RV £20,000 in line with the scheme for day nurseries in its locality. The appellant was seeking a reduction to RV £8,400 on the basis that it fell into the mode and category of a community centre. The respondent was of the opinion that it was not a community centre or a day nursery and fell in a distinct mode and category of a children's centre and due to the lack of rental evidence for such properties, should be valued using the contractor's basis at RV £17,250.

30. Little Gems had been valued using the contractor's basis at RV £23,000 from 1 April 2017, which the respondent had amended to £14,000. The appellant considered it should be valued as a Community Centre at RV £3,500. The panel noted that in general, the RV was higher for day nurseries than for community centres, and the valuation using contractor's basis was somewhere in between.

31. It was also clear that there was some inconsistency with the valuation of children's centres, with some being valued as day nurseries and others as community centres, depending mostly upon the type of building in which they were located. The respondent was attempting to correct this by assigning a distinct mode and category of children's centre under which all such properties could be assessed, using the rental method if there was sufficient rental evidence available in the locality, or on the contractor's basis if there was not.

32. To understand what rateable value had to be determined for the appeal property it was necessary to have regard to 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 –

(a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;

(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".

33. In respect of all entries in the 2017 rating list, the Rating Lists (Valuation Date) (England) Order 2014 requires the rental levels to be taken as at 1 April 2015, the antecedent valuation date (AVD).

34. Paragraph 2(5) of Schedule 6 to The Local Government Finance Act 1988 provides that:

"Where the rateable value is determined for the purposes of compiling a list by reference to a day specified under sub-paragraph (3)(b) above, the matters mentioned in sub-paragraph (7) below shall be taken to be as they are assumed to be on the day on which the list must be compiled."

35. The material day for these appeals is therefore 1 April 2017 and in accordance with LGFA 1988 Schedule 6 paragraph 2(7) this is the date on which the valuer must have regard to;

(a) Matters affecting physical state or physical enjoyment
(b) Mode or category of occupation

36. The panel noted that neither party was asserting that the appeal properties should be valued in line with day nurseries and therefore determined it had to consider whether they should be valued as community centres as asserted by the appellant.

37. In considering the comparable properties put forward by the appellant, the panel noted that the valuations of three of these, Sure Start Centre at Edenbridge County Primary School, Sure Start Maypole Children's Centre and Sure Start Knockhall Children's Centre had been revised by the respondent and they were now assessed as children's centres using the contractor's basis.

38. The respondent agreed that Newlands Children's Centre was in the same mode and category as the subject properties and was still valued as a community centre but considered it should be changed and valued on the contractor's basis.

39. The panel noted from its description in the appellant's submission that Catkins Pre-School provided pre-school education from a community centre. There was no mention of it offering the services offered by children's centres and the panel was satisfied that it was not comparable to the subject properties.

40. Whilst Kings Farm Family Centre, Windsor Road, Gravesend, Kent, DA12 5BW remains on the valuation list as assessed as a community centre, the panel noted that the appellant's submission describes this as the Next Steps Children's Centre. The respondent stated that from its accommodation this was a family centre rather than a children's centre. The panel considered that in some cases it was not always straightforward to identify which hereditaments were in fact children's centres, particularly when they were on the same site as schools and other facilities. It was therefore unable to conclude from the fact that Kings Farm Family Centre was assessed as a community centre that the subject properties should also be.

41. The panel noted that the two subject properties contained facilities which would not normally be associated with community centres. These included children's toilets, indoor and outdoor play areas, multiple offices and meeting rooms and enhanced security. It did not consider that what would normally be described as a community centre would fit the needs of a children's centre and was of the opinion that the works required to a community centre for it to be suitable for use as a children's centre would constitute more than minor alterations. It also noted that children's centres do not provide services which would be available, or for that matter required by, a large section of the community. The panel therefore determined that the appeal properties should be valued under a distinct mode or category of use of children's centre.

42. The panel went on to consider the appropriate method of valuation for the subject properties. It noted that no rental evidence had been presented by the appellant for children's centres in the locality. In answer to a question from the appellant, Mr Leahy state that having searched for evidence on over thirty appeals on children's centres, he had only been able to find four sets of rental evidence – two of these were in Surrey and the other two were in Buckinghamshire.

43. The panel noted that the preferred method of valuation is always the rental comparable method. However, in the absence of any rental evidence for the subject properties or any children's centres in Kent the panel considered that it was reasonable to value the subject properties using the contractor's basis. There had also been no analysis of the rents which were available for children's centres in other counties to provide any sort of comparison with those of community centres in those areas.

44. The respondent had provided copies of its contractor's basis valuations in its challenge decisions for Little Gems at RV £14,000 and Little Pebbles at RV £17,250. Copies of revised valuations had also been submitted by the VO prior to the hearing having re-evaluated the plot sizes of the two subject properties. The respondent's revised valuations were RV £14,250 for Little Gems and RV £12,750 for little Pebbles.

45. The appellant had questioned the respondent's adoption of build costs of £1,701 per m^2 in their initial calculation of the RV for Little Gems. The panel was satisfied however, that it had now adopted £800 per m^2 for Little Gems and £850 per m^2 for Little Pebbles which were at the lower end of the range of build costs for temporary buildings and modular buildings. The appellant had not provided alternative contractor's basis valuations for the subject properties and had not contested the respondent's calculations. The panel was therefore satisfied that the respondent's revised valuations of RV £14,250 for Little Gems and RV £12,750 for Little Pebbles were reasonable.

46. In view of the foregoing, the appeal in respect of Little Pebbles was therefore allowed in part and the appeal in respect of Little Gems was dismissed.

Order

47. In accordance with Regulation 38 (4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Officer is ordered to alter the list entry for Little Pebbles Children's Centre at Chantry CP school, Ordnance Road, Gravesend, Kent, DA12 2RJ to RV £12,750 with effect from 1 April 2017. The Valuation Officer must comply with this Order within 2 weeks of its making.

Refund of appeal fee

48. A refund of the paid fee will now be arranged in respect of appeal number CHG100684602 under Regulation 13E of the NDR (Alteration of Lists and Appeals) Regulations 2009. The refund will take around six weeks to process.

Date: 23 June 2023

Appeal numbers: CHG100710387 and CHG100684602

Right of further 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.