THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; Day nursery and premises; Unadjusted rate excessive; Mode and Category; Valued as a shop; rental evidence; comparable properties; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Appeal dismissed.

Re: 5-6 Comer Crescent, Southall, Middlesex UB2 4XD

APPEAL NUMBER: CHG100735782

BETWEEN:	Snowflakes Montessori Limited	Appellant
	and	
	Ms Dawn Bunyan (Valuation Officer)	Respondent

PANEL:	Mr J M Imperato	(Chairman)
	Mr P Phelps	(Member)

CLERK:	Mr J Massey
REMOTE HEARING 1:	22 September 2022
PARTIES:	Mr A Bacon of JMA Chartered Surveyors - Appellant’s representative (Advocate and Expert Witness)
	Mr U Javed - Respondent’s representative for the Valuation Office

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Summary of decision

1. The appeal was dismissed. The panel determined that the amended rateable value (RV) of £37,000 effective from 1 April 2017 proposed by the respondent was fair and reasonable.

Introduction

2. The appeal was brought in respect of 5-6 Comer Crescent, Southall, Middlesex UB2 4XD (the “subject property”). It was a retail unit on a small shopping parade built in 1997, used as a “day nursery and premises”. It has good transport links to Boston Manor and Ealing Broadway underground stations with parking to the front and rear. There is no dispute over the total size of the property at 190.75m^2.

3. This is a 2017 Rating List appeal and the Rateable Value was £39,000 with effect from 1 April 2017 based on a zone A rate of £285 per m^2. Following a check, a challenge was submitted by JMA Chartered Surveyors on behalf of the appellant on 6 October 2021 seeking a reduction in the RV of the subject property to £27,250 based on an overall rate of £140 per m^2.

4. The challenge decision notice was dated 29 December 2021. The notice stated that the challenge was not well founded but that the current entry was unreasonable and proposed a 5% allowance for quantum thereby reducing the RV to £37,000.

5. An appeal against this decision was made on 15 March 2022. The appeal was later revised to an RV of £24,200 analysing at £125 per m^2 (overall).

6. 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 before 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.

Issue

7. The correct rateable value for the subject property.

Evidence and submissions

8. The evidence 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 submission; photographs and location plans of the appeal property and a copy of the lease for the subject property.

9. Mr Bacon appeared on behalf of the appellant in a dual role as Surveyor advocate and as expert witness. 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 was instructed on a conditional fee basis. He declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would comply with this as well as the requirements of his professional body, regardless of whether or not the evidence supported the client's case.

10. 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.

11. Mr Bacon contended that the subject property should be valued as a day nursery and not a shop. He explained that whilst the subject property may have been a shop at some point, it has not been used as a shop for over 20 years. It has planning for a day nursery (D1) and he contended that there would be difficulty in obtaining planning permission to change its use back to a shop (A1) particularly as there is a high demand for nursery places in the locality. He asserted that there is little demand for retail use in the immediate locality and this is demonstrated by the use of the subject premises and other units in the parade for non-retail purposes.

12. Mr Bacon sought a reduction in the rating assessment as he contended that the appeal property's basic rate was excessive and was not in line with assessments of other day nurseries in the locality. He referred to the passing rent on the subject property which had been agreed at £36,000 per annum (pa) on 8 August 2016 on a new 15 year lease with 5 yearly reviews. He submitted that the market rose by 2% per month after the antecedent valuation date (AVD) of 1 April 2015 and therefore would have risen by 32% by the date the lease was agreed. On this basis he adjusted the subject rent to be £27,250 at the AVD giving a unit rate of £140.00 per m^2 on an overall basis. At the hearing, Mr Bacon argued that the appellant had paid above market rent for the subject property in 2016 and contended that the subject property should be valued on an overall basis in line with the tone for day nurseries in the locality which he asserted was £125.00 per m^2, resulting in a RV of £24,200.

13. Mr Javed for the respondent explained that the subject premises was valued as a shop as it must be valued vacant and to let. It had been valued at £285.00 per m^2 in terms of zone A (ITZA) based on the tone in the parade. He stated that he had inspected the subject property on 16 September 2022, and it consisted of four merged units each with their own front doors and separate shop frontages. There was no indication that there had been any significant alterations other than installing air conditioning which would suggest that it could be used as a shop without major works being carried out. He considered that the rent agreed in August 2016 of £36,000 pa was not too far from the AVD and supported the respondent's proposed RV of £37,000.

14. Whilst he acknowledged that the subject property did not currently have planning consent for A1 use, such use was allowed in the lease and he was not aware of any barriers to obtaining such permission from the planning authority. He also pointed out at the hearing that, having examined the lease, it did not appear to cover the whole of the demise as shop 6 was not highlighted on the plan contained within the lease.

Decision and reasons

15. The main issue in dispute concerned the level of value to be adopted for the appeal property.

16. The term 'rateable value' is defined in paragraph 2(1), 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;
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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".

17. In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the AVD of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

18. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 1 April 2017.

19. The Lands Tribunal judgment *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

20. In considering the rent agreed on the appeal property in 2016, the panel noted that the issue regarding the extent of the subject property covered by the lease had not been raised during the challenge or prior to the hearing. It would have expected either or both parties to have noted this and discussed the implications prior to the hearing. As it stands, the lease had been submitted as evidence by the appellant and clearly showed that shop 6 was not included in the rent agreed of £36,000 pa. The photograph presented by the appellant clearly showed that shop 6 was part of the assessment and this had been confirmed by the respondent's visit to the premises.

21. In light of this, the panel found that whilst it was not possible to accurately analyse the rent for the whole premises it would have been proportionately higher than the £36,000 pa specified in the lease. Whilst there was no evidence before it that rents had increased by 2% per month after the AVD, the panel was satisfied that there had been some increase between the AVD and 8 August 2016. Taking both these factors into consideration the panel determined that the rent agreed in 2016 for part of the subject premises indicated that vacant and to let, it would have let as a shop and the RV of £37,000 did not appear to be unreasonable for the whole premises.

22. The respondent had quoted the tone for shops in the subject parade to be £285 per m^2 ITZA which Mr Bacon had not disputed whilst Mr Bacon asserted that the tone for day nurseries in the locality was £125 per m^2 (overall). As neither party had provided details of comparable properties to either support their own assertion or refute the other's the panel accepted the assertions made by each party regarding the value of shops and day nurseries in the locality.

23. With regard to the physical state of the subject property, the panel was satisfied that little alteration would be required to return its use to that of a shop and there was no evidence before it to suggest that a planning application to return it to such use would not be successful. It considered that the hypothetical landlord would be in the business of maximising the rent for the subject property and would seek to let the subject property as a shop. The respondent had stated that the rental evidence indicated that the landlord expected to and did let the subject property as a shop at £285 per m^2 (ITZA) and no comparable evidence had been provided by the appellant to refute this.

24. In appeals of this nature the burden of proof rests on the appellant to prove his case for a reduction. The panel concluded that the appellant's representative had failed to produce sufficient evidence to justify his claim that the subject property should be valued on an overall basis at £125 per m^2 resulting in an RV of £24,200.

25. The panel was therefore satisfied that a fair and reasonable rateable value would be £37,000 based on a zone A rate of £285 per m^2 which includes a 5% allowance for quantum. The appeal was therefore dismissed.

Date: 19 October 2022

Appeal number: CHG100735782

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.