THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list; day nursery and premises; compiled list appeal; comparable assessments; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976]; appeal allowed.

Re: The Wylands, Lower High Street, Bristol BS11 0DA (the 'appeal property').

APPEAL NO: CHG100750527

BETWEEN:	Snapdragons Nurseries	Appellant
	and	
	Ms A Morley (Valuation Officer)	Respondent

PANEL:	Ms Celia Edwards (Presiding Senior Member) Ms Aruna Verma (Senior Member)
CLERK:	Mrs A Keohane
HEARING:	Remote Hearing No. 3 on 22 September 2023
APPEARANCES:	Mr R H Short of Knight Frank on behalf of the appellant, as advocate and expert witness Ms M Hancock representing the Valuation Officer (VO) as advocate and expert witness

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Summary of decision

1. Appeal allowed. The assessment of the appeal property was reduced to £41,250 rateable value (RV) with effect from 1 April 2017.

Introduction

2. This appeal was received by the Tribunal on 28 September 2022 and was brought by Knight Frank on behalf of the appellant. The appeal was against the VO's decision dated 1 June 2022, to leave the appeal property's entry in the 2017 rating list as Day Nursery and Premises, £61,500 RV with effect from 1 April 2017.

3. The appeal property is a day nursery located in the centre of Shirehampton, six miles northwest of Bristol city centre. It is an approximate fifteen-minute walk from the train station with the M5 and A4 in proximity. The property is a detached Grade II listed building with a net internal area (NIA) of 470m^2, that was converted to a day nursery by the appellant in 2016. The property is over ground and two upper floors with brick elevations, Georgian style windows and a slate roof. Internally, there is a kitchen and two

rooms for children on the ground floor, three children's rooms, storage, and a staff room on the first floor and two further children's rooms and a kitchen on the second floor. Externally, there is a recreation area to the front with a store and parking to the rear. The appellant has the freehold interest in the property and therefore no rental evidence is available.

4. Mr Short appeared on behalf of the appellant in the dual role of advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC) Mr Short confirmed he was instructed on a fixed fee basis. However, he understood and accepted that his duty was to the Tribunal in giving his evidence and would comply with this as well as the requirements of his professional body, regardless of whether the evidence supported his client's case.

5. This appeal was previously listed before a different panel, but the panel was unable to reach consensus. However, the preliminary issues identified in this appeal were determined at the previous hearing, and the appellant's new evidence and the photographs provided by the VO were deemed admissible in proceedings.

6. This decision document is not and does not purport to be a verbatim record of proceedings.

Issue

7. There was no dispute between the parties over the size of the appeal property or the relativities applied to the various parts.

8. Mr Short contended that the appeal property fell within the description of a type 2 nursery property and should be assessed on an unadjusted rate of £100/m^2, giving a revised assessment of £41,250 RV. The VO considered the appeal property fell within the description of type 1, and its current assessment of £61,500 RV based on £150/m^2 was correct.

Evidence and submissions

9. A bundle of evidence comprising the information and correspondence exchanged between the parties was provided for consideration.

10. In brief, Mr Short referred to the scheme in which the appeal property was placed and indicated the most commonly adopted value was £100/m^2. The VO had assessed most day nurseries in Bristol as either type 1, (the most superior) or type 2. Mr Short argued against the appeal property's designation as type 1, given it was a converted property. He relied on census data which he argued statistically showed the area to be one of the most socially and economically challenged areas of Bristol, which adversely impacted on the nursery's fee structure.

11. In the absence of rental evidence, Mr Short referred to the guidance for weighting evidence as set out within *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* [1976]. He did not consider the VO's comparable properties carried the most weight, given they were in more affluent areas. He referred to five type 2 properties considered to provide the best evidence, placed within the same scheme, which were situated in and around Bristol. These were Red Bus Nursery & Pre School, Badocks Wood Children Centre, 2-4 Archfield Road, Clifton Tots Day Nursery, and First Step Pre-school at Crossway Infant School, all of these has assessments based upon an unadjusted rate of £100/m^2.

12. Ms Hancock argued that when valuing a day nursery, the descriptions of type 1 and type 2 were a guide and not every nursery fitted the criteria exactly. She disagreed that Shirehampton was a socially and economically challenged area but accepted there were more desirable areas than Shirehampton. She noted the appeal property was within 15 minutes' walk of the station and located near a major road. She argued people may not necessarily live nearby but could work nearby or travel past the nursery when commuting, therefore, good transport links were important.

13. Ms Hancock considered that a converted building did not necessarily mean that its current use was compromised. Mr Short had referred to fee costs and she pointed out that profitability was not a question, and no trading figures had been provided. She explained that, whilst type 1 included modern purpose-built properties, it also referred to substantially refurbished premises, such as the appeal property, which was considered to be prestigious and desirable. Photographs of type 1 comparable properties at 1 Clifton Park and Acorn Nurseries, were submitted to show what such properties could look like, not what they must look like. She accepted the appeal property may be in a different area, but believed this did not prevent it from falling within type 1, and the type 1 properties referred to shared similar features with the subject. When taking the appeal property as a whole, she argued it fell comfortably within type 1 and an assessment based on £150/m^2 was not unreasonable.

Decision and reasons

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

16. As the appeal property was held by the appellant on a freehold basis, no rental details were available for the panel's consideration. In the absence of rental details for comparable properties, the panel had regard to the assessment evidence submitted by the parties.

17. As the crux of this appeal revolved around the designation applicable to the appeal property, the panel had regard to the VO's description of day nurseries, as follows:

    Type 1
    "Modern purpose built, or substantially refurbished premises offering commercial child care. Capable of full day commercial use providing full day care with meals provided and areas set aside for sleeping and recreation. Operates 51 or 52 weeks a year, from as early as 0730 to as late as 1830. Best town centre location within the prime residential area with excellent public transport connections nearby. Size range >200 sq m."

Type 2

"Urban/suburban solidly constructed buildings. Capable of full day commercial use providing full day care with meals provided and areas set aside for sleeping and recreation. Good road access but may not be optimally located as for type 1. Increasingly these may be located on industrial estates. Operates for 51 or 52 weeks per year from as early as 0730 to as late as 1830. Size range >175 sq m.

18. In considering this appeal, the panel accepted the appeal property could be viewed as fulfilling a number of the criteria within each type; however, it was convinced that taking a 'best fit' approach, the property fell within type 2.

19. The panel found the appeal property was not a modern purpose-built nursery. However, it had been substantially refurbished, having been converted from a conference centre. The photographs confirmed the alterations provided the facilities necessary for a nursery, but the panel held the view that a converted building did not give optimum flexibility of use. In addition, as the accommodation was over ground and two upper floors, without the benefit of a lift, there would be some inflexibility. That said, the panel accepted the appeal property could be viewed as fulfilling the type 1 building requirement of being a substantially refurbished premises.

20. Addressing the rest of the criteria, the panel found that type 1 properties were described as being within the best town centre locations and prime residential areas. The panel was not persuaded that the appeal property fulfilled the description, Shirehampton was said to have no town centre but a small retail area that served local needs. The demographics of the area suggested it was not within a prime residential area. The type 1 comparable properties submitted by the VO were Grade II listed buildings, as was the appeal property, however, the evidence showed that one was within an affluent area of inner Bristol and the other, whilst also being in an affluent suburban area, was located opposite a golf course. The panel was not convinced the appeal property's locality was on a par with those of the type 1 comparable properties. It therefore fell within type 2, which related to properties that were not as optimally located.

21. Within type 1 it was set out that a property should have excellent public transport connections nearby. Mr Short confirmed there were limited bus routes available, and the train station was three quarters of a mile away on the opposite side of the A4 to the appeal property. Although the appeal property had good road links with the A4 and M5, the panel noted that the criteria within type 2 was also satisfied as it referred to a property with good road access.

22. The panel found further support for the appeal property's entry in type 2 from the five comparable properties provided by Mr Short, which were within the same scheme as the appeal property and valued using a rate of £100/m^2. Four of these were located in suburban residential locations, similar to the subject property. Three of the comparable properties had been converted from alternative uses and two were purpose built and therefore provided bespoke facilities. The panel found no reason for the appeal property to be valued at a higher rate than these comparable properties.

23. The panel agreed with the VO's contention that the appeal property did not have to fulfil all of the criteria within type 1. However, the panel was persuaded that the appeal property fulfilled enough of the criteria within type 2 to be classed as such. The appeal was therefore allowed, and a revised assessment of £41,250 RV was confirmed with effect from 1 April 2017.

Order

24. Under the provisions of paragraphs (4) and (9) of Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Tribunal orders the Valuation Officer to alter the appeal property's entry in the rating list within two weeks of the date of this order to show a revised assessment of £41,250 RV with effect from 1 April 2017.

Refund of fees

25. The appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 12 October 2023

Appeal number: CHG100750527

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.