VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; Unadjusted rate per m^2 in dispute; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Day Nursery Comparable assessments; Appeal allowed .

APPEAL NUMBER:	CHG100765100	
RE:	The Grange 15, High Street, Hoddesdon, EN11 8BJ (the "subject property")	
BETWEEN:	Cedar Park Schools Ltd	Appellant
	and	
	Joanne Moore IRRV (Hons) (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	23 September 2024	
BEFORE:	Mr SP Wood, Presiding Senior Member Mr SC Kamalan, Senior Member	
CLERK:	Mrs J Routledge IRRV(Tech)	
APPEARANCES:	Mr M Clayton from Altus representing the appellant Mr C Lewell representing the respondent	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed.

2. The Tribunal Panel was satisfied having had regard to the comparable properties in the scheme that the rateable value of the subject property was not reasonable and should be reduced to £39,500 from 1 April 2017.

Introduction

3. This was a 2017 rating list appeal. The challenge proposal was submitted by Altus on behalf of Cedar Park Schools Ltd and was received by the Valuation Officer on 14 January 2022. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was not reasonable. A revised RV of £39,500 was proposed with effect from 1 April 2017.

4. The Valuation Officer issued a challenge case decision notice on 14 January 2022 which stated that based upon the evidence and information available, the rating list entry was reasonable and there would be no change to the list entry of £47,250 RV.

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 by the Tribunal on 13 June 2023.

6. Mr Lewell's declaration of truth included a statement that he was not instructed under any conditional fee arrangement and declared that he understood and accepted that his duty was to the Tribunal in giving evidence and he would comply with this as well as the requirements of his professional body regardless of whether the evidence supported the respondent's case.

7. Mr Clayton confirmed he was instructed under a contingency fee and understood that his duty was first and foremost to the Tribunal. This was in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

8. 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.

9. This statement of reasons is not and does not purport to be a full verbatim record of the proceedings.

Background

10. The subject property was a Grade II Listed detached building, converted into a private day nursery valued at £150/m^2 .The operator runs a second nursery nearby at Wolverton. The Valuation Officer described both as good quality in

comparison to other nurseries in the vicinity which were described as average quality and therefore of lower value.

11. The subject property is held at a rent of £75,000 effective from 29/09/2020. This is a connected party letting with the freehold owner associated with the occupying business and leasing this back as an internal arrangement and therefore not open market.

12. Mr Clayton submitted that the subject premises had a number of disadvantages that needed to be taken into account when considering the rental bid from the hypothetical tenant coming new to the scene. The subject property was a converted building and therefore not as desirable as a purpose built nursery, it was not close to schools or transport facilities. It was also in a less populated location than The Grange, Cheshunt and would therefore not command the same rental bid as this property. He argued that taking into account the other nurseries in the scheme and closer to the subject property, it should be valued at the same level. He provided details of eleven nurseries in the same scheme that were assessed at £125.00 m^2 to support his contention.

13. Mr Lowell argued that the best comparable property was The Grange in Cheshunt which was also a Grade II converted building with similar facilities. It was of a similar high quality with longer opening hours, car parking and good outdoor space and was considered more homely which would make it more desirable than the other day nurseries put forward as comparable by the appellant. He disputed that there was any disadvantage in the location as with a car park at the premises travelling on to nearby schools or transport facilities would be of little inconvenience as most were less than a ten minute drive. The other day nurseries in the scheme were of less prestige and lower quality and therefore would attract a lower rental bid. He provided rental evidence on two properties that were considered comparable.

14. The Valuation Officer also provided two other comparable properties in the region Cedar Park Nursery in Wolverton and Harpenden day nursery in Harpenden which were assessed at £175m^2 . Both were converted from large period properties; both were considered of high quality and were cited to support the assessment of the subject property at £150m^2.

Preliminary issue

15. This was a second listing of the appeal as the original hearing was cancelled. In advance of that hearing the appellant had submitted an email that included further information regarding the 2010 assessment of the two nurseries run by the appellant company and a map.

16. Mr Clayton submitted this was not new evidence as the properties had been referred to in the Valuation Officer's decision notice and the map was to assist the panel to be aware of the proximity of the subject property to the local school. He believed that photographs should not be considered new evidence.

17. Mr Lewell for the respondent advised that he was not objecting to the map but considered that a new argument was being put forward regarding proximity to travel hubs that had not been included in the challenge. He had not had the opportunity to respond to this argument.

18. With regard to the evidence of the previous 2010 list Mr Lowell advised that this was misleading as the previous list reflected the assessment of the Cheshunt property before conversion to a day nursery and was therefore at a lower rate per metre.

19. The Clerk referred the panel to The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009 No 2269) (as amended) which states state:

Admission of new evidence on NDR appeal

17A.—

(1) On a NDR appeal, the VTE may only admit evidence that was not included in the notice of appeal or any document accompanying the notice of appeal ("new evidence") if—

(a) that evidence—

(i) is provided by a party to the appeal;

(ii) relates to the ground on which the proposal was made; and

(iii) was not known to the party and could not reasonably have been acquired by the party before the proposal was determined under Part 2 of the NDR Regulations; or

(b) all the parties to the appeal agree in writing to the party providing the new evidence.

(2) If the VTE admits new evidence under paragraph (1), the VTE may admit further evidence provided by another party to the appeal if the further evidence specifically relates to—

19 (a) the new evidence; and

(b) the ground on which the proposal was made.

(3) A party which provides evidence under paragraph (1) or (2) must also provide that evidence to all the other parties to the appeal.

20. The panel retired to consider whether this was new evidence and whether it should be admitted.

21. The panel found that the evidence of the previous list assessments was new evidence and had been objected to by the Valuation Officer and therefore could not be admitted. There was no objection to the map and photograph and was admitted.

22. Mr Clayton also raised the issue that the original challenge was closed before there was a chance to respond. The panel found that the challenge had been reopened and the appeal lodged therefore there was no disadvantage to the appellant in this breach of the procedure.

Relevant Law

23. In arriving at a decision, the panel is governed by rating legislation laid down by Parliament where Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provides that:

(1) 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.

24. 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 antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 20.

25. 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 2015.

Discussion

26. The panel was guided by the leading judgment in the Lands Tribunal case of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. The six propositions in this judgment were:

> "(i) Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.
>
> (ii) 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 s19(6) of the General Rate Act 1967, the more weight should be attached to it.
>
> (iii) Where rents of similar properties are available, they too are 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.
>
> (iv) Assessments of other comparable properties are also relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values as estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can be properly referred to as giving some indication of that opinion.
>
> (v) In the light of all the evidence an opinion can then be formed of the value of the subject hereditament, the weight to be attributed to the different 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.

(vi) 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 clearly be more difficult to reject the evidence of the actual rent.”

27. It was accepted by both parties that the rental evidence on the subject property was unreliable and could be given no weight as it was between connected parties being a lease back arrangement and not an open market rent.

28. The panel noted that the rental evidence provided by the Valuation Officer was in respect of two properties: The Grange Cheshunt which analysed to £157.80 per annum and was a new lease from 31 July 2013 for a 25 year term with five yearly rent reviews and a six month rent free period. It was assessed at £150m^2. The panel gave this evidence limited weight as it was two years before the AVD. The second rental evidence was on Littlebury, College Road Cheshunt, which analysed to £127.12 this was a new lease for one year on a single storey purpose built day nursery. It was assessed at £125m^2, the panel gave more weight to this evidence as it was closer to the AVD.

29. The panel also had regard to the two properties in the region identified as comparable by the Valuation Officer, no rental details or descriptions of the locality were provided. The panel placed less weight on these comparable properties as there was too little information to make a reasoned comparison to the subject property.

30. The panel noted that two of the day nurseries identified by the appellant in the scheme were also converted buildings and therefore comparable to the subject property. These were all assessed at £125m^2. The panel gave these some weight as indicating that the subject property was over assessed.

31. The panel was aware that the 2017 list was at an end and at this stage the list was settled and weight could be given to the established pattern of values which indicated a tone for day nurseries within the area. Of the twelve nurseries identified in the scheme, eleven were assessed at £125m^2, no rental evidence had been given for these nurseries and therefore the panel relied on the assessed values. The panel found that the advantages of a purpose built single storey nursery attached to a school in better locations would offset the higher quality of the subject property.

32. Having had regard to all of the evidence the panel was satisfied that the RV on the subject property was not reasonable, the panel gave weight to the rental evidence on Littlebury as it was closest to the AVD and best demonstrated the market at that time. Weight was also given to the comparable properties in the scheme, in the panel’s opinion the higher quality of the subject property was equalled by the better location and accessibility of the other day nurseries.

Disposal

33. In view of the above findings and conclusions, the Tribunal Panel was satisfied that the base rate on the subject property was not reasonable and should be reduced to £125m^2 from 1 April 2017.

Order

34. 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 the subject property to £25,000 RV with effect from 1 April 2017. The Valuation Officer must comply with this Order within 2 weeks of its making.

Refund of appeal fee

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

Valuation

line	floor	description	Area m^2	£ per unit m^2	Value (£)
1	Basement	Kitchen	22.53	46.88	1,056
2	Basement	Office	12.65	62.50	791
3	Basement	Kitchen	7.89	46.88	370
4	Basement	Internal Storage	13.35	46.88	626
5	Ground	Reception/entrance	28.14	125.00	3,518
6	Ground	Nursery	30.11	125.00	3,764
7	Ground	Nursery	46.00	125.00	5,750
8	Ground	Nursery	25.46	125.00	3,183
9	Ground	Kitchen	4.79	93.75	449
10	Ground	Internal Storage	0.85	93.75	80
11	Ground	Public toilets	6.79	93.75	637
12	First	Nursery	25.88	112.50	2,912
13	First	Nursery	42.88	112.50	4,824
14	First	Nursery	21.36	112.50	2,403
15	First	Nursery	45.53	112.50	5,122
16	First	Nursery	29.50	112.50	3,319
17	First	Public toilets	9.08	84.38	766
		Total	**372.79**		**£39,567**

Rateable Value rounded to £39,500.

Date issued to parties: 14 October 2024

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.