THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; day nursery and premises; price per m^2 in dispute; rental evidence; comparable assessments; appeal allowed in part.

RE: 5 Westbury Road, Warminster, Wiltshire BA12 0AN

APPEAL NUMBER:	CHG100807381	
BETWEEN:	Storal Learning Ltd	Appellant
	and	
	Ms A Morley, Valuation Officer	Respondent
PANEL:	Ms S Yousef (Senior Member) and Ms J Morton	
CLERK:	Mrs L Horne	
REMOTE HEARING ON:	Friday 16 June 2023	
APPEARANCES:	Mr H Seabrook from Altus Group, representing the appellant Mr M Ingram representing the Valuation Officer	

Summary of decision

1 Appeal allowed in part. The panel determined a revised price of £75 per m^2 which resulted in a rateable value (RV) of £12,250 with effect from 1 April 2017.

Introduction

2 This is a 2017 rating list appeal. 5 Westbury Road, Warminster, Wiltshire BA12 0AN, (the 'appeal property') had been entered into the 2017 rating list as day nursery and premises at a RV of £16,250 with effect from 1 April 2017.

3 The challenge proposal was submitted by Altus Group on behalf of Storal Learning Ltd and was received by the Valuation Officer on 18 May 2022. It had been made on the grounds that the RV shown in the rating list on 1 April

2017 was inaccurate. A revised RV of £7,400 was proposed with effect from 1 April 2017.

4 The Valuation Officer issued a challenge case decision notice on 26 October 2022 which disagreed with the proposed alteration of the list and stated that the rating list entry was reasonable based on the evidence and information available.

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 12 January 2023.

6 The subject premises is a converted former residential property, occupied as a privately owned nursery which is open all year and provides full day-care facilities. It is assessed in valuation scheme 396606 applicable to day nurseries and playschools within Warminster, as a type 2 property (see paragraph 18).

7 The present valuation of £16,250 RV is based upon a total area of 193.47m^2, at a price of £100 per m^2.

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

Issues

9 The issue in dispute is the price per m^2 to be adopted in the valuation.

Evidence and submissions

10 The bundle comprised all the documents exchanged between the parties as part of the challenge process: initial response to the challenge, further evidence exchanges, Valuation Officer's challenge case decision notice, and the appellant's challenge submission. The addition of photographs of comparable properties and an extract from the valuation scheme by the Valuation Officer was accepted by the appellant's representative.

11 In support of his proposed price of £45 per m^2, Mr Seabrook referred to comparable properties and agreements from the same valuation scheme. He requested a revised valuation at £7,400 RV with effect from 1 April 2017.

12 On behalf of the Valuation Officer, Mr Ingram defended the present price of £100 per m^2 with reference to comparable assessments and the classification of the appeal property as a type 2 day nursery. He requested that the panel confirm the present RV of £16,250 with effect from 1 April 2017.

Decision and reasons

13 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:

> 2(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.

14 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 2014 (SI 2014 No. 2841).

15 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.

16 The panel was guided by the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, which had set out six propositions to be followed when considering the weighting of evidence. The starting point was the subject rent, however, the appeal property was held freehold and therefore there was no rental information for consideration. The remaining propositions required consideration of the rents of similar properties and comparable assessments. In light of all the evidence an opinion could then be formed.

17 Only one piece of rental evidence was put forward by Mr Seabrook. A five year lease agreed for Tiddlywinks, Bradford on Avon, BA15 1LE at a rent of £8,550 per annum with effect from 23 August 2016. Although post AVD, Mr Seabrook contended that the analysed rent of £38.24 per m^2 was pertinent evidence which demonstrated that £100 per m^2 was excessive for the appeal property.

18 The panel decided that little weight could be attached to the Tiddlywinks rent as Mr Ingram confirmed that it was based upon the number of children's spaces, and it was therefore not an open market rent. It was also noted by the panel that Tiddlywinks had been assessed at £100 per m^2.

19 In the absence of any relevant rental evidence, the panel turned to the parties' comparable properties. The following extract of the subject valuation scheme had been provided by Mr Ingram:

> **Type 1** - Purpose built and good quality refurbishments, well located in town centres, prime residential areas or close to main employers; full day commercial use. Values adopted range between £120/m² and £100/m².
>
> **Type 2** - converted from a previous use in urban or suburban areas; full day commercial use. Range from £65/m² - £100/m² adopted.
>
> **Type 3** - Full commercial use in rural areas -£60/m² - £70/m² adopted.
>
> **Type 4** -sessional care in traditional buildings. adopt between £50/m² and £60/m².
>
> **Type 5** -sessional care in temporary classroom / modular type buildings, adopt £45/m².

20 Mr Seabrook presented nine comparable properties which ranged from £45 per m^2 to £70 per m^2. Of those, four were assessed at £45 per m^2, the price he proposed for the appeal property. With reference to the photographs and further information provided by the Valuation Officer, the panel was not persuaded that the nurseries assessed at £45 per m^2 were relevant for comparison with the appeal property.

The Learning Meadows Foxholes, Foxholes, Crockerton, Warminster, BA12 7DU

Described by Mr Seabrook as a purpose-built, new build nursery, just off the A350, this was a type 5 property of modular construction and different in character to the appeal property in a more rural area.

Little Cuckoos Pre-School, Lyes Green, Warminster, BA12 7PA

Described by Mr Seabrook as 5.5 miles from the subject. No photographs or details of the construction were provided to enable comparison with the appeal property, however, at £45 per m^2, it had been assessed as a type 5 property.

Noahs Arc Nursery at Princecroft School, Princecroft Lane, Warminster, BA12 8NT

Described by Mr Seabrook as the best comparable, a purpose-built nursery which was the closest in location to the appeal property. However, it had been assessed as a type 5 property, being of modular construction, and was therefore different in character to the appeal property.

Codford Caterpillars Pre-School, Cherry Orchard, Codford, Warminster, BA12 0PN

Described by Mr Seabrook as a purpose-built nursery next door to Wyle Valley Primary School, 7.5 miles from the subject. Considered by the Valuation Officer to be in an inferior rural location. Most significantly, this was a type 5, term time only nursery with no provision for full time childcare and therefore valued at a lower price per m^2.

21 Mr Seabrook contended that the best evidence was derived from two agreements relating to properties within the same scheme:

Nursery at Tabernacle United Reformed Church, St Mary Street, Chippenham, SN15 3JW

Located next door to the church in the centre of Chippenham, this had been reduced by agreement from £100 per m^2 to £65 per m^2. As a type 2 property, this was considered by the Valuation Officer to be the most similar in nature to the appeal property, however it differed in character and was considered to be inferior in specification.

Treetops Day Nursery at Little Folly Children's Centre, Winding Way, Salisbury, SP2 9EA

Described by Mr Seabrook as a purpose-built nursery, next door to Woodlands County Primary School. This property had also been reduced by agreement from £100 per m^2 to £65 per m^2. The Valuation Officer considered that this type 2 property was of inferior construction and had poor access.

22 Of the remaining three comparables properties put forward by Mr Seabrook, the panel noted that Wylye Coyotes After School Club and Mere Playgroup, both assessed at £60 per m^2, were time-time only and therefore not like for like comparisons with the appeal property; Leaping Frogs Nursery, a type 3 property assessed at £70 per m^2 was in an inferior rural location.

23 In support of £100 per m^2 for the appeal property, the Valuation Officer scheduled three comparable assessments.

12 Wingfield Road, Trowbridge, Wiltshire BA14 9EB

A type 2 converted domestic property assessed at £100 per m^2. Mr Seabrook stated that this was 10.3 miles away from the appeal property.

Malthouse Nursery School, Charlton Park, Malmesbury, SN16 9DG

A type 2 property assessed at £100 per m^2. Mr Seabrook stated that this was 33.6 miles away from the appeal property.

The Old Brewery House, 8 Bath Road, Shaw, Melksham, SN12 8EF

A type 2 property assessed at £100 per m^2. Mr Seabrook stated that this was 14.1 miles away from the appeal property.

24 While the panel noted that the Valuation Officer's comparable properties were located further away from the appeal property than those relied on by the appellant, it was also the case that a number of Mr Seabrook's comparable properties were different in construction and character.

25 Taking all the evidence into consideration, the panel determined that the present price of £100 per m^2 for the appeal property was unreasonable. The panel was not persuaded that the appeal property was directly comparable with Malthouse Nursery or 12 Wingfield; Mr Ingram had acknowledged that 12 Wingfield was superior to the appeal property. The panel further considered that the properties relied upon by Mr Seabrook which were assessed at £45 per m^2 were type 5 properties, and therefore not directly comparable with the appeal property.

26 As a type 2 property, the panel considered that the rental value of the subject would fall below that of 12 Wingfield Road and Malthouse Nursery School (£100 per m^2) but above that of Nursery at Tabernacle United Reformed Church and Treetops Day Nursery (agreed at £65 per m^2) and Leaping Frogs at £70 per m^2. The panel therefore determined a revised price of £75 per m^2.

Line	Floor	Description	Area m^2	£/m^2	Value £
1	Ground	Classroom	14.56	75.00	1,092
2	Ground	Classroom	13.61	37.50	510
3	Ground	Classroom	13.97	75.00	1,048
4	Ground	Classroom	34.26	75.00	2,570
5	Ground	Kitchen	6.86	56.25	386
6	Ground	Classroom	29.74	37.50	1,115
7	Ground	Classroom	29.71	75.00	2,228
8	Ground	Kitchen	2.89	56.25	163
9	First	Office	14.67	67.50	990
10	First	Nursery	12.52	67.50	845
11	First	Nursery	13.17	67.50	889
12	First	Office	7.51	67.50	507
Total area:			193.47		
Total value:					12,343
Adopted Rateable Value					**£12,250**

27 The appeal was allowed in part and the panel determined a revised RV of £12,250 with effect from 1 April 2017.

Order

28 Under the provisions of regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to alter the entry in the rating list to rateable value £12,250 with effect from 1 April 2017.

29 Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

30 A refund of the paid fee will now be arranged provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 29 June 2023

Appeal number: CHG100807381

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.