THE VALUATION TRIBUNAL FOR ENGLAND

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

RE: 3 St Margarets Gardens, Melksham, Wiltshire SN12 7BT

APPEAL NUMBER:	CHG100896012	
BETWEEN:	M C & S H Cawley Limited	Appellant
	and	
	Ms L Formela-Osbourne Valuation Officer	Respondent
PANEL:	Mrs N Crawshaw (Presiding Senior Member) Mrs A Fielder (Senior Member)	
CLERK:	Mrs L Horne	
REMOTE HEARING ON:	Wednesday 24 January 2024	
APPEARANCES:	Mr H Seabrook from Altus Group, representing the appellant Mrs S Cronk representing the Valuation Officer	

Summary of decision

1 Appeal dismissed. The panel was unable to order an increase in rateable value (RV) as requested by the Valuation Officer in accordance with regulation 38(5) of The Valuation Tribunal for England (Council Tax and Rating Appeals) Procedure) Regulations 2009 (SI 2009 No. 2269).

2 The Valuation Officer's revised RV of £12,750 with effect from 1 April 2017, reflected the presence of heating and additional toilets identified during an inspection on 14 December 2023.

Introduction

3 This is a 2017 rating list appeal. 3 St Margarets Gardens, Melksham, Wiltshire SN12 7BT, (the ‘appeal property’) had been entered in the 2017 rating list as day nursery and premises at a RV of £12,500 with effect from 1 April 2017. The RV was reduced to £12,000 following a check case decision in January 2023, to reflect a lack of central heating.

4 The challenge proposal was submitted by Altus Group on behalf of M C & S H Cawley Limited and was received by the Valuation Officer on 13 January 2023. 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 £7,800 was proposed with effect from 1 April 2017.

5 The Valuation Officer issued a challenge case decision notice on 17 March 2023 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.

6 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 7 July 2023.

7 As Mr Seabrook 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).

8 It was established that Mr Seabrook’s company would receive a conditional fee if the rateable value was reduced as a result of the panel’s decision.

9 However, Mr Seabrook declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that 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).

11 The panel therefore considered the “expert” evidence and attached such weight to it as it saw fit.

12 The subject premises is a converted 1950s detached residential property, occupied as a privately owned nursery. It is open 51 weeks per year and provides full day-care facilities for 37 children. The present valuation of £12,000 RV is based upon a total area of 148.8m^2, at an unadjusted price of £100 per m^2. The present adopted price of £95 per m^2 reflects a lack of heating.

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

Preliminary issue

14 Mr Seabrook had made a late request to cite a recent relevant Valuation Tribunal decision: appeal number CHG100807381, Storal Learning Ltd, 5 Westbury Road, Warminster, BA12 0AN. As there had been an objection raised by Mrs Cronk prior to the hearing, Mr Seabrook set out the reasons for the late request and why he considered that it was in the best interests for the panel to have sight of the decision. When asked for her comments, Mrs Cronk confirmed that she no longer objected, and had been able to look at the decision prior to the hearing.

15 The hearing was then adjourned briefly to allow time for the panel to read through the decision.

Issues

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

Evidence and submissions

17 The bundle comprised all the documents exchanged between the parties as part of the challenge process: initial response to the challenge, Valuation Officer's challenge case decision notice, and the appellant's challenge submission. The parties were in agreement that following an inspection, the Valuation Officer's additional submission should form part of the bundle.

18 In the challenge submission, Mr Seabrook had proposed a RV of £7,800, based upon a revised price of £65 per m^2, and with reference to rental evidence and comparable assessments. At the hearing, Mr Seabrook proposed a revised RV of £9,700 based upon £75 per m^2, in line with the Tribunal's decision for Storal Learning Ltd, 5 Westbury Road, Warminster.

19 Mrs Cronk stated that following an inspection on 14 December 2023, it became evident that the property has full gas central heating, apart from in the small back kitchen. The RV had been adjusted at check stage as a declaration had been made that the premises had no heating. It had also been noted that there were additional children's toilets on the ground floor. As such, Mrs Cronk requested that the panel confirm a revised RV of £12,750 with effect from 1 April 2017.

Decision and reasons

20 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;
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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;
>
> (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.

21 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).

22 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.

23 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; the appeal property was subject to a connected parties lease, and therefore little weight could be attached to it. 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.

24 The first point made by Mr Seabrook was that the Valuation Tribunal's decision for Storal Learning Ltd was pertinent to the subject property, due to the similarities between the two. Both were situated in central locations, they were similar in size and specification, and both were converted residential properties. In view of the Tribunal's decision to reduce that assessment from £100 to £75 per m^2, Mr Seabrook submitted that the appeal property should also be valued at £75 per m^2.

25 In consideration of Mr Seabrook's reliance upon the Storal Learning Ltd decision, the panel was not persuaded that it supported £75 per m^2 for the appeal property. As outlined by Mrs Cronk, one of the properties cited in that decision, Treetops, had previously been incorrectly identified. In her opinion, that had cast doubt on the information presented in that case. It was also confirmed by Mrs Cronk that Storal Learning was situated in a more rural location in a less affluent area, and had since been reclassified as a Type 3 Nursery.

26 In further support of his contention that £100 per m^2 was excessive for the appeal property, Mr Seabrook referred to the rental analysis for Tiddlywinks, Bradford on Avon, BA15 1LE at £40 per m^2; seven assessments within Salisbury valued between £45 to £70 per m^2; and the following settlement evidence:

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. It was opposite Pinewood Play Area and located in close proximity to a variety of sports clubs and health centres, in comparison to the subject which was situated 1.5 miles from Melksham station in a residential area with no notable amenities. This property had been reduced by agreement from £100 per m^2 to £65 per m^2.

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

Described as a similar conversion, located next door to the church in the centre of Chippenham, 1.5 miles from the station and next door to the main shopping centre of Emery Gate. It had three on site car parking spaces and was located next to a public car park. This property had been reduced by agreement from £100 per m^2 to £65 per m^2.

27 The panel attached little weight to Mr Seabrook's rental analysis of Tiddlywinks, following confirmation that the Valuation Office did not hold any rental details, and that a form of return declared that the occupier had never paid rent.

28 Mrs Cronk disputed the relevance of Mr Seabrook's seven comparable assessments in Salisbury, due to their location, type and distance from the subject; they were either located in more rural locations, or of inferior construction, or both, which accounted for the lower tones adopted.

29 In addressing the relevance of the settlements cited by Mr Seabrook, Mrs Cronk confirmed that Treetops was a Type 3. The Nursery at Tabernacle United Reform Church was a Type 2, however, the reduction in tone reflected

the distance from the appeal property, and a constrained site with limited outdoor space and parking.

30 For the reasons outlined by Mrs Cronk, the panel was satisfied that the most relevant evidence was derived from similar Type 2 converted former dwellings, closer in location to the appeal property:

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

Located closest to the subject, this was an older property in a more peripheral location. It had been assessed at £100 per m^2 and was unchallenged.

New Road Nursery, 36-37 New Road, Chippenham SN15 1HP

An older building, located in the centre of Chippenham with external space, but no car parking. A check had been received against the assessment at £100 per m^2 but it remained unchallenged.

See Saw Nursery, 1 Eastbourne Road, Trowbridge, BA14 7HW

An older conversion around six miles from the subject south-west of Melksham. There was external space to the rear but very limited car parking. It had been assessed at £100 per m^2 and was unchallenged.

31 Taking all of the evidence into consideration, the panel determined that the present price of £100 per m^2 for the appeal property was not unreasonable. While it was the case that all of the properties cited were valued within the same valuation scheme, the values adopted ranged from £45 to £180 per m^2. Nurseries were categorised into five types, according to factors such as location, build, facilities, and whether full commercial use or sessional care.

32 The panel attached most weight to the Valuation Officer’s comparable properties which were Type 2 Nurseries and therefore most relevant for comparison with the appeal property. Less weight was attached to Mr Seabrook’s evidence as it comprised properties either in inferior locations, different in construction or classified as a different type.

33 Mrs Cronk requested that the panel confirm a revised RV of £12,750 with effect from 1 April 2017. However, regulation 38(5) of The Valuation Tribunal for England (Council Tax and Rating Appeals) Procedure) Regulations 2009 limits the ability of the Valuation Tribunal to increase RVs. The Tribunal may only increase a RV from the date of the decision. As the 2017 rating list has now closed, any increase cannot take effect and therefore the panel cannot make an order to change the list. Consequently, the panel dismissed the appeal.

Date: 7 February 2024

Appeal number: CHG100896012

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.