VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; garden centre and premises; challenge against compiled list entry; accuracy of rateable value; method of valuation; turnover at AVD; comparable properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal allowed in part.

APPEAL NUMBER:	CHG100924497	
RE:	Laylocks Nurseries,Bromyard Road,Cotheridge,WR6 5LP (the “subject property”)	
BETWEEN:	Laylocks Garden Centre	Appellant
	and	
	Lucy Formela-Osborne (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	30 October 2024	
BEFORE:	Mrs AE Fielder, Presiding Senior Member Ms SE Gargaro, Senior Member	
CLERK:	Ms N Shepherd IRRV (Hons)	
APPEARANCES:	Mr P Rabbette, on behalf of the appellant Mr S Bewsher, on behalf of the Valuation Officer	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed-in-part.

2. The Tribunal Panel determined that the mains space rate at the subject property should be reduced to £25/m^2. The resultant rateable value (RV) was £43,000 from 1 April 2017.

Introduction

3. The appeal process began with a challenge made by the appellant's representative on 16 February 2023 in respect of the Valuation Officer's (VO) rating list entry of the subject property at £58,000 RV with effect from 1 April 2017. The appellant's representative proposed a revised assessment of £25,000 RV from that date based on a reduced value for main space.

4. The respondent issued a challenge case decision notice on 25 January 2024, which found that the proposal was not well founded, and the current rating list entry was reasonable based on the information and evidence available. The appellant's representative appealed that decision to this Tribunal on 29 May 2024 on the grounds that the valuation for the subject hereditament remained unreasonable and sought an unadjusted rate of £15/m^2.

5. After reviewing the evidence received during the challenge stage the respondent revised its opinion of value in respect of the subject property and amended the relativities applied to the covered sales areas and Portacabin reducing the RV of the subject property to £51,500.

6. The subject property was a garden centre and premises made up of a number of converted glass houses, measuring 3,745.23m^2. It was located rurally on the A44, 3.8 miles to the west of Worcester City Centre.

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

Relevant Law

8. When arriving at its decision, the panel is governed by rating legislation laid down by Parliament. Schedule 6 to the Local Government Finance Act 1988, as amended by section 1(2) of the Rating (Valuation) Act 1999, defines the Rateable Value of a non-domestic property as the amount equal to the rent at which it is estimated the property might reasonably be expected to let on a year to year basis 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 the 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.

9. 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).

10. 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 appeals, the material day is 1 April 2017.

Discussion

11. The panel firstly addressed whether the subject property had been ascribed to the correct valuation scheme. Mr Rabbette submitted that the subject property had been incorrectly incorporated within scheme 404485, which related to "all large Garden Centres in Central NDR". He stated that the subject property was small family run business and should instead be in Valuation Scheme 405610, which was applicable to all "non-chain operated small Garden Centres in Central NDR".

12. Mr Bewsher submitted that the scheme to which the subject property was ascribed had no bearing on either the current valuation or that proposed by Mr Rabbette. Both schemes were used to value plant nurseries and garden centres, and both applied the same relativities to different structures and areas. He stated that the values within scheme 404485 ranged between £1/m^2 to £225/m^2 and those within scheme 405610 between £12/m^2 and £230/m^2. Taking this into account, whilst the panel could understand Mr Rabbette's contention that the subject property had been placed in the wrong scheme, it was satisfied that the scheme into which it was ascribed had no impact on the overall valuation.

13. Mr Rabbette submitted that the subject property was valued upon it's Fair Maintainable Trade (FMT) and that he considered that this was not the correct method of valuation for Garden Centres. He contended that the subject property was a multi-generational family business, which whilst trading on excellent reputation was small and independent. This meant it was not able to benefit from wholesale prices in the same way that large chains could negotiate and that staff costs may be higher. Furthermore, as it was a family business family members may not taking a wage from the business. As such, he did not consider the turnover alone to be the most competent method of valuation. Instead, he submitted that the comparable method of valuation was preferable, referring to *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141.

14. The panel was aware that this was a leading judgment which had set out six propositions to be followed when considering the weighting of evidence. The starting point was the subject rent. Consideration of how the time, subject matter and conditions related to the statutory requirements was required in order to determine how much weight should be attached to the subject rent. The remaining propositions required consideration of the rents of similar properties and comparables.

15. Mr Bewsher submitted that generally rental evidence in relation to garden centres was scarce. He stated that although comparables were taken into account when valuing, due to the limited rental evidence available, garden centres were put onto six categories based upon the turnover received. These categories were not determinative of a particular level of value but assisted as an aid to comparison reference. Based upon the turnover of the subject property as of 31 December 2014 of £996,120, it fell within Category 3, for which, according to the Valuation Office's Rating Manual, the range of values were usually between £25m/^{2} and £35m/^{2} for average, standard sales glass houses.

16. The parties had provided details of comparable properties. Mr Rabbette had identified six garden centres, all located within the West Midlands which he considered supported the proposed main space rate of £15m/^{2}. Of these, the panel noted two had also been confirmed as Category 3 by the Valuation Officer. Mappleborough had an unadjusted rate of £15m/^{2} and Rowberry's had an unadjusted rate of £22/m^2. Mr Rabbette submitted that Mappleborough

was purpose built in 2016 and was of a superior quality and location than the subject property and Rowberrys was situated in a better location, therefore it was not unreasonable to expect the subject property to have a lower unadjusted rate than either of these two properties.

17. Mr Bewsher submitted that after being notified that these properties were being used as comparable by Mr Rabbette, they were both found to have been undervalued significantly. As the 2017 List was closed, no amendments were able to be made to these assessments. This was also the case of Singletons, a further Category 2 comparator referred to by Mr Rabbette. Mr Bewsher therefore did not consider them to be good evidence in assisting with the determination of the unadjusted rate at the subject property.

18. The panel was aware that Valuation Officers should not impugn the list entries. If the existing entries are incorrect, the Valuation Officer has a statutory duty to correct it, unless the law prevents him from doing so. However, the panel had regard to the Upper Tribunal judgment of the *Dog & Gun Ltd (Oxenhope) v Howarth (VO)* [2015] in which it was determined that an exception to this is when the list is closed to further Valuation Officer alterations and information has since come to light, which the panel considered to be similar to this case.

19. Mr Rabbette had provided details of three further properties within Category 2. Of these the panel disregarded Lower Court Farm which was a rural furniture showroom selling outdoor wear for gardens but no plants, and which the panel therefore did not consider comparable to a garden centre. It also did not consider Burford House to be comparable as this was part of a historical estate and gardens. The final comparable referred to by Mr Rabbette was that of Garden Centre, Worcester Road which had an unadjusted rate of £20/m^2. The panel considered this to be a good comparable in terms of locality. Having regard to the photographs provided the panel found it also to be similar to the subject property in terms of character and specification but noted that it was Category 2, meaning that it’s turnover at the AVD was lower than that of the subject property.

20. The panel then addressed the comparable properties submitted by the Valuation Officer. Mr Bewsher submitted that he considered greater weight should be attached to rents and agreed settlements as opposed to unchallenged assessments. As there was no rental evidence available, he referred to the six garden centres located closest geographically where agreements had been reached. Of these only 2 were Category 3 assessments, Notcutts which had an unadjusted rate of £31.75/m^2 and Smiths Orchard which had an unadjusted rate of £30/m^2. He referred to the turnover at each of these properties at the AVD, with Notcutts having a turnover of £1.3 to £1.4 million between 2013 and 2015 and Smiths a turnover of £1million between 2012 to 2014. Mr Bewsher submitted that these assessments supported the current unadjusted rate of £30m/^{2} at the subject property.

21. Mr Rabbette disputed the comparability of these two assessments submitting that Notcutts was part of a garden centre chain which had 19 stores nationally and was therefore not comaparble to the independent family run subject property. Furthermore, both of these comparables were not within the locality of the subject property, with Notcutts being situated 115 miles away and Smith 185 miles away. The panel had consideration to Mr Rabette’s contention and whilst not finding these properties to be good comaprators in terms of locality and character, did find them to be useful due to their turnovers being similar to that of the subject property at the AVD.

22. Mr Bewsher also contended that in the majority of cases the RV of garden centres would be expected to fall between 4-6.5% of the turnover for the last full trading year prior to 1 April

2015. In respect of the turnover at the subject property of £996,120, the current RV of £51,5000 would be roughly 5.2 % putting it firmly within this percentage range.

23. The panel had regard to the trading figures of the comparable properties submitted by Mr Bewsher and the percentage applied to these in calculating the RV at each property. It found that in all of the garden centres, other than Notcutts in which the percentage was slightly higher, that the RV was between 4-6.5% of the turnover at the AVD. Having consideration to the proposed RV of £25,000 the panel found that this figure was 2.5% of the subject property's turnover at AVD, significantly lower than the percentages applied at the other garden centres referred to by Mr Bewsher.

24. The panel had consideration to the evidence and submissions of both parties and found that the comparables submitted by Mr Rabbette, particularly Garden Centre, Worcester Road did support a reduction in RV. However, based upon the evidence provided the panel did not consider the proposed unadjusted rate of £15/m^2 to be appropriate. The panel considered that the approach of the Valuation Officer in using trading figures at the AVD in conjunction with comparables was useful, due to the lack of rental evidence available in respect of garden centres. Taking into account the turnover at the subject property at the AVD, the panel considered an unadjusted rate of £25/m^2 to be more reasonable, giving an RV of £43,000 with effect from 1 April 2017.

COMPONENT PARTS OF PROPERTY					
Ref	**Floor**	**Description**	**Area m^2/unit**	**£ per m^2/unit**	**Value (£)**
1.1	Ground	Glasshouse	1097.20	25.00	27,430
1.2	Ground	Outdoor Sales Display	1295.10	5	6,476
1.3	Ground	Covered Area	123.90	7.50	929
1.4	Ground	External Storage	54.39	10	544
1.5	Ground	Covered Area	466.20	7.50	3,496
1.6	Ground	Outdoor Sales Display	561.34	5	2,807
1.7	Ground	Public Toilets	29.70	30	742
1.8	Ground	Portacabin	16.90	8.10	137
1.9	Ground	Outdoor Display/Seating area	100.50	5	502
				Valuation sub-total:	£43,054

Say £43,000 RV

Disposal

25. In view of the above findings and conclusions the panel therefore allowed the appeal in part.

26. The Tribunal orders, pursuant to Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, that the Valuation Officer, within two weeks of the date of this order, shall alter the rateable value in the 2017 list in respect of the subject property to an RV of £43,000 with effect from 1 April 2017.

27. A refund of the paid fee will now be arranged (Regulation 13E of the Non-Domestic Rating (Alteration of Lists & Appeals) (England) Regulations 2009. Provided there is no review of the Tribunal's decision the refund will take around six weeks to process.

Date issued to parties: 29 November 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.

Amended decision in accordance with Regulation 39 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 due to a clerical error