VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; children's playcentre and premises; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976]; Ladies Hosiery and Underwear Ltd v West Middlesex Assessment Committee [1932] 2 KB 679; rental evidence; assessments of comparable properties; correct unadjusted rate to be applied to the subject property's assessment; appeal dismissed.

APPEAL NUMBER:	CHG100957726
RE:	Unit 17, Severnside Trading Estate, Textilose Road, Manchester, M17 1WA (the "subject property")

BETWEEN:	Jump Nation Ltd	Appellant
	and	
	Amanda Hitchings BA(Hons) MRICS (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	3 June 2024
BEFORE:	Ms CJ Jones (Presiding Senior Member) Ms J Gittens (Senior Member)
CLERK:	Mrs J Smith IRRV (Tech)
APPEARANCES:	Adam Fowke of Altus Group - representing the appellant Mr Isaac Rischer - representing the Valuation Officer

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DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The panel confirmed a rateable value (RV) of £118,000 for the subject property with effect from 1 April 2017.

Introduction

3. This is a 2017 rating list appeal. Unit 17, Severnside Trading Estate, Textilose Road, Manchester, M17 1WA had entered the 2017 rating list as ‘childrens play centre and premises’ at RV £118,000 with effect from 1 April 2017.

4. The challenge proposal was submitted by Altus Group on behalf of Jump Nation Limited and was received by the Valuation Officer on 15 March 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 was proposed of £75,000 with effect from 1 April 2017.

5. The Valuation Officer issued a challenge case decision notice on 31 August 2023 which disagreed with the proposed alteration of the list. The material date was 1 April 2017.

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.

7. Mr Fowke, of Altus Group, appeared on behalf of the appellant as both 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 Fowke confirmed that he was instructed under a contingency fee basis and he 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.

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).

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

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

Background

11. Prior to the fit out work undertaken by the current occupier, the subject property was an industrial unit. It is now a children’s soft play centre. It is located within Trafford Park in Manchester, a large commercial property park located near to the Trafford Centre. The hereditament consists of a ground floor trampoline area, public toilets, café and kitchen, reception, a first floor viewing area and café, party room and staff room. The total area of the property is 1541.07m^2 and it is valued at an unadjusted rate of £80/m^2.

12. The appellant's representative argued that the unadjusted rate adopted is excessive based on the comparable assessments of other trampoline/play parks and sought a reduction to £47.50/m^2 which resulted in his proposed assessment of RV £75,000 with effect from 1 April 2017.

13. The VO defended the present assessment of RV £118,000 with effect from 1 April 2017.

Preliminary issue

14. Following a joint inspection of the subject property on 7 March 2024, Mr Rischer had submitted a number of internal photographs of the premises. Mr Fowke had no objection to the inclusion of this new evidence.

15. Having regard to this situation, the panel considered the matter in accordance with Regulation 17A of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI No 2009/2269) (as amended), the Valuation Tribunal for England 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.

16. Since it was clear that this evidence was not available before the proposal was determined and neither party objected to its inclusion, the panel allowed these photographs to be admitted.

17. Mr Rischer had also submitted a copy of a recent VTE decision, CHG101068723, regarding another play centre in Trafford Park. However, the panel was aware that Tribunal decisions are not regarded as evidence and therefore a copy of this decision was admitted.

Relevant Law

18. The term 'rateable value' is defined in Schedule 6 to the Local Government Finance Act 1988 (as amended):

"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".

Discussion

19. The panel had to determine the RV for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree, as at the Antecedent Valuation Date, 1 April 2015. The common date was used to ensure that every property was treated in a consistent way.

20. The Lands Tribunal judgment in *Lotus and Delta* v *Culverwell (VO) and Leicester City Council* [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

21. Mr Rischer had referred to the rent of the subject property, which was a new letting from 29 May 2014, agreed before the unit was fitted out as a play centre. The lease was for a term of 5 years with the first 6 months as a step at £89,045 per annum and the remaining 4.5 years at £104,045 per annum, which he had analysed at £69.29/m^2. Mr Rischer suggested that, in light of this rental evidence, an adopted unadjusted rate of £80/m^2 was appropriate for the subject property, allowing for the high specification conversion of the warehouse.

22. No rental evidence was submitted by either party in respect of any comparable properties. As such, the panel went on to have regard to proposition four as set out in *Lotus & Delta* and have regard to the assessments of comparable properties.

23. Mr Fowke had provided a table of comparable properties on Severnside Trading Estate. Unit 14, which was the same age as the subject property and had an area of 1196.78m^2 , was valued at an unadjusted rate of £47.50/m^2, and number 9/10, which was built prior to 1990, and had an area of 1390.30m^2, was valued at an unadjusted rate of £42.50/m^2. These were both regular industrial warehouses.

24. Mr Fowke had also referred to 16 Severnside Trading Estate, which was also a play centre, although much smaller than the subject property, with an area of 703.90m^2. This had been valued at an unadjusted rate of £46.50/m^2.

25. Mr Fowke then referred to 3 other playcentres situated further away from the subject property, in Bolton and Widnes. These ranged in size from 607.70m^2 to 2406.52 m^2 and valued at unadjusted rates of between £37/m^2 and £81/m^2. These had all been reduced by the VO in line with the values of typical industrial units on their respective estates. Mr Fowke suggested these reductions supported his argument that, under the rating hypothesis, if vacant to let, the subject property would be a warehouse and premises and should therefore also be valued in line with the neighbouring warehouses.

26. Whilst Mr Rischer acknowledged that these 3 units had been reduced in line with other industrial units, in his opinion this was incorrect and he stated that these cases would be subject to a thorough review by the VO. With regards to this, he referred to the principle established in the judgment *Ladies Hosiery and Underwear Ltd v West Middlesex Assessment Committee* [1932] 2 KB 679, in that the correct course of action was to correct an error, not compound it by reducing a property in line with an error to maintain consistency.

27. The panel understood that, in determining the mode or category of occupation of the appeal property at the material date, it had to consider the appeal property physically as it stood, or *rebus sic stantibus*. As outlined in the judgement in *Williams (VO) v Scottish & Newcastle Retail Ltd and another [2001*] EWCA Civ 85, there were two strands to the *rebus sic stantibus* or reality principle: the use to which a property was put, and its physical state on the material day. In this case, the panel acknowledged that the appeal property's mode or category of use was a children's playcentre and premises and knew that the valuation should reflect that. The analysed rent of £69.29/m^2 reflected a warehouse, not a play centre. The appellant's representative had not provided details of the fit out costs but it was clear to the panel that a considerable amount of money had been spent to create a customer facing environment to accommodate a large number of visitors.

28. Mr Rischer had submitted a copy of a recent VT decision regarding a similar children's playcentre which was also situated in Trafford Park. Like the subject property, the rent in that case had been agreed before the fit out and had analysed at £57/m^2. In that particular case, the Tribunal had dismissed the appeal, finding that the RV was not excessive, at an unadjusted rate of £80/m^2. Whilst the decision was not binding on this Tribunal, the panel considered it to be good evidence in support of the current valuation of the subject property.

29. The panel knew that rental evidence carried the most weight and found the rental evidence for the subject property, agreed before the extensive fit out, to be persuasive. Whilst Mr Fowke had put forward some good arguments, having highlighted inconsistencies by the VO, his comparable property, also a play centre and on the same trading estate, was a lot smaller and did not offer the same facilities. A high proportion of the subject property had been dedicated to public space and it had clearly been fitted out at a level far beyond that of a regular warehouse.

Disposal

30. In view of the above, the panel found there was insufficient evidence to show that the current assessment was unreasonable and therefore dismissed the appeal.

Date issued to parties: 20 June 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.
