VALUATION TRIBUNAL FOR ENGLAND

2023 rating list appeal; Local Government Finance Act 1988; Lotus and Delta v Culverwell (VO) & Leicester Coty Council [1976] RA 141. Appeal dismissed.

APPEAL NUMBER:	CHG101049664
RE:	Mains House Nursery, West Lane, Chester-le-Street, DH3 3HL (the 'appeal property')
BETWEEN:	LR — Appellant
	and
	Ms A Hitchings — Respondent
SITTING:	Remotely *using Microsoft Teams*
ON:	12 June 2024
BEFORE:	Dr S Penni MBE (Senior Member) Miss R Punia (Member)
CLERK:	Mr A Johnson
APPEARANCES:	LR (the appellant) Mr O Ridley (representing the Valuation Officer)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal was dismissed. The panel found that the rateable value for the appeal property was not unreasonable.

Introduction and background

2. The appeal property a two storey converted building made of solid brick construction which was located near the centre of Chester-le-Street, County Durham. It operated as a children's day nursery.

3. A proposal was submitted by the appellant in respect of the appeal property's rateable value because she believed the appeal property had been placed into an incorrect category which had resulted in an unreasonable rateable value being applied to it. The appeal property had been placed in scheme 619517 as a nursery in an average residential location that is a good quality conversion, which valued nurseries in its scheme at a rate of £420 per child, for which a rateable value (when rounded down) of £14,250 had been applied. It was the appellant's position that it should be placed in scheme 619513 which is the category for day nurseries in average quality converted buildings in average residential areas at a rateable value of £315 per child, which results in a rateable value (when rounded down) of £10,500.

4. The Valuation Officer issued a decision notice in response to the proposal to advise that it had not been well-founded and, as such, the rateable value of the appeal property would not be changed. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, an appeal was submitted to this Tribunal on the grounds that the valuation of the appeal property was not reasonable, the appeal was registered by this Tribunal on 2 January 2024.

5. The Tribunal followed its model procedure and the appellant presented her case first.

6. This decision and statement of reasons is not verbatim record of the proceedings and should not be read as such.

Relevant law and considerations

7. The term 'rateable value' is defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (as amended):

   (1) The rateable value of a non-domestic hereditament (one 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.

8. In respect of an appeal against an entry in the 2023 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2021, in accordance with the Rating Lists (Valuation Date) (England) Order 2020. As this was a compiled list appeal, the material day (the date by which physical factors must be taken into account) was 1 April 2023.

9. The leading judgment is the Lands Tribunal case of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This case set out the six propositions to have regard to when considering the weighting of evidence and expert opinion. These are:

   (i) Where the property 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 agreed both as to time, subject matter and conditions relate to the statutory requirements, the more weight should be attached to it.

   (iii) Where rents of similar properties are available, they too are to be 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 appeal property.

   (iv) Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.

   (v) In light of all the evidence an opinion can then be formed of the differing types of evidence depending on the one hand 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 be clearly more difficult to reject the evidence of the actual rent.

Discussion

10. The dispute between the parties concerned the appropriate base rate to be applied to the appeal property in the calculation of its rateable value and in order to determine this appeal, it was apparent to the panel that it was required to consider three points. Broadly, these were the rental evidence relating to the appeal property, the quality of the conversion work and the residential area it was located within.

11. The Valuation Officer had, with effect from 1 April 2023, changed the way in which children's day nurseries are valued. Rather than being valued on the net internal area and the price per m^2, children's day nurseries are valued on a price per child based upon the capacity of the nursery.

12. As far as the rental evidence was concerned, the panel had to have regard to the authoritative Lands Tribunal case of *Lotus and Delta*. In doing so, the panel understood that the appeal property had been the subject of a passing rent since 2008 of £14,000 per annum which had been the subject of a review in 2018, after ten years. The rent, following the 2018 review remained at £14,000 per annum and whilst the panel noted Mr Ridley's assertion that it was reasonable to expect some rental growth since 2008 this was, with all due respect to him, somewhat anecdotal. The panel also noted the appellant's assertion that the rent had not been negotiated with the landlord 2018 but was instead inherited when the nursery was acquired.

13. After due consideration, the panel concluded that whilst the rent had not been agreed close and the outcome of the rent review was approximately three years prior to the AVD, the appellant had nevertheless agreed to pay it when she acquired the lease. This provided good evidence that the passing rent of £14,000 per annum supported a finding that, when it is divided by the capacity of 34 children, the adopted rate of £420 per child was not unreasonable. Furthermore, information relating to three other nurseries in the North East had been provided by Valuation Officer which were found to be comparable with the appeal property and the rental evidence in respect of them was found to support £420 per child.

14. Both parties had provided information in respect of other nurseries in the locality (it was noted that Bright Star had been increased from £315 per child to £420 per child following its reclassification to a good quality conversion in an average area). The appellant had provided a list of eight nurseries which were, in her opinion, more comparable with the appeal property which ranged in distance from the appeal property 0.7 miles to 7.8 miles away which had base rates ranging from £175 to £420 per child. The panel observed that each of their rateable values had been calculated by multiplying their base rates by the number of children. Castle View, for example, had a base rate of £420 and a capacity for one hundred and thirty five children. Therefore, 420 x 135 = 56,700 (or £56,500 when rounded down). This evidence demonstrated that the rateable values of the other nurseries in the locality had been calculated in the same consistent manner and the panel found that they supported the calculation of the appeal properties rateable value.

15. As far as the quality of the conversion work was concerned, the panel accepted that no specific rules existed to determine what a 'good conversion'. Rather, this was valuer judgement, based upon the overall physical state of each nursery. After reviewing the evidence before it, the panel found nothing to suggest that the appeal property represented anything other than a good conversion (as demonstrated, in particular, by the photographs which had been provided).

16. In terms of its locality, the panel found that the appeal property had been reasonably referred to being located within an average residential area. Whilst the Appellant had provided evidence showing that it was located in a more deprived area than the nurseries which had been used for comparison purposes it was nevertheless centrally located within Chester-le-Street, a short distance from the local hospital and the train station. Others, such as Castle View and Bright Star were not so centrally located and whilst Castle View benefitted from on-site parking (which the appeal property did not) and Bright Star was a purpose built nursery, these factors were not

found to be materially influential when determining the rateable value of the appeal property.

17. The panel also noted that the Appellant had referred to some of the other nurseries being located within a conservation area. However, no compelling evidence had been provided to show how this compared to the appeal property. Furthermore, the panel observed that being located within a conservation area can itself be a negative influence given the restrictions that can apply when, for example, wanting to make changes to the property.

Disposal

18. The panel was satisfied that the rateable value of the appeal property was not unreasonable and it dismissed this appeal.

Date issued to parties: 3 July 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.