VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal appeal: Local Government Finance Act 1988; accuracy of the rateable value in the list as at 1 April 2017; day nursery and premises; rental evidence; comparable assessments; appeal dismissed.

APPEAL NUMBER: CHG101078474

RE: Angell Day Nursery, Gresham Road, London, SW9 7NL (the "subject property")

BETWEEN: Little Angels Nursery School Limited — Appellant

and

Valuation Officer — Respondent

SITTING: *remotely using Microsoft Teams*

ON: 2 May 2024

BEFORE: Mr C Derrick, Presiding Senior Member
Ms CJ Jones, Senior Member

CLERK: Mrs H Beresford

APPEARANCES: Mr J McCarthy of Altus Group, representing the Appellant
Mr W Mak, representing the Valuation Officer

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The assessment was confirmed at rateable value (RV) £56,500 with effect from 1 April 2017.

Introduction

3. This appeal has been brought in respect of Angell Day Nursery, Gresham Road, London, SW9 7NL (the "subject property"), which was entered in the 2017 rating list as 'day nursery and premises' at RV £56,500, effective from 1 April 2017.

In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Altus Group made an appeal to the Valuation Tribunal for England (VTE) on behalf of Little Angels Nursery School Limited. The appeal was made because the appellant did not agree with the Valuation Officer’s decision not to alter the 2017 rating list following the challenge. The appellant sought a reduction to RV £44,000 with effect from 1 April 2017.

4. The appellant’s representative, when appearing as expert witness, stated that he was on a conditional fee arrangement. However, he also stated that he understood and accepted that his first duty was to the VTE in giving his evidence, whether or not the evidence supported his client’s case.

5. The panel has accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and is 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).

6. It was therefore appropriate for the panel hearing the evidence to consider the ‘expert’ evidence and assess what weight, if any, to give it in the context of the matters in issue before it.

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

Background

8. The subject property is a private nursery situated on the ground floor of a block of local authority flats at the south-western end of Gresham Road close to its junction with Wiltshire Road in Lambeth. Brixton Station is within ten minutes walking distance from the subject property which has an area of 287.84m^2.

9. The appeal to the VTE was made on the grounds that the valuation for the subject property was not reasonable.

Issue

10. The base level of value adopted for the appeal property was not agreed. The valuation officer had adopted £225.00/m^2 in respect of the appeal property, but the appellant’s representative sought a reduction to £175.00/m^2 in his revised analysis which amounted to a rateable value of £44,000.

Relevant Law

11. 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

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

13. 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.

14. The panel noted that in this appeal there was a rent renewal and a rent review on the subject property, the review was for £60,000 per annum (pa) agreed in December 2011 and the renewal which had been agreed on 1 December 2016 at £67,000 pa and which was analysed to £265.36/m^2. The panel noted that these rents had been agreed somewhat remotely from the AVD, however, it also noted that the increase was not significant, and the rent could reasonably be assumed to be somewhere between the two values at the AVD, it therefore attached moderate weight to this evidence.

15. Mr McCarthy referred to two properties which he submitted supported his argument that a base rate of £175/m^2 was fair and reasonable. He submitted that Ground Floor Exbury House, Edmundsbury Court Estate, Ferndale Road, London, SW9 8BA was a similar nursery on the ground floor of a council block of flats, in the central Brixton location with an area of 108.55m^2 and a UAR of £175.00/m^2 and 9, Knowle Close, London, SW9 0TQ, which was also a similar nursery located in a council estate, and which Mr McCarthy submitted was arguably a nicer building than the subject property with a central Brixton location, measured 131.50m^2 and also had a UAR of £175.00/m^2.

16. The panel noted that these were similar to the subject property in that they were located in council property, however, it also noted that these comparable properties were significantly smaller than the subject property and were located further from the city centre. Furthermore, no rental evidence had been provided and the panel therefore attached moderate weight to this evidence.

17. The Valuation Officer had provided rental evidence for two similar sized properties. Mr Mak referred the panel to 134-136, Landor Road, London, SW9 9JB this property was a lease renewal made on 1 December 2015 the rent analysed to £225.98/m^2, it measured 231.44m^2 and had a UAR of £165.00/m^2; and 3-5, Gresham Road, London, SW9 7PH, this property had a lease renewal made on 24 March 2014 with a rent which analysed to £309.55/m^2 it had an area of 273.00m^2 and a UAR of £310.00/m^2. Mr Mak also referred to the rent on the subject property which had been agreed at £67,000 on 1 December 2016 this was a rent renewal and was analysed to £265.36/m^2.

18. The panel found this evidence of rents to be the more persuasive evidence in particular the rent on 3-5, Gresham Road which was in a similar location to the subject property and was similar in size. It had had a lease renewal made on 24 March 2014 with a rent which analysed to £309.55/m^2 it had an area of 273.00m^2 and a UAR of £310.00/m^2. Whilst the panel noted that this building was superior to the subject property and slightly closer to the town centre it noted that this was reflected in the difference in the UAR/m^2. The panel considered this to be useful evidence and it attached weight to it.

19. The panel found that in cases of this nature the burden of proof is on the appellant's representative to satisfy the Tribunal that the appeal should be allowed. In this case the panel was not persuaded by the evidence and arguments put forward by the appellant's representative that a reduction in the assessment to £175.00/m^2 was warranted and it found the RV of £56,500 to be fair and reasonable.

Disposal

20. In view of the above findings and conclusions, the appeal was dismissed.

Date issued to parties: 24 May 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.
