IN THE VALUATION TRIBUNAL FOR ENGLAND
IN THE MATTER OF A 2023 RATING LIST APPEAL

Case No: CHG101199008

Sitting remotely using Microsoft Teams

Date: 29 July 2025

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

Before:
Mr P Patel
Mrs F Duggan

Between:

Manor Farm Nursery Limited — **Appellant**

- and -

Lucy Formela-Osburne
(Valuation Officer) — **Respondent**

Regarding:
The Manor Farm Nursery, Manor Farm, Lechlade GL7 3EX
(the "subject nursery")

Mr Paul Phillips of Appeal My Rates UK Limited, representing the Appellant
Mrs C Salter, representing the Respondent

Hearing date: 21 July 2025

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The panel found that the subject nursery had been correctly categorised as a “NUR2” nursery. Therefore, the rateable value (rv) was maintained at £50,000.

Introduction and background

3. This decision and statement of reasons is not a contemporaneous or verbatim record of the proceedings.

4. The subject nursery is a children’s day nursery, accessed via a circa 500 metre private lane off the A361. It was described within the Respondent’s submission as being a modern barn conversion with a corrugated sheet roof on a steel portal frame with concrete block/stone walls and timber cladding. There was also extensive grounds for outside play/learning with the opportunity to interact with farm animals.

5. A Challenge was submitted to the Respondent in accordance with the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 against the rv of £50,000, which is based upon a NUR2 classification at £500 per child space. The Appellant was seeking a reduction to £30,000 (which is based upon a NUR3 classification at £300 per child space. It was agreed between the parties that the number of available child spaces is, on the material day, one hundred.

6. The representatives appeared in the dual roles of advocate and expert witness, with M Phillips declaring that he/Appeal My Rates UK Ltd were representing the Appellant on a contingency fee basis. Both representatives acknowledged and accepted that when presenting evidence as expert witnesses, that their duty was to the tribunal irrespective of whether their evidence supported their respective argument. Mindful of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT (LC), the panel accepted the expert witness evidence on this basis as the appeal was not considered to be complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions - general) of the Procedure Regulations. Furthermore, it was allowable due to the Tribunal’s rules concerning admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial). It was therefore appropriate for the panel to consider the expert evidence and assess what weight, if any, to give it in the context of the issues before it.

Discussion

7. This appeal was against an entry in the 2023 rating list and so the rental levels are taken as those passing at the antecedent valuation date (AVD) of 1 April 2021 in accordance with the Rating Lists (Valuation Date) (England) Order 2014. The material day (the date by which physical factors must be taken into account) is provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992. The material day is 1 April 2023.

8. Paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988 provides that the RV 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 based upon three assumptions. These assumptions are well known to the

parties and so the panel did not consider it necessary to set them out in this decision and statement of reasons.

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. As with the aforementioned legislation, these propositions are well known to the parties and so the panel did not consider it necessary to set them out in this decision and statement of reasons.

Determination

10. There is no passing rent as far as the subject nursery is concerned because it is owned by the occupier. It was described as containing a ground floor nursery (197.1m^2), and WC's (16.8m^2) a first floor nursery (178.3m^2) and WC's (5.8m^2), a canopy (37m^2), an activity room (32.09m^2), external WC's (8.3m^2), an office (6.74m^2), reception (11.99m^2), kitchen /staff area/ laundry room (27.83m^2) a garden, a pets corner, a two acre play area (including stables) and car parking for up to thirty vehicles.

11. The matter in dispute concerned the classification of the subject nursery in the 2023 rating list. There were four types, NUR1, NUR 2, NUR3 and NUR 4. The subject nursery is categorised by the Respondent as NUR2 which is valued at a rate of £500 per child space. It is Mr Phillips contention that it should be categorised as NUR3 and be valued at a rate of £300 per child. The categories in question, NUR2 and NUR3, were described by the Respondent as:

    NUR2 - £500 per child place
    Nurseries in residential areas. Occupying a variety of accommodation, from industrial units, church halls, shops, converted houses etc. They will be in areas where some top up fees will be paid on top of Government subsidies.

    NUR3 - £300 per child place
    Nurseries that cover both rural areas, where there may not be enough catchment to generate income, or less affluent areas where the majority of their income is by way of Government funded places.

12. Mr Phillips described them as:

    NUR2 - £500 per child place (scheme 637267)
    Urban/suburban locations in solidly constructed buildings. Capable of full day commercial use providing full day care with meals provided and areas set aside for sleeping and recreation. Good road access but may not be optimally located as NUR1. Increasingly these may be located on industrial estates. Operates for 51 or 52 weeks a year, from as early as 7:30 in the morning to as late as 6:30 in the evening. Size range >175m^2.

    NUR3 - £300 per child place (scheme 644010)
    Rural nurseries in solidly constructed buildings, away from transport links for commuters, where there is less demand so occupancy rates tend to be lower. Premises remain capable of full day commercial use providing full day care with meals provided and areas set aside for sleeping and recreation. Size range >175m^2.

13. In brief summary, Mr Phillips argued that the subject nursery was located in a rural area on the outskirts of Lechlade (which had a population of approximately 3,000), on a farm site that

was accessed by a single track lane. It was away from any main towns and off most commuter routes. There were no industrial estates in the locality nor were there any significant employers. Mr Phillips added that there was no signage to direct anyone to the nursery and most of the children it attracted was by reputation and word of mouth recommendations. Mr Phillips also added that nature of the subject nursery meant that its upkeep and maintenance costs were higher than other nurseries. Other NUR3 nurseries that supported the reclassification of the subject nursery to NUR3 included Mary P’s Day Nursery GL20 8TU, Little Angels Nursery GL10 3RW and Walkers Day Nursery GL56 0LT.

14. Also in brief summary, Mrs Salter argued that NUR2 was the correct classification for the subject nursery. It was a destination nursery which was accessed via a private lane and enjoyed an extensive outside play/learning area and had provision for the children to interact with farm animals. This made it a highly desirable and attractive nursery. Mrs Salter added that it was located in a highly affluent area which included a significant number of high value properties with a good mix of shops, schools, public houses, a garden centre and a hotel/spa. Also, the subject nursery was easily accessed from the A361 via a private lane and had good links to arterial roads including the A417 and the M4 for parents commuting to Reading, Oxford, Cheltenham, Swindon and London. It was also located between RAF Brize Norton (approximately seven miles away) and RAF Fairford (approximately six miles away). Mrs Salter stated that the RAF was therefore a significant employer in the locality with RAF Brize Norton alone employing approximately 7,500 personnel. Other nurseries in support of NUR2 for the appeal nursery when considering the rents and facilities included 1 Willow Court (rent analysed to £447 per child – NUR2), 10 Park Street (rent analysed to £533.75 per child - NUR2), 23-25 Ashcroft Road (rent analysed to £1,298 per child – NUR1) and Unit 3 Home Buildings (rent analysed to £423.93 per child – NUR3).

15. The panel understood that, for the 2023 rating list, nurseries were valued on a rentals basis but expressed on a per child basis. The rents will be influenced by the characteristics of each nursery such as location, layout, facilities, the maximum number of children allowed by Ofsted and any additional revenue it can generate. There was no passing rent in respect of the appeal nursery and the rental evidence put forward by the Respondent together with the overall basket of evidence was found to demonstrate that a classification of NUR2 was reasonable. Two of the Appellant’s comparables were more than twenty miles from the subject nursery and so they were given less weight, and whilst Mr Phillips had argued that the unique facilities were needed to attract parents and children and came at additional maintenance costs, no evidence had been provided to substantiate this argument.

16. The panel also concluded that the subject nursery, whilst on the outskirts of Lechlade, was nevertheless part of a significantly sized affluent town and there was no evidence to show that a significant number of child places were the subject of Government subsidy that might suggest NUR3 was more appropriate. It was also well located for commuting parents and relatively close to two RAF bases who employed a significant number of personnel.

17. The panel noted the contrasting ways the parties had described the way in which the subject nursery is accessed. Mr Phillips had referred to it as a “single track”, whilst Mrs Salter had referred to it as a “private drive”. Ultimately, the panel was not convinced that access was a major consideration in determining this appeal. However it is described, it clearly provided an enhanced degree of security given the relative distance away from the A361. Also, the lack of signage was not given any significant weight. This is (subject to any required planning permission) easily rectified and given that the subject nursery attracts parents and children by its reputation and word of mouth recommendations (as most nurseries do), the lack of signage was not found to be materially relevant.

18. The panel noted that the subject nursery had been reclassified from NUR1 to NUR2 in the 2017 rating list by agreement between the Respondent and the same agent. When asked, Mr Phillips explained that he had considered the correct classification at the time of the agreement to be NUR3 and had advised the Appellant accordingly, but there was a reluctance on the part of the Appellant to proceed to Tribunal. The Appellant had, as far as the 2023 rating list was concerned, agreed to proceed to Tribunal because Appeal My Rates UK Limited had offered to absorb the costs associated with the appeal process. The panel observed that this statement from Mr Phillips was contrary to his written submission and oral confirmation at the commencement of the remote hearing that he was representing the Appellant on a conditional fee basis. Whilst the panel understood that each rating list was *de novio*, being based upon different antecedent valuation dates and material dates, it nevertheless found that this agreement carried some weight as there was no evidence of any significant changes to the locality, the demographics or the local employment situation from the 2017 AVD and material day to those for the 2023 rating list.

Decision

19. In view of its findings, the panel was not persuaded that the subject nursey should be reclassified as a NUR3 nursery.

20. This appeal was therefore dismissed.

Right of further appeal

21. Any party who is aggrieved at the Tribunal's decision, and who appeared or was represented at the hearing, has a statutory right of further appeal to the Upper Tribunal (Lands Chamber) pursuant to Regulation 42 of the Tribunal Procedure Regulations. A party does not require permission to appeal from the Tribunal. Any appeal must be made directly to the Upper Tribunal (Lands Chamber) within **four weeks** of the date this decision and statement of reasons is issued.

22. Further information regarding this statutory right of further appeal, and the parties' other rights, is contained in the guidance booklet "*A guide to tribunal decisions"* available on the Tribunal's website at www.valuationtribunal.gov.uk/guidance-booklets/.

Mr P Patel, Senior Member
Mrs F Duggan, Member

Mr A Johnson, Clerk to the Tribunal
Clerk to the Tribunal

Date issued to the parties: 29 July 2025