

THE VALUATION TRIBUNAL FOR ENGLAND



Non-domestic rating; 2017 Rating List appeal; Day nursery and premises; price per m² in dispute; rental evidence; comparable assessments; appeal dismissed.

RE: 121 Woodhall Lane, Welwyn Garden City, Herts, AL7 3TP

APPEAL NUMBER: CHG100185509

BETWEEN: Kiddie Cove Nurseries Limited Appellant
and

Ms J Moore, Valuation Officer Respondent

PANEL: Mr C Taylor (Senior Member)
Dr P Thomson

CLERK: Mrs L Horne

REMOTE HEARING ON: Tuesday 17 May 2022

APPEARANCES: Mr M Clayton from Altus Group, representing the
appellant
Ms C Miles, representing the Valuation Officer

Summary of decision

- 1 Appeal dismissed. The panel confirmed the Rateable Value (RV) of the appeal property at £51,000 with effect from 1 April 2017.

Introduction

- 2 This is a 2017 rating list appeal. 121 Woodhall Lane, Welwyn Garden City, Herts, AL7 3TP, (the 'appeal property') had been entered in the 2017 rating list as Day Nursery and premises at a RV of £52,500 with effect from 1 April 2017.
- 3 The challenge proposal was submitted by Altus Group on behalf of the appellant, Kiddie Cove Nurseries Limited, and was received by the Valuation

Officer on 6 April 2020. It sought a reduction in RV from £52,500 to £42,750 with effect from 1 April 2017.

- 4 The Valuation Officer issued a challenge case decision notice on 27 September 2021, which stated that the rating list was reasonable based upon the evidence and information available. Factual issues considered at the check stage resulted in a reduction to £51,000 RV with effect from 1 April 2017.
- 5 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. The appeal was received by the Tribunal on 24 November 2021.
- 6 Mr Clayton 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), his declaration of truth included a statement that he was instructed on a contingency fee basis. He declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and 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.
- 7 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). The panel therefore considered the expert evidence and attached such weight to it as it saw fit.
- 8 Ms Miles confirmed that the case had been prepared by her colleague and she appeared as advocate on behalf of the Valuation Officer. While she had not inspected the appeal property, she had dealt with the rating of day nurseries for the 2017 list, and therefore she considered herself to be an expert witness.
- 9 The appeal property is a converted chapel built between 1955 and 1964, located on a housing estate in Woodhall Lane. It is occupied as a private day nursery and comprises ground floor accommodation and an outdoor play area. It has the benefit of on-site parking. The total area of the property is 344.12 m².
- 10 The property is valued according to valuation scheme number 395241 applicable to day nurseries and playgroups in the local authority area of Welwyn and Hatfield. The value ranges from £125.00 to £150.00 per m² depending upon size, location and other physical factors. The present valuation of £51,000 RV is based upon an adopted price of £150.00 per m².

- 11 The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as it being overlooked by the panel.

Issue

- 12 The issue in dispute was the price per m² to be adopted in the valuation of the appeal property.

Evidence and submissions

- 13 The bundle comprised all of the documents exchanged between the parties as part of the challenge process: Valuation Officer's challenge case decision notice and appellant's challenge submission.
- 14 The case for the appellant is that the subject property is over-valued compared to other properties within the scheme. Mr Clayton contended that the appeal property should be valued at £125 per m² in line with properties which were typically converted and in a poor location. He proposed a revised RV of £42,750 with effect from 1 April 2017.
- 15 On behalf of the Valuation Officer, Ms Miles defended the adopted price of £150 per m² with reference to rental evidence derived from properties in the same valuation scheme. She disputed that the appeal property was of poor quality in an inferior location.

Decision and reasons

- 16 In arriving at its decision, the panel was governed by rating legislation laid down by Parliament where Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provides that:

2(1) 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.

- 17 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).
- 18 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 appeal, the material day is 1 April 2017.
- 19 Both parties had referred to the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, which set out six propositions to be followed when considering the weighting of evidence:
1. Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.
 2. The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of gross value in s.19(6) of the General Rate Act 1967 the more weight should be attached to it.
 3. 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 subject property.
 4. 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.
 5. In light of all the evidence an opinion can then be formed of the differing types of evidence depending on the one hand, on the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.
 6. 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.
- 20 The appeal property is held on a leasehold basis at a rent of £60,000 per annum (pa) with effect from 1 April 2018.
- 21 Mr Clayton stated that there was a four months' rent free period which resulted in a net rent of £56,000 pa. As the rent was three years post AVD, he contended that it was not helpful when looking at the appropriate £/m² to be applied.
- 22 The Valuation Officer was in receipt of a form of return which declared a rent of £60,000 pa effective from 1 February 2018 with two months' rent free. This analysed at £174 m² which was higher than the adopted £150 per m². It was stated in the challenge decision that a copy of the lease would be required to confirm the exact terms, but this had not been provided. While it was

acknowledged that the rent was three years post AVD, in accordance with *Lotus v Delta*, the Valuation Officer considered that it was the starting point when determining a basis of value.

- 23 Due to the uncertainty of the rent free period and the length of time the rent had been agreed after the AVD, the panel could not attach significant weight to it.
- 24 The panel referred to the rental evidence scheduled by the Valuation Officer in support of the adopted £150 per m².

Address	Total area	Rental details	Analysed rent/m ²	Adopted £/m ²
Leapfrog Nurseries, Kestrel Way, Welwyn Garden City, AL7 1TN	413.37 m ²	£77,957 19 April 2013	£196.81	£150.00
Squirrels Day Nursery, Briars Lane, Hatfield, AL10 8ES	182.14 m ²	£33,600 1 Sep 2013	£163.15	£150.00
4 Parkhouse Court, Hatfield, AL10 9RQ	509.76 m ²	£110,504 1 Sep 2017	£209.47	£150.00
121 Woodhall Lane (Subject property)	344.12 m ²	£60,000 1 Feb 2018	£174.84	£150.00

- 25 Mr Clayton disputed the relevance of the rental comparables. He submitted that Leapfrog Nursery is situated in a far superior location on the edge of the Shire Park office estate which contains the Tesco head office and other corporate occupiers. He argued that this is an extremely good position with employees on Shire Park easily able to drop off and pick up children to and from work, compared with the poor residential location of the subject. It is also a purpose-built nursery.
- 26 Squirrels Day Nursery, according to Mr Clayton, is in a superior location directly next to Ludwick Nursery School and Holwell Primary School. He considered that there would be a natural catchment of potential customers with siblings in the next door schools which would drive up the open market rental value. It is also a modern purpose-built nursery.
- 27 Mr Clayton stated that the letting at 4 Parkhouse Court is a connected party rent and therefore it could not be relied upon; the landlord is a client of Altus Group. It was also situated in a superior location opposite the Galleria shopping centre.
- 28 Ms Miles acknowledged that the rent for 4 Parkhouse Court was between connected parties. However, she argued that it should not be disregarded as it should have been agreed at open market value for accounting purposes.

- 29 The panel decided to attach less weight to the connected party rent, which was also post AVD. The analysis of the remaining two pieces of rental evidence demonstrated values in excess of the adopted price of £150 per m².
- 30 Both parties presented evidence of comparable assessments in support of their adopted price per m².
- 31 The Valuation Officer's comparable assessments comprised the rental comparables and the following properties valued at £150 per m²:
- 1 Mardley Hill, Welwyn, AL6 0UE
 - The University Day Nursery, College Lane, Hatfield, AL10 9AB
 - Gnd Flr Trevelyan House, Church, Welwyn, AL8 6NT
 - 14 Great North Road, Welwyn, AL6 0PL
 - Birchwood Nursery School, Birchway, Hatfield, AL190 0PS
 - Tenterfield Nursery School, London Road, Welwyn, AL6 9JF
- 32 Mr Clayton presented the following comparable assessments in support of £125 per m²:
- Bocket Pre-School, Bocket Park, Marford Road, Lemsford, AL8 7XG
 - Squirrels Day Nursery Adj Ludwick Nursery School, Holwell Road, Welwyn, AL7 3RP
 - Ludwick Nursery School, Holwell Road, Welwyn, AL7 3RP
 - The Annexe, School Lane, Hatfield, AL10 8AX
 - 9 Guessens Road, Welwyn, AL8 6QW
 - Partners Childcare Centre, Peartree Lane, Welwyn, AL8 7RF
- 33 Mr Clayton contended that £125 per m² appeared to relate to basic nurseries in Welwyn and Hatfield which should also apply to the quality and position of the subject property.
- 34 The panel referred to the photographs of the appeal property and found that it did not have the appearance of a basic nursery. Mr Clayton's argument was that as it was an older, converted property, it was of an inferior quality to that of a purpose-built nursery. As argued by Ms Miles, the panel considered that was a simplistic view. There was no evidence provided to demonstrate that it was of poor quality. On the contrary, it appeared to provide good facilities inside and out.
- 35 Turning to Mr Clayton's argument regarding the residential location of the appeal property, the panel was not persuaded that it was inferior to any of the comparable properties, given its proximity to two schools, a hospital, and the town centre.
- 36 In consideration of all the evidence presented, the panel decided to attach most weight to the Valuation Officer's rental and assessment comparables. The panel was satisfied that they supported the adopted basis of £150 per m². As stated in the challenge decision "When considering value, the pertinent rents along with the locational factors, any land attached and car parking are all important indicators, not necessarily the age of the building."

37 In conclusion, the panel determined that the appellant's representative had failed to demonstrate that the valuation of the appeal property was unreasonable. The valuation of the appeal property at £51,000 RV with effect from 1 April 2017 was therefore confirmed by the panel and the appeal dismissed.

Date: 31 May 2022

Appeal Number: CHG100185509