

THE VALUATION TRIBUNAL FOR ENGLAND



Summary of decision: 2017 rating list appeal ; Non Domestic Rating Appeal; Accuracy of the rateable value shown in the 2017 rating list: Day Nursery and Premises; Rental evidence; Main Space Price; Comparable Properties; Existing entry held to be reasonable; Appeal Dismissed.

Re: 22 Guisburn Road, Barrowford, Nelson, Lancs, BB9 8NE

APPEAL NO: CHG100020556

BETWEEN:	Little Blossoms of Barrowford	Appellant
	and	
	Mr R Roberts (Valuation Officer)	Respondent

BEFORE: Mrs X Holt (Chairperson)
Mr K Richardson

SITTING AT: Offices of the Tribunal Service, Manchester

ON: Friday 15 February 2019

APPEARANCES: Ms Elaine Greenall – for the appellant
Mr Mitchell – accompanied Ms Greenall
Ms K Porter – on behalf of the respondent

Summary of decision

1. The appeal is dismissed. The rental evidence for the subject property supports the assessment of £21,250 rateable value (RV) determined by the Valuation Officer in the decision notice.

Introduction

2. This was a 2017 rating list appeal. The appeal was against the rating assessment of 22 Guisburn Road, Barrowford, Nelson, Lancs (the ‘ appeal

property'), which was entered into the rating list at £21,250 RV with effect from 1 April 2017. The appellant sought a reduction to £15,864 RV. As this was a compiled list appeal, the material day was 1 April 2017. The appeal to the Valuation Tribunal was made on 26 September 2018 following the Valuation Officer's Challenge Case Decision Notice of 25 May 2018.

Preliminary Issue

3. Preliminary issues arose in respect of the evidence both parties wished to submit to the panel. Ms Greenall wished to submit extra information that was not provided to the Valuation Officer as part of the challenge process. This comprised advertising articles in relation to the appeal property and Barrowford Nursery; together with details of a further comparable property. The appellant indicated that the articles had only become available after the challenge against the appeal property's rating assessment had been made; this was not the case in relation to the details of the comparable property.
4. Ms Porter handed over written confirmation of the Valuation Officer's objection to the inclusion of the new evidence. However, on the understanding that the articles were recent and therefore not available at the challenge stage, she withdrew the objection in relation to this information. The objection still stood in respect of the comparable property.
5. Ms Porter confirmed that a Regulation 17 (4) Notice had not been served at the time the Decision Notice was issued. However, she provided an email to confirm that a Regulation 17 Notice had been served in accordance with timescale outlined in The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (as amended):
 - (4) Information to which this paragraph applies shall not be used in any relevant proceedings by a billing authority, a LO or a VO unless--
 - (a) not less than two weeks' notice, specifying in relation to any information to be so used the documents or other media in or on which that information is held and the dwelling or hereditament to which it relates, has previously been given to every other party to the proceedings; and
 - (b) any person who has given not less than 24 hours' notice of his intention to do so has been permitted, at any reasonable time--
 - (i) to inspect the documents or other media in or on which such information is held; and
 - (ii) to make a copy (other than a photographic copy) of, or of any extract from, any document containing such information;
 - (c) for a NDR appeal, the information relates to a matter included in--

- (i) the notice of appeal or any document accompanying the notice of appeal; or
 - (ii) new or further evidence admitted under regulation 17A.
- 6. Furthermore, Ms Porter confirmed that the evidence had been provided in response to the challenge but not in the Regulation 17 (4) format, thus preventing the appellant from examining this information and seeking her own comparable evidence from the respondent.
- 7. However, Regulation 17A (Admission of new evidence on NDR appeal) states:
 - (1) On a NDR appeal, the VTE 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.
 - (2) If the VTE admits new evidence under paragraph (1), the VTE may admit further evidence provided by another party to the appeal if the further evidence specifically relates to--
 - (a) the new evidence; and
 - (b) the ground on which the proposal was made.
 - (3) A party which provides evidence under paragraph (1) or (2) must also provide that evidence to all the other parties to the appeal
- 8. The appellant accepted the Reg 17(4) evidence as it was already in her possession during the challenge stage although not in the correct format. Whilst the acceptance was not in writing but given orally at the hearing, the panel accepted that this evidence fell under regulation 17A(1)(b) and was therefore permissible. The panel did not find that the respondent could bypass regulation 17(A) by using regulation 17(4) as a means of defeating the Government's policy and intention for all evidence to be provided during the challenge stage; but in this case, the appellant's agreement for the evidence

to be admissible under regulation 17(A) meant it could be presented. The issue then for the panel was the respondent's objection to the appellant's evidence. It could have been argued that if the respondent had properly served a regulation 17(4) notice the appellant could, at challenge stage, have sought this comparable evidence from the respondent. However, there was no evidence to suggest that this was the case. The matter then arose in that allowing the respondent's new evidence, was the appellant's evidence a rebuttal and admissible (under 17A(2))? The panel considered that it wasn't but rather new evidence and therefore not admissible.

9. In conclusion, as the unrepresented ratepayer had agreed to the respondent's evidence at the hearing (which had been provided in a different format during the challenge stage) it was permissible, whereas the respondent had objected to the appellant's comparable and it was not, in the opinion of the panel, admissible.

Background

10. The appeal property is a substantial detached two storey building, constructed in local stone with a slate roof. It is located on a busy high street through the centre of Barrowford, on the A682 close to junction 13 of the M65. The building was originally a police station, then used for educational purposes for over 40 years and was now occupied by Ms Greenall and her daughter as a day nursery.
11. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all the evidence presented was fully considered by the panel when coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked by the panel.

Issue

12. The issue in dispute related to the main space price to be applied in the appeal property's assessment in the 2017 rating list.

Evidence and Submissions

13. Ms Greenall sought a reduction in the appeal property's assessment to £15,864 RV based upon a main space price of £70 per m², in line with the assessments of comparable properties in the locality occupied by other day nurseries.
14. The appeal property's current rent was £36,000 per annum on a full repairing basis. This had been agreed following lengthy negotiations with the landlord. Mr Mitchell and Ms Greenall expressed the view that the rent was excessive, had been agreed in naivety and without realising that it would impact on the property's rateable value. The landlord had made it clear that he considered the proposed nursery as a risky venture and had determined the level of rent to reflect this. Ms Greenall's daughter could see the potential of a business in this location so despite reservations they agreed to pay the asking rent.

15. Ms Greenall and Mr Mitchell explained the details of other nurseries in the locality that had their assessments based on a lower main space price than the appeal property. Lomeshaye Nursery and Barrowford Pre-School Nursery had assessments based on £70 per m². Parrock House was assessed at £90 per m², however; Ms Greenall understood that a challenge was to be made against this assessment.
16. The Valuation Officer expressed the view that the appeal property was superior to the comparable properties. Ms Greenall and Mr Mitchell refuted this, claiming that the comparable properties were better suited to nursery use and had larger outdoor spaces and more car parking. As the appeal property was a two-storey building, it did not easily lend itself to nursery use and access to certain rooms was not ideal. It was difficult to heat in winter and keep cool in summer. Also, as a large imposing stone building, the appeal property was expensive to maintain.
17. Referring to the articles submitted, Ms Greenall and Mr Mitchell pointed out that whilst details of the nursery services and learning ethos at Little Blossoms was explained, the building in which it was situated was not mentioned as it was not viewed as an asset. However, in the article about the nursery services provided by Barrowford Nursery, emphasis was placed on the building and its outdoor space, as well as the nursery services provided.
18. Prior to taking the lease for the appeal property, Ms Greenall and her daughter had drawn up a business plan. This had proved difficult to adhere to; given the subsequent change in nursery funding, the requirement to pay pension contributions and the high cost of business rates. A reduction in the main space price to £70 per m², in line with the comparable properties, would enable Little Blossoms to remain competitive.
19. In submitting a bundle of evidence, Ms Porter stressed that there was nothing in the bundle that had not already been exchanged with the appellant. She explained that a Form of Return submitted in June 2015, confirmed that the appeal property was subject to a stepped rent, effective from 1 August 2014. The details were as follow:

Annual rent	Period of the rent
£23,000	1 August 2014 until 31 July 2015
£29,000	1 August 2015 until 31 July 2016
£32,000	1 August 2016 until 31 July 2017
£36,000	1 August 2017 until 31 July 2018

20. In Ms Porter's view, the rent supported the appeal property's current rating assessment.
21. Addressing the details of the comparable properties, Ms Porter was not persuaded that this evidence suggested that the appeal property's rating assessment was excessive. In her opinion, both the properties used by

Lomeshaye Day Nursery and Barrowford Pre-School Nursery were inferior to the appeal property and this was reflected in the lower rents they had achieved. Regarding Parrock House Day Nursery, Ms Porter stated that this was run from a good quality detached building in a desirable residential location. The property's valuation was based on the same main space price as the appeal property and a 'check case', which preceded a challenge, had not been raised against this assessment.

Decision and reasons

22. The appeal property must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonable be expected to let from year to year on a number of assumptions as outlined in Schedule 6 of the Local Government Finance Act 1988, amended by Section 1(2) of the Rating (Valuation) Act 1999; these are as follows:
 - 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 the 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.
23. For the purposes of the 2017 rating list, the date on which this hypothetical letting is assumed to take place is the antecedent valuation date (AVD) of 1 April 2015. However, matters that affect the physical state or enjoyment of the property or the locality have to be taken at the material day, which for the purposes of this compiled list appeal is 1 April 2017.
24. The appeal property's current valuation of £21,250 RV was based upon a total area of 301.2 m² (237.13m² in terms of main space) and an adopted main space price of £90 per m². There was no dispute between the parties over the size of the property; therefore, the issue for the panel to determine was the main space price to be adopted in the appeal property's assessment.
25. Ms Greenall had referred to a reduction secured in the appeal property's 2010 rating list assessment because it had been incorrectly compared to properties outside of the immediate area. However, the panel was aware that the 2010 and 2017 rating lists were separate and distinct; therefore, the fact that a reduction had been agreed in the 2010 rating assessment did not necessarily mean that a reduction was warranted in the 2017 assessment, unless the evidence supported such a reduction.
26. The panel paid attention to the details of the comparable properties submitted by Ms Greenall and Mr Mitchell. Where available, Ms Porter had provided the

rental details for these properties. The panel noted that Lomeshaye Day Nursery was approximately 1.5 miles from the appeal property and within an industrial complex with other business users. Although Ms Greenall and Mr Mitchell had expressed the view that this comparable property was not inferior to the appeal property, the photographs submitted convinced the panel that it was. The rent for this comparable property commenced on 1 March 2012 and when the rent was adjusted, it had analysed to a main space price of £82.88 per m².

27. The panel then paid attention to the details of Barrowford Pre-School Nursery, which was situated in a former youth centre approximately 200 metres from the appeal property and close to the M65. The rent for this property commenced on 11 February 2015, close to the AVD, and when adjusted had analysed to a main space price of £72.90 per m².
28. After considering the details of these comparable properties; together with the photographs and location plans provided, the panel accepted Ms Porter's contention that these properties appeared inferior to the appeal property in build quality; although it was accepted that the comparable properties had the benefit of outdoor space and better parking facilities.
29. The panel also considered the details of Parrock House Day Nursery. This was situated in a good quality detached building in a desirable location. Whilst there was no rental evidence available for this property, its assessment was based on a main space price of £90 per m² and to date, no challenge had been made against this assessment. In the panel's opinion, this property was closest in nature to the appeal property.
30. The crux of this appeal revolved around Ms Greenall and Mr Mitchell's belief that the appeal property's rent was excessive. However, in the absence of any compelling evidence to demonstrate that this was the case, the panel was not persuaded that the landlord had demanded a rent in excess of that dictated by the rental market. They had also indicated that the landlord may have accepted a lower rent from a tenant undertaking a different type of business. Again, no evidence had been submitted to show that the appeal property had been previously advertised at a rent lower than that agreed with Little Blossoms.
31. Having considered all of the evidence presented in this appeal, the panel placed the greatest weight on the appeal property's rent, which had been set only eight months prior to the AVD and which would reflect all of the advantages and disadvantages associated with the property. Ms Porter had submitted a rental summary schedule in which the appeal property's rent had been adjusted to reflect the stepped increases. The adjusted rent analysed to a main space price of £124.50 per m². This main space price was substantially higher than the main space prices derived from the rents of Lomeshaye Day Nursery and Barrowford Pre-School Nursery and was also well in excess of the £90 per m² adopted in the appeal property's current rating assessment. For this reason, the panel did not consider that the appeal property's present assessment could be regarded as excessive.

32. The panel understood the concerns put forward by Ms Greenall and Mr Mitchell in relation to the business plan drawn up for Little Blossoms and their need to remain competitive. However, as a property had to be viewed 'vacant and to let', the financial circumstances of a particular occupier could not be a deciding factor when determining the rating assessment of a property.
33. Having regard to the above, the panel confirmed that the appeal property's current assessment of £21,250 RV with effect from 1 April 2017 was reasonable. Accordingly, the subject appeal was dismissed.

APPEAL NO: CHG100020556

Date: 14 March 2019