THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Petrol Filling Station and Premises; Proposal challenging VO notice of alteration; Cardtronics UK Ltd v Sykes (VO) [2020] UKSC 21; Appeal allowed.

Re: Southcote Express Service Station, 108 Bath Road, Reading RG30 2EU

APPEAL NUMBER: 034535329504/0537N10

BETWEEN:	Tesco Stores Ltd	(Appellant)
	and	
	Dawn Bunyan	(Respondent)
	(Valuation Officer)	

BEFORE: Gary Garland (President)

CLERK: David Slater (Registrar and Chief Clerk)

REMOTE HEARING HELD ON Monday 3 July 2023

PARTIES PRESENT;
Mr Timothy Mould KC from Landmark Chambers (Appellant's Counsel)
Mr Paul Sewell from MUA Property Services Ltd (Appellant's Witness)
Mr Matthew Donmall from 1 Crown Office Row (Respondent's Counsel)
Mr David Hughes (Respondent's Witness)

Summary of decision

1. The Valuation Officer was not entitled to make the list alteration on 12 May 2021, the effect of which was to increase the compiled list entry of £64,000 Rateable Value retrospectively with effect from 28 June 2011. The reason being that this alteration was undertaken of his own volition and not to give effect to a proposal. The appeal was therefore allowed and the 2010 Rating List entry must remain at £64,000 Rateable Value.

Introduction

2. The appeal arose from a proposal served on the Valuation Officer, on behalf of the appellant, by MUA Property Services Ltd on 14 May 2021. The proposal challenged a notice of alteration dated 12 May 2021 the effect of which was to increase the appeal property's assessment, as shown in the 2010 Rating List from £64,000 to £143,000 Rateable Value with effect from 28 June 2011.

3. This appeal had been identified as a lead appeal to enable a decision to be made as to whether or not the Valuation Officer was entitled to make the list alteration in question. If the appellant's argument was correct and I found that the Valuation Officer was not entitled to make the list alteration in dispute, the appeal would be allowed with an Order that the list entry be reduced to £64,000 Rateable Value with effect from 28 June 2011, therefore nullifying the retrospective increase.

4. Alternatively, if I determined that the Valuation Officer was entitled to make the retrospective list alteration, unless the appellant appealed my decision to the Upper Tribunal, valuation issues arising from the proposal would have been determined by a lay panel later.

5. The appeal property was a Petrol Filling Station and premises. There have been a number of list alterations, both during the currency of the 2010 Rating List and after its closure.

6. The original compiled list entry was £64,000 Rateable Value with effect from 1 April 2010. Following the Valuation Office's agreement with the Petrol Filling

Station industry regarding the national valuation scheme for this type of property, the Valuation Officer increased the compiled list entry to £143,000 Rateable Value with effect from 28 June 2011. The effective date of the increased assessment being restricted by Regulation 14 (7) of the Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 2009 to the date of the alteration.

7. On 14 October 2014, the Valuation Officer deleted the existing entry from the 2010 Rating List and replaced it with two new entries. This alteration was to reflect the identification of a separate putative hereditament, namely an automatic teller machine (ATM) or cash point. As the Valuation Officer treated the ATM and the Petrol Filling Station, without the ATM, as new hereditaments the latter had an entry of £143,000 RV with effect from 1 April 2010. Since the Petrol Filling Station was valued by reference to its trading performance, the splitting out of the ATM had no impact on the valuation of the former.

8. Following the Supreme Court's judgment in *Cardtronics UK Ltd v Sykes (VO)* [2020] UKSC 21, the ATM was not capable of separate assessment, so its entry was deleted from the 2010 Rating List with effect from 1 April 2010 by the Valuation Officer on 6 August 2020. This alteration was made to give effect to the well founding of a proposal which sought the deletion of the ATM entry. The appeal, arising from that proposal, having been stayed alongside thousands of others pending the outcome in *Cardtronics.* Had there not been an outstanding proposal against the ATM entry, the Valuation Officer would not have been in a position to alter the list and delete it.

9. Two separate list alterations then followed as the Valuation Officer altered the list to reflect how it stood on 28 June 2011. The first alteration made on 21 April 2021 was to show the compiled list entry of £64,000 Rateable Value with effect from 1 April 2010. This alteration was agreed, in the settlement and disposal of an earlier appeal made on behalf of the appellant. A second alteration made by the Valuation Officer on 12 May 2021 had the effect of re-entering the previously existing entry of £143,000 Rateable Value with effect from 28 June 2011. It was the validity of this alteration which fell to be determined, following consideration of competing legal arguments from both Counsel.

10. Both parties called witnesses of fact. For the appellant, Mr Mould KC called upon Paul Sewell from MUA Property Services. Mr Sewell confirmed he was on a success related fee, as if the appeal was successful, his employer would have been entitled to an additional fee. For the respondent, Mr Donmall called upon David Hughes.

11. I was grateful to the parties for providing an agreed statement of facts. Within the evidence bundle, the parties had helpfully provided copies of the proposals and copies of the Valuation Officer's notices of list alterations. During the hearing, whilst it had no bearing on the decision I was required to make, the dates shown on the Valuation Officer's notices differed to the dates shown in the parties' agreed statement of facts. The disputed alteration was a case in point. The parties in their agreed statement of case referred to the date of alteration as being 6 May 2021, however, the notice of alteration was dated 12 May 2021, so I have adopted the latter as the correct date in my decision.

12. This hearing was conducted remotely via Microsoft Teams.

13. This decision document is not and does not purport to be a full verbatim record of proceedings.

Issue in dispute

14. Was the Valuation Officer entitled to carry out a list alteration on 12 May 2021 and retrospectively increase the compiled list entry?

Relevant Law

Regulation 14 of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 in so far as relevant is as follows;

> **14 Time from which alteration is to have effect: 2005 and subsequent lists**

(7) An alteration made to correct an inaccuracy (other than one which has arisen by reason of an error or default on the part of a ratepayer)—

(a) in the list on the day it was compiled; or

(b) which arose in the course of making a previous alteration in connection with a matter mentioned in any of paragraphs (2) to (5),

which increases the rateable value shown in the list for the hereditament to which the inaccuracy relates, shall have effect from the day on which the alteration is made.

(8) Where an alteration needs to be made after the first anniversary of the day on which the next list is compiled, it shall have retrospective effect only if it is made to give effect to a proposal.

Decision and reasons

15. The Supreme Court's judgment in *Cardtronics UK Ltd v Sykes (VO)* [2020] UKSC 21 was released on 20 May 2020. The 2010 Rating List was closed by the time of the judgment's release, and it was common ground that the Valuation Officer was not empowered to undertake any list alteration(s) unless it was to give effect to an outstanding proposal. Otherwise, the Valuation Officer would fall foul of Regulation 14 (8) above.

16. In so far as the appeal property was concerned as at 20 May 2020, it was shown as two separate hereditaments in the Rating List;

    i. Petrol Filling Station and Premises £143,000 RV with effect from 1 April 2010 and
    ii. ATM site at 108 Bath Road £8,300 RV with effect from 1 April 2010

17. As at 20 May 2020, there were two outstanding appeals against the above entries, and these were as follows;

i. the first appeal arose from a proposal made on the appellant's behalf by MUA Property Services which was served on the Valuation Officer on 18 March 2015. This proposal challenged the Valuation Officer's notice of alteration dated 14 October 2014 and sought a reduction in the assessment of the petrol filling station hereditament's entry to £1 Rateable Value with effect from 1 April 2010.

ii. The second appeal arose from a proposal made by GL Hearn, on behalf of a different party, Tesco Personal Finance Plc, and served on the Valuation Officer on 23 March 2015. This proposal was made on the grounds that the ATM did not form a separate rateable hereditament and sought a deletion of the rating list entry with effect from 1 April 2010.

18. On 6 August 2020, the Valuation Officer decided that the GL Hearn proposal, in respect of the ATM, was well founded and altered the list to give effect to it by deleting the entry.

19. With regard to the MUA Property Services proposal, Mr Hughes and Mr Sewell entered into a telephone and electronic email exchange, in order to discuss and wherever possible agree a number of settlements, in order to dispose of a number of previously stayed appeals. In the case of the appeal hereditament, Mr Hughes offered to reduce the entry of the petrol filling station and premises to £64,000 RV with effect from 1 April 2010. As this alteration was acceptable to Mr Sewell's client, the Valuation Officer gave effect to the post appeal agreement under Regulation 12 of the appeals regulations, by altering the list on 21 April 2021. Mr Mound drew my attention to a copy of the Valuation Officer's notice of alteration dated 21 April 2021 which confirmed the fact that the previously existing entry of £143,000 Rateable Value with effect from 1 April 2010 had been altered to £64,000 Rateable Value with effect from the same date, in settlement of the proposal. The language used by the Valuation Officer, in the notice of alteration, stated that the alteration was made *as a result of your submission received 18 March 2015.* Mr Mould contended that, as the only submission was

the proposal, it was self evident that the alteration was to give effect to and dispose of the proposal.

20. Mr Donmall argued that the language used by the Valuation Officer, within the notices of alteration, were not determinative. Whilst that may sometimes be the case, in this case as the proposal was agreed, the tribunal was notified by the Valuation Officer that the appeal was settled by agreement and was no longer outstanding.

21. Mr Mound made the point that the Valuation Officer, if they believed that the entry of £143,000 Rateable Value assessment was accurate, could have chosen to make no alteration. However, once the alteration was undertaken to reduce it to £64,000 Rateable Value, the Valuation Officer's hands were effectively tied as regards to being in a position to make any further alteration. Firstly, there was no outstanding proposal to alter the list therefore Regulation 14 (8) prevented any alteration. Secondly, even if an alteration was possible, Regulation 14 (7) prevented a retrospective increase in assessment.

22. Following the settlement of both appeals, it appeared to me that Mr Mould was absolutely right, and Mr Donmall would have his work cut out to convince me otherwise. When I looked at the language used in Regulation 14 (8) the alteration made by the Valuation Officer was made well beyond the first anniversary on which the next Rating List was compiled, so the alteration could only have been legitimately undertaken if it had been made to give effect to a proposal. However, when the alteration was undertaken, there was no outstanding proposal for the Valuation Officer to give effect to. The ATM deletion proposal was well founded by the Valuation Officer on 6 August 2020 and the other proposal against the petrol filling station minus the ATM was settled by agreement on 21 April 2021.

23. The upshot from the above was as clear as day, after 21 April 2021 the Valuation Officer had no vehicle to permit him to make any further alterations to the 2010 Rating List. This was the very point Mr Mould was making, in his submissions, when he contended that it was a straightforward and inescapable fact that the Valuation Officer was not empowered to alter and increase the list entry from

£64,000 to £143,000 Rateable Value with effect from 28 June 2011, by notice of alteration dated 12 May 2021.

24. For the respondent, Mr Donmall made great play on the fact that, following *Cardtronics,* the Valuation Officer's intention all along was to reverse the effects of the October 2014 alterations which was in fact what they had done. The ATM entry was therefore deleted and the original compiled list entry of £64,000 Rateable Value and the subsequent increase to £143,000 Rateable Value with effect from 28 June 2011 was reinstated. Unfortunately, for the Valuation Officer, the final alteration was one which they were not empowered to make, as by the time they got around to making it, there was no live proposal to give effect to.

25. Mr Donmall disagreed with Mr Mould's submissions, on the appellant's behalf, as they failed to recognise that when the ATM list entry was deleted, it meant that the valuation of the host hereditament within which it sat needed to be revisited. However, given that I was earlier informed that the stripping out of the ATM had no effect on the valuation of the host hereditament, it appeared to me that Mr Donmall's arguments were weak.

26. There was some irony in Mr Donmall's argument that had the Valuation Officer done nothing after deleting the ATM entry, the existing assessment of £143,000 Rateable Value, would have remained in place as the Valuation Officer was not obliged to reduce the assessment. In which case, the appellant would have been worse off. The position now was unless the tribunal upheld the right of the Valuation Officer to make the further list alteration, the appellant would be in line for a financial windfall, to which morally it was not entitled.

27. Whilst I had some sympathy with Mr Donmall's argument, since the appellant accepted £64,000 Rateable Value was inaccurate and sought a revised valuation of £120,000 Rateable Value with effect from 28 June 2011, if its preliminary arguments about the respondent's inability to alter the list in May 2021 were ill conceived, I could only apply the law as it was not how I would like it to be.

28. As Mr Mould submitted, if the Valuation Officer believed an entry of £143,000 Rateable Value was correct, he could have taken no further action with MUA's

proposal. However, as it was, Mr Hughes for the Valuation Officer believed that the correct entry for the petrol station and premises was £64,000 Rateable Value with effect from 1 April 2010 and Mr Sewell for the ratepayer was quite happy to sign off on that agreement.

29. In his witness statement, Mr Hughes stated that because of workload pressures and the way the Valuation Officer's IT system was designed, it was not possible to make more than one list alteration in relation to the same hereditament on the same day. The alteration to give effect to his agreement with Mr Sewell was undertaken on 21 April 2021. However, the alteration to increase to £143,000 Rateable Value was not undertaken until around 3 weeks later.

30. Whilst I can accept that the Valuation Officer's IT system may have prevented Mr Hughes from reinstating the list entries to how they appeared on 28 June 2011 simultaneously, it was inexplicable why it took the Valuation Officer three weeks to make the second alteration; and if the Valuation Officer knew their system was incapable of performing the actions necessary then action should have been taken to correct the inadequacy.

31. What I also found difficult to accept was the respondent's failure to come up with any form of work around solution. It appeared to me that the Valuation Officer could easily have forewarned the appellant, formally in writing, of their intention to undertake two list alterations in advance of them being undertaken by some form of note or letter. Mr Donmall appeared to accept the point I was trying to make and said he was sure his client would take note of my observations.

32. The failure of the Valuation Officer not to formally notify in advance the appellant of their intention to make two list alteration(s) in order to reinstate the list entries as they appeared on 28 June 2011 was fatal to the Valuation Officer's case. However laudable the Valuation Officer's intentions may have been, any alterations they make to rating lists must comply with statutory provisions. Generally speaking, ratepayers do not like to pay rates, but they have no choice not to pay, as being a property-based tax it was difficult to evade. However, the statutory process of compiling and then maintaining a rating list must be applied

properly. In this case, the Valuation Officer was guilty of making a unilateral alteration which quite simply was one they were not entitled to make.

33. Not one to give up the fight from a seemingly hopeless position, Mr Donmall contended that GL Hearn's proposal to delete the ATM entry from the Rating List was a vehicle that the Valuation Officer was able to use to permit them to make the May 2021 alteration. He put it to me that the appellant should have known that the alteration of the list to delete the ATM entry could not have been undertaken in isolation. Once it was established and accepted that the ATM should never have been stripped out of the petrol filling station hereditament, he argued that it stood to reason that the list would need to be altered to reflect the value of the petrol filling station inclusive of the ATM.

34. Mr Donmall therefore argued, as a matter of formal analysis, that the GL Hearn proposal should be analysed as a proposal made under regulation 4 (1) (k) because in substance the proposal was saying that the ATM was not a discrete hereditament but fell to be part of the same hereditament as the petrol filling station. In other words, it sought the replacement of two hereditaments, the ATM hereditament and the Petrol Filling Station minus the ATM, with a single hereditament being the Petrol Filling Station including the ATM, as was previously the case.

35. Warming to this theme, he asked me to consider how I would have dealt with the ATM deletion proposal had it come before me today. Since the 2010 list was closed, he suggested that in addition to deleting the ATM entry, I could determine an increased entry for the petrol filling station inclusive of the ATM by treating it as an ancillary matter with the tribunal's powers under Regulation 38 (10) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009. There were several reasons why I found this argument unattractive.

36. Firstly, the appeal arising from the GL Hearn proposal was not before me. The Valuation Officer had long disposed of it by treating the proposal as well founded and altering the list accordingly on 6 August 2020. Secondly, the proposal sought a deletion of the ATM entry and nothing else. There was nothing stated in the

proposal that would have given the tribunal jurisdiction to investigate the accuracy of and, if necessary, determine the assessment of the petrol filling station to include the ATM.

37. The appellant in this case was not a party to the GL Hearn ATM proposal. Had the tribunal been requested to add the appellant as an interested party to the GL Hearn appeal, it would have refused to do so. This would have been on the grounds that the proposed deletion of the ATM and the effect, if any, that that deletion would have had on the rateable value entry for the petrol filling station hereditament inclusive of the ATM were mutually exclusive.

38. When it comes to ancillary matters under Regulation 38 (10) normally matters would be restricted but not limited to amendments to the way a hereditament was shown or its description in the rating list. To my mind, ancillary matters do not include stretching the tribunal's jurisdiction to encompass matters not raised in the proposal or the knock-on effect on the valuation of another hereditament that was in the occupation of a different person who was not a party to the appeal.

39. In any event, it struck me that the earlier MUA proposal dated 18 March 2015 would have been a more suitable vehicle for the alteration(s) that the Valuation Officer sought to make. However, once an agreement was reached between Mr Hughes and Mr Sewell to dispose of the appeal, the shutters then effectively came down to prevent any further alterations being made to the list.

40. Whilst it did not sit comfortably with me that the appellant stood to benefit from a financial windfall, to which quite frankly it was not morally entitled, this sorry situation was a problem of the Valuation Officer's own making.

41. Although he put forward his advocacy with his usual great skill and eloquence, I struggled to see any merit in any of Mr Donmall's arguments, aside from the obvious injustice of leaving an inaccurate entry in the Rating List, if I found against the Valuation Officer.

42. Whichever way, I looked at it, when it came to making the list alteration on 12 May 2021, the Valuation Officer was altering the list of his own volition as opposed to giving effect to a proposal. The ATM deletion proposal that Mr

Donmall was trying to hang his hat on had been well founded over eighteen months previously. By disposing of the 2 proposals, that had given rise to the appeals that were outstanding at the time when the Supreme Court's judgment in *Cardtronics* was released, the Valuation Officer had squandered the opportunity of reinstating the list to how it stood on 28 June 2011. Therefore, when it came to making the list alteration in May 2021, there was no point in Mr Donmall trying to argue that the Valuation Officer had merely tried to put the appellant back into the position it was before the 2014 list alterations were made. Whilst this may have been the desired intention, unfortunately for the Valuation Officer, the way the 2 proposals were dealt with by them, meant that they had no legal authority to alter the list again in May 2021. As Mr Mould put it the Valuation Officer was acting *ultra vires.*

43. The appeal was therefore allowed and therefore the effect of the alteration made by the Valuation Officer on 12 May 2021 needed to be reversed. I therefore reduced the entry from £143,000 to £64,000 Rateable Value with effect from 28 June 2011. Effectively that means that the appeal property's assessment will remain at £64,000 Rateable Value throughout the lifetime of the 2010 Rating List.

Order

44. In accordance with regulation 38(4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Officer is ordered to amend the entry for the appeal property in 2010 Rating List to £64,000 Rateable Value with effect from 28 June 2011.

45. The Valuation Officer must comply with this Order within two weeks of its making.

President

Date: 13 July 2023

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.