

# THE VALUATION TRIBUNAL FOR ENGLAND



*Non-domestic rates; 2017 rating list appeal; shop and premises; inclusion of ATM in zone A; Cardtronics UK Ltd and others v. Sykes and others (VO) [2020] UKSC 21; appeal allowed in part*

RE: 30 High Street, Chatteris, PE16 6BG

APPEAL NUMBER: CHG100065223

BETWEEN:	Mr S Karia	Appellant
	and	
	Ms J Moore	Respondent
	(Valuation Officer)	

PANEL: Mrs X Holt (Chairman)  
Mr P Hickson

CLERK: Mrs C McAvoy

REMOTE HEARING No.3 on 12 May 2021

## APPEARANCES:

Mr Usher on behalf of the appellant

Mr A Singh on behalf of the respondent as advocate and expert witness.

## Summary of decisions

1. Appeal allowed in part; the rateable value (RV) was reduced to £12,500 with effect from 7 September 2017.

## Introduction

2. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2

regulation (5)( arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.

3. Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated “remote hearings” as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal’s Consolidated Practice Statement has been amended to reflect this.
4. This hearing related to a challenge made against the rating list entry for the post office at 30 High Street, Chatteris, PE16 6BG. This was shown in the valuation list as, shop and premises, £13,750 RV, effective from 7 September 2017.
5. The RV was increased effective from 7 September 2017 due to an extension and following the deletion of the ATM as a separate hereditament. The inclusion of the floor area taken up by the ATM being valued within the zone A area of the property.
6. Mr Karia submitted a challenge on 26 November 2018. The challenge was originally made on multiple grounds. Usually, in this circumstance, the challenge would be rejected, on the grounds that it does not meet the legal requirements<sup>1</sup> for a challenge submission. However, in consideration of the appellant’s hardship and the history of the RV, the VO, took the pragmatic approach to consider the case on the most appropriate grounds. The proposal sought a reduction in RV to a figure ‘less than £12,000’. As at 1 April 2017, the RV was lower than £12,000 so therefore it appeared that this was not a challenge to the compiled list entry. The challenge was therefore progressed under grounds number 2; A change made by the valuation office on or after 1 April 2017 is wrong.
7. In the VO’s initial response, the VO explained it would be progressed on this basis and advised that, should he wish to, Mr Karia could ask for the challenge to be rejected and then re-submit his case. This was not requested. The challenge concluded on 9 September 2019 and the decision was made not to alter the list, consequently, the appellant lodge an appeal to this Tribunal.
8. Prior to the hearing, the VO visited the property, with the appellant present, and agreed on revised measurements. The VO informed the tribunal that he now valued the property at £12,500.
9. The material date for this appeal is 9 September 2017.
10. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered

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<sup>1</sup> Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009 No. 2268) as amended by The Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2017

by the panel before coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

## **Preliminary matters**

11. On 18 February 2021, in response to the appellant's evidence submitted to the Tribunal, the VO submitted a C147 objection form. The VO objected to various documents which related to evidence not exchanged at the check or challenge stage. No representation was made in response to this objection and therefore, the evidence was automatically excluded.
12. During submissions, Mr Usher raised two new arguments, which Mr Singh objected to on the grounds that they had not been submitted within the check and challenge process. He also stated that the information would have been known at the time of submitting the check.
13. Mr Usher contested the value attributed to the timber framed sheds at the back of the property. He stated that they were welfare units and submitted that in accordance with the information provide on direct.gov, welfare units are exempt from rating.
14. He also raised that, should the panel find that the ATM is rateable, he would argue that the area it sits on should be rated as 'storage area' and not be included in the zone A assessment.
15. In considering this matter, the panel had regard to regulation 17A of Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (as amended) which states:

### **17A Admission of new evidence on NDR appeal**

- (1) 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.

16. The panel noted that the appellant had requested for the ATM to be removed within the check and challenge process, but this was on the grounds that he considered it was not rateable. He had not submitted any argument or

evidence in respect of it being rated as storage. It also found that there was no mention of the timber buildings or that an exemption was sought.

17. Therefore, in view of the foregoing and in the absence of the agreement by all parties, in accordance with regulation 17A, the panel excluded the admission of the new evidence.

## **Issue**

18. As the size and main space price was no longer in contention, the only issue before the panel, was to consider whether the value attributed to the ATM should be included in the RV.

## **Evidence and submissions**

19. The appellant had provided authority for Mr Kevin Usher to act on his behalf.
20. A bundle of evidence was provided for the appeal which comprised the reasons for the challenge to the appeal property's rating assessment and subsequent appeal. It also included the information exchanged between the parties during the challenge stage of the process which, to summarise, included; an independent valuation letter; correspondence to MP; articles and information concerning post offices and their cutbacks; ATM ruling; comparable properties; and the definition of rateable value.

## **Decision and reasons**

21. Mr Singh, in the presence of Mr Karia and Mr Usher, carried out an inspection of the appeal property on 6 May 2021. Following this, the Tribunal was informed that the measurements were no longer in contention and the VO proposed a revised RV of £12,500 with effect from 7 September 2017.
22. Mr Usher confirmed the above; but submitted that the ATM issue remained unresolved.
23. Prior to the VO altering the list as of 7 September 2017, the ATM was shown as a separate assessment. Within the challenge decision, the VO stated:  
  
‘The ATM is included in your assessment because it is located within the subject hereditament and because of the corporate and contractual relationship between the operator and the occupier of the host site mean the ATM should not be assessed separately.’
24. Mr Usher submitted that the ATM was a fixed piece of equipment that Mr Karia has no control over. He stated that the court of appeal judgment, in which the VO had referred to in its challenge decision, had since progressed to the Supreme Court (*Cardtronics UK Ltd and others v. Sykes and others* (VO) [2020] UKSC 21), where it was ruled that ATM's were not rateable.
25. The panel, being aware of this judgment, found that the Supreme Court had upheld the Court of Appeals decision in respect of ATM's not being rateable as plant. Therefore, the panel agreed that the ATM itself is not rateable.

26. However, the court ruled that the presence of an ATM should not be ignored when deciding if a separate hereditament exists. In Paragraph 33, Lord Carnwath stated the following:

‘ .....

They concluded:

“In principle, therefore, we consider that the presence of an item of non-rateable machinery, such as an ATM, should not be ignored when determining whether a separate hereditament exists. The statutory assumption applies only for the purpose of valuation and may not legitimately be applied in answering the logically prior question of whether there is or is not a hereditament which needs to be valued.” (paras 124-126)

In the Court of Appeal, Lindblom LJ agreed in substantially similar terms (paras 45- 50). Since I agree with both, and without disrespect to Mr Kolinsky’s attractive restatement of the arguments in this court, I am content to adopt their reasoning without further explanation.’

27. This judgement then went on to consider who was in rateable occupation, essentially, whether the principal occupier (of the store) remained in exclusive occupation of the whole hereditament. Lord Carnwath concluded that retailers were in paramount occupation of the whole premises, including the areas occupied by the ATMs.
28. The panel was bound by this judgment and therefore was assisted by it when reaching its decision. The panel concluded that, whilst the area in which the ATM sat on is rateable and capable of being identified as a separate hereditament, Mr Karia remained in paramount occupation of the whole space. Therefore, there was no requirement for a separate entry in the rating list.
29. The space in which the ATM is located lies within zone A of the appeal property. In view of the foregoing, the panel found nothing erroneous with the VO’s decision to include the space within the zone A assessment.
30. For the reasons stated, the panel ratified the proposed revised RV of £12,500 and the appeal was allowed in part.
31. Mr Usher asked the panel to consider costs in the form of compensation for the time spent on this matter, however, in accordance with regulation 12 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the VTE has no power to make any order in respect of costs.

## **Order**

32. Under the provisions of regulations 38(4) and 38 (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009,

the Valuation Tribunal for England orders the Valuation Officer to reduce the entry in the rating list within two weeks of this order to show the following:

30 High Street, Chatteris, PE16 6BG

Rateable Value £12,500 with effect from 7 September 2017

33. A refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

**Date:** 18 May 2021

**Appeal number:** CHG100065223