Non Domestic Rating appeal; 2010 Rating list; Proposal against Valuation Officer's notice of alteration; Effective date restriction; Automatic Teller Machine; Appeal dismissed.

RE: ATM SITE AT 798B, ALCESTER ROAD SOUTH, BIRMINGHAM B14 5EZ

APPEAL NUMBER: 460526554340/541N10

BETWEEN:	Farakh Iqbal	Appellant
	and	
	Dal Virk (Valuation Officer)	Respondent

BEFORE: Gary Garland (President sitting alone)

CLERK; David Slater (Acting Registrar)

REMOTE HEARING ON: Tuesday 26 April 2022

APPEARANCE: Andrew Dent (Valuation Officer's representative)

Decision and reasons

1. Although the Appellant, Mr Iqbal, did not appear before me, I was satisfied that he had received notice of this hearing. He had had telephone discussions with both the Acting Registrar and the Valuation Officer's representative, Mr Dent, about the hearing in recent days. The former had sent him a remote hearing invitation and Mr Dent had explained to Mr Iqbal why he would be seeking a dismissal of the appeal.

2. As Mr Iqbal was a lay person, unfamiliar with tribunals, I decided that it would be appropriate to hear the appeal in his absence, as opposed to simply dismissing it given his non-appearance, in case his appeal had some merit.

3. This appeal had arisen from a proposal that had a challenged the Valuation Officer's historic rating assessment for an automatic teller machine (cash point) at Mr Iqbal's property. The disputed entry was £8,300 Rateable Value (RV) with effect from 1 August 2014. This entry was later deleted with effect from 1 April 2015.

4. The historic assessment was entered into the Rating List on 26 May 2015 following a Valuation Officer's notice of alteration. Mr Iqbal challenged the accuracy of the Valuation Officer's notice of alteration by way of a proposal which was served on the Valuation Officer on 4 January 2016. Mr Iqbal's challenge was made on the basis that the rateable value for the ATM was excessive. With the benefit of hindsight, he was absolutely correct. It was indeed excessive, and I understand that the RV entry was later reduced considerably by the Valuation Officer before being removed from the Rating List altogether, following the Supreme Court's judgment in *Cardtronics UK Ltd and Others v Sykes (VO) and Others* [2020] UKSC 21. However, crucially the disputed assessment was only removed with effect from 1 April 2015 which meant that Mr Iqbal may have been left with a residual rate liability for the period 1 August 2014 to 31 March 2015 inclusive.

5. On behalf of the Valuation Officer, Mr Dent contended that neither he nor the tribunal could give effect to the appellant's proposal because of the effective date restrictions within the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 as amended. The appellant's proposal was made under Regulation 4 (1) (d).

6. The relevant regulation with regard to the effective date restrictions was Regulation 14 and in particular paragraphs 2 (c) and 2A

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

(1) This regulation has effect in relation to alterations made on or after 1st October 2009 to a list compiled on or after 1st April 2005.

(1A)…………………….

(1B)……………………...

(2) Subject to paragraphs (2A) to (7), where an alteration is made to correct any inaccuracy in the list on or after the day it is compiled, the alteration shall have effect—

(a) ……………………………………

(b) …………………………………………..

(c) from 1st April 2015 if the alteration is made in order to give effect to a proposal served on the VO on or after that date and the circumstances giving rise to the alteration first occurred before that date.

[2A) Where—

(a) an alteration (alteration A) is made on or after 1st April 2015 in order to give effect to a proposal made on the ground set out in regulation 4(1)(d) or (f); and
(b) the proposal was served on the VO within 6 months of the alteration which gave rise to the proposal (alteration B) alteration A shall have effect from the day on which alteration B had effect.

7. Under regulation 14 (2) (c), which was subject to Regulation 14 (2A), any alteration to give effect to a proposal could only take effect from 1 April 2015 even if the circumstances that gave rise to it occurred before 1 April 2015. However, under paragraph 2A there was an exception to that rule if the proposal was made within 6 months of the Valuation Officer's notice of alteration.

8. In this case, the exception provision in paragraph 2A did not apply, as the proposal was made over 6 months after the list alteration which is very unfortunate for Mr Iqbal and means that the tribunal cannot help him. Therefore, the earliest effective date for his proposal is restricted to 1 April 2015 because of paragraph 14 (2) (c).

9. In view of the foregoing, the tribunal is powerless to remove the historic rating list entry of £8,300 RV which existed from 1 August 2014 to 31 March 2015 which means that the only discernible course of action open to me is to dismiss Mr Iqbal's appeal.

G Garland
President

3 May 2022