THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic 2017 Rating List Appeal; Proposal sought a split assessment; Competing rateable occupations; paramount control; Cardtronics UK Ltd and others (Respondents) v Sykes and others (Valuation Officers) (Appellants) [2020] UKSC 21; Westminster Council v Southern Railway Co [1936] AC 511; appeal dismissed.

RE: Fantastic Things Emporium, 21b Saxon Square, Christchurch BH23 1QA

APPEAL NUMBER: CHG100718724

BETWEEN:	Mr M Battistini	Appellant
	and	
	Alexandra Morley (Valuation Officer)	Respondent

PANEL: Mr A Backway (Presiding Senior Member)
Mr W Read, Senior Member

CLERK: Ms R Muller

HEARING: Remote Hearing No. 1 on 14 July 2023

APPEARANCES: Mr M Battistini, the Appellant
Ms S Hillman, retail manager for the Appellant's company
Mr S Madiyiko representative for the Valuation Officer.

Summary of decision

1. The appeal was dismissed. The panel held that the appellant was in rateable occupation of the whole property and therefore it was properly assessed as a single hereditament.

Introduction

2. This was a 2017 Rating List appeal. Fantastic Things Emporium, 21b Saxon Square, Christchurch BH23 1QA ("hereafter known as the subject property") had been entered in the 2017 rating list as 'shop and premises' at an RV of £70,500 with effect from 26 April 2021.

3. The check was served on the Valuation Officer (VO) on 27 July 2021. The challenge period came to an end when the VO issued her final decision on 4 November 2022. The VO refused to alter the list and deemed the proposal to be not well founded. The appellant subsequently appealed to the tribunal on 16 January 2023. The grounds for the appeal were that each individual market stall should have its own separate entry within the Rating List.

4. The appellant was the tenant of the subject property and pays a rent of £48,000 per annum to the owner. The material day was 26 April 2021, the date the subject property had been entered into the 2017 Rating List. If this appeal was successful, this would also be the effective date for any List alterations.

5. Mr Read, the senior member had issues with his IT equipment where he could not hear the parties speak, so he joined by video using Teams but also separately used his phone so he could participate in audio discussions. All parties were satisfied that the senior member could fully participate in the proceedings.

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

Issue

7. The issue before the panel was to consider if each stall constituted a separate hereditament and therefore, whether each trader was in separate rateable occupation.

Evidence and submissions

8. The evidence provided by the parties contained a statement of evidence; a list of traders with copies of some of the trader's agreements; photographs of the subject property; details of comparable properties; a copy of a public liability certificate; confirmation of public liability insurance from Direct Line; a certificate of insurance by Simply Business; a certificate of public and products liability insurance by HISCOX and details of the case law of *Cardtronics Europe Ltd v Sykes (VO)* [2020] UKSC 21 and the Appeal of *Heilbuth (VO)* [1999] RA 109.

9. As the VO had discussed the four ingredients of rateable occupation, the clerk referred the panel to the case law of *John Laing & Sons v Kingswood Assessment Committee* [1949] 1 KB 344 *and Westminster Council v Southern Railway Co* [1936] AC 511. A copy of both cases was sent to the parties after the hearing and comments were invited. The appellant had stated during the hearing that the case law of *John Laing* could be considered relevant, as one of the traders had asked a builder to construct a unit, which would be suitable for her needs in selling her products. Therefore, she had beneficial occupation of her stall.

10. The appellant stated that there was one occupier of each individual stall and therefore, the assessment of the subject property should be split. The appellant stated that their business was to allow small businesses to sell their products without the financial worry of renting a property. The trader's contract was to allow the traders to sell their products without signing a long or lengthy contact.

11. The appellant had provided two comparable properties of Petticoat Lane, Emporium 47, Dumpton Park Drive, Ramsgate, Kent, CT11 8AD and Christchurch Emporium Avon Works, 1b Bridge Street, Christchurch, Dorset BH23 1DY. Both of these properties had market stalls that had separate entries placed within the 2017 Rating List for each stall.

12. The VO did not accept that the individual stall holders were in rateable occupation of their separate stalls. Therefore, he requested that the panel confirm that the subject property as one hereditament.

13. The VO had sent photographs to the Tribunal of the subject property the day before the hearing but had not provided a copy of the photographs to the appellant. Therefore, the panel requested that the VO send a copy of the photographs to the appellant, and it would adjourn proceedings for circa 10 minutes in order for the appellant and Ms Hillman to consider the photographs and make any necessary comments.

14. Once the hearing recommenced, the appellant stated that the photographs were a true reflection of the subject property and had no objection to their admission as evidence.

Decision and reasons

15. In appeals of this nature, where an appellant sought a split of a single hereditament into multiple hereditaments, the outcome of the appeal was usually hugely influenced by whether or not the smaller units or hereditaments were occupied for wholly different purposes.

16. The issue in dispute before the panel was whose occupation was paramount. The panel was referred to the Upper Tribunal case of *Cardtronics UK Ltd and others (Respondents) v Sykes and others (Valuation Officers) (Appellants)* [2020] UKSC 21, which concerned automated teller machines. The Upper Tribunal in paragraph 130 of its judgment stated;

    > *We think there is force in that point. Once a machine has been installed there should, in our view, be no difficulty in defining the boundaries of a fixed ATM site with sufficient precision to satisfy the geographic test of self-containment. In cases involving more mobile equipment it may additionally be necessary to consider the nature of the occupancy and whether the Bank's right was a right of occupation of a specific unit of property or simply a right of access to a machine wherever it happened to be located. But assuming the occupier of the site had a sufficient right of occupation, identifying the unit of occupation would not be problematic.*

17. The concept of rateable occupation was linked with the concept of hereditament. As in *Cardtronics*, the fact that the individual stalls could potentially form separate hereditaments did not mean that they were separately rateable from the subject property.

18. The panel noted that the appellant had referred to two other emporiums, Christchurch Emporium Avon Works and Petticoat Lane Emporium 47. Details of their assessments had been provided by the appellant to show that each stall had been separately rated within the Rating List. However, the VO stated that these properties' assessments had since been merged into one assessment within the Rating List. The panel asked the VO to submit an email after the hearing with the new assessments for both Emporium Avon Works and Petticoat Lane Emporium 47, with a copy to the appellant and the clerk.

19. The VO after the hearing provided the details of the merged assessment for Christchurch Emporium Avon Works. The appellant had replied to the email from the VO to show that the assessments for Petticoat Lane Emporium 47 still remained in the list as separate assessments. The panel considered the details provided by both parties for the emporiums at or Christchurch and Petticoat Lane. The details for Petticoat Lane remained the same and each stall had a separate entry within the rating list. The stalls at Christchurch had been merged into one assessment. As the panel did not know the specific circumstances concerning these stalls, and the reasons behind why one comparable property had had its assessments merged into one and the other comparable remained separately assessed. The panel had little alternative other than to place less weight onto the details of these two comparable properties.

20. The first and real question for the panel was who had been in rateable occupation of the subject property. When this question falls to be considered and answered in these cases, the first place is that any liability for rates depends upon actual occupation or possession of premises. This is the first of the four well established ingredients of the concept of rateable occupation approved by the Court of Appeal in *John Laing & Son Ltd. v. Kingswood Assessment Area Assessment Committee* [1949] 1 K.B. 344, namely:

    a. Actual occupation
    b. Beneficial occupation
    c. Exclusive occupation
    d. Transient (not too transient in nature)

21. In the case before the panel, it was accepted that the appellant was the leaseholder and was in actual occupation of the common parts and any vacant individual stalls that had yet to be allocated to individual traders, if any. To ascertain the actual occupation of the stalls, the panel had consideration to the trader's agreement between the traders and the appellant. Whilst the trader's agreement stated it was for a period of 12 months, within the terms and conditions, it stated the following:

    a. A holding fee is to be paid one month in advance by standing order to secure the pitch.
    b. Items to be sold must be agreed by Fantastic Things Limited.

    c. Fantastic Things Limited reserve the right to give immediate notice to anyone who is abusive to our staff or behaves unreasonably to them or to members of the public.
    d. Fantastic Things Limited reserved the right to terminate this agreement immediately without providing a notice period.

22. The appellant informed the panel that the trader agreement had been written that way so that any trader who was found to be abusive or had stolen from another trader would be asked to leave immediately. The panel understood why the appellant had the conditions within the trader's agreement, however, it demonstrated that the traders of each of the stalls did not have security of tenure.

23. The appellant had also emphasised that the individual stalls could be sealed off it they do not want to trade on a certain day. The panel noted that each trader could only gain access to the subject property and their actual stalls when the appellant's staff, or the occupier of the café, which was located within the subject property, opened the door. The panel also noted that a trader could take occupation of more than one stall if it was required, for example, if their business was growing.

24. Whilst each stall had a separate trader, the appellant and his staff operated the till, taking money for wares sold on behalf of the traders. The traders would in turn pay a charge for this service. The panel noted that even if the traders were at their stalls, they did not take money from any buyers, as this was done by the appellant's staff only. The appellant charged a transaction fee for each sale.

25. In order to ascertain who was in rateable occupation of the individual stalls, the panel referred to the judgment of *City of Westminster v The Southern Railway Company* [1936] AC 511; in this case there was an agreement between the railway company and WH Smith for the latter to pay the former a share of the gross profits. Despite this WH Smith was still held to be in paramount occupation of its bookstall.

26. The concepts of "paramount" and "subordinate" occupation were taken a stage further in the case of *Westminster Council v Southern Railway Co* [1936] AC 511. It was held that certain retail units at Victoria Station, including bookstalls, kiosks, a chemist and various showcases, occupied by independent retailers under agreements with the railway company, should be treated as separate hereditaments in the rateable occupation of the retailers. As Lord Wright MR explained (p 551):

> "*The question … is whether the premises in question have been so carved out of the railway hereditament, to which they or their sites belonged, as to be capable of a separate assessment, or whether they have, though let out, been so let out as still to leave them in the occupation of the Railway Company."*

27. Having regard to the above conclusions, the panel found that the right to possession of a stall is not by itself sufficient to render the person liable for rates in respect of that stall. There must at the least be actual possession and some use of the hereditament that is rated. The panel noted that the trader was in actual occupation of their own stall; the stall was exclusive to each trader in the fact that no one else could sell anything on the individual trader's stall. However, the stalls were beneficial to both the trader and the appellant, as the stall was beneficial to the trader to sell their wares and beneficial to the appellant, as his staff managed the till and received payment for this service of a transaction fee of 4%, according to the trader agreement.

28. The panel also noted that from the trader's agreement, that the traders were restricted to selling goods listed on the agreement without prior consent of the appellant.

29. The panel held that the separate stalls occupied by individual traders were clearly complementary to the business of the appellant and of mutual benefit to both and therefore in reality the occupation of the stalls by the traders was secondary to the appellant whose occupation was paramount.

30. The appeal was therefore dismissed.

Date: 7 August 2023

Appeal number: CHG100718724

Right of 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.