

THE VALUATION TRIBUNAL FOR ENGLAND



Summary of Interim Decision: NDR, ATM sites, whether the sites of non-rateable ATMs should be separately entered in the Rating List as hereditaments, appeals seeking deletion of the sites or merger with the host store were all dismissed.

Re:

Tesco Stores Plc, High Street, Brownhills, Walsall, WS8 6DZ

Rateable Value £16,500 wef 1st April 2010 (List alteration date 19th August 2014)

Note: Prior to the hearing the Rating List entry had been deleted to be replaced by two entries each for the site of an ATM at £8,300 RV in accordance with VO Notices dated 27th January 2016 and 29th January 2016.

Appeal Numbers

463025089473/541N10 (Seeking deletion)

463025089525/541N10 (Disputing value)

463025483743/221N10 (Store RV £780,000) (seeking merger)

463025101141/541N10 (Store RV £780,000) (seeking merger)

463025483664/221N10 (Store RV £780,000) (seeking merger)

463025171128/541N10 (Store RV £780,000) (disputing value)

Tesco Extra, 10 Jennison Street, Nottingham, NG6 8EQ

RV £11,250 wef 10th December 2010 (List alteration date 18th August 2014)

Note: Prior to the hearing the Rating List entry had been deleted to be replaced by two entries, one for the site of two ATMs at £7,500 RV and the other for the site of a single ATM at £3,750 RV in accordance with VO Notices dated 27th January 2016 and 29th January 2016

Appeal Numbers

306025086014/538N10 (seeking deletion)
306025086035/538N10 (disputing value)
306025488839/036N10 (Store RV £1,840,000) (seeking merger)
306025100042/538N10 (Store RV £1,840,000) (seeking merger)
306025156212/538N10 (Store RV £1,840,000) (disputing value)

Tesco, 18 Main Street, Bilton, Rugby, Warwickshire, CV22 7ND

RV £8,300 wef 15th January 2011 (List alteration date 18th September 2014)

Appeal Numbers

371525476070/221N10 (seeking merger)
371525089506/541N10 (disputing value)
371525089462/541N10 (seeking deletion)
371525101040/541N10 (seeking merger)
371524837853/541N10 (Shop RV £29,750) (Proposal by Rapleys) (disputing value)

Sainsbury's Swanpool Walk, Worcester, WR2 4EL

RV £8,300 wef 1st April 2010 (List alteration date 25th March 2014)

Appeal Numbers

183525181485/541N10 (seeking merger)
183525179555/541N10 (seeking deletion)
183525163006/541N10 (seeking deletion)
183525179553/541N10 (seeking deletion)
183525158429/541N10 (seeking deletion)
183525181284/541N10 (seeking merger)
183525408418/541N10 (disputing value)
183525181714/541N10 (seeking merger)

183525136527/541N10 (Store RV £875,000) (disputing value)
183525513392/221N10 (Store RV £875,000) (seeking merger)
183525369181/541N10 (Store RV £855,000) (disputing value)
183525506995/221N10 (Store RV £855,000) (seeking merger)
183525512485/221N10 (Store RV £855,000) (seeking merger)

Sainsbury's Plc, Dudbridge Road, Stroud, Gloucestershire, GL5 3HF

RV £11,750 wef 1st April 2010 (List alteration date 28th March 2014)

Note: Prior to the hearing the Rating List entry had been deleted to be replaced by two entries each for the site of an ATM at £5,900 RV in accordance with VO Notices dated 27th January 2016 and 3rd February 2016.

Appeal Numbers

162525159719/537N10 (seeking deletion)
162525352433/537N10 (disputing value)
162525161902/537N10 (seeking deletion)
162525181224/537N10 (seeking deletion)
162525181238/537N10 (seeking deletion)
162524900601/537N10 (Store RV £1,070,000) (disputing value)
162525186337/537N10 (Store RV £1,070,000) (seeking merger)
162525530464/212N10 (Store RV £1,500,000) (seeking merger)
162524900553/537N10 (Store RV £1,500,000) (disputing value)
162525186487/537N10 (Store RV £1,500,000) (seeking merger)
162525530347/212N10 (Store RV £1,500,000) (seeking merger)
162525186436/537N10 (Store RV £1,500,000) (seeking merger)
162525530646/212N10 (Store RV £1,500,000) (seeking merger)

Cardtronics - 1 Moorhall Road, Harefield, Uxbridge, Middlesex, UB9 6PE

RV £3,750 wef 1st April 2010 ((List alteration date 14th March 2014)

Appeal Numbers

551024950389/538N10 (seeking merger)

551024860430/538N10 (disputing value)

Cardtronics - 153 High Street, Princess Parade, West Bromwich, B70 7QX

RV £8,300 wef 1st April 2010 (List alteration date 7th January 2014)

Appeal Numbers

462024964083/541N10 (Offices - £24,000) (seeking merger)

462024925318/541N10 (disputing value)

Cardtronics - 16/18 Barley Rise, Strensall, York, YO32 5AA

RV £3,750 wef 25th September 2012 (List alteration date 20th May 2014)

Appeal Numbers

274125102970/539N10 (Shop - RV £20,500) (seeking merger)

274124928704/539N10 (disputing value)

Co-op - 10/12 Windermere Road, Newcastle under Lyme, Staffordshire, ST5 3HH

RV £5,900 wef 1st April 2010 (List alteration date 16th January 2014)

Appeal Numbers

342025380573/541N10 (disputing value)

342025200390/541N10 (seeking deletion)

342025369768/539N10 (Shop - RV £35,250) (disputing value)

Co-op - Lockwood Service Station, Lockwood Road, Huddersfield, HD1 3QU

RV £11,250 wef 1st April 2010 (List alteration date 15th January 2014)

Appeal Numbers

471525202168/539N10 (seeking deletion)

471525455327/539N10 (disputing value)

470525386189/539N10 (Petrol Filling Station - RV £44,750) (disputing value)

Co-op, Bradford Road, Riddlesden, Keighley, BD21 4EB

RV £8,300 wef 1st April 2010 (List alteration date 13th January 2014)

Appeal Numbers

470525425522/539N10 (disputing value)

470525202184/539N10 (seeking deletion)

470525388150/539N10 (Shop RV £28,750) (disputing value)

BETWEEN: Sainsbury's Supermarkets Ltd & Sainsbury's Bank plc Appellants

Cardtronics Europe Ltd

Tesco Stores Ltd and Tesco Personal Finance plc

Co-operative Group Ltd

and

Janet Alexander

Respondents

Dal Virk

Alison Gidman

Stuart Moss

Chris Sykes

Karen Kendrick

(Valuation Officers)

BEFORE: Mr A Clark

SITTING AT: 7 Rolls Building, Fetter Lane, London EC4A 1NL

ON: Monday 8th February 2016 until Thursday 11th February 2016

APPEARANCES:

Appellants

Tesco

Tim Mould QC (Leading Counsel) Landmark Chambers

Guy Williams (Junior Counsel) Landmark Chambers

Rebecca Biggin, BLP

Jessica Hopewell, BLP

Roger Cohen, BLP

Blake Penfold, (Surveyor) G L Hearn

Steven Andrew Rigby (Group Property Director) Tesco

Jeremy Sutton (Money Services Director) Tesco Personal Finance

Colin Francis Hannan (Planning and Response Director) Tesco Personal Finance

Sainsbury's

Richard Drabble QC (Leading Counsel) Landmark Chambers

Chris Lewsley (Junior Counsel) Landmark Chambers

Natalie Johnston, Dentons

Bryan Johnston, Dentons

Ross Wilson, Dentons

Richard Williamson, (Surveyor) GL Hearn

Simon Coates (Head of Estate Management) Sainsbury's Supermarkets Ltd

Sue Commercial (Cash Analyst) Sainsbury's Supermarkets Ltd

Co-operative Group

Tim Mould QC (Leading Counsel) Landmark Chambers

Chris Lewsley (Junior Counsel) Landmark Chambers

Natalie Johnston, Dentons

Bryan Johnston, Dentons

Ross Wilson, Dentons

Adam Burke, (Surveyor) Colliers

Craig Dye (ATM Service Manager) Co-operative Bank Limited

Jenny Alleyne (Business Loss Manager) Co-operative Group Ltd

Cardtronics

Dan Kolinsky QC (Leading Counsel) Landmark Chambers

Luke Wilcox (Junior Counsel) Landmark Chambers

Jerry Schurder (Surveyor) Gerald Eve LLP

Alastair Mayne (Managing Director) Cardtronics

Atul Sodha (Owner) Uxbridge Store, Harefield (whose witness statement was taken as a written record)

Saul Pullen (Store Manager) Strensell Store (whose witness statement was taken as a written record)

Respondents

The Valuation Office Agency (VOA)

Tim Morshead QC (Leading Counsel) Landmark Chambers

Galina Ward (Junior Counsel) Landmark Chambers

Deborah Broughton, HMRC Solicitors

Clive Vernon Angell (Surveyor) VOA

Summary of Decision

1. The appeals in respect of the deletion of an ATM site or a merger with the host store or premises are dismissed as in each case the site of an ATM is a hereditament which is in separate rateable occupation to the host store or premises.

Introduction

2. This is a hearing in respect of appeals submitted on behalf of Sainsbury's Supermarkets Limited and Sainsbury's Bank plc, Tesco Stores Limited and Tesco Personal Finance plc, Cardtronics Europe Limited and the Co-operative Group Limited relating to entries in the 2010 Rating List in respect of the sites of Automated Teller Machines (ATMs) and in all but one case the host store or premises.
3. Following a case management hearing before me on 8th September 2015 some 57 appeals (including the related appeals in respect of the host store or premises) at 11 locations were identified as lead appeals in accordance with Regulation 7 of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009.
4. The appeals were made as a direct result of the Respondent Valuation Officers creating separate rating list entries in respect of the sites of the ATMs. The appeals being heard are in a way just the tip of the iceberg with many other appeals having been stayed pending the outcome of the lead appeals.
5. I heard these appeals sitting alone in accordance with the Tribunal's published business arrangements and in the capacity of President, during the interregnum between the retirement of the Tribunal's President last August and the appointment of his successor.
6. Initially I was not in any way looking at value although I did invite the parties to address me on what effect this had on each appeal at some time during the proceedings.

7. In short I was determining as a preliminary issue whether or not the sites of the various ATMs (which themselves are non-rateable plant and machinery) should be subject to separate assessments for rating purposes because they are:
 - a. capable of being separately identified as a hereditament;
 - b. a self-contained unit; and
 - c. not in the occupation of the host retailer but are in the occupation of a third party ATM operator.
8. Following the case management hearing and the issuing of a number of Directions, which the parties fully complied with, I had the pleasure prior to the hearing of reading through the detailed bundles which amongst other information contain detailed statements (and where appropriate rebuttals) from four witnesses from the appellants in the Tesco appeals, three witnesses in respect of the Sainsbury's appeals, four witnesses in respect of the Cardtronics appeals and three witnesses in respect of the Co-op appeals, plus a single witness on behalf of the Respondent Valuation Officers. I also read full transcripts of the relevant authorities and supporting documentation. The parties counsel had also submitted their skeleton arguments which I also read in advance of the hearing.
9. In respect of three of the appeals under consideration, Tesco at Walsall, Tesco at Nottingham and Sainsbury's at Stroud, the VOs have since the case management hearing but prior to the hearing, deleted the entries in the Rating List. New entries were subsequently entered in the list for separate ATM sites whereas previously they had been combined (as a result of an inspection). Whilst this results in three of the appeals before me being in respect of historical entries for which I can make no order, the parties asked me to hear those appeals and decide the preliminary issue due to the amount of preparation taken on these cases and the fact that the same issue which was the subject of the proposals is the same preliminary dispute in respect of those that were stayed. I agreed on that basis to decide those appeals.
10. Finally, I must record my thanks to everyone who contributed to the comprehensive information supplied to me in advance as it negated the need for witnesses to go through their respective statements in detail.

Background

11. By way of background the following details in respect of the appeals were contained within the 'Statements of Agreed Facts'.

Sainsbury's Supermarkets Ltd (SSL) and Sainsbury's Bank plc (SB):

12. The appeals relate to the 2010 Rating List and concern the treatment of sites of ATMs situated at retail properties. The appeals all arise as a result of action taken by the VOA in 2014 to create separate Rating List entries in respect of the sites of ATMs at the retail properties concerned. In each case the action taken was by way of Notices, served by the respective Valuation Officers, reconstituting the previously existing assessments of the retail properties concerned (“the host store”) so as to create separate Rating List entries for the host store and for the sites of any ATMs situated at the store. Such reconstitutions were carried out by the VOA in respect of several thousand stores and the sites of their associated ATMs.
13. In respect of the ‘Sainsbury's Group’ appeals there are two lead appeal sites, Swanpool Walk, Worcester, WR2 4EL (the Worcester Store) and Dudbridge Road, Stroud, Gloucestershire (the Stroud Store). Each actual ATM is located pursuant to an agreement between JS and SB dated 8th February 2007. The agreement continues until terminated under Clause 14 of the Agreement. SB pay a licence fee in accordance with the Agreement.
14. The antecedent valuation date (AVD) for the appeals is 1st April 2008. The Material Day on the issue of whether the sites of the ATMs should be assessed separately from the store is the 1st April 2010. By alterations to the Rating List, each of the entries was split so as to assess the ATMs separately from the store hereditament with effect from (wef) the 1st April 2010.

The Worcester Store

15. The Worcester Store is open from 08:00 to 22:00 Monday to Saturday and 11:00 to 17:00 on Sunday. The ATM is accessible 24 hours a day. The customer facing display of the ATM is accessed via a hole in the external wall of the store. The ATM itself is located within SSL’s internal cash room. Access to the cash room is via a secure lobby with an outer and inner door.
16. The Worcester Store was included in the Rating List with a RV of £875,000 with effect from 1st April 2010, described as Superstore and Premises. On 25th March 2014 the VO deleted the entry and made two new list entries as follows:

£875,000 RV wef 1st April 2010 for the host store; and

£8,300 RV wef 1st April 2010 for the site of the ATM.
17. On 12th January 2015 the VO revised the Rating List entry for the host store to RV £855,000 wef 22nd March 2012. The list entry for the site of the ATM was not altered at this time.
18. SSL occupies the premises known as the Worcester Store pursuant to a lease. The ATM is located at the Worcester Store pursuant to an agreement between the SB and JS dated 8th February 2007. The agreement continues until terminated under Clause 14 of the Agreement. SB pay a licence fee in accordance with the Agreement.

The Stroud Store

19. The Stroud Store is open from 7:00 to 22:00 Monday to Saturday and 10:00 to 16:00 on Sunday. The ATM is accessible 24 hours a day. There are two ATMs located at the store. The customer facing displays of the ATMs are accessed via holes in the external wall at the front of the store. The ATMs are located within SSL's internal cash room. Access to the cash room is via a secure lobby with an outer and inner door. The store was redeveloped in 2011 and the ATMs were moved to their current locations. The Rating List entry of the host store was amended by the Valuation Officer with effect from 23rd November 2011 to reflect these changes.

20. The Stroud Store was included in the Rating List with an RV of £1,070,000 wef 1st April 2010, described as Superstore and Premises. On 27th January 2012 the VO revised the list entry for the store to RV £1,500,000 wef 23rd November 2011. On 28th March 2014 the VO deleted the entry and made two new list entries as follows:

£1,070,000 RV wef 1st April 2010 for the host store; and

£11,750 RV wef 1st April 2010 for the site of the ATMs.

21. On 8th April 2014 the VO deleted the list entry for the host store at 23rd November 2011 and made a new entry at RV £1,500,000. No alteration was made to the list entry for the site of the ATMs.

22. SSL occupy the premises known as the Stroud Store pursuant to a lease. The ATMs are located pursuant to an agreement between the SB and J S dated 8th February 2007. The agreement continues until terminated under Clause 14 of the Agreement. SB pay a licence fee in accordance with the Agreement.

Cardtronics Europe Limited

23. The appeals relate to the 2010 Rating List and concern the treatment of sites of ATMs situated at retail properties and the offices of a Building Society.

24. In respect of the 'Cardtronics' appeals there are three lead appeal sites where the ratepayers dispute the entries, Londis Convenience Store, 1 Moorhall Road, Harefield, Uxbridge, Middlesex, UB9 6PE (the Harefield Store); West Bromwich Building Society, 153 High Street, Princess Parade, West Bromwich, B70 7QX (West Brom BS), and Costcutter Convenience Store 16/18 Barley Rise, Strensall, York, YO32 5AA (the York Store).

25. The AVD for the appeals is 1st April 2008. The Material Day on the issue of whether the sites of the ATMs should be assessed separately is the 1st April 2010 in respect of the Harefield Store and the West Brom BS and 25th September 2012 in respect of the York Store. I understand that the entry in respect of the York Store should be with effect from 1st April 2010 but was incorrectly entered by the VO. I am advised by the parties nothing turns on this point and the ratepayer accepts the correct date. By alterations to the Rating List, each of the entries was split so as to assess the sites of the ATMs separately from the host hereditament.

The Harefield Store

26. The Harefield ATM is a through the wall site situated on the external wall of the convenience store next to the store entrance and available to the public 24 hours a day. It is located on the front of the store, which is situated within a small parade of shops serving a local housing estate. Illuminated signage adjacent to the machine advertises this availability. The public have access to the ATM when the shop is closed as the site is accessed by the public from the pavement without restriction.
27. The shop frontage is approximately 10.2m long. The shop is at ground floor level only and its total NIA is measured by the VO at 58.3m². The ATM itself is 0.45m wide, 0.8m deep (and thus occupies 0.36m² of floor space) and 1.4m high. The opening hours of the shop are 06:00 to 21:30, seven days a week. The existing ATM was first installed on site in 2008.
28. The Harefield store was included in the Rating List at RV £9,700 wef 1st April 2010, described as Shop and Premises. On 14th March 2014 the VO deleted this List entry and made two new entries as follows:

RV £9,300 RV wef 1st April 2010 for the store; and

RV £3,750 RV wef 1st April 2010 for the site of the ATM.

29. The ATM site at Harefield is occupied under an agreement dated 26th March 2007 between Cardpoint Services Ltd (taken over by Cardtronics) and Londis Harefield. The agreement was for a term of five years which would be automatically renewed for additional periods of seven years. The licence fee is expressed as £6,000 per annum plus 25 pence per transaction over 1,500 per month.

The West Brom BS

30. The West Brom BS ATM is located at a property situated at the junction of High Street and Bull Street, being the last property in the pedestrianised section of the High Street. It comprises a ground floor building society branch with two upper office floors. The ATM is a through the wall facility available to the public 24 hours a day. It is located on the High Street frontage in the far right hand pane of glass of the West Bromwich Building Society which serves the town centre. The public have access to the ATM when the building society is closed as the machine is accessed by the public from the pavement to which there is unrestricted access. The ATM is situated adjacent to the building society's main entrance.
31. The NIA for the building society, as measured by the VO, is 430.2m², 130.2m² of which is on the ground floor. The cabinet in which the ATM sits is 1.11m wide, 1.16m deep (and thus occupies 1.29m² of floor space) and 2.0m high. The ATM was first installed at the site in 2007. On 7th January 2014 the VO deleted the List entry for the building society and made two new entries as follows:

RV £24,000 RV wef 1st April 2012 for the West Brom BS; and

RV £8,300 RV wef 1st April 2010 for the site of the ATM.

32. The ATM site at West Bromwich BS was occupied under an agreement dated 1st April 2007 between Bank Machine Ltd (taken over by Cardtronics) and West Brom BS. Under the agreement there is a fee of 5 pence per withdrawal paid by the operator to the host.

The York Store

33. The York ATM is a through the wall site available to the public 24 hours a day. The site of the ATM is located on the front of a Costcutter Convenience store, which is situated within a parade of shops serving a 1980's housing estate. Two bollards to the front provide additional security for the ATM. The public have access to the site when the shop is closed as the site is accessed from the pavement to which there is unrestricted access.
34. The shop frontage is approximately 12.3m long. The shop is at ground floor level only and the NIA for the shop as measured by the VO is 193.74m². The cabinet in which the ATM sits is 1.07m wide, 1.035m deep (and thus occupies 1.1m² of floor space) and 2.05m high. The opening hours of the shop are 06:00 to 22:00 (Monday to Saturday) and 07:00 to 22:00 (Sunday). An ATM was first installed at the site in 2006. On 20th May 2014 the VO deleted the List entry for the store and made two new entries as follows:

RV £20,500 RV wef 25th September 2012 for the store; and

RV £3,750 RV wef 25th September 2012 for the site of the ATM.

35. The ATM site at York is subject to an agreement dated 15th December 2009 between Cardpoint Services Ltd and K & N Retail Ltd. The agreement was for an initial period of three years and on expiry it automatically continues for five year periods unless notice is given. Under the agreement a fee is payable to the host depending on the number of withdrawals per month.

Tesco Stores Ltd (TSL) and Tesco Personal Finance plc (TPF)

36. The appeals relate to the 2010 Rating List and concern the treatment of sites of ATMs situated at retail properties. The TPF ATMs are situated at the host premises by way of a site licence dated 29th November 2002 and made between TSL and TPF. The site licence relates to Tesco Premises in England, Scotland, Wales and the Isle of Man.
37. In respect of the 'Tesco Group' appeals there are three lead appeal sites where the ratepayers dispute the entries in respect of the host store, Tesco, High Street, Brownhills, Walsall WS8 6DZ (the Walsall Store), Tesco Extra, 10 Jennison Street, Nottingham, NG6 8EQ (the Nottingham Store), and Tesco, 18 Main Street, Bilton, Rugby, Warwickshire, CV22 7ND (the Bilton Store).

38. The AVD for the appeals is 1st April 2008. The Material Day on the issue of whether the sites of the ATMs should be assessed separately is the 1st April 2010 in respect of the Walsall Store, the 10th December 2010 in respect of the Nottingham Store and 15th January 2011 in respect of the Bilton Store.

The Walsall Store

39. The Walsall Store is located on the edge of Brownhills town centre. The sales area is rectangular in shape and the ATMs comprise of two internal facing machines located on the sales floor. The ATMs are next to the customer toilets and to the left-hand side of the store from the customer entrance. The ATMs were installed before 1st April 2010.
40. The Walsall Store was included in the Rating List at RV £780,000 with effect from 1st April 2010, described as Superstore and Premises. On 14th August 2014 the VO deleted this List entry and made two new entries as follows:

RV £780,000 RV wef 1st April 2010 for the Superstore; and

RV £16,550 RV wef 1st April 2010 for the site of the ATM.

Prior to the hearing the Rating List entry had been deleted to be replaced by two entries each for the site of an ATM at £8,300 RV in accordance with VO Notices dated 27th January 2016 and 29th January 2016.

The Nottingham Store

41. The Nottingham Store is located in Bulwell Town Centre. The store is a “stilted store” with covered car parking underneath the store and open car parking adjoining. The main sales area is at first floor level and there is a mezzanine sales area with traveller access. There are three entrances to the store – from the car park, from Main Street, and from a pedestrianised area running between Main Street and Jennison Street. There are two ATMs, located within an ATM room, situated on the ground floor, facing onto this pedestrianised area available for use 24 hours a day, and a further ATM located on the first floor next to the top of the stairs and adjacent to the café and customer toilets available only when the store is open to the public.
42. The Nottingham Store was included in the Rating List at RV £1,840,000 with effect from 10th December 2010, described as Superstore and Premises. On 14th August 2014 the VO deleted this List entry and made two new entries as follows:

RV £1,840,000 RV wef 10th December 2010 for the Superstore; and

RV £11,250 RV wef 10th December 2010 for the ATM site.

43. Prior to the hearing the Rating List entry for the ATM site had been deleted to be replaced by two entries, one for the site of two ATMs at £7,500 RV and the other for

the site of a single ATM at £3,750 RV in accordance with VO Notices dated 27th January 2016 and 29th January 2016.

The Bilton Store

44. The Bilton Store is a Tesco Express Store located in Bilton village which is situated to the south-west of Rugby town centre. The store fronts onto Main Street, which is the village high street, at the corner of Lawford Lane and has a small local authority operated car park to the rear and a few car parking spaces at the front of the store. The ATM is situated to the front right-hand side of the retail area of the premises adjacent to the tills and has a separate ATM room. Customers use the ATM through a hole in the wall within the retail area of the premises. The ATM can only be accessed during the trading hours of the host store. The ATM room is accessed by an external entrance at the extreme right-hand side of the store front, on the corner with Lawford Lane.
45. Initially there was no ATM at the store because of planning restrictions. The ATM was installed later and was first available on 15th January 2011. The Bilton Store was included in the Rating List at RV £29,750 with effect from 15th January 2011, described as Shop and Premises. On 18th September 2014 the VO deleted this List entry and made two new entries as follows:

RV £29,750 RV wef 15th January 2011 for the Shop; and

RV £8,300 RV wef 15th January 2011 for the site of the ATM.

Co-operative Bank plc (the Bank) and Co-operative Group Limited (CGL)

46. The appeals relate to the 2010 Rating List and concern the treatment of sites of ATMs situated at retail properties and a petrol Service Station. The ATMs are situated at the host premises by way of an agreement between the Bank and CGL. The agreement was for an original term of five years and then automatically renewed for continuous periods of twelve months unless either party gives notice.
47. There are three host locations which are the subject of these lead appeals in respect of the sites of the ATMs, 10 Windermere Road, Newcastle under Lyme, Staffordshire, ST5 3HH (the Newcastle Store), Lockwood Service Station, Lockwood Road, Huddersfield, HD1 3QU (the Service Station) and Bradford Road, Riddlesden, Keighley BD21 4EB (The Keighley Store).
48. The AVD for the appeals is 1st April 2008. The Material Day on the issue of whether the ATMs should be assessed separately is 1st April 2010.

The Newcastle Store

49. The Newcastle Store is open from 07:00 to 22:00 hours each day. The ATM is accessible at similar times. During times when the store is not staffed the shop front is covered by a shutter which also covers the ATM. The shutter is opened and closed by the store's staff. The customer facing display of the ATM is accessed via a hole in

the external wall of the store. That external wall of the store is at the front of the store. The ATM is located within the store, namely to the right hand side of the store's entrance door and abutting the front and side wall of the store. The ATM is surrounded by timber panels. The ATM housing occupies 1.38m².

50. The store was included in the List with an RV of £35,250 wef 1st April 2010. On 16th January 2014 the VO deleted the entry and made two new entries as follows:

£35,250 RV for the store wef 1st April 2010; and

£5,900 RV for the site of the ATM wef 1st April 2010.

The Service Station

51. The Service Station is open from 06:00 to 23:00. The ATM is accessible 24 hours a day. The customer facing display of the ATM is accessed via a hole in the external wall of the petrol station store. That external wall of the store is at the front of the store. The ATM itself is located within the manager's office contained within the store. The ATM housing occupies 0.54m².

52. The Service Station was included in the Rating List with an RV of £44,750 wef 1st April 2010. On 15th January 2014 the VO deleted this Rating List entry and made two new entries as follows:

£44,750 RV for the Service Station wef 1st April 2010; and

£11,250 RV for the site of the ATM wef 1st April 2010.

The Keighley Store

53. The Keighley Store is open from 06:00 to 22:00. The ATM is accessible during similar hours. Outside of store opening hours, the shop front is covered by a shutter. This shutter is opened and closed by the store's staff. The external customer facing display of the ATM is covered by a separate shutter operated independently of the shutter to the shop front by the store's staff.

54. The customer facing display of the ATM is accessed via a hole in the external wall of the store. The external wall of the store is not located at the front of the store, rather on its eastern side. Two bollards stand directly in front of the ATM. The ATM is located within the store, namely to the left hand side of the store's entrance door. The ATM is surrounded by an enclosure constructed of timber panels. The store staff do not hold keys to the cabinet. The ATM housing occupies 1.15m².

55. The store was included in the Rating List with an RV of £31,750 wef 1st April 2010. On 7th August 2012 the VO deleted this Rating List entry and made two new entries as follows:

£28,750 RV for the store wef 1st April 2010; and

£8,300 RV for the site of the ATM wef 1st April 2010.

Case Law

56. The following cases were cited by the parties and have been used by me in making my decision:

Woolway (Valuation Officer) v. Mazars LLP [2015] UKSC 53

Townley Mill Company v. The Assessment Committee For the Assessment Area of Oldham HL (E) [1936]

Vtesse Networks Limited v. Bradford (VO) [2006] EWCA Civ 1339

Kennett District Council v. British Telecommunications [1983] RA 43

John Laing & Son Limited v. Assessment Committee for Kingswood Assessment Area and Others [1949] 1 KB 344

Westminster Council v. Southern Railway Company and W H Smith & Son Ltd [1936] A.C. 511

Wimborne DC v. Brayne Construction Co Ltd [1985] RA 234

Stringer (VO) v. J Sainsbury PLC and others [1992] RA 16

Assessor For Lanarkshire Valuation Joint Board v. Clydesdale Bank Plc [2005] RA 1, 2005 SLT 167

Assessor For Central Scotland Joint Valuation Board v. Bank of Ireland [2010] CSIH 91

Selecta UK Limited v. Lothian Valuation Joint Board Assessor [2010] RA 37

Decision and Reasons

57. The starting point in these appeals is to identify whether the site of the ATM in each appeal is a hereditament in accordance with the appropriate legislation. In order to identify the hereditament all parties have initially referred me to the Supreme Court decision in *Woolway (Valuation Officer) v. Mazars*. Lord Sumption JSC sets out at paragraph 4 of his decision the statutory test for a hereditament and the challenge for courts and tribunals:

4. “Hereditament” is a somewhat archaic conveyancing term which as a matter of ordinary legal terminology refers to any species of real property which would descend upon intestacy to the heirs at law: see section 205(1)(ix) of the Law of Property Act 1925. In a conveyance, there is no problem about its bounds. They will be identified by the deed. But notwithstanding more than

four centuries of experience, the question how a hereditament is to be identified for rating purposes remains in important respects unclear. Section 64(1) of the Local Government Finance Act 1988 defines a hereditament as anything which would before the passing of the Act have been a hereditament for the purposes of section 115(1) of the General Rate Act 1967. That means a “property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in the valuation list.” The result, in the absence of further statutory definition, is that the meaning of “hereditament” is left to be elucidated by the courts in accordance with the principles underlying the rating Acts.

58. The parties drew my attention to the observations of Lord Neuberger of Abbotsbury PSC in respect of further advice on the issue of a hereditament:

46. The statutory definition of “hereditament” in section 115(1) of the General Rate Act 1967 states that it is “such a unit of ... property which is, or would fall to be, shown as a separate item in the valuation list.” While, at least to some extent, that is a circular definition, it does contain the expression “unit of property”, which carries with it the notion of a single piece of property, what in Scots law is called unum quid. And, in that connection, I entirely agree that there should be no difference of approach between Scottish and English law on the issue raised on this appeal.

*47. Normally at any rate, both as a matter of ordinary legal language and as a matter of judicial observation, a hereditament is a self-contained piece of property (ie property all parts of which are physically accessible from all other parts, without having to go onto other property), and a self-contained piece of property is a single hereditament. As the Scottish Lands Tribunal said in *Burn Stewart Distillers plc v Lanarkshire Valuation Joint Board* [2001] RA 110, 140, “the emphasis on the geographical test is an aspect of recognition that lands and heritages are physical subjects”. Thus, two separate self-contained buildings, even if sharing a common wall, would not be expected to be a single hereditament but two hereditaments. And a building no part of which was self-contained would be expected to be a single hereditament.*

*48. At first sight, it might appear that whether certain premises constitute one hereditament or two hereditaments should not depend on how those premises are occupied. To quote again from *Burn Stewart*, “[a] ‘business’ is not a concept based on physical or heritable factors” (p 141). Of course, occupation is traditionally a central issue in rating law, but at least primarily for the purpose of determining who, if anyone, is in rateable occupation. On the face of it, however, it may be thought that there should be no logical connection between the identification of the boundaries or extent of a hereditament and the identification of the rateable occupier of that hereditament.*

49. *Nonetheless, on further reflection, it can be seen that the occupation of premises can in some circumstances serve to control their status as one or more hereditaments. An office building let to and occupied by a single occupier would be a single hereditament, but if the freeholder let each floor of the building to a different occupying tenant, retaining the common parts for their common use, then each floor would be a separate hereditament. Furthermore, it is well established that premises are not merely liable to have their rateable value assessed, but also to have their status as a hereditament assessed, by reference to the machinery, plant and other structures which have been placed in or on them, whether by the occupier or someone else, sometimes even if the structure retains its character as a chattel – see per Lord Radcliffe in *London County Council v Wilkins (Valuation Officer)* [1957] AC 362, 378.*

59. Now pausing at that point to take breath and reflect on the words of Lord Neuberger, do they assist? The question the Supreme Court was faced with was whether or not different floors of an office block under common occupation should be entered in the rating list as a single entry. The parties drew my attention to these words arguing they are the correct approach in identifying a separate hereditament in respect of each ATM site in the appeals before me. The appellants argue that the current appeals fail this first test and identified two points of principle in relation to their appeals:

- i. None of the ATM sites are physically self-contained units of property (as they can only be found within the host stores);
- ii. As the ATM is a non-rateable piece of plant and machinery (not disputed) their presence within the hereditament cannot be relied on in order to identify the appeal hereditament.

60. Put quite simply when you remove the non-rateable plant and machinery from the site there is nothing left to identify it. There is no marker. Furthermore, the appellants brought to my attention that the agreements and contracts in place do not identify a specific area within the host store which is the footprint of the ATM. In all appeals they are national or standard agreements (in the case of West Brom BS for more than one site) where the operator has the right to install an ATM but for which the ATM location is not specified. There may in some appeals be a ‘hole in the wall’ (taken in its literal sense) but that this would fall under repair and can be assumed to have been covered up.

61. In support of this contention the appellants refer me in the first instance to the House of Lords decision in *Townley Mill Company v. The Assessment Committee for the Assessment Area of Oldham*. In this decision it was found that Townley Mill Company were not rateable as the occupiers of premises used as a warehouse for the process machinery as, amongst other matters, no account was to be taken of the value of the plant and machinery contained within the building. In particular, the reasoning of Lord Russell of Killowen is cited by the appellants:

“My Lords, I agree with the opinion of the Lord Chief Justice. It was said that the section only referred to the value of the process plant and machinery, and did not forbid the taking into account its existence and presence in the

hereditament; and that accordingly the section in no way interfered with the application of the old authorities, with the result that the appellants could be rated in respect of their occupation of the hereditament for the purposes of housing the process plant and machinery. This contention is too subtle for me; for I am unable to see how the value of the occupation for this purpose to a hypothetical tenant can be assessed without some consideration of the value of the plant and machinery housed. Indeed, that this is so appears from the case stated, in which occurs this passage:- "The capital value of the loose chattels on the premises was very small and the rent which a hypothetical tenant would pay to store them would be significant"."

62. The difficulty with this decision, which I do not dispute in any way and would need to follow, is that it is not on all fours with the appeals before me. Mr Morshead took me through this decision and the later decision in *Kennett* which I will come to. But in short it appears that the issue in *Townley Mill* was purely to do with the value of an obsolete factory which contained redundant plant and machinery. I have no doubt that when the factory was in full operation the building was valued (without any account being taken of the value of the plant and machinery). In the appeals before me there is no suggestion that the site is obsolete, indeed far from it, with in most cases (the possible exception being the Co-op) a sum being paid to use the area and onto which the operator of the ATM brings his own non-rateable plant and machinery. The issue before me is not the rateability of the machinery but the land on which it is placed and which other items are stored.
63. As identified by Mr Morshead in his opening, each of the ATM sites is a self-contained piece of land in accordance with the test. As Mr Morshead skilfully argues, each site may be small and you have to imagine yourself shrunk down into a person of very small dimensions in order to take access within the site, but it can be done. Every part is physically accessible from all other parts without having to go onto other property. Each site meets the test set out by Lord Neuberger as he identified in the *Burn Stewart* decision, in that there is a clear defined physical area. Its definition might not be marked by chalk or some other boundary marking but is a physical area which the host store or premises cannot use. It might not be identifiable until the operator takes possession by placing his machinery on it but once this occurs it is. The area required, based on the type of machine is known, and indeed at least one of the ratepayers argued that the siting of an ATM within a store is inconvenient to the host store. Its size, in some cases, might be quite small but that is beside the point. Optic fibres are rateable (see *Vtesse*). If any further evidence was required, then look no further than its purpose after removing the ATM, the land is used to store cash and stationery belonging to the operator which is later distributed to customers. I describe it as a shadow area. The land is not used by the host store but by the operator as a site for an ATM.
64. The flaw in the appellants' contention on this point is that they start with reference to the host store. Put simply, if the host store is self-contained then the ATM cannot possibly be so as it is included within the self-contained store. Access to it will be through an enclosed area of the store. It was argued by the appellants that this resulted in each ATM site failing Lord Neuberger's self-contained test. I do not

agree, the emphasis in Lord Neuberger's test is that the hereditament under dispute is self-contained and that test, as identified by Mr Morshead, is met. This is not the correct starting point. Many enclosed shopping centres are only accessed through areas belonging to someone else but that does not mean that they are not self-contained.

65. Mr Mould commences his argument quite forcibly by establishing that the starting point is the host premises which is a separate self-contained unit of physical property and a rateable hereditament in its own right. He then argues that once that is established the next test is whether it is possible to identify a separate self-contained unit within it. He then follows this with a test as to whether there is a separate unit of occupation. If you look at the issue purely from the view of the host store and consider the advantages that an on site ATM has for them then it is quite possible to understand how he reaches his conclusion that ATM sites are not separately rateable.
66. The difficulty with this approach is that if you are not careful, and indeed the trap Mr Mould falls into, is that you automatically focus on the host store and its relationship with the ATM site and not on identifying the hereditament in dispute and then determining who is in occupation. A blinkered approach is required until you answer those two questions and then you need to take the blinkers off and view its relationship with the host store (which I will come onto later). Mr Mould and his colleagues failed to take heed of the words of Lord Russell which I quote later and focus on the wrong premises.
67. The decision in *Kennett District Council v. British Telecommunications* held (in summary) that the respondents were in rateable occupation since the justices were entitled to make the finding of fact that the buildings were for the housing of telephone equipment and it followed that the respondents were enjoying the accommodation from the moment that some equipment had been moved in. I will take two quotes from Lord Keith of Kinkel which confirms my view, as put forward by Mr Morshead:

"In assessing the soundness of the respondents' argument it is necessary to give close attention to the nature of the hereditament sought to be rated. That hereditament is land with a building erected on it. It does not include any plant or machinery within the building.

...Nothing can be rated which is not capable of being valued for the purpose of rating, and nothing which is not so capable can be the subject of rateable occupation."

68. The appellants argue that in their appeals there is no building and of course they are correct. However, what is being rated is the site of the ATM, a piece of land clearly defined and on which the operator stores its money and stationery. This approach by the VOs to rate the site is not that remarkable when you consider the decision in *Vtesse Networks Limited v. Bradford (VO)* [2006] EWCA Civ 1339 where it was found that Vtesse were in occupation of the entire network of cables and ducts which constituted a hereditament, even though they only owned around 4 km of the total 143km. The Court of Appeal upheld the decision of the then President of the Lands

Tribunal and I have taken just a short extract of the President's judgment which was cited in the Court of Appeal decision:

“38. The issue in the present case is whether the leased fibres that are spliced to Vtesse's own-build fibres but are physically located within the cables and ducts of the leasing companies should be treated as forming, with the own-build parts of Vtesse's telecommunications system, a single hereditament in the occupation of Vtesse or as constituting parts of the telecommunications hereditaments of the leasing companies. There is no dispute that neither their extremely small diameter nor the fact they are physically bound in to the cables of the leasing companies prevents them from forming part of Vtesse's hereditament. Whether they should be treated as doing so depends on an application of the principles established in the Westminster case to the facts that I have set out above. It may well be that the logical starting point is to observe that, except at either end where they are spliced to Vtesse's own-build fibres, they are physically part of the leasing companies' cables and then to consider (as in the Westminster case) whether a separate occupation has been carved out of the cables by virtue of the use of the fibres by Vtesse. The circumstances are not exactly parallel to those in the Westminster case because the parts of Victoria station that were there held to be separate hereditaments (the kiosks, for example) were not, as the leased fibres are, connected to property owned and occupied by the lessee or licensee. But the inquiry is essentially the same.

69. It was found that the use of cables by Vtesse carved out a separate occupation and in the appeals before me I must decide whether the use of the ATM sites by the operators carves out a separate occupation.

70. But this is not the end of the issue, there is case law in England which the appellants rely on, particularly Sainsbury's, which supports their case. Furthermore, there is case law in Scotland which all the appellants say supports their case. Mr Morshead was fairly dismissive of the Scottish cases but I note that the Supreme Court considered there should be a consistency of practice in England, Wales and Scotland. Lord Sumption JSC states when speaking about Scottish cases (which The Supreme Court found extremely helpful):

“One would not expect the law to be any different when the identical questions arise for decision in England.”

71. Whilst I find it is possible to carve a hereditament out of the site of an ATM that is by no means the end of the matter. The hereditament test, once the geographical test is met is set out in *John Laing & Son Limited v. Assessment Committee for Kingswood Assessment Area and Others* and *Westminster Council v. Southern Railway Company and W H Smith & Son Ltd*. I start with reference to the *Westminster* case, a decision that many valuers will be aware of. It is particularly helpful as in that case, just in this, the issue was whether separate assessments (or hereditaments) could be carved out of a host premises (Victoria Station) which was in the control of another.

72. The control by Southern Railways included amongst other things, access (when the station was closed), to obey the by-laws, sell items that were approved (and conversely not those that were objected to), W H Smith staff were under the control of the general manager of the station and a requirement to conform to the Company's reasonable orders. One might say quite considerable control by the Railway Company. I will now look at the fine words of Lord Russell of Killowen which the parties drew to my attention:

“In the next place I would make a few general observations upon rateable occupation. Subject to special enactments, people are rated as occupiers of land, land being understood as including not only the surface of the earth but all strata above or below. The occupier, not the land is rateable; but, the occupier is rateable in respect of the land which he occupies. Occupation, however, is not synonymous with legal possession: the owner of an empty house has the legal possession, but he is not in rateable occupation. Rateable occupation, however, must include actual possession, and it must have some degree of permanence: a mere temporary holding of land will not constitute rateable occupation. Where there is no rival claimant to the occupancy, no difficulty can arise; but in certain cases there may be a rival occupancy in some person who, to some extent, may have occupancy rights over the premises. The question in every such case must be one of fact – namely, whose position in relation to occupation is paramount, and whose position in relation to occupation is subordinate; but, in my opinion, the question must be considered and answered in regard to the position and rights of the parties in respect of the premises in question, and in regard to the purpose of the occupation of those premises. In other words, in the present case, the question must be, not who is in paramount occupation of the station, within whose confines the premises in question are situate, but who is in paramount occupation of the particular premises in question.

73. Earlier I criticised Mr Mould and all the appellants for failing to concentrate on the ATM site in considering the issue but rather to focus on the host store. Lord Russell requires those considering occupation, where there may be rivals, to answer the question of paramount occupation with regard to the position and rights of the occupation of the premises and the purpose of the occupation of the premises. The premises Lord Russell is talking about are those in dispute. Too many of the appellants' witnesses focused on the advantages or purpose of an ATM for the host store and access rights over the store rather than the position and rights of the parties in respect of the ATM site.
74. In all the appeals before me the licence or agreement signed by the operator and host store provides for the operator to install and operate an ATM at the site. In respect of Tesco it is worded:

‘In consideration of the payment of the fees and subject to the terms of this agreement, Tesco grants TPF the sole and exclusive right from the commencement date and throughout the term of this agreement to install and/or operate ATMs at Tesco Premises.’

In respect of Cardtronics at the West Brom site it couldn't be clearer, particularly when you consider that WBBS doesn't provide its own customers with cash point cards:

‘Bank Machine wishes to install ATMs at certain mutually agreed sites in WBBS premises.

WBBS is willing to make available space to Bank Machine for this purpose.’

The other Cardtronics agreement is equally as clear:

‘The Licensee is the owner of ATMs which it installs in commercial premises to which members of the public have access. The Licensor is the owner of the premises.

The Licensee wishes to install their ATM in the Licensor's premises and the Licensor wishes to grant the Licensee a licence to install their machines at the premises on the terms set out in this Licence’.

Sainsbury's Group or Supermarkets have a similar agreement with Sainsbury's Bank:

‘JS or members of the JS Group own and/or operate a number of supermarkets, petrol stations, convenience stores and other retail sites.

It has been agreed that SB shall have the right to install and operate ATMs at these premises on the terms of this Agreement.’

In respect of the Co-op:

‘The Bank is seeking to install and operate ATMs in Locations at Premises other than its own.

The Society has agreed to accept installation and operation of Bank ATMs on its Premises as listed in Schedule 11 and agrees to grant an appropriate licence to enable the Bank to do so’.

75. The appellants all take great issue over the arrangements in place. As they point out none grant a lease to the operator. Ownership of the land remains with the host site. The operator is obliged under the arrangement to undertake certain requirements as well as the host. The arrangements also place a number of conditions on both parties and in some circumstances grant the host a right of access or require the operator to have restricted access. Furthermore, the repairing and refilling of an ATM requires

the use of the host store. Both the issue of the lack of lease and the degree of control are addressed by Lord Russell:

“In truth the effect of the alleged control upon the question of rateable occupation must depend upon the facts in every case; and in my opinion in each case the degree of control must be examined, and the examination must be directed to the extent to which its exercise would interfere with the enjoyment by the occupant of the premises in his possession for the purposes for which he occupies them, or would be inconsistent with his enjoyment of them to the substantial exclusion of all other persons.

In my opinion the crucial question must always be what in fact is the occupation in respect of which someone is alleged to be rateable, and it is immaterial whether the title to occupy is attributable to a lease, a licence or an easement’.

76. The issue about the lack of granting of a lease is easily dealt with as the test is who is in occupation of the ATM sites. The granting of the licence or agreement clearly grants obligations, albeit minor and basic ones on both parties. Ms Ward helpfully set out a list of the arguments and evidence put forward by the appellants which I list below. None of them interfere with the enjoyment by the ATM operators of the premises in his possession for the purposes of which he enjoys them. Some may place a restriction on the time when matters such as repairs or replenishing of the machine can take place but in real terms are minor matters and those that many tenants in the real world face.
77. A shopkeeper may have restrictions placed on him by the owner of the surrounding land on when deliveries or repairs can be undertaken. In some cases the landlord may provide services such as repairs, insurance, replenishing supplies to the premises or even cleaning but these don't result in the tenant no longer being in occupation. A Landlord may offer an incentive to a tenant to occupy premises such as a reverse premium or as in the case of some of the operators assist with the costs of installation of an ATM. A Landlord may well dictate which premise is occupied by a tenant where there may be a choice. A number of other matters focus on the host store and not the appeal hereditament. I see absolutely no force in the argument put forward. I accept that a tenancy does not exist in respect of any of the appeals but all I am demonstrating is that just, as in the case of tenancies, none of the matters mentioned interfere with the operators enjoyment of the premises. These are all simply within the spirit of the *Westminster* decision where the occupiers of stalls, kiosks and hairdressing salons were held to be in rateable occupation.

Sainsbury's

SSL are the entity who operate the stores, employ staff, own stock and equipment at the stores. Everything in the cash room is owned by SSL including safes and furniture but excluding the ATMs and cash contained in the ATM or held in the safe for ATMs.

SSL order and replenish the consumables such as receipt paper.

The ATMs are within the access control of SSL staff and held within SSL's cash room, the Loomis courier does not enter, NCR engineer can only visit when an SSL staff member is present.

SSL contributes to the cost of the installation of an ATM.

SSL repairs the areas surrounding the ATM, is obliged to keep them in good condition at their own cost, provides an alarm for the ATM and secure room, pays for utilities, maintenance of the telecoms equipment, alarms and security of the ATM and doesn't seek reimbursement.

SSL control the location of an ATM.

SSL can terminate the agreement without compensation.

SSL contract with Securitas for the collection and delivery of cash.

SSL provide and specify the design of fascia surrounding the hole in the wall.

The keys to the cash room are with SSL staff.

Complaints and enquiries may go to SSL staff about the ATM.

SSL staff can order more cash if they think the Bank's prediction is insufficient.

SSL maintains the machines.

The risk in cash is with SSL.

Cardtronics

The need to use space inside the store to service and replenish an ATM.

Magazines can be placed for sale on top of an ATM.

Tesco

TSL controls whether an ATM is installed, where and when removed.

TSL must construct and maintain secure premises for an ATM, provide for and pay for building work, obtain consents, provide communication networks, provide alarm and panic buttons, pay rates, provide electricity and clean the ATMs.

TSL have access to the ATM keys.

Loomis or NCR staff might be turned away.

Areas of the retail space are taken up by the ATM when the housing is extended.

TSL maintain the site, supply power, alarm systems and telephones.

The site is provided by TSL as a joint venture.

TSL's policy is to provide ATMs.

TPF will continue to operate the ATM even if it is unprofitable.

Co-op

The Group provide electrical power, security arrangements and insurance.

The Group is responsible for security so the Bank's access is subordinate to the control of the Group staff.

Group staff have a helpdesk number for customer queries.

Store staff carry out weekly checks to comply with the requirements of LINK.

The Group arrange Landlord consents.

The contractors need to show ID for security purposes and sign a visitors book.

There are shutters over the ATMs outside of opening hours of the store.

There is advertising on ATMs for Group initiatives.

There is a Group policy that ATMs are free to use.

78. There is a degree of reciprocity between the operator and host store in the agreement according to the appellants which affects control of the ATM. I do not see how that affects paramount control. Frequently leases will place obligations on both parties. I have no doubt that a tenant in an undercover shopping centre has a number of obligations in a lease as will the landlord. None of those will mean that the tenant is not in occupation. Whilst there is no lease in these appeals the same principle holds water. None of what is mentioned affects the operators' enjoyment of the ATM site, in fact if anything they enhance it. Mr Morshead cited *Wimborne DC v. Brayne* to demonstrate the point.
79. I find none of these arguments compelling. The whole point of the *Westminster* case was that the railway company had a degree of control over the occupiers of various shops and a bank. The principles in the *Westminster* decision in respect of the ingredients for rateable occupation tend to be cited in rating matters from the case of *John Laing*:

“Mr Rowe has said that there are four necessary ingredients in rateable occupation, and I do not think there is any controversy with regard to those ingredients. First there must be actual occupation, secondly that it must be

exclusive for the particular purposes of the possessor, thirdly that the possession must be of some value or benefit to the possessor; and fourthly, the possession must not be for too transient a period...”

80. Clearly the four ingredients are met by the operator of each ATM site and they are, therefore, in occupation of each ATM site. The area is clearly defined, is self-contained, they have exclusive use for their purpose, the possession is of value and from the evidence given at the hearing ATM sites rarely move, so it is not too transient. I pause briefly on that point. Due to the arrangements of the licences and agreements if it can be demonstrated that a particular ATM site is frequently changed at a host store then it would appear to me quite permissible to find the occupation is too transient. But this is not the case in any of the appeals before me.
81. In each appeal I have a hereditament (the ATM site) in the occupation of the operator and a hereditament host store in the occupation of someone else. The appellants argue that Scottish and English case law allow the two be merged into one as they serve the same purpose citing case law to support this contention. My starting point in deciding this point must be *Mazars*. It seems to me that the Supreme Court make an assumption in addressing the question that the only time when two or more hereditaments may be merged into one is where they are, as a starting point, in the same occupation. Taking the following words from Lord Sumption:

“...The core concepts underlying the assessment of rates are that they are a tax on property and not on persons or businesses, and that the “hereditament” is the unit of assessment. The question at issue on this appeal is how different storeys under common occupation in the same block are to be entered in the rating list for the purpose of non-domestic rating”.

82. Indeed it appears to me from the tests set out by Lord Sumption that this is only permissible where all hereditaments at issue are under the same occupation. The issue simply does not arise otherwise. The appellants spent much time in evidence talking about the functional connection between the provision of the ATM and the use of the host store. This would be relevant if the hereditaments were geographically linked, in the same occupation and the VO argued that they were wholly dissociated as per Lord Gill in *Mazars*:

“Conversely, functionality in this sense may also be relevant where premises that are apparently geographically linked are wholly dissociated; for example, the hotel and the engine sheds at a railway station: North Eastern Railway Co v. Guardians of York Union [1900] 1 QB 733”.

but no such argument has been put to me. I therefore cannot accept that functionality or a purpose test as put to me by the appellants where the hereditaments are in separate occupation is relevant. To undertake such an approach would, in my opinion, undermine the decisions in *Westminster* and *John Laing*. Indeed such a test would result in a different outcome in the *Westminster* case. These principles of

rating have stood the test of time and remain as relevant today as they were many years ago.

83. Whilst I find that the decision in *Mazars*, having concluded the hereditaments are in separate occupation, compelling and binding on me and that the appeals cannot succeed, I will comment on the other cases put forward. In *Stringer (VO) v. J Sainsbury PLC and others* it was held that the secure room and security lobby were in the rateable occupation of J Sainsbury PLC and no other party. One of the reasons for this was that it was impossible to determine exclusive occupation as the Lands Tribunal was unable to draw a clear distinction between the six financial institutions and Sainsbury's use of the secure room and security lobby. This case, Sainsbury's argued, is on all fours with their submission before me and is binding and therefore I must follow. I do not accept that, I am only interested in the site of the ATM which I have already identified as being in the sole occupation of the operator (Sainsbury's Bank) and not the secure room or security lobby. Although this decision was criticised by the Scottish Courts, I would have reached the same conclusion as the Lands Tribunal on the facts as recorded. It does not disturb my decision in the appeals before me.

84. The Land Valuation Appeal Court found in *Assessor For Lanarkshire Valuation Joint Board v. Clydesdale Bank Plc* that five auto teller sites situated in retail stores should not be separately entered in the rolls. I will refer to two extracts of the judgment, one being part of the Lands Tribunal decision and the other being that of the Appeal Court. The Lands Tribunal held that:

"...It would be necessary to identify some degree of occupation by the bank which in a realistic way could be said to interfere with use of the whole premises for the retailer's purposes. The tribunal was unable to find a realistic basis for any such conclusion. It considered it abundantly clear that the machines were primarily for the benefit of the retailer in operating its store efficiently as a trading unit"

85. The Appeal Court went on to find that:

"The flaw in these appeals lies in the contention that the agreements confer a right of occupation of the floor space upon the bank. In my opinion, neither agreement has that effect. Both agreements relate to the supply, use and control of an item of moveable property that the bank supplies to the retailer, whether or not the bank looks after it on a day to day basis, for use by the retailer as one of its retail attractions".

86. With the greatest of respect to both the Tribunal and Court, I believe that they misdirected themselves by asking the wrong questions. The Lands Tribunal almost asked the right question in respect of occupation but focused on the store and not the site of the ATM. The Court looked at the agreement and not whether the ATM site was separately occupied. The difficulty with focusing purely on licences or leases in England is that it may not reflect what actually happens on the ground or address the hereditament test. I believe my earlier reference to the wise words of Lord Russell in

the *Westminster* case hold water and that the focus must be on the hereditament or area in dispute:

“...Where there is no rival claimant to the occupancy, no difficulty can arise; but in certain cases there may be a rival occupancy in some person who, to some extent, may have occupancy rights over the premises. The question in every such case must be one of fact – namely, whose position in relation to occupation is paramount, and whose position in relation to occupation is subordinate; but, in my opinion, the question must be considered and answered in regard to the position and rights of the parties in respect of the premises in question, and in regard to the purpose of the occupation of those premises. In other words, in the present case, the question must be, not who is in paramount occupation of the station, within whose confines the premises in question are situate, but who is in paramount occupation of the particular premises in question.”

I wonder whether if they now followed the decision in *Mazars*, which follows a great deal of excellent Scottish case law, whether they would come to the same conclusion? This is of course a matter for them.

87. In *Assessor For Central Scotland Joint Valuation Board v. Bank of Ireland* it was held there was no direct link between the ATM site and the operation of the sub post office as the ATM was provided for the use of the general public. Whilst following on from, and with careful reference to the earlier decision in *Clydesdale Bank*, it is another example of where the wrong question was asked.
88. The final case that the parties brought to my attention in respect of Scottish case law can be found in *Selecta UK Limited v. Lothian Valuation Joint Board Assessor*. In this case having carefully considered earlier decisions it was found amongst other matters that the agreement related to the machines and not a site, the smallness of the site was relevant and that, and I quote direct from the decision at paragraph 33,:

“We were in any event not persuaded that the situation was so markedly different from Clydesdale Bank...The appellant company and their business are, we accept, entirely separate from Network Rail. It seems to us, however, that a purpose of supplying snacks to rail travellers is within the scope of the railway undertaking, as part of their “offer” to travellers. Snacks are routinely supplied on trains. The genesis of the appellant company was partly the supply (by Travellers Fare Limited) of refreshments to railway travellers. Snacks are routinely supplied on trains. Network Rail have to approve the type of refreshments offered from the machines, a provision going, we think, slightly beyond a standard use restriction. The fact that the business has gone out to separate commercial enterprises, while of course introducing joint or mutual benefit, does not to our mind make it a rival or “competing” business, any more than having banks install cash machines in shops”.

89. Following the logic used there one would assume that if this case law was followed in England, as trains sell newspapers and magazines, W H Smith would no longer be rateable at Victoria Station as found in the *Westminster* decision or indeed would any

of the coffee shops that can be found on stations. It is on that point that I leave the final word to Lord Russell in the *Westminster* case:

“...Again it may be part of the undertaking of a railway to provide facilities for obtaining newspapers, tobacco, chemicals, refreshments, and so forth. But a clear distinction must be drawn between providing facilities for obtaining these articles and providing the articles themselves.

90. I believe that when deciding these cases there is no quick answer. It may be my age or my traditional approach but such quick approaches run the risk that fundamental questions may be missed. Hopefully I am not too stuck in my ways to understand that case law must develop with time as fashion, technology and practices change. Indeed the extremely helpful decision of the Supreme Court is one good example but if I am correct in my approach such appeals will need to be decided by:

- i) Identifying the hereditament in dispute;
- ii) Undertaking the geographical/self-contained test;
- iii) Determining who is in occupation (using the tests set out in *Westminster* and *John Laing*); and finally
- iv) If both hereditaments are in the same occupation follow the test in *Mazars* as to whether they should be treated as a single hereditament.

91. I therefore dismiss those appeals that relate solely to the deletion or merger of separate entries in the Rating List for the sites of ATMs. Similarly, all those stayed appeals where the same issue arises and the circumstances are the same as in the lead appeals should be treated in the same way. The only exception may be where there is a degree of movement of the ATM from site to site and where it could reasonably be argued that the occupation of the site is too transient. The following lead appeals are all dismissed:

463025089473/541N10 (seeking deletion)

463025483743/221N10 (seeking merger)

463025101141/541N10 (seeking merger)

463025483664/221N10 (seeking merger)

371525476070/221N10 (seeking merger)

371525089462/541N10 (seeking deletion)

371525101040/541N10 (seeking merger)

183525181485/541N10 (seeking merger)

183525179555/541N10 (seeking deletion)

183525163006/541N10 (seeking deletion)

183525179553/541N10 (seeking deletion)
183525158429/541N10 (seeking deletion)
183525181284/541N10 (seeking merger)
183525181714/541N10 (seeking merger)
183525513392/221N10 (seeking merger)
183525506995/221N10 (seeking merger)
183525512485/221N10 (seeking merger)
183525181485/541N10 (seeking merger)
183525179555/541N10 (seeking deletion)
183525163006/541N10 (seeking deletion)
183525179553/541N10 (seeking deletion)
183525158429/541N10 (seeking deletion)
183525181284/541N10 (seeking merger)
183525181714/541N10 (seeking merger)
183525513392/221N10 (seeking merger)
183525506995/221N10 (seeking merger)
183525512485/221N10 (seeking merger)
162525159719/537N10 (seeking deletion)
162525161902/537N10 (seeking deletion)
162525181224/537N10 (seeking deletion)
162525181238/537N10 (seeking deletion)
162525186337/537N10 (seeking merger)
162525530464/212N10 (seeking merger)
162525186487/537N10 (seeking merger)
162525530347/212N10 (seeking merger)
162525186436/537N10 (seeking merger)

162525530646/212N10 (seeking merger)
551024950389/538N10 (seeking merger)
462024964083/541N10 (seeking merger)
274125102970/539N10 (seeking merger)
342025200390/541N10 (seeking deletion)
71525202168/539N10 (seeking deletion)
470525202184/539N10 (seeking deletion)

92. All the other lead appeals will be listed if necessary, in due course, for hearing in respect of the valuation issues.

Directions

1. In accordance with *Practice Statement: Lead Appeals: Staying of Related Appeals (VTE/PS/C4)* all the stayed related appeals will continue to be stayed for one month after this Direction is issued to all parties.
2. During this month, parties may apply in writing for (i) a Direction that the decisions made in respect of the lead appeals does not apply to, and is not binding on, the parties to that particular related appeal or (ii) a further Direction facilitating the disposal of the appeal.
3. Any such application shall specify the grounds on which the application is made and shall be served on the other parties who shall have 14 days to make written representations.
4. At the end of the month I will dismiss all the stayed appeals identified by the parties as disputing a separate entry for the site of an ATM unless an application as described in paragraph 2 has been made in respect of a stayed appeal.



Mr Alf Clark
Vice-President

A handwritten signature in black ink, appearing to read 'Jon Bestow'. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Mr Jon Bestow
Registrar

4 March 2016