

WIRRAL COUNCIL

CABINET - 20 SEPTEMBER 2007

REPORT OF THE DIRECTOR OF FINANCE

BUSINESS RATES – EMPTY PROPERTY RELIEF

1. EXECUTIVE SUMMARY

- 1.1. The Government issued a consultation paper on 9 July 2007 on proposals to reduce the level of empty property relief given to ratepayers. These proposals aim to promote a more efficient use of commercial land and property and to provide an incentive to bring vacant shops, factories, offices and warehouses back into use. Members are asked to agree a proposed response to the Consultation paper. Consultation closes on 1 October 2007.

2. CURRENT SITUATION

- 2.1 It is estimated that the present empty property relief scheme costs the Government £1.3 billion in lost revenue in England.
- 2.2 Owners or leaseholders of vacant commercial properties have an initial three month rate free period followed by an empty property rate charge of 50% of the full rate. Owners or leaseholders of vacant factory or warehouse properties, however, are entitled to a full exemption from the empty property rate charge. It is estimated that relief in respect of this category of building amounts to approximately £4.5 million per year within the Wirral area.
- 2.3 In addition, owners or leaseholders of vacant listed buildings are also entitled to full exemption from the empty property rate charge. It is estimated that relief in respect of this category of building amounts to approximately £175,000 per year within the Wirral area.

3. PROPOSED CHARGING POLICY

- 3.1. The Government has already put in place the primary legislation required to give effect to the changes in levying empty property rate from 1 April 2008.
- 3.2. Owners or leaseholders of vacant commercial properties will continue to have an initial three month rate free period; however, the subsequent empty property rate charge will be levied at 100% of the full rate instead of the current level of 50%.
- 3.3. Owners or leaseholders of vacant factory or warehouse properties, however, will no longer have full exemption from the charge, but will have an initial six month rate free period followed by empty property rate at a level of 100% of the full rate.

- 3.4. The Government is considering if listed buildings should continue to receive full relief from the empty property rate charge and has requested views on three options; continue with full relief, an initial six month exemption or the normal three months. The proposed response is set out in the attached appendix.
- 3.5. A number of other exemptions from empty property rate exist within the current scheme and the Government advises that they are likely to continue unchanged. Currently insolvent companies are exempt from the charge. However, companies in administration do not have this exemption and views have been requested on three options;
- full liability in accordance with the new scheme
 - an initial 12 month exemption from empty property rate
 - full exemption from the charge.

The proposed response is summarised in the appendix.

- 3.6. In addition to changes in the charging policy, the Government is evaluating methods to reduce the ability of ratepayers to avoid liability for empty property rate. Previously, a small minority of landlords have attempted to avoid empty property rate liability by making physical changes to the property in order to make it incapable of being let and consequently being removed from the Rating List e.g. removing the roof.
- 3.7. The Government intends to make changes to legislation to attempt to prevent such action being successful in having the property being removed from the Rating List. Three options have been suggested which will have varying implications on the Valuation Office Agency which is responsible for maintaining the Rating List.
- 3.8. There are a number of other examples of rate avoidance tactics that the Government is reviewing and attempting to address. Examples of the tactics and views on how to address them are requested from local authorities and other interested parties. Some examples of these tactics are set out as:
- Failing to carry out the final works of a new development and so avoiding an entry into the Rating List
 - Intermittent occupation – the owner allows occupation for periods of six weeks and subsequently obtains multiple rate free exemptions
 - Bogus tenancies – the owner lets the empty property to organisations that do not operate from the premises, but are exempt from rates such as charities; or let to a fictitious tenant

4. FINANCIAL AND STAFFING IMPLICATIONS

- 4.1. Wirral has approximately 1300 vacant business rate properties (out of 8100 business rate properties in the area) at any one time, of which approximately 400 will have a liability for empty property rate from 1 April 2008 that has never existed before.

- 4.2. It is difficult to quantify the administration that will be required to collect the additional charge. Empty property rate historically has been more difficult to establish and collect. This would certainly be the case with newly charged properties.
- 4.3. Although, a substantial exercise is required to be carried out over the next six months to update the business rates database to ensure correct information is held and to be ready for main billing in March 2008, it is currently hoped that there will be no major staffing implications in the short term, arising directly from these changes.
- 4.4. It is difficult to estimate, at this stage, what additional administrative requirements will be when collection and enforcement activities commence from April 2008. If there are any additional resources required, then this will be subject of a separate report to the Cabinet.
- 4.5. As a result of the change in legislation, the Authority will also have an additional empty property rate burden for 2008-09 and beyond. It is estimated that for 2008-09 this will be approximately £80,000.
- 4.6. In addition, it is possible that there will be an increase in applications for hardship relief, with tenants potentially locked in to long leases on which landlords may not wish to allow surrender. At present Wirral is required to fund 25% of any hardship relief granted from the discretionary rate relief budget.

5. LOCAL MEMBER SUPPORT IMPLICATIONS

- 5.1. There are none arising directly from this report.

6. LOCAL AGENDA 21 IMPLICATIONS

- 6.1. There are none arising directly from this report.

7. PLANNING IMPLICATIONS

- 7.1. There are none arising directly from this report.

8. EQUAL OPPORTUNITIES IMPLICATIONS

- 8.1. There are none arising directly from this report.

9. COMMUNITY SAFETY IMPLICATIONS

- 9.1. There are none arising directly from this report.

10. HUMAN RIGHTS IMPLICATIONS

- 10.1. There are none arising directly from this report.

11. **RECOMMENDATION**

- 11.1. That a response be sent to the Department for Communities and Local Government in the terms identified in the attached appendix.

IAN COLEMAN
DIRECTOR OF FINANCE

FNCE/213/07

APPENDIX A

RESPONSE TO MODERNISING EMPTY PROPERTY RELIEF

– a Consultation paper

Wirral's Headline comments are shown in bold with supporting information below.

1. Exemptions from Empty Property Rate

Listed Buildings (Q1-3)

Three options –

- Continue with permanent exemption
- Initial exemption of 6 months
- Initial exemption of 3-6 months

It is felt that permanent exemption should be continued for all categories of building

- The relief is of relatively low cost
- Evidence locally of long empty periods for a number of listed building offices, even though situated in prime locations
- Evidence locally of an industrial listed building which is incapable of being demolished - £100,000 was required to be spent on the external parts of the building but internally is not fit for modern usage and consequently is not a desirable unit for letting
- The study used concentrates solely on listed offices and no mention is made of other categories of building
- No mention is made in the study of the recent trend of converting listed building offices into residential accommodation which may colour the report's findings

Insolvency (Q4)

Three options –

- Companies in administration to continue to pay empty property rate
- Companies in administration to receive a 12 month exemption from empty property rate
- Companies in administration to be permanently exempt from empty property rate

It is felt that permanent exemption should be put in place for companies in administration

- The relief is of relatively low cost
- The exemption would be in line with other forms of insolvency
- The cost of empty rates would not be a burden to the administration; this would be in keeping with the Government's business rescue culture

2. Tackling rates avoidance

Changes to the state of the property (Q6-9)

Three options –

- Value the property as it was at the date it became vacant
- Value the property as it was on the last occasion it was valued
- Value the property as it was on the day before an act or omission caused the state of the property to change

It is felt that valuing the property as it was on the last occasion it was valued is the option that should adopted and that the stipulated exemptions to the anti avoidance regulations should also be applied

- This option is simple to understand for ratepayers
- The option is easy to administer by the Valuation Office Agency
- This option is unlikely to cause anomalies with transitional relief regulations

Time period for anti avoidance penalties (Q10)

Four options

- 1 year
- 2 years
- 3 years
- Indefinitely

It is felt that a two year penalty should be applied

- This option can be seen as a middle ground and not too draconian
- This option should act as a deterrent to most potential cases of tax avoidance
- It is expected that this option will not add greatly to the work of the Valuation Office Agency

Time period for anti avoidance penalties following property disposal (Q11-13)

Three options

- Anti avoidance regulations cease to apply as soon as property is disposed
- Anti avoidance regulations cease to apply after 3 months following property disposal
- There is no change in the time period following disposal

It is felt that no change in the anti avoidance time penalty should be applied

- This option will discourage properties being transferred to sister or “phoenix” companies to avoid the penalty
- This option will encourage appropriate development work by the new owner in a more timely fashion

Failure to complete a development (Q19-20)

There is no widespread evidence that owners have deliberately failed to complete development works on properties within the Wirral area to avoid payment of empty property rates

Intermittent occupation (Q21-22)

Three options

- Six weeks of occupation before a property becomes entitled to a further rate free period
- 3 months of occupation before a property becomes entitled to a further rate free period
- 6 months of occupation before a property becomes entitled to a further rate free period

We believe that there have been regular instances of the above practice especially around the Christmas period when a tenant may be attracted in the lead up to Christmas, with the effect that the owner also receives a further rate free period – this usually centres around shopping areas.

It is believed that a three month period would strike a reasonable balance between rate avoidance and preserving the ability for short term lets

• **Boqus Tenancies (Q23-24)**

Wirral have identified a number of instances where a small number of landlords manage to avoid being billed for empty property rate by “letting to suspicious or non existent tenants”. Leases or licences are provided as proof that lettings have occurred, however the suspicion is that these tenants very rarely exist or have disappeared before the Authority is advised that a let is in place. Often, the property has appeared vacant throughout the period of these “lets”.

If a statutory requirement was placed on landlords to advise, within a set time period, that a let had taken place, otherwise the landlord might be held responsible for the charge, might go some way to prevent these occurrences. This power may appear to be somewhat draconian and unpopular with the majority that are good landlords.

Wirral have identified a number of instances where properties have been let to companies, whose only asset is the lease. Consequently when enforcement takes place, there are no goods to seize and it is pointless to commence insolvency action. Companies House records might show that the company is dormant or that no accounts have been submitted by the company for some considerable time. The Authority has no power to dissolve the company and Companies House are not very proactive in this area and are slow to react to instances where company accounts are substantially overdue.

“Phoenix” companies are also seen to be a problem both for occupied and empty property rate issues. Assets are limited; often the lease is the major asset. It is extremely rare that insolvency practitioners or Companies House are willing to take action to bar the same directors from appearing over and over again. Even when it does happen, it is suspected that the new directors are often “front men” for the old.

Companies House should take a more active role in policing companies in a timelier manner and it should be easier and quicker to take action to dissolve companies that act in this way.

3. Other issues

Relief’s

It is strongly suspected that instances of ratepayers requesting hardship relief will increase substantially. Landlords will, in future, be even more reluctant to allow early surrender of leases and consequently ratepayers of limited means can be locked into long term leases until a new tenant is found.

Currently, Authorities fund 25% of any hardship relief granted, the Government should give serious consideration to reducing the amount required to be sourced from council taxpayers.

Collection

Empty property rate has always been the most difficult element of business rates to collect and this likely to continue under the new scheme. It can often be difficult to establish the owner of a property to commence the billing process, not to mention actual collection.

The Government should give serious consideration to increasing the cost of collection formula not only in respect of the new scheme’s implementation but also long term.

Objectives of the Scheme

The main objectives of the scheme are to provide an incentive for owners to re-let, re-develop or sell commercial properties and to help to reduce rents.

For the above objectives to be achieved substantially there is a requirement for a pool of potential tenants to be ready, waiting and able to take advantage of newly redeveloped or reduced rental property. We are not sure that this pool exists to any great extent.