Business Rates Appeals Reforms

Response to DCLG Consultation by the Property Litigation Association

This consultation response is made on behalf of the Property Litigation Association (the "**PLA**") to the proposed Statutory Framework for Business Rates Appeals Reforms. The PLA is the industry body representing property litigators in England and Wales.

We comment specifically on Question 6 which is the Question of most significance to the PLA membership.

Responses:

Q6. We would welcome your views on the amended approach to determining appeals against valuations.

1 Production of statements of case and evidence

1.1 The proposed Statutory Framework seeks to implement a procedure whereby at the Challenge stage, a ratepayer is required to submit a detailed proposal including "*a statement setting out - (i) the grounds of the proposal including particulars of the grounds of the proposal; (ii) evidence to support the grounds of the proposal…"* (section 8(3) The Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2016) ("**NDR**").

1.2 As drafted, the Statutory Framework would require a ratepayer to effectively submit, at the Challenge stage, its full statement of case, together with supporting evidence, up front with limited opportunity to submit further evidence in the process. This evidence would be required at such an early stage, when the ratepayer has not received detailed evidence from the Valuation Office ("**VO**") on the grounds upon which the rateable value has been assessed.

1.3 There is a very limited scope to amend or add to this evidence at the Appeal stage, which therefore puts the ratepayer under a disproportionate burden of pressure to ensure that its case is fully prepared at the outset of the Challenge stage. The Appeal stage itself raises grave concerns due to the reform's proposal to significantly limit and potentially suppress the hearing of expert and witness evidence. It would appear that the role of the tribunal will be to simply determine if the VO's decision in respect of the Challenge is correct.

1.4 The current system enables the parties to enter into discussions to resolve their differences with regard to the list before the parties are required to produce detailed statements of case and technical evidence supporting their position. The reforms however require the ratepayer to front load its costs before these discussions have taken place and indeed before the VO has provided real evidence of its assessment. There is the prospect for further unnecessary incurring of cost in then having to revise and amend this evidence (to the extent possible) in light of any evidence that the VO presents. The current system has a more logical approach

to preparation of statements of case followed by ultimate submission of witness and expert evidence.

1.5 If it is the intention in the reforms that the ratepayer is required to produce its case at the Challenge stage, it is only equitable, that the VO is required to produce its equally detailed case, with evidence, at the Check stage. This would enable the ratepayer to answer the case before it, rather than incur costs in evidencing points which may not be in dispute between the parties. It would also better facilitate parity of arms where both parties are under the same obligations and constraints. The burden in the proposals weighs far too heavily on the ratepayer, rather than the VO. Full disclosure at the outset from the VO would support the broader aim of ultimately reducing appeals.

1.6 The Statutory Framework requires the ratepayer to produce detailed and lengthy documentation within 4 months of completion of the Check stage. This is a burden on all ratepayers. However, it is particularly difficult to see how a major ratepayer, with complex issues to address, will be able to produce the documentation required within this prescriptive period, when, under the current regime, it would have had a number of months to prepare its case and then refine it through the formal pleadings process. This therefore means that the ratepayer in reality will be carrying the burden and cost of front-loading its case preparation into the Check stage, even before the Challenge stage begins.

1.7 The reforms suggest that the "*great majority of cases are resolved"* in the Challenge stage. If this is indeed the case, then the ratepayer will have incurred significant costs and time preparing documentation (which under the current system, the ratepayer would prepare ahead of any hearing), when the VO expects to resolve the case ahead of any such date.

2 Responses to the ratepayer's proposal

2.1 The Statutory Framework provides that on receipt of a proposal the VO "*must if it considers it reasonable to do so provide the proposer with any information the VO holds in response to the particulars of grounds set out in the proposal"* (our emphasis added) (section 9 NDR). This obligation is inconsistent with the underpinning policy principles "*to manage the flow of cases through the system, in a…transparent way, which will allow ratepayers to make an informed decision about how to proceed."* It is impracticable for a ratepayer to challenge the VO's rateable value, if the VO is not obliged to provide the ratepayer with all relevant information relating to its decision prior to the ratepayer preparing its proposed documentation. As set out above, the level of such documentation envisaged by the Statutory Framework is akin to that which would be required for an appeal under the current system. By way of comparison to the Civil Litigation process, a defendant would not be required to defend a claim at trial without being provided with the particulars of claim and supporting evidence well in advance of any judgment being made.

3 Provisions for the recovery of costs

3.1 If the ratepayer is to incur such costs at an early stage in the process, which may indeed be wasted costs if the matter is resolved ahead of the appeal stage, the Statutory Framework will need to provide a mechanism for the recovery of costs in the event the list is altered. The Statutory Framework contains penalty provisions in the event the ratepayer abuses the appeal system, but no protection in the event that the VO's actions require a ratepayer to incur significant costs challenging rateable values. Costs, which under the current system, would be delayed until closer to any appeal date.

3.2 In summary, the reforms do not seek to increase the chances of settlement at the Challenge stage but rather seek to bring the ratepayers' costs forward without any guarantee that the VO will be required to state its case fully with evidence at an equally early stage.

3.3 The proposals further place control of the timetable for the resolution of the dispute with the VO and the prospect of disputes taking an interminably long time to be resolved is very real. This will lead to cost in itself, but it is also contrary to the principle of swift and proportionate administration of justice.

4 "Outside the bounds of reasonable professional judgment"

4.1 The reforms state that "…the VTE, in considering an appeal, should order a change in the rateable value only where their view is that the valuation is outside the bounds of reasonable professional judgement. In the cases where the VTE consider the extant valuation is within the bounds of reasonable professional judgement, no change will be made to the valuation."

5.1 The VO's assessment of rateable values historically has been based on the principle that the ratepayer is to be rated on the basis of the benefits of its occupation. There is therefore no justification, other than these reforms, to enable the VO to now adopt rateable values which are "within the bounds of reasonable professional judgement" but which do not necessarily reflect the correct rateable value. Indeed, such approach is entirely inconsistent with the policy behind the reform which states "*Under the reformed system, businesses will be more confident that their valuations are correct and that they are paying the right amount of business rates...*" Through enabling the reforms, businesses cannot have any confidence that they are paying the correct level of rates.

5.2 These reforms are evidenced in regulations 5 and 13A NDR. Regulation 5 defines "inaccurate" to mean "*outside the bounds of reasonable professional judgement".* An appeal can be made against the VO's decision if the list remains inaccurate.

5.3 As drafted, the Statutory Framework only enables an appeal if the VO's valuation is outside the bounds of reasonable professional judgement. This is a subjective measure and effectively prevents any appeal succeeding against the VO's valuation. Professional differences, generally and in matters such as rating, are commonplace. Indeed, such differences in terms of rateable values, can be wide-ranging.

5.4 The reforms no doubt envisage valuations being determined by reference to direct rental evidence. In these more simplistic assessments, the reformed approach may be manageable as reasonable professional judgements should not vary too heavily.

5.5 However many rateable values are determined by other means, such as the Receipts and Expenditure and the Contractors Test methodologies. What therefore represents the *bounds of reasonable professional judgement* is likely to vary considerably from one professional to the next, resulting in a large proportion of ratepayers' rateable values being wildly incorrect.

5.6 Regardless of whether the assessment is based on rental evidence or other evidence, the point still remains that unless the VO's assessment of the rateable value is '*outside the bounds of reasonable professional judgment*', the assessment made will stand. This assessment may therefore not by the accurate rateable value for the property concerned. The error will become more pronounced the further towards the boundary of reasonable professional judgment the assessment is. This cannot be right, nor can it reflect the concept of maintaining an accurate ratings list.

6 Impact on smaller businesses

6.1 Smaller businesses with relatively low rateable values will be impacted by the reforms as well as larger businesses.

6.2 A number of the current regulations have adopted rateable values as a defining factor, so that a ratepayer can determine whether it is to be treated as a large or small business. Which side of an arbitrary rateable value-divide a property falls can make a significant difference to the rates payable. For example, under option 2 of the current proposals for transitional arrangements for 2017, if a rateable value is £100,001, the ratepayer will face an increase of 45% in 2017/18 when compared to 2016/17, whereas if the rateable value is £100,000 that increase will be limited to 12.5%. In these circumstances, a decision of the VO not to reduce a rateable value because it deems the existing rateable value to be within the bounds of reasonable professional judgement would have very significant consequences for the ratepayer, immediately and for entire revaluation period.

7 Barrier for the ratepayer in the proposed Appeal reforms

7.1 In crude terms, for the VO to succeed in retaining its rateable value, it is only required to find one professional to agree with its' calculations. Thus making its' rateable value "accurate". Without further definitional assistance of the term "*outside the bounds of reasonable professional judgement*", it is impossible to see how any ratepayer could successfully challenge the VO's rateable values. Furthermore, it is difficult to see why a ratepayer would seek to appeal the VO's decision when, even if their appeal was successful in determining that the VO had incorrectly assessed the rateable value, the assessment was not outside the bounds of reasonable professional judgement and hence, would not be altered.

7.2 Whilst the reforms appear to be discouraging challenges to the rateable value, the lack of sufficient interpretation in the reforms could lead to protracted and expensive litigation. Such litigation would incur time and costs of the VO in interpretational and public law litigation, as oppose to freeing up the VO to determine rateable values more efficiently. An underlying aim no doubt, of the reforms.

7.3 In summary, the reforms provide the VO with the ability to mandatorily rule on rateable values and have unfettered discretion in this taxation, hiding behind the defence that a reasonable professional person would judge that rateable value to be correct. This practice is contrary to the policy aims for transparency and building confidence in the business community that businesses are paying the correct rates. This surely cannot be the aim of the reforms.

Should you wish to discuss this submission with us, please contact Bryan Johnston of the Property Litigation Association (bryan.johnston@dentons.com; 020 7320 4059).

Property Litigation Association

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