

# IBRF Response Document

Modernising Empty Property Relief  
DCLG July 2007



## **IBRF response to DCLG consultation on Modernising Empty Property Relief (July 2007)**

The IBRF welcome the opportunity to comment on the above consultation document &, in particular, to outline the potential financial impact upon members & the reasons for our opposition.

This document is referenced to the specific questions raised within the consultation document & also makes relevant points & quotes facts which may be read separately & may be copied &/or quoted as appropriate.

The Inter-Bank Rating Forum represents the Rating & Taxation interests of the Financial Services industry amounting to over 30 of the UK's largest Banks & Building Societies & also Royal Mail. Statistically, this equates to approx 20,000 rateable hereditaments, a total Rateable Value of £1.4 billion, & total annual business rates liability of approx £500 million.

### **General Comments**

We have previously responded to the Regulatory Impact Assessment for the Rating (Empty Properties) Bill on 24 May 2007 & would refer you to our comments contained within that document. Without wishing to repeat the concerns expressed in that document, we must reiterate our concern that the Governments objectives & rationale behind the revisions now enacted to Empty Property Relief appear (in our opinion) to be seriously flawed.

In our experience, when premises become vacant the prospects for re-occupation are often affected by factors beyond our control, such as planning delays, lease termination difficulties, etc. Due to the nature & age of some buildings within our collective estate, vacancies can occur where the premises are physically & functionally obsolete. Many of these properties are protected buildings which poses immense difficulty for necessary re-development to take place unless at hugely un-economic cost.

As you will appreciate, we do not deliberately leave premises un-occupied. To do so would be inefficient & wasteful & would obviously affect "investor return" where no income was being received & would lower the asset value. Any imposition of additional charges such as the revision to Empty Property Relief

will merely add to the burden. We, therefore, urge the Government to consider introducing relief from empty property rates where the owner (or the person(s) entitled to possession) can actively demonstrate that a new occupier is being sought by virtue of marketing evidence, a relevant planning application, or transaction when the vacant period continues beyond the initial exempt period.

## **Responses to Questions**

### **Protected Buildings**

**Q1.** It is not possible to list specific examples within this response although these can be provided if required. Generally, each "Listed" building within our collective estate could be described as unique. The extent of listed (described) features will vary; this can be anything from a "protected" façade to the entire building inclusive of internal fittings & features. As a result, each building provides individual risks which will vary according to the nature & construction of the building.

Typically the traditional "mausoleum" type structure found on the High Street & constructed over 100 years ago will feature heavily; these buildings are no longer useful for their original intended purpose as banking methods & requirements in terms of our use of premises have changed dramatically over the years. Today, we require modern shop-type property in such locations, capable of being adapted & with the flexibility to create open trading spaces more akin to retail trading.

Risks associated with protected buildings will cover such items as the huge cost of maintenance; heating & energy costs; lack of adaptability of the premises to cater for modern banking methods & technology; basement Strongroom areas which are now obsolete but which are impossible to remove without demolition of the entire structure; etc.

**Q2.** We strongly support Option 1; continue to provide protected buildings with a permanent exemption from rates when they are empty. This is because of the greater risks associated with ownership of such buildings outlined above. It is often difficult, if not impossible, to obtain planning consent on such buildings where extensive works are required to adapt them for modern use & as such they are economically & functionally not viable.

**Q3.** We believe that all protected buildings should be treated in the same manner for rating purposes.

## **Insolvency**

**Q4.** We consider that companies in administration should be permanently exempt from empty property rates (Option 3), similar to those in liquidation. We support this option on the grounds that the current regulations may distort the financial decisions required to be made by companies entering administration. We believe that relieving them of the potential burden of empty rates would assist such companies to act in a prudent & fiscally sensible manner, thereby enhancing the potential to continue trading, & so preserving jobs, etc.

### **Relief from Empty Property Rates**

We accept that empty property is not eligible for mandatory occupied business rate reliefs that support particular types of active businesses but it is likely that small businesses & key service providers located within (e.g.) rural settlements may have vacated due to various circumstances & may be suffering financial hardship. In such cases, we question whether the current provisions for "Hardship relief" are robust enough to be interpreted & used by Billing Authorities in a reasonable manner? To our knowledge, "hardship" has never been defined within rating law & may, in itself, extend beyond financial hardship.

### **Rates avoidance**

We are very concerned at the prospect of anti-avoidance regulations being introduced to what is an already over-complex system of regulation which is only understood by experienced & qualified rating professionals. Ratepayers do not understand the system & a further burden of complexity will merely enforce the perceived un-fairness & inequality that currently exists.

As a consequence, we envisage protracted litigation not only on points of law but also on valuation principles which will undoubtedly add to our costs in attempting to mitigate liability. The business rates system already places a heavy economic burden upon occupation of property with most ratepayers being mystified by, & sitting in complete ignorance of, the statute governing this property tax.

We are not aware of any of our member organisations actively attempting to either evade or avoid the empty property rate by undertaking deliberate damage to their premises. Such action must be seen to be the "option of last resort" when all genuine attempts to dispose of or re-occupy the premises for economic use had failed. The market dictates whether such premises are likely to be re-occupied & market conditions will vary from area to area. We question why the Government considers it necessary to introduce "anti-avoidance" regulations?

Our understanding of established valuation practice is such that hereditaments are required to be valued in their existing state (at the date of valuation) & on the assumption (& case-derived principles) that they are in a reasonable state of repair. Should the anti-avoidance proposals be introduced, then those assumptions & principles would no longer be relevant, adding further to complexity & confusion for ratepayers.

**Q5.** We consider that each of the described options will add unnecessary complexity but in order to be as constructive as possible & in order to comply with what we believe is the Government's intention, Option 3 is our preferred choice; i.e. the Valuation Officer should be required to value empty property as if it were in the same state as it was before an act or omission that caused its state to change & which was done by or on behalf of the owner (& only if the Valuation Officer can establish that this is the case).

We believe that this option will allow the premises to continue to be valued in accordance with the established principles described above whilst also allowing prescribed acts (such as those described under Option 3 on page 19 of the consultation document) to be ignored for the purposes of establishing the state of repair. Exceptions to those prescribed acts (& for the purpose of the new Sect 66A of the Local Government Finance Act 1988) should be those as described under Option 1 & 2; i.e. natural disasters, accidental damage, criminal damage, work undertaken to re-develop the property for which planning permission has been obtained, or demolitions permitted under part 31 of Schedule 2 to the GPDO 1995. We also consider that any works to reconstitute existing hereditaments & works associated with usual business practice should also be added to the exceptions list. In addition, & as described above, we also consider that genuine attempts to re-occupy the premises by virtue of a marketing campaign, etc. to attract potential tenants should also be within the list of exceptions.

**Q6 & Q7.** Not applicable in the context of this response.

**Q8.** We agree that anti-avoidance regulations should only apply if the Valuation Officer is able to prove that damage to the property had been caused or allowed by an act or omission done by the owner, or a person acting on his behalf, as described at paragraph 4.2.18 & as outlined in our response above.

**Q9.** We cannot comment with sufficient accuracy in relation to additional classes of property to which the anti-avoidance regulations should apply.

**Q10.** There are, we believe, practical issues which DCLG should consider in implementing Option 3 but we have outlined these in our response above.

### **Period for which anti-avoidance provisions should apply**

**Q10.** We consider that a maximum period of one year should apply to the anti-avoidance regulations. This should be sufficient to deter those ratepayers from attempting to undertake avoidance activity.

**Q11.** We believe that it is of fundamental importance to have a specific method by which the commencement date of the period should be established. To that end, we suggest that this date should be provided by the ratepayer. The three suggested options for ensuring that the owners liability is not affected by the anti-avoidance provisions for any longer than the specified period may prove to be confusing; it is difficult for us to suggest a preferred alternative but, from our interpretation, perhaps Option 1 (On the day that the time period for which the change in the state of the property can be disregarded expires, the property is automatically removed from the Rating List until the Valuation Officer next values the property, when he will value it in its actual condition) would provide the most reasonable answer?

**Q12.** We agree that anti-avoidance provisions should cease to apply if the property is redeveloped or reoccupied during the period of time for which the anti-avoidance regulations apply.

**Q13.** We consider that it would be reasonable for Option 3 to apply in this case; i.e. the period of time for which anti-avoidance provisions apply does not change if the hereditament is sold or transferred.

### **New Section 66A(4)(a) & (b)**

**Q14.** We agree that, if Option 3 is adopted, acts or omissions shall be treated as having been done on behalf of the owner if they are done by any person connected with the owner, except as stated below.

**Q15.** We also agree, in the same respect, that some but not all of the persons listed at para 4.2.38 should be treated as connected with the owner. The exceptions should be the previous occupier & any relative of the owner & any supplier of goods or services unless commissioned by the owner to undertake the avoidance works. We cannot think of any alternative means by which such action could be determined without a lengthy legal process &/or sufficient policing of each circumstance by the Billing Authority.

**Q16.** We agree that (Option 3) the change in the state of the property should be disregarded where the property is damaged as a result of omissions, although we imagine that this may be difficult to prove? In any event, the burden of proof should lay with either the Valuation Officer or Billing Authority.

## **Appeals**

**Q17.** We agree that owners should have a right to make a proposal on the grounds that the Valuation Officer has incorrectly applied the anti-avoidance regulations. We are, however, concerned that the existing Appeal regulations only provide for one appeal to be made per event. In cases where the premises are (e.g.) vacant industrial or storage premises, the owner may have withdrawn an original appeal on the basis that there was no financial advantage in pursuing the appeal as no Empty Property Rates would have been payable. We, therefore, suggest that a further, additional, right of appeal against the complied Rating List entry be granted.

**Q18.** We do not envisage any difficulties in ensuring owners have a right to make proposals on these grounds, but would reiterate our suggestion as to additional rights of appeal described in Q17 above.

## **Other rate avoidance tactics**

### **Failing to complete a development**

**Q19.** We are not aware of any occasion where a development remains deliberately incomplete in order to take advantage of empty property relief. Developments are undertaken with the intention of gaining either a capital or revenue income from selling/letting the completed building or for owner occupation to facilitate a trading business. It is, perhaps, ironic that the revisions to empty property relief may persuade developers to cease at an appropriate point where a completion notice would not be applicable, especially if there was a downturn in the market leading to a lack of demand for the property. Due regard should be given, however, to instances where the development is temporarily halted (e.g.) because of a legal dispute or other extraneous circumstances.

**Q20.** We have no comment to make in this regard.

### **Intermittent occupation**

**Q21.** We are unaware of any circumstances where intermittent occupation is practiced in order to avoid empty property rates.

**Q22.** We consider that the existing 6-week period for which a property should have to be re-occupied before it re-qualifies for a 3 (or 6) month rate-free period should remain unchanged.

## **Bogus tenancies**

Please note that the question number 22 appears on page 28 of the consultation document & is repeated on page 29 but with a different question; we have assumed that this is a typographical error & have, therefore, re-numbered the latter question (number 22) as number 23 for the purposes of our response. It follows also that question numbers 23 & 24 appearing on page 29 are re-numbered as questions 24 & 25 respectively & that question number 25 appearing on page 30 is re-numbered as question 26.

**Q23.** We are not aware of any instances where an owner has let a property to a company that doesn't operate from the premises in order to avoid empty property rates. This, in our opinion, would be a rather strange scenario & somewhat pointless. Legitimate letting of premises to a registered charity is common these days but we believe that, should the charity not actually take occupation of the premises, they would have to prove that the subsequent use of the property would be for charitable purposes.

**Q24.** As above. We do not believe this practice to be widespread.

**Q25.** We are not aware of any other forms of rate avoidance.

## **Identifying owners**

We consider that it should be the responsibility of the local Billing Authority for updating their own records in the case of empty property & not the owner.

## **Next steps**

**Q26.** We would welcome the opportunity to provide additional information, if requested, & would also welcome the opportunity to comment on any draft regulations. We are very concerned, however, that an already complex rating system is about to become ever-more complicated with (we believe) unnecessary legislation. The ultimate burden will once again fall upon the shoulders of the beleaguered ratepayer which could prove fatal for many businesses who may be trading at the financial margin.

**R H Littlewood**

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27/09/2007