

TONBRIDGE & MALLING BOROUGH COUNCIL
FINANCE, INNOVATION and PROPERTY ADVISORY BOARD

18 September 2019

Report of the Director of Finance and Transformation

Part 1- Public

Matters for Recommendation to Cabinet - Non-Key Decision (Decision may be taken by the Cabinet Member)

1 APPLICATIONS FOR DISCRETIONARY RATE RELIEF

A report giving details of an application for hardship relief and seeking Members' recommendation in respect of any award for relief.

1.1 Application for Hardship relief

- 1.1.1 The application is from Attachments Fostering Ltd (AFL) in respect of their previous premises at The Cedars, Holborough Road, Snodland, Kent, ME6 5PW.
- 1.1.2 The Council is empowered to award hardship relief under S.49 of the Local Government Finance Act 1988.
- 1.1.3 When considering applications for this relief, Members must be satisfied that the ratepayer would sustain hardship if relief was not awarded and it is reasonable to award relief having regard to the interests of persons subject to its council tax.
- 1.1.4 There is no statutory definition of hardship. Members should therefore bear in mind:
- Will the employment prospects in the area be worsened by the company going out of business?
 - Will the amenities of the area be reduced?
- 1.1.5 The application is shown at **[ANNEX 1]** showing AFL's version of the timeline of events that has left them facing an outstanding rates bill of £56,495.90. As the submission contains information that falls within paragraph 3 of Sch 12A of the Local Government Act 1972, Annex 1 is shown in part 2 of the agenda.
- 1.1.6 Their latest financial information is shown at **[ANNEXES 2 and 3]**. Annex 3 contains more detailed information that is not routinely published online, so again this is included in part 2 of the agenda.
- 1.1.7 An email from AFL on 19 March 2015 advised they had been located at The Cedars since 20 January 2015. At the time of the email, La Farge Cement UK Ltd

were paying the rates on the property, as they had done since 2003. The officer dealing with the correspondence decided to take no action updating the account as La Farge had not been in touch to advise they were no longer liable and direct debit payments were continuing to be made. Members are advised that there are circumstances whereby businesses can effectively 'share' premises and one business is liable with a share of rates liability being addressed within the rent.

- 1.1.8 The situation remained unchanged until February 2018, when Gerald Eve notified us that the property had been leased to AFL since 20 January 2015.
- 1.1.9 Our records were updated accordingly, and AFL were made liable to pay the business rates. This resulted in a backdated charge of £53,204.89 with a further charge of £18,120.00 becoming due on 1 April 2018.
- 1.1.10 Mr Koca (one of the directors of AFL) contacted the Revenues team on multiple occasions throughout 2018 and was advised to make an appeal to the Valuation Office Agency (VOA). The property's rateable value was subsequently reduced by the VOA; however, since the new rating list came into effect on 1 April 2017, no appeal could be made regarding the usage of the property prior to that date (AFL state they were only using part of the property) as the old rating list was closed.
- 1.1.11 This has left AFL with a debt of £56,495.90 (covering the period from 20 January 2015 to 30 December 2018) with no further option to appeal the charge.
- 1.1.12 Mr Koca did meet the Revenue and Benefits Manager and the Principal Revenue Officer on 22 February 2019 where it was explained to Mr Koca that under rating legislation, AFL were liable as they were the leaseholders for the period 20 January 2015 to 30 December 2018.
- 1.1.13 It was recognised that AFL had been put in a very difficult position due to La Farge not notifying the Council that they should not have been liable to pay, and it was suggested that Mr Koca contact them to see if they were able to assist. Mr Koca was also asked to provide a copy of the lease in order to check the terms of the lease regarding liability for business rates.
- 1.1.14 Mr Koca did not supply a copy of the lease so action was taken to recover the unpaid debt with a liability order being obtained at Sevenoaks Magistrates' Court on 24 May 2019. There is no record to say the matter would be adjourned to the July hearing, and a note on 17 June states Mr Koca rang to request a payment plan through to March 2022. Mr Koca was advised we could only extend a payment plan to March 2021 and he was invited to submit his offer of payment.
- 1.1.15 As nothing further was received, and no payments were made, the matter was passed to our enforcement agent. AFL subsequently engaged the services of Business Rate Advisors Ltd who have submitted this application on behalf of AFL. The enforcement agent is currently on hold pending a decision on this application.

- 1.1.16 AFL are currently based at Lenvale House, 2 East Street, Snodland, Kent, ME6 5BA. They are not liable to pay business rates on this property, so there is no ongoing charge to be paid.
- 1.1.17 AFL has stated: *“Our financial situation is such that we do not have large sums of money at our disposal and paying the bill of £56,315.90 would put us out of business.”*
- 1.1.18 AFL has been left in a difficult position by La Farge who failed to advise they were not liable three years earlier. Although an initial notification was received from AFL, it was not obvious they would be liable to pay the rates charge, and with payments being received by direct debit for the three year period, there was nothing to suggest the liable party was wrong.
- 1.1.19 Having notified the Council, AFL should have made contact earlier to query why they had not been sent a rates bill. Mr Koca also took responsibility to start paying the outstanding charge in June, although at the time of writing no payment has yet been received.
- 1.1.20 This has been an unfortunate case and Members might therefore consider an award of hardship relief is appropriate on this occasion, particularly with regard to the period January 2015 to March 2017 (after which the Valuation Office Agency did review the assessment). Should the applicant be considered as a ‘special case’, up to 100% relief can be awarded. Members need to consider what level of award, if any, is appropriate.

1.2 Legal Implications

- 1.2.1 As the granting of relief is a discretionary action, the only implication would be a challenge by way of judicial review if an organisation were unhappy with a decision. Such a challenge can succeed only when the Council behaves unreasonably.

1.3 Financial and Value for Money Considerations

- 1.3.1 A hardship relief award will fall to the billing authority to fund from General fund. As there is no budget provision, should Members decide to award any level of hardship relief this will need to be met from General Revenue Reserve.
- 1.3.2 In respect of all applications for rate relief, the financial considerations of granting relief are as set out in the body of the report. If relief is not granted, there is a neutral impact on the Council’s finances. This should not prevent each application being considered on its own merits however, as there must be some degree of consistency to prevent a legal challenge.

1.4 Risk Assessment

- 1.4.1 The only risk that I am aware of is a legal challenge to the Council’s decisions (see above).

1.5 Equality Impact Assessment

- 1.5.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.6 Recommendation

- 1.6.1 Members are **REQUESTED** to consider the application and make an appropriate **RECOMMENDATION** to Cabinet regarding hardship relief.

The Director of Finance & Transformation confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and policy Framework.

Background papers:

None

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