

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

06 January 2021

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 APPEALS – EXPANDED RETAIL DISCOUNT

A report giving details of businesses appealing the decision to not award the Expanded Retail Discount for the 2020/21 financial year. Members are asked to determine these appeals. The Ministry of Housing, Communities and Local Government (MHCLG) guidance is attached at [ANNEX 1].

1.1 Background

- 1.1.1 The Government announced in the Budget on 29 October 2018 that it would provide a Business Rates Retail Discount, to apply in the years 2019/20 and 2020/21. In response to the coronavirus pandemic, in the Budget on 11 March the Government announced that it would increase the discount to 100% and extend it to include the leisure and hospitality sectors.
- 1.1.2 Following the announcement on 23 March 2020 of further measures to limit the spread of coronavirus, the Government confirmed that some of the exclusions for this relief had been removed, so that retail, leisure, and hospitality properties that had to close as a result of the restriction measures would be eligible for the relief.
- 1.1.3 The relief applies to occupied retail, leisure and hospitality properties in the year 2020/21. There is no rateable value limit on the relief.
- 1.1.4 Local billing authorities were required to adopt a local scheme and determine in each individual case when, having regard to the Government's guidance, to grant relief under section 47 Local Government Finance Act 1988. Central government will fully reimburse local authorities for the local share of the discretionary relief (using a grant under section 31 of the Local Government Act 2003).
- 1.1.5 A scheme of Expanded Retail Discount (ERD), as described in the guidance, was subsequently adopted under emergency powers on 27 March 2020 **[D200003EM]**.

- 1.1.6 The Director of Finance and Transformation is given delegated authority to grant relief in accordance with the adopted scheme, subject to any disputed entitlement to relief being referred to the Finance, Innovation and Property Advisory Board.
- 1.1.7 The guidance states properties that will benefit from the relief will be occupied hereditaments that are wholly or mainly being used, by visiting members of the public, for retail, hospitality or leisure purposes.

1.2 Appeals

- 1.2.1 I have received three appeals for ERD that have reached a stage where they are ready for Members' consideration. I give below further details of these appeals.
- 1.2.2 **Countryside Properties Plc, Show Homes And Marketing Suite At 1, 2 & 3 Bullion Close, Kings Hill, West Malling, Kent, ME19 4SL**
- 1.2.3 The property has been assessed by the Valuation Office Agency as Show homes and premises with a rateable value of £68,500. The assessment comprises two separate show homes with a converted garage block that serves as a marketing suite for the development.
- 1.2.4 The ratepayer's agent has appealed on the basis that this property is similar to a car showroom (which is specifically listed in the guidance as being eligible for relief) as it is used to show the properties and give customers the options and then used to sit and sell the properties. Their argument is, if you exchange houses for cars, then it is exactly the same as a car showroom.
- 1.2.5 I fundamentally disagree with this argument, as a show home's main purpose is to 'show' potential buyers what the house is like. It is not 'wholly or mainly being used for retail purposes by visiting members of the public'.
- 1.2.6 The Revenues Manager, as Chairman of the Kent Revenues Group, asked the other Kent authorities their views on this matter and all concurred a show home was not eligible for ERD. In my opinion, a marketing suite assessed on its own would be eligible as this where the sale of properties takes place; the Kent authorities all agree with this view.
- 1.2.7 For this assessment, the marketing suite forms a small part of the whole assessment and therefore cannot be considered to be 'mainly used for retail purposes'. It would be for the Valuation Office Agency to decide if the marketing suite should be assessed separately from the two show homes; however, in my experience, I would consider the three parts of the assessment to be contiguous, hence why they are rated together.
- 1.2.8 Members are **REQUESTED** to consider the appeal and make an appropriate **RECOMMENDATION** to Cabinet regarding ERD. If relief is awarded, the appellant will receive £35,072.00 for the 2020/21 financial year.

- 1.2.9 **Watts Farms Catering Limited, Unit 14a, Mills Road, Quarry Wood Industrial Estate, Aylesford, Kent, ME20 7NA**
- 1.2.10 The property has been assessed by the Valuation Office Agency as a Warehouse and premises with a rateable value of £215,000. The assessment comprises a 2,600m² warehouse with ancillary offices, canopy and loading bay.
- 1.2.11 The business is a family-run online farm shop supplying farm foods and a wide range of fresh produce, dairy, ambient and frozen products to their customers, who include major supermarket retailers, high end hotels, restaurants and schools.
- 1.2.12 As mentioned at 1.1.7, the guidance states properties that will benefit from the relief will be occupied hereditaments that are wholly or mainly being used, by visiting members of the public, for retail, hospitality or leisure purposes.
- 1.2.13 My opinion is that this property is a distribution warehouse, for the supply of goods to the retail, leisure and hospitality sectors. It is not used wholly or mainly by visiting members of the public for retail purposes, and therefore, it is not eligible for ERD.
- 1.2.14 Members are **REQUESTED** to consider the appeal and make an appropriate **RECOMMENDATION** to Cabinet regarding ERD. If relief is awarded, the appellant will receive £110,080.00 for the 2020/21 financial year.
- 1.2.15 **Green Parking Ltd, 60A Priory Street, Tonbridge, Kent, TN9 2AN**
- 1.2.16 The property has been assessed by the Valuation Office Agency as a Car parking space and premises with a rateable value of £37,750. The assessment comprises 65 parking spaces and two stores.
- 1.2.17 The appellant claims that, under planning law, Public car Parks fall within the 'Sui Generis' (unique) category and are of broadly similar nature to other idiosyncratic qualifying services. The guidance reaches out to the Sui Generis category which is why many of those Sui Generis services have been included in the relief. They effectively accommodate visiting members of the public, sell a service or experience which is not necessarily an item or commodity but are a qualifying use for the purpose of the Expanded Scheme. Public car parks are broadly similar to these uses.
- 1.2.18 I fundamentally disagree with this argument; car parks cannot be considered similar to the types of property in the guidance and are not used wholly or mainly by visiting members of the public for retail, hospitality or leisure purposes.
- 1.2.19 In addition, car parks and parking spaces were specifically excluded from the Retail, Hospitality and Leisure Grant. My opinion, therefore, is that this assessment is not eligible for ERD.

1.2.20 Members are **REQUESTED** to consider the appeal and make an appropriate **RECOMMENDATION** to Cabinet regarding ERD. If relief is awarded, the appellant will receive £13,934.40 for the 2020/21 financial year.

1.3 Legal Implications

1.3.1 The grant of relief is discretionary. The guidance issued by MHCLG is non-statutory but Members should have regard to it when determining the appeals. There is no statutory ability to challenge the Council's decision, therefore the usual public law principles for judicial review apply. The Council must act reasonably in determining the appeals, such as having proper regard to the guidance (and any local scheme in place) and departing from it only with proper reasons which are fully explained. The reasons for each decision should be stated, briefly, but with sufficient detail to enable relevant parties to understand why the Council reached the decision it did. Financial and Value for Money Considerations

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 no direct impact on the Council's finances. However, this should not prevent each application being considered on its own merits 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). This is unlikely.

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 Recommendations

1.6.1 Members are **REQUESTED** to consider the appeal from Countryside Properties Plc and make an appropriate **RECOMMENDATION** to Cabinet regarding ERD.

1.6.2 Members are **REQUESTED** to consider the appeal from Watts Farms Catering Limited and make an appropriate **RECOMMENDATION** to Cabinet regarding ERD.

1.6.3 Members are **REQUESTED** to consider the appeal from Green Parking Ltd and make an appropriate **RECOMMENDATION** to Cabinet regarding ERD.

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:

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