

Abolition of Empty Property Rates Relief – the juggernaut rolls on



Jerry Schurder, partner and head of rating at Gerald Eve

debrief keeps you up to date with the latest legislative developments affecting the property industry. Presented in a succinct, concise manner, **debrief** identifies the key issues relevant to your business and their associated implications for you.

In our March 2007 Business Rates **debrief**, we reported on the Budget announcement that rates relief for vacant properties was to be slashed from April 2008. Since then, the Government has rushed legislation through Parliament, in the form of the Rating (Empty Properties) Act 2007.

In this issue of **debrief**, we summarise the Act and comment upon the Consultation Paper launched this month by the Communities and Local Government Department (CLG).

The Act applies in both England and Wales, but the devolved government in Wales has the power to reverse or amend its provisions. The elections to the Assembly and negotiations over a new coalition administration have meant that decisions are yet to be taken as to whether empty properties in Wales will face the same liabilities as in England.

The Scottish Executive controls its own destiny so far as business rates are concerned and there is no indication – at this stage – that the new administration intends to change the present rules for empty rates liabilities.

We would encourage you to voice your opinions and concerns to CLG and the Welsh Assembly Government (WAG) and we will be pleased to assist you with your representations. Whatever the outcome, I have absolutely no doubt that there will be opportunities to avoid or minimise empty rates liabilities and we will devise bespoke strategies to suit your individual circumstances. If you would like to discuss this, please contact me on **020 7333 6324** or jschurder@geraldeve.com, or speak to your usual Gerald Eve contact.

Rating (Empty Properties) Act 2007

Parliament legislates

Currently, most empty properties receive 100% relief for the first three months of vacancy and 50% relief thereafter, although empty factories, warehouses and listed buildings receive 100% relief at all times. Following the Budget announcement, major changes to empty property relief will come into effect in April 2008. There will be three months free of rates for most properties and six months for factories and warehouses, but full rates will become payable thereafter.

The Government estimates that this will lead to an additional £950m of rates revenue in 2008/9, which is clearly why it has been desperate to legislate speedily. The Rating (Empty Properties) Bill was first read on 11 May 2007 and has been rushed through all of its Parliamentary stages with almost indecent haste.

But full details are yet to emerge

In truth, the Bill is enabling legislation only, providing very little of the detail. For this we will have to await Regulations although we may not get sight of these until close to their implementation date of 1 April 2008.

The Bill has just three key clauses:

- empty properties will pay occupied rates
- power for the empty charge to be reduced – to a minimum of 50% of occupied liability (should Government choose to do so)
- unoccupied property owned by charities or Community Amateur Sports Clubs (CASC) will receive 100% relief from empty rates – but only if it appears likely that the property will next be occupied by a charity or CASC

In addition, there is a new schedule that potentially changes the whole basis upon which rating valuations have always been undertaken. It has been included as a response to the perceived risk that imposing a liability on empty buildings could result in a return to the scenario last seen during the recession of the 1980s, when factory owners removed the roofs of their vacant properties, in order to escape any business rates liability.

New powers are therefore included to try to deal with steps that owners might take to avoid unoccupied rates liabilities, by constructively vandalising their own properties. It empowers the making of Regulations which would provide that an unoccupied property, whose physical condition had changed, could still be valued in its previous state. As the Financial Secretary to the Treasury stated on the Second Reading of the Bill, 'For example, if an owner removed the roof of a property, for rating purposes it could be valued as though the roof had not been removed.' He advised that the Government would consult over the summer on the details of how this would operate.

Government consults...

...when it wants to

On 9 July 2007, CLG issued a consultation paper (entitled 'Modernising Empty Property Relief') about these details. This is the first time Government has shown any real interest in the views of stakeholders, and is now inviting responses by 1 October. It has clearly failed to adhere to its own code of practice on consultation so far as the key policy is concerned. This consultation code provides that it should:

- 'consult widely throughout the process, allowing a minimum of 12 weeks ... during development of the policy'
- 'be clear about what your proposals are, who may be affected...'

Government claims that it has consulted on its proposals citing the consultation that Sir Michael Lyons undertook prior to concluding his inquiry into Local Government*. Conveniently, it omits to mention that Lyons consulted for only five weeks, which itself was over the Christmas 2006 period and that his consultation could not by any stretch of the imagination be described as 'clear about what your proposals are'. Lyons asked just one, very generalised, question on empty rates, 'How should the empty property relief in business rates be reformed?'

He certainly did not give any indication in that question that either he or the Government was considering any radical reduction in empty property rates relief.

Not only has the Government therefore failed to be clear about its proposals and those who may be affected, it has refused to hear contrary views. It states that its rationale for these changes is to 'encourage more efficient use and a readier supply of property and lower rents for businesses who rent their accommodation'.

In reality, it has steamrollered the Bill through Parliament, totally ignoring the claims of businesses, property owners, developers and investors that the result will be:

- a reduction in speculative development in order to reduce the risk of voids
- an increase in rents due to decreased supply
- less regeneration of redundant property
- inefficient use of property due to legacy costs of rationalising or expanding
- a negative impact on property investment values as the costs of voids take on increasing importance

Don't wait to be asked

If the Government was genuinely interested in consultation, it would have asked for views on the initial three or six month period for which empty properties should receive 100% relief. Those periods are not included in the Act and will be brought in through Regulations, yet the consultation on those Regulations does not invite views on the appropriateness of the rates-free periods that will be granted. However, we would encourage those who consider the periods to be too short to find a new occupier for vacant premises to make their views known. For so long as the periods are not enshrined in law, there must be some prospect of influencing change. A substantial number of responses to the consultation, to CLG, to HM Treasury and to your local MP, can do no harm.

On a related issue, the consultation paper is silent as to whether a property that has already been vacant for three (or six) months by 1 April 2008, will benefit from a fresh void period or will pay 100% rates from that date. We believe that the intention is that full rates will commence on 1 April 2008, but this has not been confirmed formally. Responses to the consultation could therefore make the point that this charge has been brought in without consultation or adequate prior notice and that, to allow a reasonable period to adjust, a fresh period free from rates should be allowed from 1 April 2008.

Views sought – on some issues

CLG's consultation paper does however seek views on the following matters:

Listed Buildings – and those subject to a building preservation notice – currently pay no empty rates, but Government is minded to remove this benefit 'as an incentive for owners to bring empty properties back into use'. It is seeking evidence, however, as to whether listed buildings are demonstrably harder to let and whether the risks of ownership of protected buildings are significantly greater than the average. Consultees are asked whether the existing exemption should remain, be removed totally,

*Lyons Inquiry into Local Government – Final Report: March 2007

or whether there should be exemption for the first six months of vacancy only (as for warehouse and industrial premises in future).

Intermittent Occupation – at present, if a vacant building, which has received a three month void period, is re-occupied for a minimum of six weeks, it can benefit from another three month void once vacated again. This principle will remain, but the consultation paper asks whether the minimum period for re-occupation should be six weeks, three months or six months. Whilst we are sure HM Treasury will be looking to maximise revenue and will therefore be seeking a six month minimum occupation before a fresh void period can be claimed, the decision might again be influenced by the numbers of responses seeking a shorter period.

Insolvency – insolvent companies that are in liquidation are exempt from empty property rates, as are individuals subject to bankruptcy proceedings. Government is considering addressing an existing anomaly whereby companies in administration remain liable for empty property rates and is seeking views. The options are either to stick with the status quo, to exempt companies in administration from empty rates for 12 months, or to provide them with full exemption as for those in liquidation.

No change for small properties...

It seems that there is no intention to change the existing provisions for properties with assessments below Rateable Value £2,200. These will continue to be exempt from empty rates.

...or where occupation is prohibited or prevented

Similarly, properties where the 'owner is prohibited by law from occupying it' or are kept vacant because of action taken by a public authority, will also not face an empty rates charge. This is intended to cover circumstances such as lack of a means of escape in case of fire or where legal action has been taken to prevent occupation on the grounds of risk to health or safety, but we can see opportunities to use these provisions to prevent an empty rates charge in some other situations.

Part vacant property will still be able to apply to the local authority for discretionary relief in respect of that part, but from April 2008, that relief will be limited to a maximum of three months (six months for warehouse and industrial premises).

The anti-avoidance provisions

Simplicity? – we rather doubt it

But the major part of the consultation paper relates to the anti-avoidance provisions, ie those that are intended to remove the incentive for owners to cause or allow damage to their vacant property. The paper is replete with platitudes which we believe Government will find nigh impossible to deliver. For example, it says 'the anti-avoidance provisions should be as simple as possible to operate' and then presents three very complex alternative suggestions to achieve them. It says the provisions 'should be based on existing valuation practice wherever practicable' which is an astonishing thing to say given that 400 years of rating valuation practice is being binned, with properties to be valued in future, not as they exist, but in some previous state!

Government says it wants to continue to provide exemptions to those 'who genuinely qualify for them' and to 'tackle rates avoidance tactics that could be employed', but that these should not apply where damage is caused 'by normal business activity'. It sounds easy when you say it that way, but we believe it will be exceptionally difficult to achieve this in regulations without both enormous complexity and many unintended consequences.

Demolition and redevelopment will not get caught

Government seems to be clear that if you demolish a building under permitted rights or if you redevelop property for which planning permission has been obtained, then the property would be valued in its actual rather than some previous state. But it is not clear whether 'redevelop' requires total re-building or could encompass less extensive works. The paper suggests that you could be liable for empty rates if you are splitting one unit into three separate premises, although we would categorise that as a 'normal business activity'.

The intention is that a property will not fall under the anti-avoidance provisions if it is damaged as a result of a natural disaster, such as flooding, gales and the like, or because of 'accidental damage' such as burst water pipes, gas explosions or fire. However, in the case of 'accidental damage' the owner will have to prove that appropriate action had been taken to prevent the damage – quite a challenge to provide such proof after the event. Damage caused by criminals will also not count against the owner, but again the owner will be under a substantial burden to prove that appropriate action had been taken to prevent it.

Whereas there will be no time limit upon empty rates liabilities for vacant properties, those that have been deliberately vandalised are likely to be penalised through the anti-avoidance measures for a limited period. Government is consulting on whether the anti rates-avoidance measures should cease after one, two or three years, or continue indefinitely.

And lastly, it is suggested that the anti-avoidance measures might come to an end upon sale of the property – which, if implemented, would seem to provide a ready made opportunity to circumvent the intention of the provisions.

Muddled thinking – presenting opportunities

To conclude, these are the key issues on which your views are sought. Frankly, the consultation paper displays considerable naivety about the operation of the rating system and some muddled thinking in certain areas. We are fearful that unless exceptional care is taken over the drafting of the Regulations (for which CLG does not have a good track record) they could create substantial unfairness. The flip side is that we are sure there will be significant loophole opportunities for us to exploit for you.

When the Rating (Empty Properties) Bill was first introduced in Parliament, the Government claimed that owners were unlikely to want to get involved with roof removal, yet it is intending to create a labyrinth of regulation – and probable legal challenge – to prevent it happening. It would be preferable to see how owners respond to their new liabilities and then to regulate if there is a pressing need.

Making your views known

Your representations on the consultation paper should be submitted to emptyproperty@communities.gov.uk by 1 October 2007.

And, if you want to try to dissuade the National Assembly for Wales from removing or reducing empty rates relief, we suggest you write to **Paul Harrison** at the Welsh Assembly Government paul.harrison2@wales.gsi.gov.uk as soon as possible. The Welsh have a financial incentive to follow the English scheme as their grant from Westminster next year is likely to be reduced by the amount that could be raised from levying rates on vacant properties. Having said that, WAG has previously adopted a more enlightened attitude regarding business rates issues – transitional arrangements and small business rates relief come to mind – so there must be a reasonable prospect of influencing a more considered position regarding empty property rates in Wales.

Leading our sector, not following it

“ We believe technical expertise should come as standard with any property consultancy. What sets us apart is our role in driving change and influencing policy. Many of our partners are at the top of their profession, playing influential roles in advising Government and guiding clients through change. ”

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debrief is just one of the many ways we communicate the key issues in our swiftly-changing property world.

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Key Gerald Eve personnel — people like Hugh Bullock, Graham Foster and Jerry Schurder — all play a role in advising on legislative, statutory and regulatory changes. It's that involvement that keeps our clients ahead of the game on issues that directly affect their interests. We are at the vanguard of our sector and believe our leadership can only be of benefit to our clients.

If you would like to know more, please contact me at dbutters@geraldev.com or call **020 7333 6237**.

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Where to find out more

Our March 2007 debrief – what you need to know about the Lyons Review and 2007 Budget – can be downloaded at www.geraldev.com

Modernising Empty Property Relief – A Consultation Paper can be downloaded at <http://www.communities.gov.uk/index.asp?id=1511767>

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