

THE ISLE OF MAN RENT & RATING APPEAL COMMISSIONERS

KIRINDOLAM 2 LIMITED

Objector

HELD AT: Douglas
CHAIR: Mr Mark Emery

DATE OF SITTING: 15 April 2024
MEMBERS: Mrs Fiona Robinson
Ms Debbie Reeve

REPRESENTATION

- The Objector was represented by Mr C Barr.
- Isle of Man Treasury (**Treasury**) was represented by the Valuation Assistant, Mr Brian Johnson.
- Douglas City Council (**the Council**) was represented by Mr Keiron Murray, of Innova Law.

DECISION

The objection is dismissed by the Isle of Man Rent & Rating Appeal Commissioners (**the Commissioners**).

REASONS FOR DECISION

Introduction

1. The Commissioners are an independent judicial body established in law, in part to hear and determine objections against a rate levied against a property. The overwhelming majority of objections to the Commissioners concerning rates involve objections where objectors seek up to a 20% reduction in rates due to external factors allegedly impacting upon the ordinary rateable value of their property (recent examples include the Douglas Promenade redevelopment and sewage issues).
2. This objection is unique in that it concerns a voluntary agreement (agreed in good faith between Treasury and certain local authorities, including the Council) (**the Good Faith Agreement**) whereby historically it has been the case that where significant construction works to a property have been undertaken by a ratepayer rendering their property uninhabitable for a period of time, then the ratepayer has requested, and Treasury and the local authority in question have previously granted on a temporary basis, a suspension of rates on at most a yearly basis until the works are completed and the property is once again habitable.
3. This decision concerns the Good Faith Agreement (as recently amended by the Council), an alternative statutory process of temporarily re-valuing the rateable value of a property whilst the same is uninhabitable, and the jurisdiction of the Commissioners. As such, whilst the Commissioners have not typically published its decisions, the Commissioners have agreed to do so in this case at the request of the parties.

Relevant Background

4. This objection concerns the former Saddle Mews Nursing Home (coded 385393) (**the Property**), which is owned by the Objector and situated immediately next to the National Sports Centre.
5. It was the evidence before the Commissioners that the Property has been vacant for quite a period of time, which the Objector explained was because of various issues with obtaining planning approval. The Objector explained that it was likely in future that the Property would

be redeveloped into residential town houses, and that the previous plan for thirty four residential apartments was unlikely to be progressed any further. The current state of the Property is that the inside has been stripped-back completely to a shell, with exposed concrete walls and visible plumbing. There were various pictures put before the Commissioners confirming the same, which the Objector stated had occurred because of the future redevelopment and also due to asbestos being discovered in the Property.

6. With the Property stripped-back to its shell as outlined above, the position of the Objector was that it was uninhabitable/incapable of beneficial occupation, and as such on or around 24 May 2023 the Objector requested that rates were suspended. Rates for 2023/24 were suspended by Treasury (who had expected a similar agreement by the Council in accordance with the Good Faith Agreement) and confirmation of the same was provided to the Objector. However, the Council (who collect their own rates, unlike a number of local authorities who rely upon Treasury to both charge and collect rates) responded on or around 15 September 2023 by email to inform the Objector that whilst there had been agreement for the last four years to suspend rates, that no further allowance would be granted by the Council and therefore the full rateable value of 1936 would be charged for 2023/24, with a rate demand of £9,854.24 to be issued.
7. In support of the unexpected decision by the Council, reliance was placed upon a new suspension policy issued within minutes of a meeting of the Council dated 28 September 2023 (**the New Policy**), which states that the maximum period of time the Council can agree to the Good Faith Agreement is twelve months in relation to properties needing internal works only or eighteen months in relation to properties needing both internal and external work.
8. Upon being questioned in respect of the New Policy, the Council accepted that it was not easy to find, as it had not been issued in the form of a separate byelaw or public notice as one might have ordinarily expected, and that in order to find the same on the Council's website a member of the public would have to know the specific date of the Council's meeting when the New Policy was implemented. Whilst the Council accepted on reflection that this was not particularly helpful to the public, for the reasons outlined below it is in any event the view of the Commissioners that the New Policy is unlikely to be of particular relevance going forward.
9. With the Council unwilling to provide any further voluntary suspension of rates due to the New Policy, the Objector filed an objection to the Commissioners, arguing the New Policy and/or the rate demand had been issued unlawfully, or in any event there was a relevant exemption for the payment of rates pursuant to section 75 of the Rating and Valuation Act 1953 (**the Act**):

"Subject to section 3 of the Rating and Valuation Act 1981, no buildings or an extension to any existing building valued under a supplemental list shall, whilst unfinished, be liable to the payment of any rate up to the date on which they are first occupied, but shall be liable to the payment of the proportion of the current year's rate from the date of actual occupation."
10. The Commissioners had the benefit of helpful oral and written submissions from the Objector, Treasury and the Council. As part of those submissions the Council averred that the Commissions had no jurisdiction to set-aside the New Policy/the rate demand and also requested clarification from the Commissioners as to what power, if any, the Commissioners have to reduce rates outside of the 20% permitted under the Act.

Application of section 75 of the Act

11. The Council submitted that there were only very limited instances when discounting of rates is permitted, including:

- a. Section 64 of the Act provides for a fixed discount of up to 5% for payment by 30 June of rates due, and similarly under section 30(4)(a) of the Act a discount is provided for early payment of rates due on new or altered buildings; and
 - b. Section 63A of the Act enables Treasury to make regulations enabling a local authority to make a rebate scheme.
12. The Council outlined that none of the above instances apply to the Objector's position, which was accepted by the Objector, which only leaves the question as to whether the Objector could potentially rely upon section 75 of the Act for an exemption from rates. The Council submitted that it is obvious that section 75 does not relate to existing properties, and therefore could not be relied upon by the Objector. In response to this, Treasury (and the Objector, who adopted Treasury's submissions on this point) argued that section 75 of the Act applied in this case because it essentially makes an exemption for buildings, such as the Property, which are unfinished and unoccupied.
13. It is clear to the Commissioners that section 75 of the Act has no application whatsoever to the Property. In this regard, once the Property was originally "finished" and subject to rates logic dictates that it cannot in future again become "unfinished". Further, section 75 of the Act states that it is expressly subject to section 3 of the Rating and Valuation Act 1981, which is a section titled "*new property*" and allows Treasury to issue a notice to a building authority to pay rates in respect of a newly built, but unoccupied property. For these reasons, section 75 of the Act is obviously intended only to relate to new properties in an unfinished state, has no application to this case, and cannot be relied upon by the Objector.

Sections 24 and 26 of the Act/the Good Faith Agreement

14. Section 26 of the Act allows Treasury to revise/alter/correct the valuation list as it sees fit, and if the valuation list is revised/altered/corrected then notice is first given to affected parties (such as the owner and the local authority), who, pursuant to section 26(2) of the Act can make representations to Treasury and ultimately any continued objection to the same is determined by the Commissioners in accordance with section 26(3) of the Act. More generally, section 24 of the Act also provides for a statutory process for interested persons (such as ratepayers or local authorities) to file any objection against the rateable valuation of any property to the Commissioners.
15. In its submissions, Treasury brought the relevant legal test to the attention of the Commissioners in respect of determining the rateable value of any property. It is not necessary to refer to the whole legal test, save that Treasury submitted that a fundamental ingredient of this legal test is that the property must be considered habitable, and that if the property is uninhabitable (as opposed to being in a mere state of disrepair) then Treasury averred that the relevant legal test means that the property should be zero/nominally rated.
16. After discussions with the parties it became clear that instead of using the Good Faith Agreement, it would be open to a ratepayer undertaking substantial construction works (to such an extent that their property becomes uninhabitable) to instead consider requesting from Treasury a revaluation of their property's rateable value on the basis that it should be zero/nominally rated and seek that the valuation list is updated accordingly. Assuming this were successful, upon completion of the construction works (such that the property is habitable again) then the ratepayer would contact Treasury again and request a revaluation of the property's rateable value back to its full amount.
17. The Commissioners questioned Treasury and the Council on how the section 24/26 process of the Act interacts with the Good Faith Agreement. The parties explained that the two systems have ran in parallel, but that the Good Faith Agreement was entirely voluntary and had been used exclusively to date. The Commissioners were informed by Treasury and the Council that

this was the first ever occasion where the Council had refused to agree voluntarily to grant a rates suspension which Treasury was willing to grant as per the Good Faith Agreement. The Council explained that they had recently taken legal advice, which had concluded that it should no longer agree to voluntary suspensions in accordance with the Good Faith Agreement as this has no statutory footing. Having considered the submissions of the parties, the Commissioners agree with the Council's submissions that it has no ability to step-in to enforce the Good Faith Agreement as the same is entirely voluntary as between Treasury and the Commissioners.

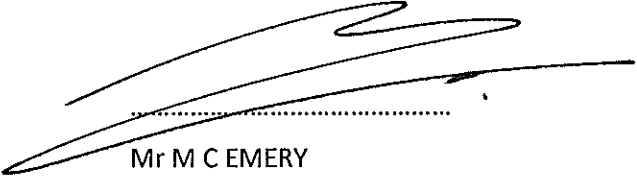
Jurisdiction of the Commissioners

18. With the rate for the Property unable to be discounted by the Commissioners, and the Commissioners not having the power to enforce the Good Faith Agreement, this leaves only the question of whether the Commissioners have the power to set-aside the rate demand and/or the New Policy.
19. In considering whether or not the Commissioners have the power to set-aside the rate demand and/or the New Policy, the Commissioners are mindful that they are a creature of statute and can only operate within the limited statutory constraints granted to them by Tynwald.
20. The Commissioners can reduce a rate demand by 20%, which it is permitted to do so in appropriate cases in its discretion in accordance with section 16 and the fourth schedule to the Act. However, none of the parties were able to direct the Commissioners to any further statutory power for it to set-aside a rate demand by any further amount, or to set-aside a rate demand completely or the New Policy. The Commissioners therefore conclude that no such statutory jurisdiction exists, and that if the Objector wishes to set-aside the rate demand and/or the New Policy then it should take independent legal advice in respect of the merits of issuing a Petition of Doleance in the Isle of Man High Court of Justice challenging the same, or to defend any court proceedings issued by the Council seeking judgment in respect of the 2023/24 rate (which it transpired during the hearing had already been issued in the small claims court by the Council, with a preliminary hearing listed for 26 April 2024).

Decision/Guidance for future objectors

21. For the reasons outlined above, it is the unanimous decision of the Commissioners that the Objector's objection must be dismissed. However, the Commissioners wish to take this opportunity to briefly comment more generally on matters subject to this objection with a view of assisting the parties in respect of future rate demands and also the wider public.
22. Whilst the Good Faith Agreement has been terminated by the Council, it appears that the separate statutory process at sections 24/26 of the Act outlined above at paragraphs 14-17 of this decision may be of assistance to ratepayers undertaking substantial construction to a property (to the extent that the property becomes uninhabitable/unfit for occupation due to the same). This statutory process would require the ratepayer to first notify Treasury of the same, requesting a temporary revaluation of rates to zero/minimally rated. Whilst the Commissioners leave open for another day (as they have not had the benefit of legal submissions from the parties on the same) the question of whether or not in such circumstances a property should be zero/minimally rated, there is a clear statutory route of objection for any objector/the Council to the Commissioners pursuant to sections 24 and 26(3) of the Act to determine any such dispute over the rateable value of a property.
23. The effect of the alternative statutory process at sections 24/26 of the Act is that the New Policy, issued by the Council governing how it is prepared to agree to voluntary suspensions of rates going forward in accordance with the Good Faith Agreement, may no longer be particularly relevant. This is because during the hearing the Council expressed a view that

progressing under sections 24/26 of the Act may well be a more appropriate process going forward for situations such as this, as it puts matters on a statutory footing and ensures the sanctity of the valuation list itself (a key issue given the conclusiveness of the valuation list in accordance with section 22 of the Act and its availability for inspection to the public in accordance with section 19 of the Act), as suspensions agreed under the Good Faith Agreement have not been reflected in the same to date.



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Mr M C EMERY

Chair of the Isle of Man Rent & Rating Appeal Commissioners