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Dear Peter

THE NON-DOMESTIC RATES VALUATIONS (CORONAVIRUS) BILL – FURTHER QUERIES

Following on from the Committee's evidence session on 13 December and your subsequent letter, I write to provide clarification on the matters raised by Committee.

How the economic impact of coronavirus is to be allowed for in the next (and future) valuation(s) while the impact of coronavirus on the physical enjoyment of a premises will not be taken into account.

In short, Reval 2023 (and subsequent revaluations) will take into account the impact the pandemic has had on rental values when calculating NAVs. The Bill would remove the right to appeal NAVs where covid has an impact *in between the valuation date and the new valuation list coming into effect*.

To give a fuller explanation, it is necessary to repeat some information which has been provided to the Committee in correspondence, as well some detailed references to the rating legislation.

Non-domestic properties are valued for rates on the basis of the net annual value, or NAV, of the property, which reflects the annual rent that the property would be expected to achieve in the market if it were vacant and available to let. Because NAVs should reflect market rents, the Valuation List needs to be updated from time to time to make sure that changes in the property market are factored into the NAVs and, ultimately, into rate bills. The Valuation List is updated through a general non-domestic revaluation exercise undertaken by Land & Property Services.

In a non-domestic revaluation, the NAVs of all properties are assessed at the same date known as the Antecedent Valuation Date (or AVD). The use of this common date is important as it ensures all properties are taxed on the same basis. Because a revaluation is a complex exercise which takes some time to complete, there is typically a two year gap between the AVD and date that the new Valuation List is published.

It may be useful at this stage to identify the relevant provisions in the Rates (Northern Ireland) Order 1977 which govern how a revaluation is undertaken.

- Article 38: The Commissioner and the district valuers shall conduct general revaluations as are necessary for the preparation of new valuation lists.

- Article 39: Every hereditament (i.e., rateable property) shall be valued upon an estimate of its net annual value, (except dwelling houses, private garages and private storage).

- Article 39A: A net annual value is ascertained by reference to an earlier time (the Antecedent Valuation Date or AVD).

- Article 45: A new valuation list is prepared, published and shall come into force on the 1st April following the day on which it was published.

- Article 59: The Commissioner or district valuer may serve a notice on any person requiring him to provide such information as may reasonably be required for the purpose of enabling a new list to be accurately prepared.

The interaction of these articles allows the valuer to take account of economic changes in the rental market, assess them at the AVD, and reflect them in a new Valuation List. It is the job of the valuer to source the evidence to support changes in the list, and it is the responsibility of the ratepayer to provide the evidence when requested.

The economic changes on the rental market which have occurred since 1 April 2018, including those brought about by the pandemic, will be reflected in rents being negotiated in the market. LPS Valuers will gather information about these rents, which will, therefore, feed into the new 2023 list. In this way, the economic impact of Covid will be reflected in the new Valuation List.

However, the economic changes since 1 April 2018 will reflect more than just the impact of Covid. They will take into account many other ongoing economic changes which have been impacting on the rental market over time, such as

- The accelerated shift to online shopping which could affect rents on the high street.

- The rise in the prevalence of working from home, which could affect office rents and businesses which rely on footfall in town centres.

- The increase in demand for warehouse space.

- The increase in construction costs.

- The Brexit effect, and how it may influence rental negotiations.

These effects may cause some rents to increase and some to decrease. Covid may have accelerated some of these trends, such as the shift to online shopping and working from home, but will have had minimal impact on others. The only robust way to assess these impacts is to gather and assess the evidence from the market.

Because general revaluations are complex exercises to undertake, there is typically a gap of up to 2 years (shortened to 18 months for the current revaluation) between the AVD and the publication of the new Valuation List. Economic events can happen which might impact on market rents. For example, a boom in some sectors, or a recession. Trying to take account of every change that might occur would, even if it was possible in practice, be very disruptive to the preparation of the new Valuation List and the planning of rate revenues by Councils and the Executive.

Therefore, to ensure the transparency and certainty of the tax, both for the ratepayer and the public sector which depends on the revenue, economic changes that happen between the AVD and date of publication do not have any effect on the NAVs in the new List. Instead, any economic changes are dealt with at the next revaluation. To illustrate the principle in our current context, if there were to be a period of very rapid economic growth in 2022 as a ‘bounce back’ after the pandemic, this would not be reflected in the Valuation List that will take effect on 1 April 2023, but will manifest in changes in the rental market and be reflected in the subsequent revaluation exercise.

That addresses how the economic impacts will be taken into account. However, an NAV can be affected by certain types of physical changes impacting on property that happen between the AVD and the date of publication of the list. These are specified in Article 39A(1A) of the Rates Order.

The Bill currently being considered by the Committee affects only Article 39A(1A). This Article can be separated from those noted above in that it refers only to those physical matters which were in place on the date the list came into force (i.e. 1 April 2020 for the current list; 1 April 2023 for the next list) and not to any other economic changes which may have occurred since the AVD. The very specific connection between the Bill and Article 39A(1A) allows for only the impact of direct or indirect consequences of coronavirus on Article 39A(1A) to be excluded under the proposed Bill for the purpose of the current list and in relation to future lists. This specific linkage means that the Bill will not affect the ability of LPS to reflect the economic impacts of Covid in the revaluation.

Does this mean that periods of closure or restricted operation (owing to coronavirus regulations) will not affect valuations while e.g. the impact of reduced footfall (which is an indirect consequence of the pandemic) will be taken into account?

As noted above, reduced footfall is one of the economic trends (predating the pandemic but perhaps accelerated by it) that would be expected to influence rents negotiated in the property market at the AVD. Any impact of the pandemic, or indeed any other economic factor, will be manifest in rental evidence collected, and will be taken into account in the NAVs assessed as part of Reval 2023.

How will the longer business turnover period of 3.5 years be used to determine valuations?

Traditionally, the statutory valuation date has aligned with the taxation year, that is 1 April in the relevant year, and LPS has sought turnover information for the previous 3 tax years. However, we are not dealing with a typical or normal set of circumstances because of the pandemic. One particular issue was the fact that at 1 April 2021 most economic sectors were operating under restrictions. Therefore, for Reval 2023 the statutory valuation date was moved to October, to allow more time for evidence to materialise, particularly given the context of the covid pandemic.

The Committee has been particularly interested in how this will work for the hospitality sector. A prospective tenant would wish to see the most recently available turnover information, and given that trade tends to fluctuate, a tenant will also wish to examine turnover from earlier years.

By requesting 3.5 years of business turnover, LPS will be able to determine the normal trading figures pre pandemic, the extent of downturn during the pandemic and the level of trading since businesses have emerged from lockdown. All of which would be factors in the mind of a hypothetical landlord and tenant agreeing a rental bid.

The 3.5 years of business turnover will be examined to estimate a Fair Maintainable Trade, which is the amount of turnover a reasonably experienced pub operator could expect to maintain in the premises at the AVD.

It must be pointed out that the response rate from the hospitality sector has been poor over the last several revaluations, and many NAVs have been assessed based on estimated turnover information. It is important that ratepayers in this sector come forward with the information requested for Reval 2023 to ensure valuations are fair and accurate at the statutory valuation date.

Clarity on current rates valuation appeals; in particular whether the 2,000 or so covid-related appeals have been stayed and if the 3,000 or so other appeals are progressing.
Clarity on the overall timeline for the resolution of non-covid appeals.

The first year following publication of a Revaluation always results in a significant increase in appeals over and above the quantity of appeals received in a non Reval year. For the 2015 Revaluation LPS received 4,850 first stage appeals in the year following publication. These were all completed within 2 years. Approximately 25% went on to a second stage appeal, and completed before publication of the 2020 List.

To be clear in relation to 2020 appeals, whether or not Covid has been stated as a reason for the appeal, LPS valuers must still consider the effects of the health protection regulations on the assessed NAV. The initial approach followed by LPS was quite correctly to pursue a robust evidential basis by engaging with ratepayers and their agents to demonstrate the degree to which market rents were being affected by the impact of the Regulations. The evidence has been slow to emerge.

However, legal advice from Senior Counsel has confirmed that it would also be impossible to undo any reductions made because of Covid during the life of this valuation list. So whilst it is not LPS normal operating practice, the decision had to be taken to put appeals on hold where Covid is a given reason for the appeal or where the valuer is aware Covid has had a potential impact on rental value, until LPS has clarity on the likely outcome of the Bill.

Any appeal which could be actioned, has already been actioned and the cases have been closed. Of the 4,339 appeals received for Reval2020, 707 or 16.3% have been completed.

Should the Bill pass the Commissioner of Valuation would target the remaining first stage 2020 appeals to be completed within two years, and second stage appeals before 2026.

Should the Bill not pass a conservative estimate of the resources required to complete the first stage appeals, and assess the impact on NAVs of similarly circumstanced property, would be 6 years. Second stage appeals would take longer. This would certainly run into appeals from the 2023 and possibly 2026 Revaluations, and represent a considerable instability in public finances going forward.

I trust that this letter addresses the Committee's questions. Ian Snowden and Andrew McAvoy from Rating Policy Division will attend the Committee on 15 December for the next stage of the Committee's consideration of the Bill.

Yours sincerely

Andy Monaghan

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DEPARTMENTAL ASSEMBLY LIAISON OFFICER