

## COVID MCC RATES APPEALS TO BE DISMISSED

To say that rating surveyors, ratepayers and occupiers were all taken completely by surprise by the Government's announcement on 25<sup>th</sup> March would be a gross understatement.

On behalf of the Government, Luke Hall, the Minister of State for Regional Growth and Local Government, announced that there would be a new £1.5bn discretionary fund to support businesses that had not already received any business rates relief as a result of COVID-19.

However, at the same time, Mr Hall also announced that the establishment of this fund will be accompanied by a change in legislation that will effectively extinguish COVID-19 as being fair grounds for a "material change of circumstance" proposal. It is this second statement that came as a shock to anyone whose business has been affected by the pandemic.

Readers will be aware that the amount of business rates an occupier or ratepayer pays is dependent on the level of the Rateable Value on the property that they occupy. Rateable Values broadly reflect rental values as a particular date with the current 2017 Rating List reflecting rental values as at April 2015. Rateable Values are adjusted every time there is a new Rating Revaluation but the next one has already been delayed until April 2023.

Under existing legislation (Schedule 6, para 2(7) of the Local Government Finance Act 1988) ratepayers or occupiers can challenge the level of the rateable value on their property if a "material change of circumstance" (MCC) has occurred between Rating Revaluations.

Without getting too technical in order for an MCC appeal to succeed there has to be a physical change to the appeal property or to the 'locality' in which the property is found, and economic factors have to be disregarded. The Government argues that MCC appeals are merited on individual cases like roadworks near a property that temporarily affects its value but Mr Hall says that the impact of COVID-19 is an economic one.

However, the Valuation Office Agency (VOA) has already agreed that MCC appeals as a result of COVID-19 are valid and indeed, until recently, had been in discussions with the professional bodies representing Rating surveyors about how best to deal with the huge number of COVID-19 appeals that had been lodged. It is estimated that more than 170,000 businesses are currently seeking reductions in their Rateable Values to reflect the "material change of circumstances" (MCC) represented by the pandemic and the restrictions imposed to stop its spread and more than 400,000 MCC "checks" have been lodged since the start of the pandemic. These "checks" are the first step in the new three-tier appeals system that is now in place.

The Government now wants to introduce new legislation to remove the right to challenge rateable values due to the effects of COVID-19. This would have the effect of declaring all 400,000 MCC "checks" to be null and void, which is surely contrary to the principles of a good property taxation regime.

It is readily accepted that the Government has introduced many measures to help businesses during the pandemic, through loan schemes, furlough arrangements and the 100% business rates relief to all occupiers in the retail, leisure and hospitality sectors. It is also accepted that despite the Government's "work from home" directive, some businesses will have managed to cope through the pandemic with staff working from home. But these businesses are still left paying 100% business rates for premises that they have not been able to occupy or use for the majority of the past 12 months.

To be blunt, the reason the Government is proposing to change the rules about "material changes of circumstance" appeals is solely down to economic factors. For about 23% of the £29 billion raised each year from business rates is paid by occupiers in the office sector, which has not been granted any relief or exemption from Business Rates and yet it has probably seen the greatest decline in values as a result of the coronavirus and the various lockdown measures put in place by the Government. Obviously, even a 10% reduction in rateable value across the board in the office sector would have created a huge hole in Government finance and there are certainly strong arguments for larger allowances than this.

The Government's announcement on 25<sup>th</sup> March therefore came as something of a hammer blow to the Rating industry. As one rating firm has stated, "this will be a catastrophic blow for businesses who have spent the last year lawfully pursuing business rates adjustments only to have their statutory legal right ripped from them..." Another has described the Government's announcement as a "staggering response by

the Government to sectors that have been adversely impacted by COVID-19. The Government is ripping up the rule book retrospectively.”

The £1.5bn discretionary fund that will be introduced is an inadequate compensation package that will provide little relief to those businesses who will now feel that they have borne the brunt of the economic impact of COVID-19. Removing the legal right for ratepayers to legitimately challenge the level of their Rateable Value due to temporary but unprecedented factors is an extraordinary draconian act and totally undermines belief in a tax system which is already under close scrutiny. This proposed action by the Government will ride roughshod over their claim that Business Rates should be a fair and transparent system of property taxation and will declare that the business rates system is no longer “fit for purpose”.

At the time of writing, it is known that investigations are underway concerning the possibility of mounting a legal challenge or some form of judicial review against the Government. We will advise on the outcome of these investigations in due course, but in the meantime should you wish any further clarification on this matter, please do not hesitate to get in touch.

Ashwell Rogers is a firm of Chartered Surveyors and is regulated by the RICS. Our Rating Partner, Roger Dunlop is a Chartered Surveyor and is also a member of the Institute of Revenues Rating and Valuation (IRRV) and the Rating Surveyors Association (RSA). Please feel free to contact him if you need advice on any rating matter. (Email: [roger@ashwellrogers.com](mailto:roger@ashwellrogers.com); mobile: 07946 683855).

