PHD474
Ward(s): All

DRAFT PORTFOLIO HOLDER DECISION NOTICE

PROPOSED INDIVIDUAL DECISION BY THE PORTFOLIO HOLDER FOR FINANCE AND ADMINISTRATION

TOPIC – Business Rates Write-offs

PROCEDURAL INFORMATION

The Access to Information Procedure Rules – Part 4, Section 22 of the Council's Constitution provides for a decision to be made by an individual member of Cabinet.

In accordance with the Procedure Rules, the Corporate Director (Governance), the Chief Executive and the Head of Finance are consulted together with Chairman and Vice Chairman of The Overview and Scrutiny Committee and any other relevant overview and scrutiny committee. In addition, all Members are notified.

If five or more Members from those informed so request, the Leader may require the matter to be referred to Cabinet for determination.

If you wish to make representation on this proposed Decision please contact the relevant Portfolio Holder and the following Committee Administrator by 5.00pm on Monday 4 March 2013.

Contact Officers:

Case Officer: Gill Cranswick, Head of Revenues, 01962 848 190, gcranswick@winchester.gov.uk

Committee Administrator: Nancy Graham, Senior Democratic Services Officer, 01962 848 235, ngraham@winchester.gov.uk

SUMMARY

Approval is sought to write-off two Non Domestic-Rate debts amounting to £70,413.21.

David Lailey& Sons (Machinery) Ltd(1999/2000 – 2002/2003) £30,349.25
Barton Farm Industrial Estate, Wield Road, Old Alresford, SO34 9RN

Due to a number of companies being registered with Companies House for this address there were initial problems establishing the correct liable party for this property. The above company was eventually identified as the correct liable party and billed accordingly. Payments were not made in accordance with the bill so recovery action was instigated and a liability order was obtained in December 1999.

The order was passed to bailiffs to recover the debt and payments were obtained from the company to clear it.

The company failed to make payments in subsequent years and liability orders were obtained in each year of its occupation. Each time bailiffs were instructed to recover the outstanding balances but they were unable to do so. The liability orders were returned to the Council in May 2005. The notes made by the bailiffs state that the site was in poor condition. The little machinery that was there was not worth removing.

A letter was sent to the company in June 2005 asking it to contact the Council regarding the arrears and referring to the possibility of issuing a winding up petition. The company paid the instalments due for that financial year but did not make an arrangement to pay the arrears.

In July 2006 a representative of the company contacted the Council and stated that the company was only registered "live" at Companies House because it was in litigation regarding an environmental licence to deal in scrap metal. A new company was started so this rate account was closed.

The liability orders were sent to a different bailiff company who made an arrangement with the debtor company. They have been collecting regular payments of £250 per month since 2008. At this rate of collection the total outstanding balance of £48,456.42 would take over 16 years to clear. The company is still registered "live" at Companies House. Given the significant period of time it will take to recover the debt it is considered appropriate to write off the oldest 4 years of the debt as uncollectable.

The Watercress Company Ltd (2008/09 – 2010/11) £40,063.96
Manor Farm Business Centre, Alresford, SO24 9FH

An account was set up in April 2011 in the name of this company when the previous occupier notified the Council that they had actually vacated the property in September 2005. The account therefore covered the period from September 2005 to April 2011. The Council had no contact from either the previous occupier or this company for the period from 2005 to 2011, although rates were demanded over that period of time and were paid by the previous occupiers without any dispute, even though they had in fact (according to their subsequent notification in 2011) vacated the property.

After the Watercress Company was billed in April 2011 they wrote to query the address as they did not recognise it. They stated that if it referred to a property they knew by a slightly different name then they were using it in relation to their agricultural/horticultural business. A request was made for our Property Inspector to visit and determine if the property was being used for agricultural purposes. In August 2011 she confirmed that it was being used as a purely agricultural facility and a report was sent to the Valuation Office for them to consider removing the property

from the Rating list from September 2005. This is the date that the company became liable for payment of rates.

The Valuation Office determined that the property could be removed from the Rating list and did so with effect from 1 April 2010. The Valuation Office confirmed that they were unable to remove the property from the list from September 2005 as they are prevented in law from doing so. The relevant regulations state that the last date for an interested party to make a proposal to alter the 2005 Valuation list was 31 March 2010 or 6 months after the date of a Valuation Office notice, whichever was the latest. The last date possible for a Valuation Office notice to change an exemption was 1 April 2011.

This is relevant as properties considered to be agricultural are exempt from rating. The proposal to remove the property due to a change in the exemption was not made until August 2011.The property was removed from the list with effect from 1 April 2010 in December 2011. A new bill was sent to the company covering the period from September 2005 to April 2010, and recovery action commenced.

The company disputed the charge, stating that it would have appealed to the Valuation Office if it had been aware that the property was still in the rating list. The Council had advised the company to contact the Valuation Office in 2000 following some correspondence with the company but no action was taken by the company at that time. In the circumstances recovery action was withdrawn to allow time for the ratepayer and/or the agent to prepare a full response.

This was received in June 2012. The letter stated that the company would have contacted the Valuation Office immediately if it had been aware that there was a liability prior to the deadline for making an application to remove the property from the rating list. As it did not receive any bills or notices it was assumed that the property was exempt as it was agricultural. The letter goes on to state that the company does not believe that it is equitable to be charged rates for the period prior to the removal of the property from the list. Two High Court cases are quoted by them in mitigation and these are Encon Insulation Ltd v Nottingham City Council (1999) and North Somerset District Council v Honda Motor Europe Ltd, Chevrolet United Kingdom Ltd & Graham (2010).

In the case of Encon, the local authority billed the ratepayer retrospectively after it became aware of the liability. There were issues with the length of time it had taken Nottingham City Council to identify the liability and Encon Insulation contended that the billing notices had not been served in accordance with the regulations in that they “had not been served on or as soon as practicable…after 1st April in the relevant year”. The appeal was allowed and it was concluded that the important question was whether it was practicable for the billing authority to have identified the location at an earlier date and thus been able to serve the notices earlier.

In the case of North Somerset v Honda Motor the Council contended that the ratepayer was liable to pay rates for premises for a period of 5 years and the notices were served after their liability ceased. The ratepayer contended that the demand

notices were not served in accordance with the regulations. It also contended that it had suffered substantial prejudice as a result of the delay in serving the notices and that it would be unconscionable to allow the Council to enforce liability or it would be conspicuously unfair.

It was found that there was little doubt that if Honda had been aware earlier that it was liable for rates for the property on receipt on notices steps would have been taken to extinguish that liability or substantially reduce it. The company had suffered substantial prejudice in the consequence of late service. Similarly Chevrolet suffered substantial prejudice as a result of the late service of the notice.

With regards to Mr. Graham, the local authority served a number of notices to the incorrect address and failed to identify Mr. Graham as the owner of the property in question. Mr. Justice Burnett was satisfied that Mr. Graham had suffered substantial prejudice which flowed from the late service of the notice by his inability to propose that the hereditament should have been deleted from the 2000 list. The claims against all three defendants were dismissed.

The Watercress Company has stated that the liability will have an adverse effect on its business, in effect that the late service of the notice has caused them substantial prejudice as they were unable to make any provision for the payment of the rates. The circumstances set out in the two High Court cases above are different to this case in that the notices were served late due to the continued payment of the liability by the previous occupiers and there was no reason for the Council to question that the name of the liable party was incorrect.

However, it would appear to be the case that as stated by the ratepayer, if a valid notice to remove the property from the Rating List had been submitted to the Valuation Office within the appropriate timeframe then there would be no liability as the property was exempt for agricultural purposes. In the circumstances it is not considered appropriate to pursue this debt.

The Responsibility for Functions – Part 3, Section 3.2 of the Council's Constitution provides for a Scheme of Delegation to Portfolio Holders.

Each Portfolio Holder

1. To incur expenditure or to make decisions in connection with the operation of services within the budget and policy framework approved by Council, other than on contract award, IT projects, or where a more specific delegation is granted in this scheme, subject to:
    (a) in relation to individual matters where Cabinet has specifically authorised delegation to a portfolio holder up to a limit per project of £500,000 and
    (b) in any other case up to £200,000

PROPOSED DECISION

That approval be given, under Financial Procedure Rules 11.7, to write off Non-Domestic Rate debts, as detailed in the Notice, amounting to £70,413.21.

REASON FOR THE PROPOSED DECISION AND OTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

Given the circumstances of the ratepayers, as described in the Notice, there is little or no prospect of any recovery of the debt.

RESOURCE IMPLICATIONS:

These write offs will have the effect of reducing the amount paid by the Council to the Government for the financial year they are written off, if there is a difference between the amount written off and the bad debt provisions previously made.

CONSULTATION UNDERTAKEN ON THE PROPOSED DECISION

n/a

FURTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED FOLLOWING PUBLICATION OF THE DRAFT PORTFOLIO HOLDER DECISION NOTICE

n/a

DECLARATION OF INTERESTS BY THE DECISION MAKER OR A MEMBER OR OFFICER CONSULTED

n/a

DISPENSATION GRANTED BY THE STANDARDS COMMITTEE

n/a

Approved by: (signature) **Date of Decision**

Councillor Stephen Godfrey – Portfolio Holder for Finance and Administration