

ITEM 12(b)

POLICY AND RESOURCES COMMITTEE

29 MARCH 2000

DISCRETIONARY RATE RELIEF APPLICATION: SECTION 44A, LOCAL GOVERNMENT FINANCE ACT 1988 - PARTLY OCCUPIED PROPERTIES

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1. **Purpose**

- 1.1 To consider an application for discretionary rates relief under Section 44A of the Local Government Finance Act 1988 from Vision Express.

2. **Summary**

- 2.1 Vision Express have asked us to allow them rate relief for the two months they were refurbishing the rear part of their City Centre shop.

3. **Recommendations**

- 3.1 The Committee is recommended to refuse the application.

4. **Background**

- 4.1 Section 44a of the Local Government Finance Act 1988 provides Councils with discretionary powers to allow businesses rate relief where part of their property is temporarily unoccupied.
- 4.2 There is no cost involved to the Council Tax Payer where relief is granted.
- 4.3 The Finance and General Purposes Sub-Committee agreed a scheme of delegation for applications under this head at its meeting on 25 June 1991 (Minute FG12/92 refers).
- 4.4 It was decided applications should be granted where any of following conditions apply:
- (a) where a business is moving into new premises and there are practical difficulties in occupying the property in one operation;
 - (b) where a business is vacating their property but there are practical difficulties in doing this in one operation;
 - (c) where part of a manufacturing site is temporarily redundant; and
 - (d) where refusing an application will cause hardship.
- 4.5 Where an application was refused under delegated powers there was a right of appeal to the appropriate Committee.
- 4.6 Erdman Lewis Rating who are Vision Express's Rating Consultants applied for relief on 25 October 1999. This was refused under delegated powers and on 15 December 1999 they wrote another letter to us appealing against the decision.

5. **Issues and Choices**

- 5.1 Erdman Lewis Rating's first letter said the following:

"Please treat this letter as a formal application under Section 44a of the Local Government Finance Act 1988 rate relief for...4 Midsummer Arcade. The property is currently undergoing a refit, but some of the property is still open for trade. I attach a floor plan indicating the area still currently in use, and I understand work commenced on 16 October 1999.

Please let me know if you have any queries, and I look forward to hearing from you at your earliest convenience"

- 5.2 The application was refused for the following reasons:

- (a) At its meeting on 27 November 1996, the Resources Committee refused an application for relief from Beni Foods who were refurbishing

three quarters of their factory in Michigan Drive between 13 November 1995 and 25 March 1996.

- (b) When Vision Express were planning the refurbishment they had the choice of completely vacating the shop (in which case they would have been entitled to rate relief) or vacating it in part which meant if they wanted any rate relief they were relying on the Council's discretionary powers.
- (c) The situation fell well outside the circumstances described in 4.4 where it is stated Council policy to allow relief.

5.3 Erdman Lewis Rating were informed of this decision and their right of appeal. They were advised to provide the following information if they decided to pursue this:

- (a) the reasons Vision Express decided to leave the front part of the shop open;
- (b) did they anticipate any rate savings from having the rear of the shop vacant;
- (c) the purpose of the refurbishment; and
- (d) whether Vision Express would experience any hardship if relief was refused. If so, in what way would the severity of this be any more than hardship experienced by another business that had to pay full rates while their premises was being refurbished.

5.4 The letter appealing against the decision reads as follows:

"Thank you for your letter of 3 December 1999 regarding our application for Section 44A relief.

There appears to be some misunderstanding. We are applying for relief under Section 44A of the Local Government Finance Act for a partly vacant property, we are not applying for relief of rates on the grounds of hardship. Whilst we appreciate this is a discretionary relief the Council is required to exercise its discretion reasonably and we cannot therefore see the relevance of your...questions. However to answer [them]:

1. Vision Express decided to leave part of the shop open in order to reduce the loss of trade and the inconvenience to their customers during the period of refurbishment.
2. The purpose of the refurbishment is to update their retail image and provide a better service to their customers.
3. The refurbishment was completed on Saturday 11 December 1999.

4. Vision Express will experience a hardship of paying an unreasonable rate burden on a partly unoccupied property, this would [be] the same as experienced by any other occupier whose application for Section 44A relief was unreasonably refused.

I would also point out that similar applications on behalf of Vision Express have been granted by Dudley Metropolitan Council.

I trust in the light of this you will reconsider your decision and that the Council will now exercise its discretion in a reasonable manner. Should this not be the case, I would be grateful if you set out the Council's reasons clearly so that an application for judicial review may proceed without unnecessary delay."

5.5 The contents of Erdman Lewis Rating's second letter raises a number of issues:

- (a) There was no misunderstanding about relief being requested for a partly vacant property. It was clear from our letter that we had considered the application on these grounds. Furthermore, if Vision Express's rating consultants are aware of the government's guidelines on rate relief for partly empty properties they will be aware that the circumstances in which we allow relief closely resemble those where the government suggest it should be allowed.
- (b) Erdman Lewis are insisting our decision to refuse relief was unreasonable but they provide very little to substantiate this point of view. They say a similar application was granted by Dudley Metropolitan Council but it may be inferred from this similar applications have also been refused. If Milton Keynes were the only Council ever to refuse such an application they would have surely said so.
- (c) Dudley Metropolitan Council has been contacted and they confirm they will grant relief in the circumstances this Council will allow it. However, the only examples they provided where relief was refused was where they were unable to verify part of a property was empty and where an application was made in respect of a brickworks because it was closed during the Christmas period.
- (d) The only other argument they appear to put forward is that an unreasonable rate burden will arise if a property is partly occupied and rate relief is not allowed for the empty part. However, the legislation is discretionary and there would be little point in giving Councils the responsibility to decide whether or not to allow relief unless there are situations in which it is right to grant relief and other circumstances where it is right to refuse it. If Vision Express's consultants are right it is difficult to see a situation where relief should be refused. If relief must always be granted it would make more sense for the legislation to be mandatory.

- (e) It is noted Erdman Lewis were silent about whether Vision Express anticipated any rate savings as a result of the refurbishment. Consequently, it might be concluded that they never considered this or the matter was too insignificant to have any impact on the decisions they were making.
- (f) The final issue the Committee may want to consider is whether our original reasons for refusing the application were, as Erdman Lewis contend, unreasonable. Is it unreasonable to expect a business to consider the implications of what they are planning to do? In this instance they could have:
 - (i) Tried to obtain a “temporary” reduction in Rateable Value while the works were in progress although there was no guarantee the Valuation Officer would agree to this.
 - (ii) Tried to get the empty part separately rated while the works were in progress. Again there was no guarantee the Valuation Officer would agree to this.
 - (iii) Could have asked the Council for discretionary rate relief, which is what they did.
 - (iv) Could have vacated the shop in its entirety knowing they will get rate relief but accepting the problems this might cause their business.

5.6 If any of the first three options were being considered, the Committee may think it would have been sensible to make enquiries beforehand to find out what attitudes were likely to be encountered. We do not know whether the Valuation Officer was contacted but we were never asked about the likelihood of obtaining discretionary relief. There is nothing wrong in applying for relief without warning but perhaps it is unwarranted to suggest the Council was unreasonable to refuse relief when an earlier enquiry would have made it clear this was the likely outcome.

6. **Implications**

6.1 Environmental

None.

6.2 Equalities

None.

6.3 Financial

If this application is granted it is estimated that the rate relief would amount to £3,000. This is nearly 4% of Vision Express’s annual rate bill in 1999/00 of £76,528.50. The National Non Domestic Rating Pool would meet the whole

cost of this relief. No cost would fall on the Council's discretionary rate relief budget.

6.4 Legal

Power for allowing this discretionary rate relief is contained in Section 44a of the Local Government Finance Act 1988.

6.5 Staff and Accommodation

None.

7. **Conclusions**

7.1 The recommendation is to refuse discretionary relief for the reasons set out in paragraph 5.5 to this report.

Background Papers: Correspondence from Applicant