GOODMAN NASH
PROPERTY AUDIT

BUSINESS RATES REVIEW: TECHNICAL CONSULTATION

Response by:

Alan Weston BSc MRICS
(BOARD DIRECTOR)

Goodman Nash Ltd

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Goodman Nash Ltd is an RICS Regulated and IRRV accredited firm of Chartered Surveyors providing rating advice to many hundreds of ratepayers across England, Wales & Scotland. Our client base includes a wide spectrum of businesses and administrative organisations, to include FTSE 100/250 companies, local authorities and charitable bodies, as well as representing a very significant number of SME ratepayers and property occupiers not otherwise represented for business rates advice.

Chapter 1 – Information Provision

Q1. Do you have any views on the proposed implementation of the information provision system? What issues should be considered in the design of the new system?

The objectives and identified purposes for the self declaration process are laudable, but in my view the proposed process cannot achieve the desired outcome, which at its core states that it "is straightforward, easy to use, and adds minimal additional burden on ratepayers".

In my view, the system needs to be so designed to maximise both the volumes of information provided and its accuracy. Neither sits well outside of each other. This immediately raises questions over the party best placed to provide the information, that will satisfy both of these objectives.

Information on the Property/Changes to Lease Information/Ratepayer

The underlying purpose to the collection is to support the 3 yearly revaluation framework and the further detailed aspirations that derive from having better survey information and a more accurate valuation base. Under a self-declaration process, this could be sought from the Owner (to be defined) or the person in Rateable Occupation i.e. the Ratepayer. At the outset placing the obligation on the Owner means less separate individuals are so obliged (notwithstanding some owners may be completing many returns), and accuracy will be substantially improved from a more knowledgeable source base, who will have greater awareness in commercial property. The information requirements can more readily be understood by this body of individuals. On the other hand, ratepayers are a very diverse base of individuals, companies or organisations that offer a wide range in capability and understanding, as well as comprehension of systems and even the English language.

Whilst not all those elements disappear by placing the self declaration process on the Owner instead of the Ratepayer, the system objectives will be overwhelmingly improved.

Placing obligations on lay ratepayers to understand valuation matters across such a wide range of property types (as demonstrated by the number of VOA Scat Codes) so they are able to determine whether a property change or improvement is likely to be material is just unrealistic. The expectation that at the same time they are able to interpret and determine the correctness of line by line Detailed Property Valuations, let alone carry out the correct measurements, falls into the same camp.

The huge inaccuracies contained in existing FOR's clearly demonstrate that the vast majority of unrepresented ratepayers are not familiar with lease terms nor property language and expressions. Stated rents can be 20% adrift because they include VAT. Poor understanding of repairs and obligations invariably exists.

Collect this information from the best source. Owners are well aware of property changes and material changes require prior approval. Compliance at the same time can be much more effective because it is being targeted at the right sector provider, which would also enable a more robust fine system to be introduced.

Changes to ratepayer can be placed on the Owner or remain with the Ratepayer. It is however crucial to understand the many challenges that exist within the determination of ratepayer (the complexity of which isn't always clear to seasoned professionals, as demonstrated in recent case law such as the cases of Cardtronics and Ludgate House amongst others). Our experience shows there can be vast differences in interpretation of who is in 'rateable occupation' between tenant and landlord, ratepayer and Council, ratepayer and the VOA, and indeed the VOA and Council.

There is also an expectation within the consultation that "where possible, over the longer term, the government will also seek to minimize instances where ratepayers may be asked to provide the same or similar information to government more than once". We would argue this information is already provided to Government (albeit local, rather than central) in typically a timely manner through the billing process instigated by the local authority. Duplication by also providing it to the VOA, who may have different requirements on evidence or similar to those posed by the Billing Authority at best risks duplication, at worst risks inconsistency between two public bodies as to who is indeed in rateable occupation (a far from straight forward principle in some scenarios).

Phone: +44 (0)1380 739112
email: contactgn@goodmannash.co.uk

Certainly any requirement of 'claiming' a property as it exists in the current cumbersome CCA process could be completely foiled by the VOA and a local authority not acting in the same timeframe. Any such process would need to sit outside of the current property claim requirements, any Government Gateway access requirement, and require the occupier/ratepayer to declare no more than their view of the facts, rather than extending to definitions of unit of assessment or any judgement turning on technical and legal interpretation.

Trade Information/Costs Information

This information can be collected from the Ratepayer.

The return rate success will be influenced by the frequency of provision, the level of detail required, and to the time frames permitted under the process.

The proposed time frames under the self declaration are all too restrictive, and together with the frequency of declarations will combine to see high levels of non-compliance; not through deliberate avoidance but through unrealistic rule sets. To achieve the goals of collecting maximum volumes alongside improved accuracy, these timescales need to be radically altered.

At the core of the self declaration proposals is to provide more accurate information to assist the Revaluation process. Within a shorter 3 year cycle, we would advocate that an annual declaration process is unnecessary. Thus changes to leases, trade and costs could be required to be provided 3 yearly aligned to the AVD dates.

Keeping up to date with Property changes/ Rateable Occupation changes on the other hand, does support greater fairness amongst ratepayers, so taxes are more correctly levied and against the correct ratepayer. Since material changes to property that increase rateable value can retrospectively be back dated to the event change, there is no requirement to place such a tight schedule (30 days) on notification of change. A declaration by 31 December in the year in which the change was completed would suffice. I would favour a similar 31 December declaration deadline relating to ratepayer changes, if that declaration process remains a must, to avoid too many time differing timelines.

Q2. Can you see any difficulties in collecting this information or providing it to the VOA? Is there any further information that should be provided?

It is my view that the quest for greater and more accurate information will not be delivered from the proposed ratepayer route, which is backed up with a very watered down compliance regime. One wonders what the incentives might be to comply. Engaging in the compliance process adds a very unnecessary cost to the compliance regime, where an endless amount of chances exist before anyone would get close to a fine. Just how much is that going to cost to police?

Further still by placing this information self declaration process under a soft launch sometime between 2023 to 2026, places huge risks in finding far too late that the process will not work as designed.

You can write any amount of information help sheets, but it is not realistic to educate the majority of the ratepayer community to accurately complete these declarations as proposed.

There is likely to be great confusion among many ratepayers who are in receipt of Small Business Rates Relief or certain other reliefs, which renders their bills to nil or relatively small annual amounts, and still find themselves in a 'big brother' window of compliance with extensive obligations imposed. Many are going to say "....why!"

The process simply flies in the face of placing minimum additional burdens on ratepayers.

Q3. How can the VOA best help customers understand what is needed and how to provide it?

At best it could provide the necessary information in respect of the bulk sectors, retail offices and industrials where education is simplest. Outside of these sectors, I do not feel it is at all viable. Notwithstanding that commentary, I remain of the view that the information requirements sought from the ratepayer should be limited; to avoid overburdening the ratepayer and to get better accuracy and much higher data volumes.

Phone: +44 (0)1380 739112
email: contactgn@goodmannash.co.uk

Q4. How do you want to be engaged with as this system is developed?

I would not wish to be engaged with assisting these proposals in an unchanged form, nor if the burdens on ratepayers are not significantly reduced from that proposed.

Goodman Nash Ltd act for a significant number of single property occupiers and SME ratepayers, rather than just larger portfolios and we would be prepared to assist the VOA if they considered this would be of value.

Chapter 2 – supporting the compliance regime

Q5. Does the proposed framework strike the right balance between a system of proportionate and flexible sanctions, and one which helps ratepayers to meet their obligations?

Government has an expectation that the majority of ratepayers will provide their information because they want to ensure they are paying the right tax based on accurate property valuations. That notion needs to be tested against the following concerns:

i. Simplicity to engage in the self declaration process – the process is not simple, as differing time lines, and the information requirements will not always be well understood;

ii. The requirement to provide the information is fully supported, but why would ratepayers who do not pay rates line up with their support. Nor do we suspect ratepayers occupying a property to which no changes have occurred within a year are likely to support an annual no change declaration, where the only 'benefit' is avoiding fines. That speaks of unwanted red tape. Someone has to process the applications after all. We struggle to see the expense to process 2 million self declarations each and every year to be a worthwhile cost or use of public funds;

iii. The compliance regime for self declaration is unlike other taxes and is incredibly soft touch, providing for endless and repeated non-compliance extensions to be provided without penalty (notwithstanding it may not be deliberate but through ignorance or lack of understanding). The costs of following the proposed soft touch approach will either be enormous or largely abandoned or be ineffective like the current compliance regime for non completion of FORS, which hardly raises a fine.

Q6. What would you wish to see in an online service to best help ratepayers meet their obligations?

No comment

Q7. Under what circumstances would 30 days not be enough time for ratepayers to meet their obligations?

It is difficult to understand in what other declaration process such ridiculously short time scales of 30 days persist. The only justification for such a short time frame could be on the basis that any longer time frame would mean the ratepayer would otherwise forget the obligation to disclose. The time frame set out in the disclosure process needs to balance maximimum compliance, whilst at the same time provide adequate time to take further actions upon those disclosures where necessary. We have alluded to retrospective back dating of increases of property changes be they for increases, decreases or indeed re-organisations, which can all go back to the day of event, so that provides no justification for a 30 day time limit. Do Billing Authorities really need a 30 day notification period where they have managed without a compliance regime for years?

In my view ratepayers will wholeheartedly not meet this time frame. That is subjective but I am not aware of any other similar regimes where take up or non-compliance on such a short time frame can be considered for support of the proposition.

Phone: +44 (0)1380 739112
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Q8. What processes might ratepayers have to put in place to meet their obligations and what costs might this bring?

For large organisations and large portfolios these obligations could more realistically be met. Far better though to have a disclosure programme of say 31 December, where all such changes are notified but with no duty to notify where there has been no change.

At the other end of the scale it is difficult to understand what the prompt measures might look like. It is not going to be achievable to put any prompts in place with the ratepayers solicitors, architect, builder etc and these obligations simply cannot be nailed down. Compliance unfortunately hangs in the balance that the Ratepayer is aware of his obligations. But for me there are simply too many differing obligations being proposed, with too many different time frames. The requirement is less of but with more consistent time frames.

As mentioned above, our experience of representing a great many small businesses has demonstrated if these obligations were secondary to a requirement for Government Gateway registration and property claim, they are simply unworkable within any proposed timeframes.

It would be nonsensical to have a system as complex as the current Government Gateway registration, property claim, and Check process for ratepayers to undertake every year to simply declare no change. This is an increased cost in time, obligation, and quite possibly requirement for professional advice to assist completion to a ratepayer who does not stand to benefit from the process.

Q9. Do you have any suggestions for how this compliance framework could be improved? If so, please provide evidence or scenarios.

No comment

Chapter 3 – appeal changes and transparency

Q10. Do you consider that the proposed reform to the rules on MCCs will ensure that changes in economic factors, market conditions or changes in the general level of rents are reflected at revaluations? If not why not?

No comment

Q11. What are your views on the proposed improvements to the CCA system. How else could we improve CCA in a system under which ratepayers are now providing information under the new duties?

The proposed 3 month window for Challenges to be made in respect of the 2026 Rating List and beyond is unworkable.

The self declaration process has laudable aims, but needs modification as suggested. With Revaluation reduced to 3 yearly cycles together with aspirations of more frequent revaluations in the future, clearance of the majority of the Challenges within that same list period makes a lot of sense and should be encouraged as an objective.

The requirement to ditch Checks for the 2026 list is again to be welcomed, as the current system brings about unnecessary delays to the resolution process and fails to acknowledge that the survey and valuation attributes are in many cases needing resolving at the same time. The separation of these as distinct processes leads to the current unacceptable practice, whereby the VOA increases assessments to reflect survey changes only to reduce the RV below the original RV, when valuations considerations are taken into effect. This results in unnecessary billing to occur imposing extra costs on the ratepayer (albeit it across a temporary period) when in fact bills should be lowered. It is unquestionably a failed process.

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The 3 month proposed window must be reconsidered. Argument is advanced that given the draft list will be published several months in advance then the window at compiled list Challenges is in fact widened to 6-7 months, but will of course remain at 3 months in respect of ratepayer changes, and to VONs. However, this ignores a number of very important matters:

i. The shift to the Challenge process from 2017 represented a radical new system imposing upon the ratepayer the requirement to submit all its evidence within the Challenge. That task is invariably a very onerous task, requiring the collation of rental, trade or cost information, usually across a number of comparable hereditaments, which can take months to come together. On an individual basis the time limits can be adhered to, but the system needs to cater for ratepayers to have the ability to secure the services of expert rating surveyors, who will find the 3 month window unworkable, when they themselves may be responsible for many hundreds and for others many thousands of potential challenges, potentially when advising large property portfolios. Even if it was possible to work up the challenges in time, the up resourcing of staff and then subsequent offload following the deadline, only to repeat the exercise at the next Revaluation, simply means it is unviable. Greater transparency of data will have very little impact on this scenario.

ii. Whilst the imposition of a time limit will enable a return to the programming of Challenges, so that similar hereditaments in the same location can be considered en masse, there are several alternative solutions that should be considered to produce a system that delivers a workable solution for ratepayers and their advisors and still achieve the underlying objectives. Options include (in order of preference):

    a. Widening the time limit for Challenges against the compiled list to 6 months but at the same time reducing the requirements on compiled list Challenges to submission of the grounds of the Challenge to include any relevant rental, trade or cost information for the appeal hereditament, with further detailed comparable evidence and argument to follow during programme listing.

       The 3 month window to non-compiled list Challenges could be retained in similar format.

    b. Provide an extended 12 month window for challenges against the compiled list where any of the following matters apply :

        i. the compiled list Rateable Value is £50,000 or more; or

        ii. the ratepayer is able to demonstrate that on the compiled list day he is liable to rates on 10 hereditaments or more; or

        iii. the hereditament falls outside of the bulk classes retail, offices and industrial (Category codes to be specified).

       The Challenge remains unaltered in its requirements for the ratepayer to submit all the evidence up front. On this basis compiled list challenges falling outside the above categories and non-compiled list changes should have the time limit extended to 6 months.

    c. Compiled list or first entry list Challenges to have a 12 month window and all other

Q12. Are there particular considerations that the respondents consider the government should have particular regard to when moving forward with phase 2 of transparency?

The promises of improved information coming forward for the 2026 Revaluation is to be welcomed. Questions around the disclosure of confidential information remain, and there has been little or no communication in the proposals, as to how this will be dealt with. Furthermore there is a lack of clarity of what will be made available in terms of comparables. In reality it is difficult to comment on the proposals when such lack of detail exists. There are natural concerns that without an understanding of this detail, the remainder of the reforms will leave us with an unfair system. This detail needs to come forward prior to any changes in legislation are put in place.

Previous suggestions of sharing information have been completely shackled by the VOAs interpretation of the Commissioners for Revenues

Phone: +44 (0)1380 739112
email: contactgn@goodmannash.co.uk

and Customs Act 2005 (CRCA), where the VOA have suggested detail cannot be provided in the absence of a Challenge or similar. If the Government move forwards with this approach, the interaction with the CRCA is critical to overcome, otherwise the transparency aim will be at risk of comprising little more than lip service to a very positive aim.

Chapter 4 – improvement relief

Q13. Will the proposed rules for the improvement relief ensure the relief flows to occupiers who are investing in their business?

Yes but I have two areas of concern:-

i. The rules should be amended to allow a building in substantial disrepair and incapable of beneficial occupation and therefore not entered or removed from the list, to qualify if the same ratepayer then carries out works of improvement and at the same time satisfies the occupancy conditions;

ii. The certification process should include rights of appeal as it clearly impacts upon the benefits the ratepayer might receive. There appears to be no logic to exclude such a process from appeal.

Q14. Do you consider that the 2 conditions will give effect to the stated policy intent? Do you have any concerns regarding the practical application of the conditions as set out?

Yes, the policy intent would be met.

Q15. Do you agree that the proposed method of reaching the chargeable amount will achieve the objective of preventing ratepayers who have undertaken qualifying works from seeing an increase in their bill for 12 months as a result of the qualifying works?

Yes, with the addition of a right of appeal should errors arise.

Chapter 5 – green measures

Q16. Do you agree that the proposed changes to the plant and machinery regulations would ensure that plant and machinery used in onsite renewable energy generation and storage used with electric vehicles charging points are exempt?

No comment.

Q17. Do you agree that the tests we are proposing in the heat networks relief scheme will ensure the relief is correctly targeted?

No comment.

Chapter 6 – other administrative reforms

Q18. What are your views on the proposed reform to the administration of the central list?

No comment.

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Q19. Do you agree that decisions on the operation of local discretionary relief schemes should be localised to billing authorities in the way proposed. Do you consider any rules should still be imposed from central government and if so why?

It is deeply regrettable that the Government sees the S47 discretionary relief process as fit for purpose, because it simply has become a failed system, where a post code lottery has been created as to whether relief is awarded or not. The Government has been putting what are mandatory schemes but dressing them up in 'sheep's clothing' and labelling them up as discretionary schemes, yet completely funding such reliefs through the S31 Billing Authority funding mechanism. Goodman Nash has encountered widespread differences in approaches where central guidance has been found wanting.
For the various retail relief, expanded retail relief, CARF, why should ratepayers or selected sector ratepayers be treated so very differently.
This leads to a vehicle repair garage receiving Expanded Retail Discount in one local authority area but not in another; a racing yard in receipt of the relief but not in another and so on and so on. We are able to monitor on the coal face how incensed this makes some ratepayers feel with intense hatred for the system, whereby in some instance if a property was moved in some instances just a few miles across Council boundaries the occupier would be entitled to dramatically different levels of Government support. This derives from the very substantial monetary benefits enjoyed by some but not by others, merely on account of the fact that the ratepayer's hereditaments fall under differing local authorities, and the respective interpretations of guidance by different revenues teams. The variations in the CARF system are incredibly diverse and often not reflecting the same allocation rules at all. Direct feedback from some Local Authorities has heavily criticised the role they are expected to play.

The Localism Act 2011 did not envisage discretionary relief to work in this way at all, because at that time there was no direction of travel to label up mandatory schemes as in fact discretionary schemes under s.47. What was envisaged under the s47 process was entirely different with top ups to the mandatory schemes which effectively should be rolled out to all ratepayers in fairness. The whole business rates tax is being severely undermined by this process in not meeting the basic requirements that such taxes should be fair.

There is no requirement to allow local authorities to set their own deadlines in respect of applications under the s47 process. It is indeed correct that uncertainty exists amongst the local authorities on the rules under s47 upon whether the application needs to have been decided by the following 30th September, or whether the application merely needs to be submitted by that date.
Regarding backdating of claims there is equal confusion and variation, rendering the whole system under s 47 as not fit for purpose.
A return to the de facto position at 2011 needs to be re-engaged so that local support is limited to target ratepayers who contribute across the whole council tax and non-domestic communities.

The Government should step in and make the legislative changes to confirm any limitation on backdating by providing statutory limitations and to define the application and decision process where s47 is to apply.

Q20. Are local authorities, ratepayers or other interested stakeholders aware of any other instances where existing constraints on section 47 relief are giving rise to administrative challenges or unintended practical outcomes?

There is barely a relief that exists today that has not become a postcode lottery in terms of the outcome a particular ratepayer might receive. This variation leads to often substantial sums being received by some but not others, particularly if the relief is set at 50 – 100% range. We comment upon some of the reliefs as follows:-

i. Small Business rates relief : whilst mandatory there is considerable variation on backdating – some to 2012 others 6 years from the start of the rate year, others limiting to 6 years from the date the relief is awarded;

ii. Retail Relief for 2014/15 and 2015/16 and 2017/18 and 2018/19 has seen considerable differences on interpretation, particularly on mixed uses where there is little clarity and to over classes where the treatment of the customer profile or business comes under scrutiny e.g.B2C, B2B, internet etc.;

Phone: +44 (0)1380 739112
email: contactgn@goodmannash.co.uk

iii. Expanded Retail Discount has exacerbated the problems where wide variations exist and remain as for retail relief and the treatment of employment agencies receiving widespread variation;

iv. Considerable confusion exists across (ii), (iii) and (iv) above over the application of the public visitor test;

v. The application of retail discount on backdated assessments, whereby a ratepayer could first qualify for a relief beyond when it can lawfully be granted;

vi. Local discretionary relief – widespread variation with some schemes showing no resemblance to the distribution methodology;

vii. S44a – wide spread variation;

viii. Empty rates mitigation – wide spread variation;

ix. CARF schemes – widespread variation with some schemes showing no resemblance to the distribution methodology

Q21. Would the proposed reforms to the multiplier improve the administration of the system and if not why not? Do you agree that the deadline for confirming the multiplier should no longer be tied to the approval of the local government finance report?

We agree on both counts.

Phone: +44 (0)1380 739112
email: contactgn@goodmannash.co.uk