

London Borough of Hillingdon

Policy and Overview Committee dated 13th October 2015:

Rates Retention and the Rating of Heathrow Airport

A briefing paper prepared by Rates Plus

Submitted 2nd October 2015

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1 Introduction and Overview

1.1 Background

The Government has implemented revised approaches to local Rates since 2013 under the Localism agenda. Under the new rules, and for the first time in more than 25 years, the financial impact of Rates to the Billing Authority is very significant. Under Rates Retention, Councils are both responsible for a share of losses in the Rates systems derived through successful Ratepayer appeal, and are incentivised to identify and collect additional revenue.

While all Councils have broadly similar incentives and risks under the new system, Hillingdon has particular, and it will be demonstrated unique challenges as a consequence of the Heathrow Airport and related assessments.

Rates Plus have been at the forefront of Rates Retention services for the last two years, and we have recently signed our 30th client. In London our clients include two of the top five Councils by RV, Hillingdon and Tower Hamlets Councils.

1.2 This Report

This report is constructed to enable an informed decision making process, and with reference to the following sections:

- **At section 2:** Within section 2 we present a series of data tables which are designed to demonstrate the scale of the matters at hand with Rating at Heathrow Airport;
- **At Section 3:** A commentary is provided at Section 3 which is designed to examine some of the particular procedural problems which the Council faces in Rating. Inevitably, this focuses on the decision making and practice of the Valuation Office agency and to an extent their relationships with other stakeholders to the Rates process including the Council and Agents on behalf of Ratepayers; and
- **At Section 4:** We provide a series of specific steps which could conceivably be considered to improve the operation of the Retention system, and which the Council's Policy and Overview Committee could consider as possible solutions.

1.3 A summary of the Rates system

We attempt to provide here and in just a few sentences a very high level summary of the key parts of the Rates system, as they pertain to this report and our evidence.

Rates is a very old system of taxation which has been used for many hundreds of years to support local taxation and the provision of local

services. Under modern arrangements there are three key parts to the case by case decision making process:

- The **Billing Authority** for each Council area has a duty to collect and administer Rates. This duty includes responsibility to tell the Valuation Office when potential changes to the List are required;
- The **Valuation Office** are responsible for the calculation of the Rateable Value (RV) upon which tax calculations will be based. The Valuation Office is separate from the Council, and is a separate agency of the Government's HMRC;
- Ratepayers commonly appoint specialist Valuation "**Agents**" for the effective management of their Rates liability. Agents are accordingly tasked, on behalf of their Ratepayer principals for the effective management of each Company's Rates liability.

The Rateable Value which is ascribed to each property is subject to an annual "multiplier" which is prescribed by the Government. The current multiplier is 0.49, so in very broad terms, an RV of say £1,000,000 will attract a Rates bill of just under £0.5m per annum.

1.4 About Rates Plus

Rates Plus is the leading, independent commercial supplier of specialist, professional Rates Retention services, and the only service which is partnered with the Chartered Institute of Public Finance and Accountancy (CIPFA), which is the professional association of public sector finance in the UK.

We are pleased to provide support to the Council's Policy and Overview committee, and provide this paper as part of our evidence pack.

2 Overall Summary of the Heathrow Assessments

2.1 Overview

Within this section, we present some of the research which we have completed which demonstrates the overall scale of activity.

2.2 The Heathrow Assessments

This section is drafted to provide an overall summary of the scale of the issues faced at the Heathrow Airport. The tables are all based upon the Rates Plus analysis of various datasets using our own methodology.

Table 1, the Heathrow Airport Assessments

Table 1 shows the top five assessments by Rateable Value (RV) within the Borough's Rating List. All five are, somewhat predictably, consequent upon the business of the Airport, and four of the five are at the Airport itself.

Unit	RV £m
Heathrow Airport	243
Engineering Base	42
BA World Cargo	27
Terminal five	23
BA Offices, Waterside	6

It is also worth noting that:

- The total of the four assessments at the Airport over £5m RV is £335m, which is over 40% of the Council's total Rates taxbase;
- The Heathrow main assessment has only changed 8 times since the commencement of the 2010 List. With the level of change taking place, this would appear alone to be worthy of further investigation;
- Only one of the above assessments is currently under appeal; and
- The Valuation Office have been unable to explain why the BA Waterside offices have reduced from a maximum RV of £9.5m.

Table 2: Heathrow and other very high value assessments

Table 2 is drafted to show the scale of Heathrow, showing all England assessments over £40m. The Heathrow assessment remains, by a very significant margin, the largest single assessment in the country:

Unit	RV (£m)
Heathrow Airport	243
Heathrow Engineering Base	42
Gatwick	59
Sizewell Power Station	66

Heysham B Nuclear Power Stn	52
Vodafone Telecoms Hub	40

- This table is sourced from analysis of publically available data published by the Valuation Office, drawing down from publically available Valuation Office data the current Rating assessments which are above £40m RV;
- There are only a handful of assessments over £40m in the country, of which the Council has two, both at the Airport;
- The scale of the Heathrow “cumulo” assessment is simply without parallel. Within the national Local List valuations, there are simply no other List entries over £70m.

Table 3, “missing” units identifiable at the Airport

It is possible to identify some of the potentially rateable units at the Airport without site access. Potentially rateable items which can be located remotely include:

- ATM’s (approx. 108);
- Shops etc (approx. 300);
- Radio Masts (number TBC);
- Advertising Rights (number TBC).

Table 4, Examples of other missing or under-rated premises identified

Other examples of rateable units which have been identified by our team over the last two years include:

- A civilian VIP Airport actively trading from a rateable UK Military Airport;
- Higher value Advertising Rights at iconic locations including at the top of London City Offices, and at locations to the periphery of Heathrow Airport;
- Additional works at major rated premises, in which there has been no change in RV and in which the position of the VO remains that the works identified are “...value neutral...”

Table 5, the scale of missing units, ATM's

Our earliest research identified missing "cash machine" units, or Automatic Teller Machines (ATM's). The following table summarises findings:

Council	Identified	In List	% Rated
LB Hillingdon	289	60	20.76%
Council 1	94	13	13.83%
Council 2	55	9	16.36%
Council 3	95	13	13.68%
Council 4	44	8	18.18%
Council 5	133	15	11.28%
Council 6	201	30	14.93%
Council 7	51	11	21.57%
Council 8	193	28	14.51%
Council 9	164	41	25.00%
Council 10	90	17	18.89%
Council 11	188	39	20.74%
Council 12	230	45	19.57%
Council 13	144	29	20.14%
Council 14	49	9	18.37%
Council 15	260	47	18.08%
Council 16	156	27	17.31%
Council 17	313	55	17.57%
Council 18	104	22	21.15%
Totals	2564	458	17.84%

Points to note from this analysis include:

- The rating of Cash Machines, and the overall extent to which these units are missing from the List has been a longstanding problem;
- The value of the units is high considering the modest site footprint;
- The Councils examined in this data table are Rates Plus clients, and are a mix of London, District and Unitary Councils;
- Figures published most recently in February of 2015 by the Financial Times estimate that the annual losses on Rates attributable to ATM units could be more than £200m. The same FT report is consistent with the analysis we present here, i.e. that only 18% of units present in the UK are currently rated.

Table 6, the scale of missing units, Radio Masts

The following table shows the incidence of Radio Masts in London, based on our own research of nationally published data.

Council	No in List	Est. Prems	Units Missing	% Rated
LB Hillingdon	305	999	694	30.5%
London Borough 1	102	376	274	27.1%
London Borough 2	229	719	490	31.8%
London Borough 3	118	341	223	34.6%
London Borough 4	173	654	481	26.5%
London Borough 5	199	713	514	27.9%
London Borough 6	393	939	546	41.9%
London Borough 7	396	641	245	61.8%
London Borough 8	216	733	517	29.5%
London Borough 9	197	688	491	28.6%
London Borough 10	197	610	465	32.3%
London Borough 11	145	476	327	30.5%
London Borough 12	149	475	282	31.4%
London Borough 13	193	478	323	40.4%
London Borough 14	155	454	281	34.1%
London Borough 15	116	408	292	28.4%
London Borough 16	186	535	349	34.8%
London Borough 17	172	606	434	28.4%
London Borough 18	286	669	383	42.8%
London Borough 19	315	677	362	46.5%
London Borough 20	95	335	240	28.4%
London Borough 21	225	626	401	35.9%
London Borough 22	145	448	303	32.4%
London Borough 23	122	417	295	29.3%
London Borough 24	156	639	483	24.4%
London Borough 25	123	401	278	30.7%
London Borough 26	136	415	279	32.8%
London Borough 27	279	725	446	38.5%
London Borough 28	110	396	286	27.8%
London Borough 29	318	825	507	38.5%
London Borough 30	124	475	351	26.1%
London Borough 31	184	543	359	33.9%
London Borough 32	973	1864	891	52.2%
Total	6927	19301	12398	35.89%

Points to note include:

- Radio Masts, like ATM units, are higher value Rateable units missing from the List in higher numbers;

- The comparison Councils examined in this table are all London Boroughs;
- It may be worth noting that of the Boroughs in London for which this analysis has been completed, the lowest incidence of Rated masts is 27% while the highest is 61%;
- The potential cashable value of getting all London Boroughs up to 61% would clearly be significant.

Table 7, Rates Plus proposals submitted for Authority clients, March 2015

The following table summarises formal appeals which were submitted by the Rates Plus team in respect of four Council clients earlier this year and to comply with Government deadlines to fully protect an Authority right to backdate any alteration of the List to 2010.

Council	ATM's	Not In List		MCC	Total
		Radio Masts	Ad Rights etc	Radio Mast	
Client 1	90	406	0	91	587
Client 2	187	408	0	121	716
Client 3	0	999	22	312	1333
Client 4	313	825	25	338	1501
Total	590	2638	47	862	4137

2.3 Data and Analysis: Final observations

The analysis shown in the above section is prepared by, and is based upon the research of Rates Plus. In some cases reference has been made to other publically available datasets.

3 The Law and practice

3.1 Overview

This section sets out some of the key problems, in our experience over the past two years, and where appropriate, with specific reference to the challenges which are faced at the Airport.

3.2 Overall summary of the legal Framework

One of the principle issues which is faced in Retention in our view, is that the rules for the "Localism" agenda implemented from April 2013, have been bolted onto a Rating system which has been in place for several hundred years. The legal framework for Rates may be briefly summarised:

- While in recent memory a series of **primary legislation** has been laid to manage Rating (most recently including the Local Government Finance Act 1988), the use of Rates as a tax over a very long period means, in practice that a raft of caselaw is also fundamental to defining how some of the rules work;
- **Caselaw** defines key elements of the system, including fundamental elements like the principles of what constitutes "Rateable Occupation", and some of the key concepts of valuation for Rating; and
- **Secondary legislation** defines the rules for many operational areas of the tax, including for example the time and manner of appeals. However in many cases, even regulations which appear relatively recent are often heavily reproduced from previously adopted regulations.

3.3 Examples of operational failure

We set out here the key areas of the legal framework which in our experience over the last two years are in practice combining to prohibit effective operation of Rates Retention.

Inspection of premises

One of the more fundamental weaknesses of the current system is that the Billing Authority has no formal rights of access to premises. While the Valuation Office has a right of access to premises, in practice this is rarely used and in those cases in which sites visits do take place, the accepted VO preference is to complete site visits jointly with agents on behalf of the Ratepayer.

VO target to solve appeals

The VO is measured under a small number of performance targets including the clearance of appeals. We suggest that without other appropriate targets, including the quality of decision making in the

Valuation made, the currently systems act to provide perverse incentives. Examples of this outcome which we have observed include:

- Multiple VO “No actions” or otherwise refusal to alter the Local List;
- Recently, in cases in which a List entry is concluded, to enter a very low Valuation.

Agreement of targets with Treasury

There are examples of the Treasury agreeing key targets with the Valuation Office, and which result in the VO prioritising those matters over other decision making. Our clients have been routinely advised since last summer that as the VO have agreed clearance of appeals targets with the Treasury, that those matters must come first.

VO approach to information: the CRCA

The VO is formally a part of the HMRC, and is governed by the terms of the Commissioner of Revenues and Customs Act (CRCA). Internal VO lawyers have adopted a very restrictive view of what information may be communicated to parties under the CRCA, and which is routinely used by the VO to refuse to give detailed case information.

At a specialist conference of the Rating Surveyors Association last year attended by 300 Rates specialists, there was open discussion in the meeting of the VO’s restrictive approach to information. We understand from these discussions that while one of the professional bodies working in the Rating system had taken leading Counsel’s advice on the interpretation of the law and which concluded that release of information could be possible, the HMRC position remained unchanged, and reliant upon only the advice of internal lawyers.

We believe that this very restrictive interpretation of the law is being used by the VO to restrict access to information about the Rating of the Airport assessment. Despite our requests for details of the Valuation, none have been forthcoming.

VO approach to information: general

Although recent changes proposed under the Government’s Enterprise Bill should remove some of the restrictions of the CRCA we doubt very much that the culture of secrecy that seems to be the comfort zone of the VO will change.

VO Programmes

The VO uses “programmes” as an internal device to manage valuation appeals. In theory programming should mean that valuation resources are co-ordinated and valuation conclusions reached are fairly disseminated amongst like premises. In practice, we have observed examples of programming being used to advance only the cause of the VO and of the Ratepayer agent, and to take steps to restrict access to the Billing Corporate Services & Partnerships Policy Overview Committee - 13 October 2015

Authority stakeholder. A recent example is the approach which the VO have determined to take for the management of the so-called Virgin Media appeals, and in which the VO are determining to complete discussions with the Agents on behalf of the ratepayer for a set of national appeals about whether 65 separate assessments should be combined into one, before completing discussions about the level of value.

In taking this approach, the VO has determined a method which potentially excludes Billing Authorities from visibility of Valuation conclusions until they have been agreed with the Ratepayer

Approach to EBAR's

The VO has established a system of communication for the Billing Authority to communicate with the VO and to explain possible changes to the List, which the VO calls the "EBAR" (Electronic Billing Authority Request) process.

The VO continues to place significant pressure on Billing Authorities to use the EBAR process because it suits the VO, and is not suitable for the transmission of higher volumes of workload. As a non-statutory process, there is also no recourse to the Billing Authority in the event that the VO determines that no change to the List is required, which happens in the vast majority of cases.

In some cases, the VO has claimed that more than 75% of cases subject to EBAR are subject to a "No Action" determination. In our experience, that number is understated.

The Billing Authority as stakeholder

Underlying many of the processes which the VO has put in place is a fundamental failure at the VO to accept that under retention, the Billing Authority now has a significant financial interest in Rating, whether by losses on appeals or through additional revenues.

Refusal to accept service of documents

In one case observed earlier this year, VO resistance to change even extended to a refusal to receive service of documents. A London Client in the spring of this year acted to "opt-in" to Ratepayer Appeals at a small number of very high value financial offices in London's financial district. The appeals were first attempted service under personal service by one of our team attending the named London VO office responsible for the cases. Service was refused by the VO. We then attempted service by recorded delivery, which was also refused. We finally managed to achieve service by email, copied to the Chief Valuer for London and a series of other named VO officers.

Refusal to supply details of valuation

Refusals to provide details of cases under examination by the Billing Authority are common. In the Council's case, one example is the initial examination which we completed on the Council's behalf of the BA Offices at Waterside, which peaked at a List RV of £9.6m, and notwithstanding any identifiable defects, has reduced to £6.1m. Successive emails sent over the early spring of 2015 have been routinely ignored by the VO, receiving no attempt at substantive reply.

Failure to declare communications with Ratepayer agents

Evidence strongly points to the conclusion that when more significant increase to the List are identified and advised to the VO, that the VO can begin informal discussions with the Ratepayer agents. Such discussions are rarely (if indeed ever) declared by the VO, and the most obvious sign of such discussion is that the VO appears to be doing nothing with the case at hand for a period of months, usually resulting 4-6 months later with a "No Action" decision.

The VO "pre agreement" process

In partial evidence of the above, we have been told on a couple of occasions over the summer, when challenging VO delays, that the VO is delayed in final decision making as they seek to "pre agree" alteration of the List. It would appear that the VO have accordingly put a new process in place when alterations of the List or backdates are requested which are above internal VO thresholds. The process appears to enable the VO seeks to "preagree" those changes to the List with the Ratepayer. We have some written evidence of this process in London, but the exact terms of its operation are not clear.

4 Summary Conclusions

4.1 Overall

Our draft conclusions and recommendations are contained here.

4.2 Summary Conclusions, Specific Procedures and VO practice

We contend that each of the examples of operational malfunction which are described above are capable of being successfully countered.

Inspection of premises

The rules which allow the Valuation Office the right of access appear to have been written in such a way that the VO could conceivably delegate the right of inspection to another party. As resources are tight, and as rationalisation programmes have left the VO located remotely from the premises under examination, the right of inspection could be delegated to the Billing Authority by the VO on a case by case or on an Authority by Authority basis.

VO target to solve appeals

The target setting regime under which the VO currently operates needs to be changed so that the perverse incentives possible under the current system are removed.

Agreement of targets with Treasury

As above. In order to make the Retention system work effectively, some of the performance controls currently applied to the VO must be amended.

VO approach to information: the CRCA

We do not believe that the provisions of the Enterprise Act alone will suffice. As we explained, there appears to be a wider culture of the VO and Agents and which is very resistant to the interests of the Billing Authority which must fundamentally change.

VO Programmes

The current use of VO Programmes is one higher profile example of internal VO processes which in all probability need to be reviewed to reflect the legitimate interests of the Billing Authority as at the least an interested stakeholder to the process, and at most as a "relevant authority" formally admitted to the appeals process.

Approach to EBAR's

The VO must design and manage processes by which higher volumes of cases are referred for alteration of the List. Under the auspices of the current review of transfer of information, or otherwise, the VO must

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engage with Councils and with suppliers like the London Borough of Hillingdon and Rates Plus whose research will be capable of generating higher volumes of potential alteration of the List.

Since formally requesting such involvement with the VO in May this year, we still have received no answer from the relevant VO specialist team.

The Billing Authority as stakeholder

We believe that the evidence strongly points to the conclusion that the Valuation Office is failing to recognise the legitimate interests of the Billing Authority as a full stakeholder to the Rates Retention process post 2013. If the attention of the VO must be attracted by the formal submission of Billing Authority proposals and similar then that would appear to be one of the appropriate routes of escalation which must now be considered.

Refusal to accept service of documents

The actions which we have observed here are simply a fundamental failure. It cannot be acceptable for a UK Government department to be able to refuse service of documents.

Refusal to supply details of valuation

As above, it cannot be acceptable for the Valuation Office to simply refuse to answer questions.

Failure to declare communications with Ratepayer agents

Informal discussions to which the Billing Authority is not party are not helpful to the interests of the Billing Authority, and neither to the interests of the wider taxpayer. If the VO can only be made to accept the value of the Billing Authority interest by the making of formal proposals, or by the formal opting into appropriate Ratepayer appeals, then that would appear to be the route which Billing Authorities must now consider.

The VO "pre agreement" process

It clearly cannot also be acceptable to Local Authority stakeholders that a process be put in place in which appears to allow for internal discussions between the VO and the Ratepayer Agent alone to include the RV of premises to be admitted to the List.

The VO simply must understand that under Retention whether through formal appeals or otherwise, that the Billing Authority is now a fully engaged party to the determination of Valuation conclusions, and must be accordingly accommodated within the conclusion of all proposed alterations to the List.

4.3 Possible Next Steps

Rates Retention presents general challenges for all local government, but we hope this paper together with other available evidence makes the case

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that in some regards the challenges that the London Borough of Hillingdon faces are unique.

Possible next steps for the Council's consideration may include:

- In the event that there are any further matters of clarification from the Council's formal democratic process, we will be pleased to provide additional evidence where necessary;
- The Council will also wish to consider how the Council may best make the case for changes to the current processes, to ensure that the Retention system become a more fundamentally stable system of income and of risk to the Council than is currently the case; and
- In considering the Council's position, steps which could be considered include, but are not limited to:
 - What steps may be taken together with other interested London Councils;
 - Steps which may be taken with the Valuation Office Agency and with the Department for Communities;
 - Steps which may be taken through political channels; and
 - Steps which may be taken through the application of existing Billing Authority rights to the Rating appeals process, including the formal Billing Authority proposals for units currently reflected within the main Heathrow assessments and which may be argued to be capable of separate assessment.

Glossary of terms

The following definition of otherwise specialist terminology is provided in support of this paper. This is not presented as an exhaustive definition of Rating terms, so much as to explain key terms within this document.

Term	Short definition
Billing Authority	The Local Authority which has responsibility for the collection and administration of Rates.
CRCA	Commissioner for Revenues and Customs Act. An Act establishing statutory rules for the HMRC including on the management of information
List	The Local Rates List, which provides the basis of Rates Bills. The Local List is compiled by the Valuation Office, and shows the Rateable Value for each rateable premises.
Programme	An internal VO process used to bring together and manage similar classes or types of appeal.
Proposal	A formal legal device which is available under prescribed circumstance for the application of the alteration of the Rates List
Rateable Value (RV)	The basic calculation of assessment for the charging of Rates. The RV is calculated by the Valuation Office as the basis of local Rates charges levied by the Billing Authority
Valuation Office (VO)	The Valuation Office is a part of the HMRC and which has responsibility for the creation and maintenance of local Valuation Lists.