

Overview and Scrutiny Committee

16 January 2018



Title	Business Rate Avoidance and Evasion		
Purpose of the report	To note		
Report Author	Roy Tilbury and Punita Talwar		
Cabinet Member	Councillor Howard Williams	Confidential	No
Corporate Priority	Financial Sustainability		
Recommendations	To note the report		
Reason for Recommendation	Not applicable		

1. Key issues

- 1.1 To understand the issues around Business Rate Avoidance as a result of the legislative changes on 1st April 2008 increasing empty rate charge from 50% to 100%.
- 1.2 As a result of these changes ratepayers sought ways to limit their exposure to 100% rate charge on empty property.
- 1.3 In July 2015 the government sought consultation on Business Rate Avoidance, the findings are attached (appendix 1). There was an interesting response from a group representing charities (appendix 2). No legislative amendments were made so the issue of avoidance is subject to court decisions.
- 1.4 It is also important to remember that limiting tax liability is legal (avoidance), evasion of a tax on the other hand is illegal.
- 1.5 Liability for empty rate falls on the owner or leaseholder or person entitled to possession.
- 1.6 Typically avoidance takes on of the following forms; of which further details can be found on attached (appendix 3);
 - i) Occupation for 42 days leading to a further empty relief period.
 - ii) Occupation of empty properties by charities or Livestock!
 - iii) Empty property leased to a charity for when next in use it will be mostly for charitable purposes (100% Mandatory relief)

- iv) Insolvency – Member Voluntary Liquidation schemes and Phoenix companies (keep reinventing themselves with different names to avoid Business Rate charges) .
- 1.7 Spelthorne, currently has one case under sub section (iii) and 3 cases under investigation under (iv) phoenix companies.
- 1.8 Since 2015 Spelthorne has put in place processes to ensure that cumulative fraud returns (including Housing, Council Tax Support and Business Rates avoidance and evasion) are recorded quarterly, quantified and measured in terms of the number of positive outcomes generated and the equivalent financial value. For Business Rates the financial gains generated are based on the actual figure per case i.e. business rate income identified due to the authority.
- 1.9 Spelthorne has been proactive in its approach to the above schemes set out at paragraph 1.6 and has collected an additional £674k for Business Rates since January 2015. The breakdown of these cases is shown at Appendix 4 and it is worth highlighting that of the £674k, one case alone generated an impressive £260k (ratepayer had continued to benefit from an occupation prohibited by law exemption beyond the effective cease date). Quarterly fraud returns are communicated as appropriate and shared across the Surrey counter fraud partnership, enabling useful comparison. The Internal Audit Manager represents Spelthorne at the Surrey Counter Fraud Board which enables sharing of best practice in terms of counter fraud measures.
- 1.10 Since April 2016, Analyse Local have been assisting the Council in identifying potential increases to rateable value arising from changes or adaptations to properties. Up until 31.12.17 this resulted in identification of rateable value increases equivalent to £403k in business rates income.
- 1.11 Spelthorne entered into a contract with Reigate and Banstead Borough Council with effect 1st August 2017 to procure counter fraud resource, intended to support and supplement the existing investigatory resource at Spelthorne focussing on Housing and Business rates. These collaborative arrangements agreed with Reigate & Banstead provide access to a team of experienced Investigators with specialist expertise and access to a range of investigatory tools to assist in investigating cases of avoidance and evasion. To date some ad hoc referrals have been passed to Reigate to investigate although there are opportunities to make greater use of this resource as set out below under section 2.

2. Options analysis and proposal

- 2.1 These schemes vary and present different challenges in obtaining evidence and tackling issues.
- 2.2 Spelthorne has since 2015 considered and put in place counter fraud measures identified by the Surrey Counter Fraud Board, made collaborative arrangements with Reigate & Banstead and used the services of Analyse Local.
- 2.3 Improvement options for the future:
 - (i) There is scope for Spelthorne to make greater use of Reigate and Banstead Council's fraud team for investigating avoidance and evasion as

part of the current collaborative arrangements. This could include pro-active exercises on assessing the validity of relief already granted (small business rate and charity rate relief), investigating the legitimacy of phoenix companies (current cases referred to at 1.7 above) and consideration of cases where referral to the Accredited Financial Investigator Resource (FIR) may be appropriate. With regards the latter option (FIR), this allows recovery of money to Councils through compensation and confiscation orders under the Proceeds of Crime Act (POCA) and it is worth highlighting the significant financial gains that can be generated from seizing assets under POCA, as well as wider benefits gained i.e. conveys a strong message to the public that Spelthorne will not tolerate tax evasion/avoidance.

(ii) The Council will keep challenging all these type of avoidance/evasion schemes in order to maximise business rate income to the authority. This is even more important in the context of the Surrey Councils piloting a 100% business rate retention scheme in 2018/19.

3. Financial implications

- 3.1 Continue to collate and report additional collection from the schemes mentioned above, currently £674k to 31st December 2017, of which £270k represents a direct saving/gain to Spelthorne (refer to Appendix 4). This is by some considerable margin the highest figure achieved across the Surrey districts and boroughs participating in the Surrey counter-fraud partnership. This could be enhanced even further if Spelthorne pursues referrals to the Financial Investigator Resource with potential for a successful outcome. Other boroughs and districts have pursued this route with impressive financial gains.
- 3.2 Potential gains now that business rate pilot status awarded.
- 3.3 The current impact of the properties mentioned above relating to Spelthorne relates to approximately £25k in 2017/18 against total net business rate income of £45.3m

4. Other considerations

- 4.1 Ensure staff are provided with relevant training in terms of tackling avoidance and evasion and keep up to date with relevant training on legislation and Court decisions. Effective application of training to the verification and inspection process should also help mitigate risks.

5. Timetable for implementation

- 5.1 Whilst no specific timetable or implementation is required, to seek to maximise use of Reigate and Banstead Investigatory resource for evasion and avoidance during the remaining contract period.

Background papers: There are none.

Appendices:

- 1 – Responses to government consultation on Business Rate avoidance**
- 2 - Consultation response from Charity Finance Group**
- 3 – Details of an appeal decision relating to Business Rates avoidance**
- 4 – Business Rates fraud returns**