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Dispute over funding of €250m rates waiver

A major 'dispute' over the funding of the €250m waiver of commercial rates has emerged between two Government departments regarding how to pay for it.

Housing Minister Darragh O'Brien, in an interview with the Irish Examiner, has promised that the waiver of rates until the end of September "will absolutely" be continued in October's budget.

However, new briefing documents from his own department highlight a clash with the Department of Public Expenditure and Reform over how the original three-month waiver between March and May was to be funded.

The note says that the cost of the full waiver of rates was announced on May 2, for a three-month period, for businesses forced to close due to public health requirements from March 27.

"The County and City Management Association has estimated the Covid-19 impact on commercial rates income to be in the region of €86m per month or €260m over the three-month period, which is to be met by the Exchequer. The amount involved is disputed by DPER, who consider €95.5m as appropriate, and this issue remains to be resolved," the note states.

"The Government decided on 2 May, 2020, to waive commercial rates for all businesses that have been forced to close business due to public health requirements from 27 March for a three-month period at a cost of €260m, to be met by the Exchequer.

"Since then, differences have emerged between the department and DPER regarding the approach to be taken to the implementation of this decision, in light of the wording of the Government decision," the note adds.

DPER has expressed the view that the Government decision covers businesses that were forced to close and cease operations completely and has suggested that this approach would cost in the region of €95.5m.

"However, this cost is based on estimated average impact and a proposed banding approach to the waiver; it does not factor in all businesses that were forced to close fully, as it was based on banded averages. Even using narrow eligibility criteria, it will be extremely challenging to implement the waiver as announced within €95.5m," the department told Mr O'Brien on taking office.

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The department has analysed the cost of a three-month waiver for businesses that were forced to close and cease operation by the regulations and were estimated by the LG sector to be 100% impacted by the closure, and the estimated cost of this approach is €105.5m.

Separately, the local government sector has estimated that other income losses, for example from a collapse in parking-charge revenue, amount to €91m across the 31 local authorities.

In his interview, Mr O'Brien said he will 'absolutely' be seeking a further concession on commercial rates for small business on budget day, on top of the €600m already committed to by the Government.

"We pushed very hard here on the rates waiver and worked very well with Minister Michael McGrath on it," he said.

"No rates have been paid since March and no rates will be paid between now and the budget. And absolutely we'll be looking again at it in the budget," he said.

Political sources have said that the issue of introducing the waiver was cleared at Government level and the disagreement came when officials in the Department of Public Expenditure, led by Robert Watt, refused to sanction more than the €90m, despite the waiver costing €260m.

The payment of commercial rates is a key revenue stream for local authorities around the country.

Couple challenge revocation of rates exemption for D4 property

Couple came to attention in 2019 after receiver's possession order due to €25m debt default

A couple who last year fought an attempt to repossess their bed and breakfast in Sandymount, Dublin, have brought a High Court challenge to a decision to impose commercial rates on the property which they say is primarily their family home.

Ann Keane and Patrick Halpin came to public attention last year when a receiver got a possession order over the 16-bedroom Aberdeen Lodge at Park Lane over default on a €25 million debt which had been acquired by Kenmare Property Finance. It followed seven years of litigation, ending up in the Supreme Court which found against the couple.

The couple resisted the repossession and engaged in what receiver Paul McCann's lawyer called a high-profile media campaign to seriously and wrongly distort what had happened in the courts over the years.

An application to jail them for contempt over the refusal to hand over possession is still pending before the courts.

In the meantime, in May last year, the couple were told their property was liable for commercial rates. They say it should be exempt as it is mainly their family home for them and their two children.

Last month, in a separate case against them by a Dublin City Council rate collector, the High Court found the couple were liable for a €75,000 rates bill for 2013-17 despite their contention the property was not rateable. The court noted a turnover of €537,000 for 2016 from the B&B.

The couple had separately brought judicial review proceedings seeking to quash the decision to revoke a previous decision making the premises exempt.

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On Thursday, Mr Justice Charles Meenan began hearing the challenge to the decision by the Valuation Commissioner.

They claimed, among other things, the decision was arbitrary, outside the commissioner's powers and in breach of their European Convention rights. The commissioner denies the claims.

Owen Hickey SC, with Proinsias Ó'Maolchlainn, for the couple, said that until 2012 Aberdeen Lodge had been operated in the name of a company, Elektron Holdings, which went into liquidation. The premises had been registered under the company name with the tourism authority and had paid rates. Following liquidation and closure of the premises, that registration lapsed.

Subsequently, Ms Keane began operating it as a B&B and a request was made in 2017 to have it revalued on the grounds it was primarily a "domestic premises" and therefore ought not to be rated under the 2001 Valuation Act.

A Valuations Office revision officer, who inspected the lodge, recommended it not be rated. The office's revision manager confirmed that recommendation and in March 2019 decided it should be excluded.

In May 2019, the same manager decided to revoke that decision and make it rateable. It was claimed the earlier decision to exempt the property was made in error.

New revision

Mr Hickey said it was argued by the Valuation Commissioner's head of valuation services, Declan Lavelle, the error occurred as a result of a misunderstanding that its deregistration with the tourist authority automatically made it exempt.

Counsel said the Valuation Commissioner had said the new revision took place to ensure equity and uniformity in the valuation system.

Counsel said the moves to revise the March decision and to make it rateable all took place on the same day. There had been no error in March, he said.

It was "crystal clear" in March to the revision manager it was primarily a family home and remained crystal clear in May, he said.

There was no basis under the law for the May revision because there was no material change of circumstances as required by the Valuation Act for such a revision, he said.

Where the property is used as a family home, even where part of it is used as a B&B, the law provides that it is not rateable, he said.

The case continues.

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