

# Barclay Implementation Appeals Sub-Group – Minutes

Tuesday 16 May 2019, 2:00 pm

Meeting Room 3N.01, SAH

## **Present:**

Ian Storrie (Chair)	Scottish Government
Alastair Beattie	Scottish Valuation Appeal Committees Forum
Ken McCormack	Royal Institution of Chartered Surveyors
Ian Milton	Scottish Assessors Association
Niall Rankin	Scottish Property Federation
Brian Rogan	Scottish Chambers of Commerce
Graeme Strachan	Scottish Assessors Association
Anouk Berthier	Scottish Government
Adam Scott	Scottish Government

## **Welcome and Introductions**

The Chair welcomed all attendees and went over the agenda. The purpose of this meeting was to expand on points raised at the previous working group meeting.

## **Discussion**

### Previous Minutes

It was requested that the minutes from the previous meeting of the Appeals Subgroup on 9 April be amended to ensure attendees were listed as representing the correct organisations, along with some other minor changes to the wording. Adam will update this and ensure that all previous minutes are accurate in this regard.

### Update on 1 May Appeals Working Group Meeting

Discussions focused first on areas where agreement was more likely, then moved on to remaining points to clarify how close the group was to consensus, rather than going through each point in order. The numbers of the items discussed were taken from the 1 May working group minutes.

#### **2.1 Draft Valuation Publication Date**

- The working group minutes stated that the group was ‘widely in agreement’ that 15 December was the most suitable date for publication of draft values (DV).
  - However, it was mentioned that people may be preoccupied around 15 December, partly due to the budget statement.

- It was suggested that an earlier date could be trialled during the first year of the new system, as there is little to no change between 4 October and 6 April.
  - However, concerns were expressed that the DV could not be produced earlier than 9 months after the tone date, especially with the new system still to be defined, implemented and tested.
- The chair stated that the aim would be to get people invested in the new system from the start by taking advantage of the two-year tone date.
- SG officials will consider the options discussed by the working group (end-October or mid-December).

## **2.2 Is the group content that the Bill specifies Assessors must include such information in the valuation notice as is specified by regulation?**

- The precise content of the information to be produced alongside DV will not be set out in primary legislation as this was viewed as being too restrictive.
- Assessors requested that they be legally allowed to make information available online only; people would be able to access the roll at assessors (participants also discussed that the roll should be accessible by ratepayers with assessors rather than the council as is currently the case)
  - SG officials noted they would reflect on this request, but that issues of fairness and accessibility may require that letters be sent out.
- Assessors queried whether they would have to issue a notice with DV as well as a valuation notice, and requested that at least one of these be done online if not both. It was asked if, after the is provided, another paper will only need to be issued on 1 April if the valuation has changed, as this is how things work in the current system.
  - SG officials were not able to comment on this matter at this time.
- It was asked if the postal option would be required for everyone who refused to accept electronic correspondence, requiring a double system and having cost implications for assessors.
- The chair mentioned that rollout of R100 should address this issue prior to the revaluation by improving internet access.
- SG acknowledged Assessors' request that any supplementary information that will be statutorily required alongside the DV/final value be made available by way of an online link.
- SG noted the exact information that assessors will be required to set out alongside DV/value will be discussed at the next meeting (this will be set out in secondary legislation) (valuation notice, summary valuation, valuation, supplementary information and returns on information).
- Participants noted the need for fairness and balance in terms of what assessors must provide at valuation and proposers must provide when lodging a proposal.
- The chair set out that SG officials would reflect on the postal delivery mechanism.
- The desire for any arrangement to be reciprocal was expressed, with appropriate information provision on both sides.

- The chair clarified that it had previously been agreed that assessors would provide the comparable addresses used, without the rental information. This had been considered preferable to rental information without the addresses.
  - IT development going ahead is dependent on this issue being settled.
  - Ian Milton indicated that around 75% of properties would be able to have comparative addresses published, but there could be difficulty for the remainder due to differences between sectors.
- It was mentioned that there are issues with the information currently set out in summary valuations, with private sector participants supporting further supplementary information.
- Assessors pointed out that in complex cases, full disclosure of information could run into issues of commercial sensitivity and GDPR.
- SG officials clarified that information related to how the valuation was arrived at should be shared if possible.

### 2.3 **Proposal period on DV (can be thought of as a pre agreement until 1 April and a “proposal” after that) if DV differs from valuation on 1 April**

- A period of 4 or 6 months for lodging proposals from DV issuance were discussed, with a longer period for cases where DV differs from 1 April valuation. A three-month extension to the deadline from the final valuation in the case of a change between DV and valuation appeared reasonable to the group.
- SG noted it would reflect on these options.
- The chair shared his view that there is no scope for agreement on the extension of this date for instances where DV and final valuation are different.
- The chair asked the group whether there was any disagreement on the extension of the deadline if there is a change before 1 April.
  - It was mentioned that a large number of proposals between December and April could make matters difficult.
  - Concerns were expressed that ratepayers only take notice when their actual bill arrives. It was suggested that ratepayers be informed of the increased importance of draft valuations.
  - Assessors noted SG would need to communicate any change to the system effectively, making ratepayers aware of the importance of the DV issuance date. The NDR team will be in touch with SG colleagues to discuss the marketing campaign that will be used.
- Concerns around the effect of reliefs or other legislation on future **ratepayer** liabilities were raised.
- The issue of running roll changes was raised. It was confirmed that information pertaining to this could potentially be published on the portal and not necessarily made available by post to the ratepayer.
  - It was pointed out that official notice needs to be issued when a valuation changes.
- SG officials stated that the date the roll is made up needs to be changed.
  - It was pointed out that this might mean that there would be different rolls for each assessor.

- It was asked whether the dates set to supply the roll to the central authority would continue to be in place. SG officials agreed that this no longer made sense.
- The attendees discussed whether a cut-off date for physical changes pre-revaluation (currently January) was needed.
  - A two-week period was suggested, or no statutory deadline at all, instead of the current four months.
  - It was pointed out that the roll should be “live”, i.e. up-to-date and that the final date physical circumstances can be considered created anomalies in the roll (e.g. a physical change in February cannot legally be taken into account for 1 April revaluation and must instead in theory, wait for the subsequent revaluation).
  - The chair suggested that ratepayers should be obligated to inform assessors of physical changes, in order to prevent information being withheld, in the similar way that the NDR (Scotland) Bill provides that ratepayers must notify councils.
- The group agreed that it did not make sense to have a DV issuance date, a date at which the roll is made, and a valuation date. The group agreed it would be sensible to remove the “date the roll is made up” from legislation.

**2.5 The maximum time between a proposal being lodged, and the Assessor issuing a proposal disposal date (PDD) to the proposer (the assumption being that if they do not issue a PDD by that date, the ratepayer then has the right to appeal)**

- The chair asked whether there was any agreement on this point.
- The group noted it did not deem if necessary for there to be a final date by which the assessor has to respond to a proposal simply a timeframe for PDDs.
- Some of the group were under the impression that a proposal automatically becomes an appeal in the NDR Bill. SG noted this is incorrect, and ratepayers will have to decide whether to take the case to appeal.
- The issue of expedited hearings was raised and it was suggested that proposers be able to request an expedited proposal as soon as they have lodged a proposal. This would be considered by the VAC (Scottish Tribunals in future). The latter would then set the dates for parties to share information if they agree it should be expedited.
  - SG officials confirmed that they would consider the need for the right to request an expedited PDD. There is no intention to change the current existing right to request an expedited appeal.

**2.6 Timeframe for PDDs**

- It was questioned whether a statutory deadline to issue the “proposal disposal date” (PDD) was necessary. Dates of 30 September and 15 December 2024 deadline for proposals to be heard were suggested.
- Assessors noted an earlier deadline would lead to the risk these timescales cannot be met.

- SG stated it would consider these two options.

## 2.7 **Time between issuance of the Proposal Disposal Deadline (PDD) by the assessor and the PDD itself**

- The group noted the previous working group's deliberations had concluded this should be 70 days rather than the current 105 days (i.e. revert back to previous practice of 70 days).

## 2.8 **Information that must be specified at proposal if any: are the group content with the current wording in the Bill that a proposal must set out "how the person making the proposal wants the assessor to alter the entry". Secondary regulations may specify the type of information to be included within the proposal in future, and it would be helpful if you could provide a list of what must, at minimum, be provided, e.g. a "reasonable" alternative value, specific grounds of appeal, some form of notification that the agent has authority to act on the ratepayers behalf, etc.?**

- The chair asked whether there was agreement on this point.
- The view was expressed that there will not be enough information in the proposal for a change to be made straight away.
  - The group emphasised the need for symmetrical requirements in terms of what assessors have to share at valuation/proposal/appeal, and what ratepayers have to share at tone date/proposal/appeal.
  - The chair clarified that the ratepayer will be required to provide a counter to the evidence used.
  - Anouk Berthier suggested discussing this issue in the next meeting.
- The view was expressed that the need for a mandate to act on the ratepayer's behalf should be set out in primary legislation for proposal/appeals, as assessors may currently receive and have to deal with multiple appeals from the same ratepayer through different agents. There was disagreement as to whether assessors can currently refuse an appeal from a party that does not have the formal right to do so on behalf of the ratepayer. SG noted it believed it was the case they could and noted they would check this with their Legal Directorate. Some members of the group thought this was an administrative issue not a statutory one, and that assessors are already not obligated to respond to anything without a mandate.

## 2.9 **Exchange of information in relation to PDD: timings and information to be shared between parties (scenarios are as set out in the working group minutes)**

- The chair made it clear that Scenario 1 is SG's preference.
- It was suggested that the full grounds of appeal and the assessor's response should be set out at the appeal lodging date.
  - SG officials clarified that they are currently exploring the legal options for this.

- It was made clear that we can revisit this issue during the consultation and that it can be discussed at the next working group.
- The issue of a ratepayer submitting grounds for appeal which bear no resemblance to the proposal was raised.
  - The chair agreed that the appeal must be based on the proposal.
- It was stated that tribunals being able to ask for whatever evidence they need is an access to justice issue. It was suggested that tribunals could request specific information from the assessor, rather than the assessor submitting a response straight away after the appeal is lodged.
  - It was suggested that an overview document could be submitted to the tribunal, setting out the positions and the discussions that had already taken place.
  - It was suggested that the ratepayer's ground of appeal and comparison be combined into a single submission.
  - SG officials are currently considering limiting tribunals to only making requests relating to topics already discussed.
- It was highlighted that currently no discussions happen until a citation is issued, and in the new system the PDD notice will set a deadline which will drive the discussion.
- The view was expressed that agents should be able to respond to submissions from the assessor.

**2.10 Date by which Assessor must notify of final Proposal Disposal (PD) outcome and date by which ratepayer must notify the Assessor after PD outcome of their acceptance or not of the outcome.**

- A window of 70 days (the PDD) was agreed, then allowing the appellant a week for a final response.

**2.12 Conditions under which an appeal cannot be made: please provide any comments on whether you consider 3ZB(1) and (2) to be appropriate e.g. if information requested under section 14 has not been provided at proposal stage? It is currently envisaged that no new information can be brought at appeal stage that has not been shared at proposal stage – covered under 3ZB (1)(b)(ii). Comments on this would be welcome e.g. exact wording to be used in secondary legislation (“grounds of appeals”, “productions”, etc.)**

- The chair stated that extra information and evidence can only be submitted at a later point if it did not exist at the point of submitting the proposal. This will prevent information being withheld.

**2.13 Points not discussed in detail**

- These were intentionally not covered at the working group, rather than being missed due to a lack of time.

**Next Steps**

- The chair set out that the working group needs to reconvene before the next Appeals Subgroup meeting and suggested that an SG representative sit in without participating in the discussion.
- SG schedule has been amended, our consultation will no longer take place at the same time as the tribunals consultation.
- Attendees were encouraged submit evidence for the NDR bill.