

REPORT TO: POLICY AND RESOURCES COMMITTEE ON 24 JUNE 2008

**SUBJECT: NON-DOMESTIC RATES: APPLICATION FOR RATES RELIEF
BY ROYAL NAVAL ASSOCIATION (LOSSIEMOUTH)**

BY: CHIEF FINANCIAL OFFICER

1. REASON FOR REPORT

- 1.1 This Report presents to the Committee an application from The Royal Naval Association's Lossiemouth branch for an award of some rates relief on the Non-Domestic Rates payable for their club premises.
- 1.2 This report is submitted to the Council in terms of Section A (20) of the Council's Administrative Scheme relating to the disposal of applications for relief from rates.

2. RECOMMENDATION

- 2.1 **The Royal Naval Association's Lossiemouth branch does not currently satisfy the criteria detailed in exiting rating legislation for an award of rates relief so there is neither entitlement to mandatory rates relief nor eligibility for consideration of an award of discretionary rates relief.**
- 2.2 **The Committee have previously disregarded the provisions of this legislation and existing judicial precedent and the advice of the Chief Financial Officer and Chief Legal Officer to make an award of one-hundred per cent discretionary rates relief to Royal British Legion branches in Moray. The Royal Naval Association in Lossiemouth now seeks to gain a similar award of rates relief.**
- 2.3 **It is recommended, on the basis of existing rating legislation and previously-established judicial-precedents, that this application for an award of discretionary relief is refused.**
- 2.4 **In light of the decision by the Council to award discretionary rates relief to Royal British Legion branches, the Committee may choose to make an award of some discretionary rates relief. If this is the case then Members will require to determine an amount of relief between one per cent and one-hundred per cent of the Non-Domestic Rates bill issued to the Lossiemouth branch of the Royal Naval Association.**

3. **BACKGROUND**

3.1 **Applicant**

Royal Naval Association - national organisation

3.1.1 The Royal Naval Association is a United Kingdom charity (Register number 266982) incorporated by Royal Charter of 1954. Amongst the objects listed in its charter is the provision of “*relief from conditions of need, hardship or distress, to persons who serve or have served in Our Naval forces and all dependents of such persons.*” It also seeks to assist its members to obtain employment, and to provide them with pensions and welfare-benefits advice.

Royal Naval Association - Lossiemouth branch

3.1.2 The Royal Naval Association branch in Lossiemouth is seeking an award of some rates relief following the decision to make an award of full discretionary rates relief to Royal British Legion (Scotland) branches in Moray.

3.1.3 It has provided evidence of its membership and community work in support its application and a summary of the most relevant aspects of this information is detailed in the following points.

3.1.4 The Royal Naval Association’s Lossiemouth branch currently comprises of 393 members, 108 of which are pensioners. The branch-membership may be broken down into the following categories:

- Life members 8 members;
- Full members 47 members (**Note:** this membership class is only open to former service-personnel);
- Associate members 318 members;
- Honorary members 20 members.

3.1.5 The branch’s Financial Statement at the close of their financial year, on 30th November, 2007, recorded the following items:

- i. the Balance Sheet recorded total Net Assets of £130,011, of which £57,167 were described as Net Current Assets;
- ii. the Income and Expenditure Account (Bar) recorded an annual Turnover of £129,420, an annual Gross Profit £68,223, and a Net Profit of £15,352;
- iii. the Income and Expenditure Account (General) recorded expenditure on Welfare totalling £733;
- iv. the Income and Expenditure Account (General) recorded an annual operating deficit of £5,636.

- 3.1.6 The branch holds a seven-day liquor licence which permits the sale of alcohol for significant periods each day.
- 3.1.7 The branch has organised Lossiemouth's Annual Remembrance Day Parade for the last ten years, providing refreshments and facilities for the participants at its club hall following the ceremony.
- 3.1.8 The branch organises an annual senior citizen's dinner each February. This event has been attended by 120 of the town's pensioners and its cost is borne by the Royal Naval Association.
- 3.1.9 The branch organises an annual Christmas Party for its members' children.
- 3.1.10 The branch's members may hire the club-hall to stage private functions on payment of a fee of £35. An additional charge of £25 is levied if the kitchen is also necessary to hire the kitchen to cook meals for such a function.
- 3.1.11 The branch does not possess charity status in its own right.
- 3.1.12 The information on the membership and activities of the Royal Naval Association branch in Lossiemouth was provided by the Secretary in letters to the Council dated 1st May and 22nd May, 2008.

Conclusions

- 3.1.13 The following conclusions may be drawn from the information provided by the Royal Naval Association Lossiemouth branch to the Council:
- i. the principal activity undertaken at the club on which the rates are payable is the sale and consumption of alcohol;
 - ii. there is a significant divergence between the welfare work undertaken nationally under the auspices of the Royal Naval Association and the activities carried out within the club premises of the Lossiemouth branch, which principally related to the sale and consumption of alcohol;
 - iii. the charitable work in which the branch is involved is incidental to the principal activity undertaken on its club premises, as referred to in para.(i), above;
 - iv. since the principal activities undertaken in the branch do not conform to those detailed in the Royal Naval Association's objects as contained in its Royal Charter, the branch cannot be considered to be in charitable occupancy.

3.2 Current Rating Legislation

- 3.2.1 There is provision within rating legislation for an award of rates relief to be made for the rates payable on premises occupied by a charity in furtherance of the objects of that charity. This relief falls into two classes: mandatory rates relief and discretionary rates relief.
- 3.2.2 The legislation governing the award of mandatory rates relief is described in Section 4(2)(a) of the Local Government (Financial Provisions) (Scotland) Act 1962. It states that if premises “*are occupied by, or by the trustees for, a charity and are wholly or mainly used for charitable purposes*” there is an entitlement to eighty *per cent* rates relief.
- 3.2.3 The legislation governing the award of discretionary rates relief is described in Section 4(5) of the 1962 Act. It states rating authorities have discretion to grant rates relief for premises:
- i. falling within the terms of Section 4(2) of the 1962 Act; or
 - ii. occupied for the purposes of organisations which are not established for profit and whose principal aims are charitable and are otherwise philanthropic or religious or concerned with education, social welfare, science, literature or the fine arts; or
 - iii. occupied for the purposes of a club, society or other organisation not established or conducted for profit and which are wholly used for the purpose of recreation.
- 3.2.4 The legislative requirements described in the preceding points make it clear that a charity is only entitled to an award of rates relief, whether mandatory or discretionary, if it occupies premises wholly or mainly for charitable purposes.
- 3.2.5 The distinction between charitable and non-charitable occupancy was clearly considered to be a very important factor in determining eligibility to rates relief by those responsible for framing this legislation.
- 3.2.6 This legislative-caveat requires that the rating authority determine the nature of the occupancy of premises before making any award of rates relief to a charity. If the test to determine charitable occupation cannot be satisfied, it is not appropriate for an award of relief to be made.

3.3 Judicial Precedent

- 3.3.1 The nature of the occupancy of premises by a charity may not be immediately obvious and an important mechanism by which the nature of occupancy may be tested, thereby permitting determination of whether it is possible to make an award of rates relief, is by reference to established judicial precedent.
- 3.3.2 There are two precedents which clarified rating law on charities’ entitlement to rates relief:

- i. ***Oxfam -v- Birmingham City Council [1976]*** - in dismissing an appeal by Oxfam against Birmingham City Council's decision not to award rates relief for charity shops, this case clarified the test applied to establish charitable occupation. In the judgement, Lord Chelsea defined charitable occupation as "*directly related to the achievement of the objects of the charity*";
- ii. ***Coalburn Miners' Welfare and Charitable Society -v- Strathclyde Regional Council [1994]*** - established charitable clubs are not entitled to rates relief for premises used mainly for non-charitable purposes, such as the purchase and consumption of alcohol. Lord Sutherland believed Coalburn Miners' main income was derived from the profits on the sale of alcohol and noted the bars were regularly open. He concluded that alcohol was continuously available on the premises to provide a social club for adult members and not as incidental to the provision of charitable, sporting or leisure activities. Sutherland believed the regional council acted "*in a reasonable fashion to decide that the main use of the premises was as a social club and that accordingly the main use was not for charitable purposes.*"

3.3.3 In addition to these precedents, it is important to note that the 1985 Report of the Charity Commissioners for England and Wales stated: "*The provision of facilities for social drinking is not of itself a charitable purpose*".

3.3.4 A review of these precedents and the Report of the Charity Commissioners makes it clear that premises occupied by a charity but used for the provision of facilities for the sale and the social consumption of alcohol cannot be classed as in charitable occupation. It is not possible, therefore, for a charity operating such a club to satisfy the legislative criteria necessary to permit an award of mandatory or discretionary rates relief to be made.

3.4 Policy of Moray Council

3.4.1 The Council has previously disposed applications for rates relief for licensed premises occupied by charities by rejecting the application. Rejection was on the basis that the premises cannot be considered to be wholly or mainly used for charitable purposes as it is mainly used for the sale of alcohol and the provision of licensed social facilities for club members. This policy, which was adopted from the policies of the former Grampian Regional Council, was put in place at the time Moray Council achieved unitary status in 1996.

3.4.2 The policy of the Council was in accordance with precedent established by the judicial rulings described in Section 3.3 (Judicial Precedent), above.

3.4.3 The Council has subsequently received applications from Royal British Legion (Scotland) branches in Moray, and against the advice offered by the Chief Financial Officer and Chief Legal Officer, Elected Members chose to disregard this policy. At the Council's meeting of 30th January, 2008 it made an award of one-hundred per cent discretionary rates relief to the Royal British Legion (Scotland) branches situated in Buckie, Dufftown, Forres and Keith.

4. SUMMARY OF IMPLICATIONS

(a) **Corporate Development Plan/Community Plan/Service Improvement Plan**

There are no Corporate Development Plan, Community Plan or Service Improvement Plan implications arising from the content of this Report.

(b) **Policy and Legal**

The decision made in response to this application for an award of some discretionary rates relief will only be applicable to this individual application for relief.

(c) **Resources (Financial, Risks, Staffing and Property)**

The rateable value of the club premises occupied in Lossiemouth by The Royal Naval Association for which an award of some discretionary relief is sought is £16,500.

The Non-Domestic Rates payable for this premises in the current financial year, 2008-09, is £7,557.

The cost of awarding **ten per cent** discretionary rates relief for 2008-09 would be £755.70, seventy-five per cent of which would be borne by the national Non-Domestic Rates 'pool' and twenty-five per cent, amounting to £188.92, would accrue as a financial burden to the Council and would require to be funded directly by Moray's Council Tax-payers.

The cost of awarding **twenty-five per cent** discretionary rates relief for 2008-09 would be £1,889.25, seventy-five per cent of which would be borne by the national Non-Domestic Rates 'pool' and twenty-five per cent, amounting to £472.31, would accrue as a financial burden to the Council and would require to be funded directly by Moray's Council Tax-payers.

The cost of awarding **fifty per cent** discretionary rates relief for 2008-09 would be £3,778.50, seventy-five per cent of which would be borne by the national Non-Domestic Rates 'pool' and twenty-five per cent, amounting to £944.62, would accrue as a financial burden to the Council and would require to be funded directly by Moray's Council Tax-payers.

The cost of awarding **seventy-five per cent** discretionary rates relief for 2008-09 would be £5,667.75, seventy-five per cent of which would be borne by the national Non-Domestic Rates 'pool' and twenty-five per cent, amounting to £1,416.94, would accrue as a financial burden to the Council and would require to be funded directly by Moray's Council Tax-payers.

The cost of awarding **one-hundred per cent** discretionary rates relief for 2008-09 would be £3,778.50, seventy-five per cent of which would be borne by the national Non-Domestic Rates 'pool' and twenty-five per cent, amounting to £1,889.25, would accrue as a financial burden to the Council and would require to be funded directly by Moray's Council Tax-payers.

(d) Consultations

The Chief Legal Officer has been consulted on, and his comments incorporated into, the content of this Report.

5. CONCLUSION

- 5.1 The Royal Naval Association, which is a registered United Kingdom charity incorporated by Royal Charter, currently operates a private members' social club in Lossiemouth.**
- 5.2 Current rating legislation contains provision for mandatory and/or discretionary rates relief to be awarded to a charity which is in charitable occupation of the premises for which an award of relief is sought. If the charity cannot satisfy this test, there is neither entitlement to mandatory rates relief nor eligibility for consideration of an award of discretionary rates relief.**
- 5.3 Determination of charitable occupation has been clarified by judicial-precedent which has established the criteria which should be applied to demonstrate if a charity is in charitable occupation of premises. It has been made clear by reference to such precedents that the sale and consumption of alcohol cannot be considered a charitable activity, regardless of the use that was made of the funds raised.**
- 5.4 It has been established by examination of the information provided to the Council, and the subsequent testing of this information against rating legislation and the established precedents, that the Royal Naval Association's Lossiemouth branch of is not in charitable occupation of its club premises.**
- 5.5 On the basis that the Royal Naval Association's Lossiemouth's branch is not in charitable occupation of its premises, it has neither entitlement to mandatory nor discretionary rates relief.**

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Background Papers:
Ref: JGT/LJC/448490