

FALKIRK COUNCIL

Subject: RATES APPEALS
Meeting: EXECUTIVE
Date: 29 APRIL 2014
Author: CHIEF GOVERNANCE OFFICER

1. INTRODUCTION

- 1.1 Section 238 of the Local Government (Scotland) Act 1947 (“the 1947 Act”) requires that a Rating Authority must hear appeals from ratepayers who have lodged an appeal on the grounds that they consider they have been improperly charged.
- 1.2 The Council, as the Rating Authority, has not, until recently, received an appeal of this nature for a considerable number of years. Accordingly, it has not been required to convene a meeting to consider an appeal. Under the Council’s Scheme of Delegation, an appeal of this kind falls to be dealt with by the Executive. Members will be aware that appeals on valuation matters, which are more common, are dealt with by a separate and independent Valuation Appeal Committee.
- 1.3 The Chief Finance Officer has recently received a request for a section 238 appeal from a ratepayer (“the current appeal”). A meeting of the Executive requires to be held to consider the current appeal.

2. PROCEDURE FOR APPEALS

- 2.1 The 1947 Act allows the Rating Authority to make procedures in relation to lodging and hearing appeals as long as they are not inconsistent with the provisions of the Act. The purpose of this report is to seek agreement from the Executive on the procedures to be followed in relation to the current appeal and future appeals.
- 2.2 A recommended procedure for conduct of an appeal is detailed at Appendix 1. This sets out a procedure for the period in advance of an appeal hearing taking place as well as a procedure that the Executive would follow for the appeal hearing.

3. THE CURRENT APPEAL

- 3.1 It is proposed that a date for a special meeting of the Executive be set to consider the current appeal. The specific timescales mentioned at paragraphs 1.1 and 1.2 of Appendix 1 shall be deemed to have been complied with in relation to the current appeal. The submissions to be provided by the appellant and the Chief Finance Officer in terms of paragraph 1.4 of Appendix 1 will be requested.

4. RECOMMENDATION

4.1 It is recommended that members agree:-

- 4.1.1 to adopt the procedures detailed at Appendix 1 for rates appeals where the ratepayer considers they are being improperly charged;**
- 4.1.2 to delegate to the Chief Governance Officer the setting of a date for an appeal hearing to be held by the Executive to consider the current appeal; and**
- 4.1.3 that the timescales detailed in paragraphs 1.1 and 1.2 of Appendix 1 shall not be applied in the case of the current appeal.**

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Chief Governance Officer

Date: 4 April 2014

Contact Officer: Iain Henderson ext 6103

LIST OF BACKGROUND PAPERS

Nil

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 506103 and ask for Iain Henderson

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PROCEDURE IN RELATION TO NON-DOMESTIC RATES APPEALS

1. PROCEDURE PRIOR TO APPEAL HEARING

- 1.1. Any request for an appeal requires to be made in writing by or on behalf of the ratepayer to the Chief Finance Officer within **28** calendar days of the demand note being sent to the ratepayer (“the appellant”).
- 1.2. An appeal hearing should normally be held by the Executive within **40** working days of receipt by the Chief Finance Officer of the written request for appeal or, in the event of the Executive being unable to convene within that period, as soon as possible after the expiry of that period. The Executive may postpone an appeal hearing date if it is unsuitable to either party.
- 1.3. Parties must be given not less than **20** working days notice of the appeal hearing date unless the appellant and the Chief Finance Officer have otherwise agreed.
- 1.4. Not less than **12** working days before the date fixed for the appeal hearing:-
 - (i) The Chief Finance Officer must send to the Chief Governance Officer as clerk to the Executive (“the clerk”) a copy of his decision to which the appeal refers and such other information or written submission as he considers to be relevant to that decision.
 - (ii) The appellant should send their written representations to the clerk with copies of any documents, reports and information relevant to their appeal or to which their appeal specifically refers.
- 1.5. The clerk must ensure that the Executive and all parties receive copies of all such material at least **5** clear days prior to the date fixed for the appeal hearing.

2. PROCEDURE AT APPEAL HEARING

2.1. An appeal hearing must afford the appellant an opportunity of appearing and making oral representations. The appellant shall have the right:-

- (i) to appear or to be represented at the appeal hearing by another person;
- (iii) to lodge written representations; and
- (iv) to allow the presentation of their case to rest on written representations.

2.2. Where the Executive proceeds by way of written representations only, it may seek further information from the parties prior to issuing its decision in accordance with the provisions of paragraph 2.6.

2.3. The Chief Finance Officer may be represented at the appeal hearing by another party such as a Council solicitor.

2.4. The following order of business should be adhered to unless, for good reason, the Executive determines otherwise:-

- (i) Case for or on behalf of the Chief Finance Officer
- (ii) Questioning by or on behalf of the appellant
- (iii) Case for or on behalf of the appellant
- (iv) Questioning by or on behalf of the Chief Finance Officer
- (v) Summing up by or on behalf of the Chief Finance Officer
- (vi) Summing up by or on behalf of the appellant

2.5. Members of the Executive may ask questions at appropriate points as determined by the Chair.

- 2.6. Where the Executive considers that it does not have sufficient information to enable it to determine the appeal, it may request that further information be provided by means of written submissions by the appellant and the Chief Finance Officer. The Executive shall give written notice to that effect to both parties setting out which further representations or information is requested. The parties shall have 14 days from receipt of the notice to send comments to the clerk in reply to the notice. The provisions detailed at paragraph 2.9 in relation to adjourning the appeal hearing will apply where further information is sought by way of written submissions.
- 2.7. All parties attending the appeal hearing should normally be present throughout the proceedings subject to the discretion of the Chair where cause has been shown.
- 2.8. The clerk may be called upon to give advice on procedures or points of law during the course of the appeal hearing.
- 2.9. The Executive may from time to time adjourn the appeal hearing and will give such notice of the date, time and place of the adjourned appeal hearing to the parties entitled to appear at the appeal hearing as may appear to it to be reasonable in the circumstances.
- 2.10. The Executive may proceed with an appeal hearing in the absence of any person entitled to appear at the appeal hearing.
- 2.11. Where the Chair considers that any questioning at the appeal hearing or any address would lead to undue repetition or elaboration such questioning or address may be disallowed.

3. DETERMINATION BY THE EXECUTIVE

- 3.1. Where the Executive considers that it has sufficient information to enable it to determine the appeal, it may determine the appeal without further procedure. The Executive must give notice of its decision to the appellant.