

**Written evidence submitted by the British Council of Shopping Centres (BCSC) and  
the British Property Federation (BPF) (ENT 24)**

**Enterprise Bill: Commons Committee Stage  
Clauses 25 and 26  
BCSC / BPF briefing paper and suggested amendment**

This submission is made on behalf of the British Council of Shopping Centres (**BCSC**) and the British Property Federation (**BPF**). BCSC is the representative body for all aspects of retail property investment, development and operation, our membership includes major occupiers and owners of retail real estate. The BPF represents businesses owning, managing and investing in property. This includes a broad range of businesses comprising property developers and owners, financial institutions, corporate and local private landlords and those professions that support the industry.

**Summary of BCSC / BPF position**

We have been actively engaged with government Ministers and DCLG and Valuation Office Agency (VOA) officials on the provisions in this Bill that seek to facilitate the sharing of information between the VOA and local authorities, and those that arise from the Government's review of business rates and would introduce a new appeals system: "*check, challenge, appeal*". We are grateful for Ministers, particularly Marcus Jones MP, and his officials' willingness to engage with industry on this issue. We believe we have shared objectives, however we do not believe the provisions in this Bill will deliver the outcome we all desire.

Whilst we are broadly supportive of a three stage appeals process, we feel strongly that the *Check* stage would be far more effective at filtering valuation disputes if more information were provided by the VOA than is currently proposed. Our members would like to be able to undertake informal checks of their assessments (including the evidence on which they are based) without going through the lengthy and potentially costly *Challenge* process. As such we consider the current provisions in the Bill are a wasted opportunity to address a number of critical issues, such as;

- providing businesses with a better understanding of how their properties have been valued,
- enabling businesses to be confident their valuations are correct,
- enabling valuation errors to be put right more quickly, and
- simplifying a complex system which will require professional assistance and associated additional costs to navigate successfully.

As you are well aware;

- Business rates are a tax paid by businesses based on the 'rateable value' (RV) of the property they occupy. RV is determined by the VOA based on evidence it collects from businesses.

- In all other taxes the taxpayer is in possession of the relevant facts which determine their tax liability. This is not so with business rates where one taxpayer's liability is dependent upon rents and other lease provisions of other properties, of which they initially have no information and no easy means of obtaining it.
- Businesses are currently not ordinarily entitled to view the evidence upon which their RV assessment is made. The only way for them to verify whether the VOA has made a correct assessment is to appeal that assessment. This is the main reason that there are so many appeals in the business rates system.

As such;

- We are supportive of far greater disclosure by the VOA. Our members would like to be able to undertake informal checks of their assessments (including the evidence on which they are based) without going through the lengthy and potentially costly appeals process.
- The VOA contends that taxpayer confidentiality prevents it from disclosing evidence to businesses. However, the VOA routinely shares its evidence as part of the appeals process (in the run-up to Valuation Tribunal hearings) and there should therefore be no objection in principle to providing that evidence more generally.
- The Government's proposed approach in Clauses 25 and 26 and in its recent *Check, challenge, appeal: Reforming business rates appeals* consultation paper does not envisage such sharing of evidence at an early enough stage for it to make any real difference to ratepayers wishing to understand their assessment. Instead, it shifts the burden of proof from the VOA, which has access to all relevant rental evidence, to the ratepayer who does not.
- Checking one's RV assessment is therefore likely to be more costly and time consuming, particularly for small businesses. Whilst this may result in a reduction in formal 'appeals' there is unlikely to be a reduction in the workload within the system.
- Whilst we understand one of the main objectives of these changes is to reduce the number of unscrupulous rating agents that manipulate ill-informed SMEs we believe it is just as likely that small businesses will increasingly be targeted by rogue rating surveyors who will use the complexity of the system and its new information requirements to charge significant up-front fees on the promise of savings, which may never materialise.
- We therefore strongly support the amendment proposed by the Earl of Lytton in the Lords on Report, included below for reference, which would empower the VOA to share with qualifying ratepayers the evidence used to prepare RV assessments.

## Conclusion

The VOA asserts that the Commissioners for Revenue & Customs Act 2005 places restrictions on when it can disclose otherwise private information. However, the Rating Surveyors' Association took a legal opinion from a leading barrister who in essence disagreed with the VOA's interpretation. We strongly believe this difference of opinion needs further consideration.

It should be a fundamental pre-requisite of any modern property taxation system that the taxpayer should be able to gain reasonably easy access to relevant information which will enable him to check the basis of the tax.

We are not alone in our opinion set out above.

Steve Norris, Chairman of Soho Estates and BNP Paribas Real Estate UK and former London Mayoral Candidate, recently [said](#):

*“One of the reasons ratepayers appeal is because under the current opaque system the chances of achieving success are pretty good. Many appeals are effectively fishing expeditions often launched on a ‘no win, no fee’ basis by specialists who live off whatever they save their client. What is needed is more openness as to how the VOA arrives at its rulings if we are serious about wanting to reduce the backlog”*

*“The Enterprise Bill ..... certainly looks as though it will reduce the number of appeals. It does so by the simple expedient of removing the ratepayer’s rights and giving the VOA the power to determine value on the basis of whatever information it chooses.”*

*“If this system were to operate in some third-world dictatorship, it would be decried as dictatorial and fundamentally undemocratic. The judge decides the defendant’s guilt or innocence without telling him how he has arrived at his conclusion. This dreadful nonsense has no place in our law.”*

Professor Graham Zellick CBE QC, recently retired President of the Valuation Tribunal for England, in a [recent article](#) said

*“the ratepayer is never given the full explanation for the valuation. As a result, every time there is a new rating list, ratepayers initiate a challenge – partly to protect their position but chiefly to “flush out” more information.*

*Unless information is given up front, the system will remain defective and unsatisfactory and unjust. I don’t know any other tax that can be levied where the taxpayer doesn’t understand in full down to the last detail the basis on which the taxman has calculated the tax due. It’s unprecedented, it’s unique and it’s wrong.”*

The government stated in its recent consultation paper that *“businesses need to have a better understanding of how their properties have been valued. They need to be confident that valuations are correct and that they are paying the right amount of business rates”*.

Sadly, the Government’s proposed approach in Clauses 25 and 26 and in its subsequent consultation paper does not achieve these lofty aims. In fact *Checking* an assessed value will become more costly and time consuming for businesses, particularly small businesses. Whilst this may result in a reduction in formal ‘appeals’ there is unlikely to be a reduction in the workload within the business rates system.

It is therefore hugely important that the Enterprise Bill gives government the power to allow the VOA to share with ratepayers the information it has used to prepare their RV assessments.

## For more information

A useful summary of the appeals process prepared by Jerry Schurder, Head of Business Rates at Gerald Eve, which was referenced at Second Reading in the Lords, can be found here - <http://goo.gl/dCUvxc>

Our full response to government's recent consultation can be found here - <http://goo.gl/BE8kGS>

For reference the proposed amendment drafted by Lord Lytton is below;

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# Enterprise Bill [HL]

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AMENDMENT  
TO BE MOVED  
ON REPORT

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## Clause 22

### THE EARL OF LYTTON

Page 40, line 3, leave out subsection (1) and insert –

- “(1) An officer of the Valuation Office of Her Majesty’s Revenue and Customs may disclose Revenue and Customs information to –
  - (a) a qualifying person for a qualifying purpose;
  - (b) a ratepayer for a hereditament.
- (1A) Information disclosed under subsection (1)(b) may –
  - (a) be disclosed for the purpose of providing the ratepayer with all information used to assist determination of the valuation of any hereditament for which the ratepayer is responsible for the non-domestic rating liability and may be retained and used for that purpose, and
  - (b) include information relating to hereditaments not owned by that ratepayer.”