

# **NNDR Recovery Scenarios:**

How to improve collections

**Richard Kerr**

**Greenhalgh Kerr Solicitors**



# Meet Mr Colin Davies:



- ❖ Self employed pub landlord of the Dog & Duck
- ❖ Lives on his own at 23 Orchard Drive, Old Town
- ❖ Owns his home property, subject to a mortgage
- ❖ Doesn't like paying business rates

## Scenario #1

The council has obtained a liability order for NDR at the Dog & Duck for £2,200, making Mr Davies' total debt £5,200.

Charging order or bankruptcy?

Can I get a charging order for business rates?

- Transfer of liability order to county court for enforcement
- S 18 Judgments Act 1838
  - All decrees and orders of courts of equity, and all rules of courts of common law whereby any sum of money, or any costs, charges, or expences, shall be payable to any person, shall have the effect of judgments in the superior courts of common law
- A liability order therefore may be considered to have the effect of a judgment
- It can therefore be enforced in the same way as a judgment
- This is GK's current view – an appeal decision confirming it would be nice!

## Scenario #1

The council has obtained a liability order for £2,200, making Mr Davies' total debt £5,200.

Charging order or bankruptcy?

- Vulnerability checks
- Equity levels – credit report/age of mortgage v Zoopla/Rightmove
- Ability to pay a large debt in one go?
- Other creditors to eat up the equity?
- Will bankruptcy affect his ability to earn a living?

**\*\*As of 1<sup>st</sup> Nov 22**

Deposit rising from £990 to £1,500

## #Scenario 2

Bankruptcy proceedings issued and Mr Davies makes a payment of £300 2 days before the hearing.

Can the council seek an order at the hearing?

**Yes!**

- *Lilley v American Express Europe Limited* [2000] BPIR 70
- Rule 10.24 of the Insolvency Rules 2016

*“It seems to be clear that the court cannot make a bankruptcy order if the whole of the debt has been paid by the time it comes for hearing, but the Act says nothing to prevent a court from making an order if only part of the debt has been paid. In my judgement a court must retain a discretion as to whether or not it is proper to make an order in these circumstances”.*

- Costs don't count – interest does (Ss 17&18 Judgments Act 1838)
- If payment before issue (eg on service of stat demand) – defeats proceedings

## Scenario #3

Mr Davies' house is unregistered at Land Registry

Can the council get a charging order?

**Yes!**

Transfer the liability orders to the County Court in the usual way

Gather evidence that he owns it to support the application

- Benefit claims or other council forms – eg planning apps
- Correspondence/emails/telephone notes/inspection reports
- Tenancy agreements
- Will
- Witness evidence from neighbours
- Online news reports

At Court's discretion (not balance of probabilities) – support with witness statement

Caution against first registration/land charge

## Scenario #4

Charging orders have been obtained each year, but Mr Davies thinks that the council can get repaid when he sells the house.

What options does the council have?

### Bankruptcy?

- Security may be waived
- Trustee in bankruptcy has no duty to the occupants

### Order for sale

- *Bank Of Ireland Home Mortgages v Bell [2009] 2FLR 809* - powerful consideration that a creditor is being kept out of their money
- Equity usually required but not necessarily - seek paying owner?
- Council policy not to evict

## Meet Mr O'Brian:



- ❖ Runs a large pub and restaurant
- ❖ Property owned by Wall Properties Ltd - Mr O'B sole director and share holder
- ❖ The business has been known as The Belvedere for the last 10 years



## Scenario #1

The council has liability orders totalling £25k against Wall Properties Limited

Again the same Q – insolvency or charging order?

- Can the company find £25k?
- Voluntary security?
- Other creditors?
- Costs of liquidation (\*deposit also increasing on 1.11.22 from £1,600 to £2,600)
- No need for a stat demand – demand by letter is fine
- Proceedings to be issued in the High Court – personally served
- Beware need to advertise – twin edged sword
- Settlement by way of agreement (including costs)

## Scenario #2

Mr O'Brian has emailed the council to inform them that The Trusty Sailor Limited is now occupying the property.

How do the council currently deal with this?

Form/checklist would be useful

See handout on legal entities

## Party Name and Address

*For individuals:* Full name and address of the occupying party  
Second contact address (other than the hereditament address)  
Contact phone number

*For companies:* Limited company number and registered address  
Contact phone number and email address of a director

## Identification

*For individuals:* Copy driving licence, recent bank statement or utility bill

*For companies:* Headed paper/email/invoice  
Copy recent utility bill or bank statement in the name of the company

## Entitlement to Occupy

A copy of the document entitling the person or company to occupy e.g. lease, licence, tenancy at will

## Start Date

Confirmed start date of occupation/entitlement to occupy

## Meeting

Problem properties – suggest meeting with new tenant

### Scenario #3

The property has been **empty** for 2 years. The Trusty Sailor Limited has been dissolved and a new company/lease presented.

Preliminary Steps : background checks

Companies house – tenants

- Recently formed prior to occupation
- No/little documentation filed
- No apparent connection to the landlord

Land registry – establish landlord

FH The Belvedere - EX372458.pdf (SECURED) - Adobe Acrobat Reader DC

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the ten foot strip of land coloured green on the said plan for the purpose only of maintaining support for and general cleansing and maintenance of the pond situate on the land edged blue the Vendor or other the person entering making good all damage occasioned thereby."

NOTE: The land coloured green referred to is hatched blue on the filed plan and the land edged blue referred to adjoins the Southern boundary of the said land hatched blue on the filed plan.

8 (04.07.1997) REGISTERED CHARGE dated 28 April 1997 to secure the moneys including the further advances therein mentioned.

9 (04.07.1997) Proprietor: AIB GROUP (UK) PLC of 241/243 High Road, Ilford, Essex.

10 (19.10.2015) Option to purchase in favour of Redbourne (Billericay) Limited affecting the land edged red to the plan contained in an Agreement dated 23 September 2015 made between (1) Bridget Mary O'Donoghue and Shaun Gerrard O'Donoghue and (2) Redbourne (Billeracay) Limited upon the terms therein mentioned.

NOTE:-Copy filed.

### Schedule of restrictive covenants

1 The following are details of the covenants contained in the Conveyance dated 4 November 1892 referred to in the Charges Register:-

"And whereas the land expressed to be hereby conveyed was sold to the said James Aylward subject to the stipulations specified in the second schedule hereto Now therefore the said James Aylward as to the land hereby conveyed doth hereby for himself his heirs executors administrators and assigns covenant with the said Alfred Seeley and with the said Edward Westby Nunn and Lysaght John Rutter separately and also with the owners or owner of any other land to which the benefit of the said stipulations is attached that the said James Aylward and every person deriving title under him will henceforth perform and comply with the said stipulations so far as the same relate either to the rights or

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# Preliminary Steps : background checks

- Identify individuals
- Establish propensity to pay
- Other useful evidence? Option to purchase

## Preliminary Steps : council information

- Correspondence
- Inspection reports
- Other departments (eg planning)
- Media reports











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8th March

## Fresh plans put in to demolish The Belvedere and build 23 new homes - but care home could still be on the cards

Maurice Richmond @mrichmond\_echo Reporter



Belvedere.jpg O'Donoghue.jpg

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# Contact

- Investigation
- Assistance required
- Please provide?
- Meeting?
- Costs – reasonable execution of duty to collect rates

We are assisting our client with the investigation of non-payment of business rates in respect of the above property going back to 2013.

As owners of the property, we are inviting you at this stage to assist with our investigation by providing the following information:

1. Please provide a schedule of occupants of the property since January 2013 including:
  - 1.1. the name of the person or company concerned;
  - 1.2. the dates on which their occupation started and finished.
2. For each of the entities named above, please provide a copy of any formal documentation entitling them to occupy such as a lease, licence or tenancy at will.
3. For each of the occupants please provide details of rent payments made together with the identity of any party paying the rent. If no rent was paid by any particular party or period, please provide details of what action was taken by you to obtain payment of that rent.
4. Please provide details of who has been responsible for utilities at the property since January 2013, such as electricity, gas and water together with any documentary evidence in support.
5. Please provide details of any dates since January 2013 and which you as landlord of the property have inspected the property and provide details of those inspections.

We would be grateful if you could provide the above information within 14 days, and we look forward to hearing from you.



## Re-billing

- No argument on delay, if the landlord has effectively misled the council regarding occupancy
- If no response to date, the billing/summons procedure may stimulate contact
- Doesn't matter if you have already obtained liability orders against the "tenants"
- Keep the matter under review at all times
- No likelihood of costs against the council if evidence only provided following written requests/proceedings

# Proceedings

## ➤ Seek directions

1. The Respondent shall file and serve a Statement of Case particularising the basis on which it disputes liability by 4.00pm on XXXX.
2. The Complainant shall file and serve a Statement of Case in reply by 4.00pm on XXXX.
3. The Complainant shall serve evidence upon the Respondent by 4.00pm on XXXX.
4. The Respondent shall serve on Complainant all evidence upon which it intends to rely by 4.00pm on XXXX.
5. The Complainant shall serve on the Respondent any evidence in response by 4.00pm on XXXX.
6. The Parties shall agree a consolidated trial bundle by 4.00pm on XXXX and the Complainant shall lodge a copy of the trial bundle by 4.00pm seven clear days before the final hearing.
7. The Parties shall file and serve skeleton arguments by 4.00pm three days before the final hearing.
8. The case be listed for a final hearing before a District Judge with an estimated length of hearing of XXXX at XXXX on XXXX.



## Scenario #4

Mr O'Brian has started storing some boxes of his own belongings in the property and removing them after 6 weeks.



## Ask the right questions:

Q1. Is there a suggestion that the hereditament is being used in **any** way?

**If Yes:** Q2

**If No:** Q3?

2. Can the user be identified and is their occupation, on balance, rateable?

**If Yes:** Bill that user as ratepayer on an occupied basis.    **If No:** Q3

3. Who is the person lowest on the tenurial chain with both an immediate legal right to possession and a practical ability to either occupy or put someone else into occupation?

The person identified is billed as ratepayer on an unoccupied basis.

Section 65(2) Local Government Finance Act 1988:

(2) Whether a hereditament or land is occupied, and who is the occupier, shall be determined by reference to the rules which would have applied for the purposes of the 1967 Act had this Act not been passed (ignoring any express statutory rules such as those in sections 24 and 46A of that Act).

Laing v Kingswood Assessment Area Assessment Committee [1949] 1 KB 344 at [350] -  
Occupation must be;

- i. Actual;
- ii. For not too transient a period;
- iii. Exclusive for the purpose of the occupier; and,
- iv. Of value or benefit to the occupier.

- (1) The possessor of the property must be in actual occupation of the property, i.e. making some use of the property.
- (2) The possession of the property must be exclusive to the possessor; it must not be shared with another person also entitled to possession.
- (3) Voluntary use of a small proportion of the property to store a small amount of the possessor's goods is sufficient.
- (4) It does not matter if the storage is whimsical or eccentric, for example storage of a collector's items or of redundant items.
- (5) The possessor of the property must have an intention to occupy the property, which may be inferred from use of the property.
- (6) It does not matter if the possessor's predominant or sole motive is mitigation of or exemption from rates liability.

(7) There is no occupation of a property where the person entitled to possession intends not to occupy it but to create a semblance or pretence of occupation.

(8) The presence in the property of goods not worth the trouble of removing, which may be inferred to have been abandoned, is not sufficient for occupation.

(9) It is not sufficient for occupation if the only use of the property is its upkeep and preservation or alterations in preparation for future occupied use.

(10) The possessor of the property may be a professional contractor whose business is occupation, provided it has the right to exclusive possession.

(11) The possession of the property must not be too transient; it must endure for more than a fleeting period of time.

(12) Occupation may more readily be found too transient where the property in question is a temporary structure than where it is a building for permanent use.

## Exclusive Occupation

- The occupation must be exclusive for the particular purpose of the occupier – where multiple occupiers share a purpose it is not exclusive, nor it is exclusive where a third party's use for whatever purpose interferes with the purpose of the occupier.
- Atos IT Services Ltd v Fylde BC [2020] EWHC 647 (QB); per Saini J. at [41];  
    *"To the same effect, in In re Briant Colour Printing Co. Ltd [1977] 1 WLR 942 (CA), Buckley LJ explained at pp952-953:*  
        *"There cannot, I think, be two occupiers for rating purposes at one time of one hereditament. If a state of affairs arises in which two persons are in occupation of what is listed as one hereditament for rating purposes, each entitled to exclusive use for a particular purpose, the list must be amended to show two hereditaments in order to enable the rating authority to assess both occupiers.""*

Good luck!

[richard.kerr@greenhalghkerr.com](mailto:richard.kerr@greenhalghkerr.com)

