Committee:	**Cabinet**	**Agenda Item**
Date:	**9 May 2013**	**10**
Title:	**Business Rates write off**	
Portfolio Holder:	**Councillor Robert Chambers**	Key decision: **No**

Summary

1. The second largest business ratepayer in the district, Eighteen Aviation Ltd, has defaulted on its 2012/13 business rates liability of £1,155,066.48.
2. Recovery action and legal proceedings have determined that there no prospect of recovering the amount due. It is necessary to write off the debt.
3. Legal action will be instigated to wind up the company to prevent further irrecoverable funds becoming due, as far as is possible.

Recommendations

4. The Cabinet is recommended to approve the 2012/13 business rates write off of £1,155,066.48 relating to Eighteen Aviation Ltd.
5. The Cabinet is recommended to delegate to the Assistant Chief Executive – Finance, in consultation with the Assistant Chief Executive – Legal and the Finance Portfolio Holder, authority to write off 2013/14 business rates for Eighteen Aviation Ltd as may become necessary pending conclusion of winding up proceedings.

Financial Implications

6. The 2012/13 write off will be treated as a loss against 2012/13 business rates income and will therefore reduce the amount that UDC pays over to the national pool. As such this represents a loss to the public purse of £1.15m but there are no direct financial implications for the district council.
7. If the 2012/13 write off was not processed until 2013/14, under the business rates retention scheme 50% of the loss would be borne locally, which would directly affect the finances of the District Council, County Council and Fire Authority.
8. Localised retention of business rates takes effect from April 2013. If the ongoing 2013/14 liability is not paid then again 50% of the loss would be borne locally. It is therefore imperative that legal action to wind up the company is concluded as swiftly as possible.

Background Papers

None.

Impact

Communication/Consultation	Liaison with the debtor, other creditors' legal representatives and the Court
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	None
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Situation

9. Eighteen Aviation Ltd, trading as Aero Toy Store, occupy large hangar-type premises within the Stansted Airport complex. Their core business is to provide VIP accommodation and garaging facilities for private jets and their owners. The company's paid up share capital is just £1.

10. The business rates liability for these premises in 2012/13 is £1,155,066.48, making this the second largest liability in the district after the Airport itself.

11. The company failed to make payments and the account fell into arrears. The Council carried out recovery action as follows:

    - 18 April 2012 – Bill issued
    - 18 June 2012 – Reminder issued
    - 26 June 2012 – Re-billed due to Section 44a application
    - Section 44a certificate is issued by the Valuation Office where part of the premises is empty. The Valuation Office determined that a permanent split of the property was required as part of the premises was also occupied by another company. The Council was unable to progress recovery action while the Valuation Office was dealing with this.
    - 16 August 2012 – Reminder issued

- 22 August 2012 – Company advised it was seeking amendment to previous Section 44a determination. Agreed to pay first instalment whilst waiting for correction, but did not make the payment.

- 20 September 2012 – Summons issued.

- 9 October 2012 – Contact by company in response to Summons. Agreed a payment plan of £30,000 immediately and £140,000 to be paid in total by 30 October 2012. – Valuation Office confirmed that the Section 44a was incorrect. Billing and recovery process re-set again.

- 13 January 2013 – Following completion of the revaluation process and reissuing of the Section 44a certificate a new bill issued.

- 13 February 2013 – reminder

- 21 February 2013 – summons issued

- 12 March 2013 - a Liability Order was granted by the Magistrates Court.

- 15 March 2013 Bailiffs attended company offices for collection of the debt and were refused entry at the gate. A nulla bona certificate was therefore issued and the decision was taken to commence winding up proceedings. Liaison with another creditor's solicitors began due to their existing winding up proceedings.

12. The advice of the Assistant Chief Executive – Legal is that there is no prospect of recovering the unpaid sum. The rationale for this advice is as follows:

    - A liability order has been obtained in the magistrates court but no payment forthcoming as a result.

    - Bailiffs were refused admission to the company premises when they attended to levy walking possession despite previous assurances from the company that it would co-operate with that process

    - Another creditor of the company has already issued a winding up petition in the high court which is pending. The sum claimed is believed to be in the region of £33,000. The fact that the company has been unable to pay or secure that sum to the satisfaction of the creditor is significant

    - The council has been informed that the company has no funds at present but was hoping to receive further investment from a director of a holding company to keep the company afloat. This is consistent with information given to the creditor that has filed a petition. However there are no firm details as to the anticipated source of these funds and the time within which they were to have been provided has passed without any payments being made to the council or the other creditor. There is no obligation for a holding company or any of its directors to provide funds to a subsidiary company. If a company is unable to pay its debts from its own resources then it is insolvent. If the holding company or any of its directors were willing and able to provide funding then it is probable that this would have been done in response to the pending petition or the statutory demand upon which it was based.

- The council and petitioning creditor have also been informed that all chattels used in connection with the business are leased and as such are not available for distress to cover all or part of the liability. This is common business practice and there are no grounds for doubting the accuracy of this information

- The premises occupied by the company are held under a lease which would have limited value and in any event is subject to a mortgage to SR Technics UK Ltd. This mortgage would in all probability be an “all monies due” charge and would take precedent over any charging order which the council may be able to obtain and over any realisation of funds on a dissolution of the company

13. As the conditions to justify write off were in place by 31 March 2013 the correct action is to treat this as a loss of business rates income in 2012/13 and reflect this in the requisite audited return to DCLG.

14. The 2013/14 full year liability is £1,413,000 and is therefore accruing at the rate of £117,750 per month. In all probability, for the period until the winding up of the company this will not be collectible and will need to be written off. This report requests delegated authority to enact this write off. The effect on the localised business rates retention will be reported to the Cabinet through the budget monitoring process.

15. It is not anticipated that any money would be recovered as a result of the company being wound up. In the unlikely event that this were to occur the amount recovered can be written back on. However officers consider it important to take steps to wind the company up as liabilities are continuing to accrue which are also likely to prove irrecoverable.

Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
Ongoing risk to the public purse and losses borne locally until the company is wound up.	3 (the legal process will take time to complete)	3 (the sums involved are significant)	Liaise with the court and monitor progress

1 = Little or no risk or impact
2 = Some risk or impact – action may be necessary.
3 = Significant risk or impact – action required
4 = Near certainty of risk occurring, catastrophic effect or failure of project.