

# **Discretionary Rate Relief Policy**

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## 1. Introduction

- 1.1 The Council has discretionary powers to award relief from payment of Non- Domestic Rates in a range of circumstances. This Policy shall apply in giving consideration to applications for discretionary rate relief made in respect of the following circumstances;
- i) Properties partly occupied for a temporary period**  
*(Awards under section 44a of the Local Government Finance Act 1988)*
  - ii) Ratepayers that would otherwise suffer hardship**  
*(Awards under section 49 of the Local Government Finance Act 1988)*
  - iii) In exercise of the Council's general power to award discretionary rate relief**  
*(Awards under Section 47 of the Local Government Finance Act 1998 as amended by Section 69 of the Localism Act 2011)*
- 1.2 This Policy shall take effect for all applications made in respect of rate liabilities incurred from 1 April 2014 onwards.
- 1.3 Each application for discretionary rate relief will be considered on its individual merit but in making a decision on the award the decision maker will give due consideration to the requirements of this Policy.

### Exceptions to this Policy

- 1.4 In accordance with the Council's Constitution the Portfolio Holder with responsibility for this function may determine discretionary rate relief applications which fall outside the scope of this approved Policy.

## 2. General Principles

1. All decisions in respect of applications for discretionary rate relief must be taken in accordance with statutory requirements and give due consideration to any guidance issued by the Secretary of State.
2. Decisions shall be taken in accordance with the Council's Constitution.
3. In addition to these requirements the following shall apply in respect of all requests for rate relief under the powers set out above.

### The Interests of the Borough's Council Taxpayers

4. The objectives of any organisation granted discretionary relief must accord with the Council's corporate priorities. Applicants will need to demonstrate that the services provided from the premises on which business rates are being paid directly benefit our residents.

### Reviews and Appeals

5. Decisions on the award or otherwise of rate relief will normally be taken by the Director of Finance & Procurement and the decision will be final. There will be no automatic right of appeal. An applicant may make a request for the decision maker to review a decision but only where either;
  1. Additional information that is relevant to the application and that was not available at the time the decision was made becomes available, or
  2. There are good grounds to believe the application or supporting information was not interpreted correctly at the time the decision was taken
6. A request for a review must be made within four weeks of notification of the decision and must set out the reasons for the request and any supporting information.
7. Cases will be reviewed by the Portfolio holder or Deputy Leader

### Requirements for Applications

8. Applications will only be considered where a written application is received from the ratepayer, or where the ratepayer is an organisation a person properly authorised to make an application on behalf of the organisation. Where the Council provides an application form the application must be made on that form.
9. The Council shall request such supporting evidence as it considers necessary to enable the Council to properly assess the merits of the application.

10. Ratepayers submitting an application shall set out, as part of the application; the benefits that the ratepayer considers will accrue to the Borough's Council Taxpayers as a result of the award.

### **Timescale for Decisions**

11. The Council will aim to make a decision regarding the application within four weeks of receiving the application and all supporting evidence considered necessary to enable the application to be considered.

### **Requirement to Make Payment of Amounts Falling Due**

12. Ratepayers must continue to pay any amount of rates that falls due whilst an application is pending. In the event that payments are not received as due the Council may continue with its normal procedures to secure payment.

### **Awards for Retrospective Periods**

13. With the exception of applications on the grounds of hardship, rate relief will not normally be awarded in respect of any day prior to the day that an application is received. However, in exceptional circumstances consideration may be given to awarding rate relief for a retrospective period where the ratepayer can demonstrate good cause for not submitting the application earlier.
14. Where the application is on the grounds of hardship an award may be made for a respective period where it is considered that the business suffered hardship during that period.
15. No consideration shall be given to an award for a retrospective period where the Council is not able to verify to its satisfaction that the circumstances giving rise to the application pertained for that period.

### **State Aid**

16. Rate relief shall not be awarded in any circumstances where it appears that an award will result in the ratepayer receiving state aid that is above the current de minimis level. Each application must be accompanied by a statement signed by the appropriate person representing the business setting out the amount of state aid, including but not limited to discretionary rate relief, which the ratepayer has received within the previous three years. Applications shall not be considered until this statement is received.

### **3. Applications under Section 44a (Partly Occupied Property)**

- 3.1 The Council has discretion under section 44a of the Local Government Finance Act to award rate relief where part of a property is unoccupied for a temporary period. The amount of rate relief that is awarded is determined by statute and is calculated by reference to the rateable value ascribed to the unoccupied area by the Valuation Office Agency.
- 3.2 Applications will only be considered in respect of unoccupied parts of a property that can be clearly defined and are reasonably segregated from the occupied part of the property.
- 3.3 For the purposes of this policy a period of up to 12 calendar months shall be considered to be temporary and longer periods shall not be considered to be temporary.
- 3.4 No award shall be made where it appears to the Council that the reason that part of the property is unoccupied is wholly or mainly for the purposes of applying for rate relief.
- 3.5 A ratepayer making an application under section 44a shall provide a plan of the property showing the dimensions of the occupied and unoccupied area of suitable quality to enable the Valuation Office Agency to apportion the rateable value of the property between the occupied and unoccupied areas. Applications will not be considered until such time as the plan is provided.
- 3.6 Rate relief under this section will not be awarded in respect of partly occupied property where the partial occupation of the property may be considered to arise due to the ordinary day to day nature of the business (for example the operation of a warehouse).

#### **Termination of Awards**

- 3.7 Awards of rate relief shall end at the earliest occurrence of one of the following;
  - a) The end of the statutory period for which relief may be allowed.
  - b) All or part of the unoccupied area becoming occupied
  - c) The whole of the property becoming unoccupied
  - d) The ratepayer ceasing to be the person or organisation liable to pay non-domestic rates in respect of the property.
  - e) Where all or part of the unoccupied area has remained unoccupied for one year
  - f) The commencement of a further award in respect of the property
  - g) The Council is unable to verify, following reasonable notice, that the area remains unoccupied

### **Further Applications**

- 3.8 A further application may be submitted where there is a change to the area of the property which is unoccupied.

### **Verification of Unoccupied Areas**

- 3.9 The ratepayer must allow a Council Officer access to the property by appointment during normal working hours within two weeks of the Council receiving the application in order to verify the occupation of the property
- 3.10 Further access may be required during the award period.

## **4. Ratepayers that would otherwise suffer hardship (awards under section 49 of the Local Government Finance Act 1988)**

- 4.1 The principle purpose of awards of rate relief under this section of the Policy shall be to provide short-term assistance to businesses that are suffering unexpected hardship, arising from circumstances beyond the business's control and outside of the normal risks associated with running a business of that type, to the extent that the viability of the business would be threatened if an award were not made.
- 4.2 Rate relief on the grounds of hardship shall only be awarded where it is considered that:
- (i) The ratepayer would sustain hardship if the Council failed to grant Hardship Relief; and
  - (ii) It is reasonable to grant Hardship Relief having regard to the interest of person's subject to the Council Tax.
- 4.3 The test of "hardship" need not be confined strictly to financial hardship and applicants should disclose all relevant factors affecting the ability of the business to meet its rate liability.
- 4.4 The "interest" of local Council Taxpayers may go wider than direct financial interests; for example, where employment prospects in an area would be worsened by a ratepayer going out of business, or the amenities of an area might be reduced by, for instance, the loss of a neighbourhood shop.
- 4.5 A business will not be considered to be suffering financial hardship in any annual accounting period during which it is profitable or has experienced a loss which is minor in comparison to the overall turnover of the business. In determining whether a business is profitable account shall be taken of reasonable drawings by the proprietor or reasonable remuneration of directors. For the purpose of this policy the reasonable remuneration shall be no more than 150% of the minimum wage.
- 4.6 Where the circumstances giving rise to the hardship pertain for a only part of the business's normal annual accounting period the income and expenditure of the business for the period during which the circumstance pertain may be used to determine whether the business is profitable.
- 4.7 It is expected that businesses will take prompt action to mitigate any factors giving rise to hardship. Examples of mitigating actions may include seeking business advice, discounts and promotions, reviewing pricing, extending the range of stock or services, negotiating with creditors etc. Applications may be declined in circumstances where the business is unable to demonstrate that it is taking reasonable steps to alleviate the hardship.

- 4.8 Applicants must supply the last two years' accounts and a current cash flow forecast in order for an application to be considered. Where the business has traded for less than two years accounts must be provided where available, and draft accounts or budget forecasts must be provided for the period since the business commenced trading.
- 4.9 No award shall be made where it appears to the Council that the proprietor of the business has failed to exercise due diligence to anticipate circumstances that may give rise to hardship, financial or otherwise, and/or to put in place measures to prevent or mitigate the circumstances.
- 4.10 Applications will be viewed favourably where the criteria of the Policy are met and the business provides the only goods or services of that type in the local area or where the business is a niche business supplying specialist goods or services that are not widely available and vice versa.

### **New Businesses**

- 4.11 Award of hardship rate relief will not be made for the purposes of enabling a new business to become established except where the viability of the business is threatened by events that could not reasonable have been foreseen when establishing the business.

### **Unoccupied Properties**

- 4.12 Rate relief on the grounds of hardship in respect of rates payable for an unoccupied property will only be awarded in the most exceptional circumstances where there are clear and tangible benefits to local Council Taxpayers in making the award.

### **Relationship to other forms of Rate Relief**

- 4.13 Applications for hardship rate relief shall be regarded as a last resort and will only be considered after consideration of any other forms of rate relief to which the applicant may be eligible.

### **Duration of Awards**

- 4.14 All awards shall terminate at the end of the financial year if the award has not ended at an earlier date. Where the hardship continues a further application may be made in the new financial year, however in considering repeated applications consideration should be given to the number and value of previous awards.

## **5. In exercise of the Council's general power to award discretionary rate relief**

(awards under section 47 of the Local Government Finance Act 1988 as amended by Section 69 of the Localism Act 2011)

- 5.1 Section 69 of the Localism Act 2011 amends the 1988 Act to allow local authorities the discretion to award rate relief to all types of businesses. The Plain English Guide to the Act addresses this as follows:

*"The Localism Act gives councils more freedom to offer business rate discounts - to help attract firms, investment and jobs. Whilst councils would need to meet the cost of any discount from local resources, they may decide that the immediate cost of the discount is outweighed by the long-term benefit of attracting growth and jobs to their area."*

- 5.2 This section sets out the Council's agreed policy for dealing with applications from such cases.

### **General Requirement**

- 5.3 Applications for rate relief under this section of the Policy will normally only be considered favourably where the Council is satisfied that an award will result in tangible benefits to local residents and in particular where the award will directly result in attracting businesses, investment or jobs to the local area.

### **Maximum Amount of Awards**

- 5.4 The Localism Act allows scope for the Council to award up to 100% rate relief in any one year for qualifying businesses. The maximum amount awarded shall normally be limited to no more than 50% of the rate liability for discretionary cases and 10% of the rate liability in cases where 80% mandatory relief has been applied, except where there are exceptional circumstances which justify a greater amount.

### **Duration of Awards**

- 5.5 Each amount of rate relief awarded under this policy shall normally apply for no more than two financial years at a time.

### **Information to Support Applications**

- 5.7 All applicants are required to complete the Council's rate relief application form. Such information and evidence as the Council requires must be provided to support an application and in the event that the requested information and evidence is not provided the application may be refused.

- 5.8 In submitting an application the ratepayer must demonstrate with verifiable supporting evidence the benefits to the Borough's Council Taxpayers that will accrue from making an award.
- 5.9 On receipt Council officers will prepare a report setting out the merits of the application. This report will detail, amongst other elements the economic, social and environmental benefits that may derive from granting the application.

### **Relationship to other forms of Rate Relief**

- 5.10 Applications under this section will only be considered after consideration of any other forms of rate relief to which the applicant may be eligible (excluding hardship rate relief).

### **Guidelines for Making Awards**

- 5.11 Each application will be considered on its individual merit but in making a decision on the award the following factors must be considered by the decision maker;
1. That awards should only be made in exceptional circumstances;
  2. The value of any previous awards and the benefits to local Council Taxpayers realised from previous awards;
  3. The cost to the Council, including the loss of income or of retained rates yield, in making an award;
  4. The impact of the cost or loss of income in relation to the Council's overall financial situation;
  5. The benefits to the Borough's Council Taxpayers in making an award, and in particular whether the award will directly result in attracting businesses, investment or jobs to the local area;
  6. The impact on other Non-Domestic Ratepayers in the Borough;
  7. The Council's statutory equality duties; in respect of clubs and accessibility, membership must generally be open to all residents and not discriminate against any of the groups protected by the Equality Act 2010.
  8. That awards should normally only be made where the ratepayer's activities in the Borough will contribute towards the aims and objectives of the Corporate Plan.
  9. The extent to which an award will support the Council's aspiration to promote and encourage economic growth, and in particular growth in the Non-Domestic Rating tax base and in employment opportunities for residents of the Borough;
  10. The overall profitability of the business.

11. Other sources of funding available i.e. through the use of grants or club subscriptions.
12. Consideration will be given as to the number of properties occupied by the applicant.

## Definitions

- 5.12 The following definitions are provided for hereditaments where Discretionary Rate Relief may be awarded
1. Charities – Ratepayer is a charity or trustees for a charity, and the property is wholly or mainly used for charitable purposes. Based on above guidelines maximum award 10% discretionary rate relief.
  2. Not-for-profit Organisations – Not established or conducted for profit and whose aims should be charitable or otherwise philanthropic, or concerned with the promotion of social welfare, education, science, literature of the fine arts. Based on above guidelines maximum award 50% discretionary rate relief.
  3. Sports Clubs - Property is wholly or mainly used for the purpose of recreation and all or part of the property is occupied for the purpose of a club, society or other organisation not established or conducted for profit. Based on above guidelines maximum award 50% discretionary rate relief. When determining applications from Sports Club we will consider:-
    - a. Whether the sports club have achieved or are working towards Sport England's Clubmark accreditation
    - b. Whether the organisation has a licensed bar
    - c. How else funds are raised
    - d. Level of reserves or savings
    - e. Number of members resident in the Borough
    - f. Development of the organisation including youth development, providing facilities for use by disabled people or special interest groups
  4. Community Amateur Sports Clubs (CASC's) – Sports Clubs that have registered with the Inland Revenue. Based on above guidelines maximum award 10% discretionary rate relief. CASC's must
    - a. Be open to the whole community
    - b. Be run as an amateur club
    - c. Be a non-profit making organisation
    - d. Aim to provide facilities for, and encourage people to take part in eligible sport