



**Appendix 1**

# **Discretionary Rate Relief Policy**

## **Guidelines for the award of Discretionary Relief on National Non-Domestic Rates**

March 2016

Document Control

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## **1. Introduction and scope**

- 1.1. The Royal Borough of Windsor and Maidenhead Council are committed to correctly administering the award of Discretionary Rate Relief (DRR) on National Non-Domestic Rates (NNDR) to qualifying organisations within the Borough.
- 1.2. With the introduction of the Business Rates Retention regime from 1<sup>st</sup> April 2013, local authorities share in the gains and losses associated with changes in Business Rates income. The Government hopes that the localisation of Business Rates in this way will incentivise Local Authorities to adopt strategies to promote businesses and generate additional Business Rates income. The introduction of Business Rates Retention has a major impact on the funding arrangements for Mandatory and Discretionary Rate Relief as follows:
- Mandatory Relief is now financed 50% by Central Government, 49% by the Council and 1% by the Fire and Rescue Authority
  - Discretionary Relief is also now financed 50% by Central Government, 49% by the Council and 1% by the Fire and Rescue Authority
  - Discretionary Rate Relief awards for New Build Empty Property Relief are financed at 100% by Central Government. This is a temporary time limited relief specifically introduced to support business and will cease on 30<sup>th</sup> September 2016.
- 1.3. In view of the additional cost of awarding DRR, the Council has determined that its DRR policy is reviewed to ensure that an award of DRR is focused to maximise benefits to Windsor and Maidenhead businesses and residents.
- 1.4. This policy document outlines the areas of local discretion and the Council's approach to the various awards. This approach has regard to the impact:
- of granting Discretionary/Hardship Rate Relief on the Council's wider financial position and Council Tax payers;
  - on the organisations and businesses that currently receive or may apply for relief in the future;
  - for the Royal Boroughs residents if relief is awarded and the regeneration benefits to the borough.
  - of funding made available by Central Government to provide full financial support for the awarding of New Build Empty Property Relief.
- 1.5. The principal consideration when making an award is that any relief granted is in the best interests of the boroughs residents and taxpayers and produces a local benefit.
- 1.6. All Officers and elected members involved in the consideration and processing of DRR applications will adhere to this policy.



## **2. The Discretionary Rate Relief Scheme**

2.1. DRR is granted in accordance with:

- Section 43 of the Local Government Finance Act (LGFA) 1988; and
- Section 47-49 of the Local Government Finance Act (LGFA) 1988 as amended by the Localism Act 2011;

Clause 69 of the Localism Act amended section 47 of the Local Government Finance Act (LGFA) 1988 to allow local billing authorities to fund their own local discounts. With effect from 1 April 2012, the Council is able to grant business rates discounts entirely as it sees fit within the limits of the primary legislation and European rules on state aid. These powers can be used to encourage new business and investment, as well as to support local shops or community services.

The powers under Section 47 of the LGFA 1988 can also be used to grant specific reliefs that the Government has initiated, namely, New Build Empty Property Relief.

2.2. The Legislation requires the Council to maintain a DRR Scheme to award business rates relief of up to 100% to certain organisations which operate within specified criteria. This criteria covers:

- Charitable bodies already in receipt of Mandatory Relief at 80% – the Council has further discretion to ‘top up’ this relief to 100% of the business rates due;
- Registered community amateur sports clubs (CASCs) already in receipt of Mandatory Relief at 80% – again the Council has further discretion to ‘top up’ this relief to 100% of the business rates due;
- Non-profit making organisations – the Council has discretion to grant ‘standard’ DRR of between 0% -100% of the business rates due;
- Local Child care providers – the Council has discretion to grant up to 100% DRR.
- Property that is in a qualifying rural settlement and is a qualifying food shop, general store, Post Office, sole public house or sole petrol station already in receipt of Mandatory Relief of 50% – the Council has further discretion to ‘top up’ this relief to 100% of the rates due, or to grant up to 100% Discretionary Relief providing the qualifying criteria is met.

Businesses to which the Council considers it wishes to grant relief – the primary reasons will be to encourage regeneration in the borough.

2.3. In making decisions about applications the Council may:

- Grant relief up to a maximum of 100% of the rates due;
- Grant relief for a sum less than 100% of the rates due; or
- Refuse any application for additional relief.

### **3. Charitable Bodies (Charities)**

3.1 A Mandatory Rate Relief of 80% is granted to charities in the following circumstances where the:

- ratepayer of a property is a charity or the trustees of a charity; and
- property is wholly or mainly used for charitable purposes (including charity shops, where the goods sold are mainly donated and the proceeds are used for the purpose of the charity).

3.2 Registration under the Charities Act 1993 is conclusive evidence of charitable status. Bodies which, under the 1993 Act, are excepted from registration or are exempt charities are also eligible for Mandatory Rate Relief. Providing the above criteria are met, 80% Mandatory Rate Relief is granted.

3.3 In cases where a charity is in receipt of Mandatory Rate Relief of 80%, the Council has discretion to grant up to 20% additional rate relief – DRR top up. The Council will consider applications for a Discretionary Rate Relief top up from charities based on their own merits, on a case by case basis. However the principal consideration is that the relief is in the best interests of the residents and taxpayers of the Royal Borough and produces a local benefit as the Council must contribute to the cost of each award. As such, top up will be awarded to only the following type of registered charities:

- Scouts, guides, cadets and other clubs/associations for young people;
- Community schemes encompassing organisations providing support for those over the age of retirement, community transport, those based on volunteering and residents associations;
- Organisations providing support in the form of advice, training for employment, counselling;
- Organisations that provide services that address the consequences of ill health and disability;
- Charitable sporting clubs (also see CASCs);
- Locally based leisure and cultural organisations;
- Armed forces veterans associations;
- Locally based charities;
- Charity shops (operated by either locally based or national charities);
- Local Child Care providers registered as charities.

#### **4. Registered Community Amateur Sports Clubs (CASCs)**

4.1. A Mandatory Rate Relief of 80% is granted to registered community amateur sports Clubs (CASCs). To qualify as a CASC, a sports club must fulfil all of the following criteria. It must be:

- Open to the whole community;
- Run as an amateur club;
- A non-profit making organisation; and
- Aiming to provide facilities for, and encourage people to take part in, eligible sport.

4.2. In cases where a CASC is in receipt of Mandatory Rate Relief of 80%, the Council has discretion to grant up to 20% additional rate relief as a discretionary top up.

4.3. The Council will consider applications for a Discretionary Rate Relief top up from CASCs based on their own merits on a case by case basis. The principal consideration is that any relief is in the best interests of the residents and taxpayers of the Royal Borough and it produces a local benefit as the Council must bear a percentage of the cost of any relief granted. However, in determining the application the following must be taken into consideration:

- How the CASC supports and links into the Council's corporate vision and priorities;
- A club should have an open access policy. If a club effectively discriminates by only accepting members who have reached a particular standard, rather than seeking to promote the attainment of excellence by enhancing access and the development of sporting aptitude, then it does not fulfil the requirements;
- Although clubs should be open to all without discrimination, single sex clubs may be permitted where such restrictions are not discriminatory in intent but a genuine result of physical restraints (such as changing room facilities) or the requirements of the sport. In such cases, the organisation will be required to provide proof of such limiting factors;
- Membership and fee structure – see section 7

4.4. It should be noted that sports clubs and other organisations which run a bar are unlikely to be awarded relief if their main purpose is the sale of food or drink. However, if the sale of food or drink by the organisation aids the overall operation and development of the organisation in achieving its objectives, this would be permissible as long as the principal objectives of the organisation meet the eligibility criteria detailed at 4.1. If the bar makes a profit, this profit must be reinvested to support the organisation in achieving its principal objectives. Financial information will be required to evidence any profit and its use.



## **5. Local Child Care Providers**

- 5.1. The Council will consider applications for DRR from Local child care providers based on their own merits on a case by case basis. The principal consideration is that any relief is in best interests of the residents and taxpayers of the Royal Borough and produces a local benefit as the Council must bear a percentage of the cost of any relief granted.
- 5.2. A nursery can be in receipt of Mandatory Rate Relief of 80% if it is registered as a charity, in these cases the Council has the discretion to grant up to 20% additional rate relief.
- 5.3. In cases where a nursery is not in receipt of Mandatory Rate Relief the council has the discretion to consider granting an award up to 100% of rate relief.
- 5.4. It is necessary to highlight that if a nursery charges unreasonable fees or if they make significant profits that are not reinvested into the business that they are unlikely to be awarded rate relief.
- 5.5. In reviewing an application from a childcare provider attempts should be made to consult with the Early Intervention and Families team to determine if providing relief would meet the aim of supporting local childcare provision.

## **6. Non Profit Making Organisations**

- 6.1. The Council has the power to grant Discretionary Rate Relief of up to 100% for the rates due to other non-profit making organisations. The main objectives of the organisation must be related to:
  - Relief of poverty;
  - Advancement of religion;
  - Advancement of education;
  - Social Welfare;
  - Science;
  - Literature;
  - Fine arts; or
  - Recreation
  - or be otherwise beneficial to the community

An organisation must be able to demonstrate how it:

- meets local needs and benefits local people; and
- provides a valuable service to the community; and
- is open to all sections of the community
- operates in such a way that it does not discriminate against any section of the community; and
- is not conducted or established for the primary purpose of accruing profit.

## **7. Membership and Entry Fees**

7.1. If the organisation applying for DRR requires membership or an entry fee, the Council will consider whether:

- membership must be open to everyone, regardless of race, ethnic origin, sex, marital or parental status, sexual orientation, creed, disability, age, religious affiliation or political belief,
- The subscription or fee is set at a level which is not prohibitively high and considered to be affordable by most sections of the community;
- Fee reductions are offered for certain groups such as, for example, under 18s or over 60s;
- Membership is encouraged from groups who face social barriers, such as, for example, young people not in employment, education or training; people above working age; or people with disabilities;
- Facilities are made available to people other than members.

7.2. Where the applicant organisation requires membership, at least 50% of the members should reside within the boundaries of the Royal Borough (proof of this will be required).

7.3. If a childcare provider applies for relief they must not charge fees that would be considered unaffordable by most of the boroughs residents. The provider must also not restrict attenders with admittance policies that are deemed unfair.

## **8. Discretionary Rural Rate Relief**

8.1. Organisations or businesses which reside within a designated rural settlement (with a population of 3,000 or less) may be eligible for Discretionary Rural Rate Relief. Eligible organisations/businesses must be located in one of the settlements identified in the Council's rural settlement list, which is reviewed periodically.

8.2. The Council uses polling districts to define its rural settlements. From 1<sup>st</sup> April 2016 areas designated as rural settlements are:

Ascot East  
Bisham  
Cheapside  
Cookham  
Cookham West  
Eton  
Eton Wick  
Great Park  
Horton  
Hurley North  
Hurley South





Littlewick Green  
Oakley Green & Fifield  
Park West  
Shottesbrooke  
Waltham St Lawrence  
White Waltham & Paley Street  
Woodlands Park

8.3. Discretionary Rural Rate Relief is open to any type of business within a classified rural settlement that satisfies the following criteria:

- It is within the boundaries of a qualifying rural settlement;
- It has a rateable value of less than £16,500;
- It is a qualifying food shop, general store, Post Office, sole public house or sole petrol station already in receipt of mandatory relief of 50%;
- The property is used for purposes which are of benefit to the local community;
- It is reasonable for the Council to grant relief, with regard to the interests of residents and Council Tax payers

8.4. As a guide, to be eligible for Discretionary Rural Rate Relief, an organisation must not have enough financial resources available in unrestricted funds (i.e. resources which are not being held for specific purposes) to continue to operate for more than 12 months, nor should it have sufficient financial resources in unrestricted reserves to continue to operate for more than 12 months, unless a business plan exists detailing how these additional reserves are to be used to benefit the local community.

## **9. Discretionary 'Hardship' Relief (DHR)**

9.1. The Council has the power to reduce or remit the business rates charged in certain circumstances where the applicant organisation is enduring temporary financial difficulties. This is known as Discretionary 'Hardship' Relief (DHR).

9.2. The Council may grant DHR if it is satisfied that:

- The ratepayer would sustain financial hardship if the Council did not do so; and,
- It is reasonable for the Council to grant relief, with regard to the interests of its residents and Council Tax payers.

9.3. DHR is a temporary measure which should not be used to artificially sustain a failing business. DHR will be awarded where the applicant organisation is facing temporary financial difficulties and where the community would be significantly disadvantaged if the business were to close due to these temporary financial constraints.

## **10. Discretionary Rate Relief Using Powers Conferred by the Localism Act**

10.1. The Council is now able to grant business rates discounts entirely as it



sees fit within the limits of the primary legislation and European rules on state aid. These powers will generally be used as appropriate to support local shops or community services, but, to align with the regeneration objectives of the Council, any use of such powers will be focussed on encouraging new business and investment and the regeneration of the Royal Borough.

- 10.2. The Government has initiated one relief on a time limited basis to support businesses. It can be awarded under the powers of the Localism Act. The granting of this relief is in relation to specific categories of property and the funding for the New Build Empty Property Relief is provided 100% by Central Government. Applications for this relief will not be considered after 30<sup>th</sup> September 2016. (See Annex A)
- 10.3. The Council has initiated one relief to support businesses who occupy retail premises that have been empty for more than 12 months. Businesses can qualify for up to 100% Discretionary Rate Relief based on their own merits on a case by case basis. (See Annex A)
- 10.4. Using the general exception from the state aid rule where the aid is below The “de minimis” level, the Council will limit awards to a maximum of €200,000 to any one business over any three year period (inclusive of awards as outlined at 10.2).

## **11. Applications**

### **11.1. Discretionary Rate Relief**

11.1.1. Applications for DRR must be supported by, and include:

- The applicant organisation’s main purposes and objectives, as set out in, for example, a written constitution, a memorandum of association, or set of membership rules;
- A full set of audited accounts relating to the two years preceding the date of application. Where audited accounts are not available, projected figures should be provided instead;
- Details of how the organisation meets the criteria outlined in these guidelines.

11.1.2. Applicants will be encouraged to submit their applications electronically through the Business Rates mailbox, [business.rates@rbwm.gov.uk](mailto:business.rates@rbwm.gov.uk)

11.1.3 As a guide, to be eligible for DRR, a charity/organisation must not have enough financial resources available in unrestricted funds to continue to operate for more than 12 months, nor should it have sufficient financial resources in unrestricted reserves to continue to operate for more than 12 months, unless a business plan exists detailing how these additional reserves are to be used to benefit the local community.



11.1.4 In exceptional cases, DRR will be granted to organisations which have enough financial resources in unrestricted funds to continue to operate for more than 12 months. This may include charities or community organisations which require large amounts of available resources to sustain the service they deliver to the community. In such cases, the applicant organisation must be able to prove that it offers a service which the Borough's residents depend on, and which they would be unlikely to find elsewhere in the Royal Borough.

## 11.2 **Discretionary Hardship Relief**

11.2.1 Applications for DHR must be accompanied by full set of audited accounts relating to the two years preceding the date of application. Where audited accounts are not available for the current financial year, projected figures should be provided instead. It is recommended that applicant organisations submit audited accounts dating back further than two years, if such information is available.

## 11.3 **Discretionary Rate Relief Using Powers Conferred by the Localism Act**

11.3.1 Applications should be supported in accordance with section 10.1, however where applications seek rate relief in respect of new business set up etc., information provided should include business plans and other information that demonstrate the regeneration or economic benefit to the Royal Borough.

## 11.4 **Applications for Excepted Businesses/Organisations**

11.4.1 Excepted businesses and/or organisations are properties which are occupied by a billing or precepting authority, such as the Council. Applications from excepted businesses and/or organisations cannot be considered.

## 11.5 **General Advice**

11.5.1 The Council will encourage:

- not for profit organisations to seek CASC or charitable status so that they may qualify for Mandatory Relief;
- shared occupation of property for similar types of organisation and those wishing to reduce their rating liability;
- organisations using properties for religious purposes to seek certification as a Place of Worship so that the property may be removed from the rating list.



## **12. Period of Relief**

- 12.1. DRR will usually be granted for the period of one financial year at a time. Successful applicants will be sent a letter confirming that their application DRR has been granted. This letter will also explain that relief has been granted for twelve months only.
- 12.2 Backdating requests where an application has been successful may be considered and will be decided on a case by case basis based on the reasons for the delay in the application being made.
- 12.3 The granting of relief will be reviewed annually and those in receipt of DRR will be asked to supply or confirm relevant information for the purpose of the review.
- 12.4 If an organisation in receipt of DRR ceases to meet the eligibility criteria outlined in this policy, it will cease to receive DRR. The Council will give such organisations twelve months written notice prior to the withdrawal of DRR. Such organisations may appeal against this decision, as outlined in Section 14 of this policy.
- 12.5 DHR is awarded as a temporary measure in accordance with the applicant organisations circumstances and the anticipated length of the financial difficulties. Successful applicants will be sent a letter confirming that their application for DHR has been granted and including the appropriate timeframe for relief.

## **13. Approval**

- 13.1. The Council delegates the decision making power for DRR awards and DHR to the Section 151 Officer and the Cabinet Member for Finance.
- 13.2 The initial recommendations to award or refuse a DRR or DHR award will be made by the Section 151 Officer.
- 13.3 Final approval will be sought from the Cabinet Member for Finance. All recommended awards will be justified by an explanation supporting the proposed decision.
- 13.4 Any officer or member involved in the decision-making process for DRR or DHR must declare if they have an interest in or association with any organisation which is applying for DRR.
- 13.5 The business rates team inform applicants in writing of any decision as soon as possible. A revised NNDR bill will be sent where appropriate. Unsuccessful applicants will be notified that they can appeal the decision
- 13.6 The Council recognises that there will be occasions when the applicant body does not appear to satisfy the criteria generally applied but where the Section 151 Officer and Cabinet Member for Finance may choose to award relief.



The Council has the ability to depart from its general policy as to granting relief if it sees fit to do so, taking into account the facts of each case and the interests of residents and Council Tax payers.

#### **14. Appeals against decisions**

- 14.1. Any organisation requiring a review of the decision may submit a request by email to [business.rates@rbwm.gov.uk](mailto:business.rates@rbwm.gov.uk)
- 14.2 Windsor and Maidenhead Council can review a DDR or Hardship Relief decision in the event of a dispute or in light of any new information. Where appropriate an applicant may request personal representation at the review. Final decisions on appeals will be made by the Section 151 Officer.

#### **15. Policy Review**

- 15.1. The Council reserves the right to review and revise the policy at any time as a result of information gained as a result of operating the policy.
- 15.2 The Cabinet Member for Finance in conjunction with the Section 151 Officer are authorised by Cabinet to agree any revisions to the policy.

## **ANNEX A**

### **DISCRETIONARY RATE RELIEF POLICY TEMPORARY RELIEFS UNDER S47 OF THE LOCALISM ACT**

The Council wishes to promote opportunities for business within the Royal Borough and therefore will implement the Government's initiatives to provide business rate relief for new build empty property.

Therefore businesses can apply for this relief in the same way as all others by making an application on the Council's web-site.

#### **NEW BUILD EMPTY PROPERTY RATE RELIEF**

In accordance with powers under S47 of the Localism Act, the Council will grant Discretionary Rate Relief at 100% to all newly built commercial property completed between 1<sup>st</sup> October 2013 and 30<sup>th</sup> September 2016. Such properties will have an exemption from paying empty property rates for up to 18 months, up to State Aid limits. The relief will run with the property rather than the owner.

#### **Properties that benefit from this Relief**

Properties that will benefit from the relief will be all unoccupied non domestic properties that are wholly or mainly (more than half) comprised of qualifying new structures.

For clarity, the Council defines "structures" in accordance with Government guidance as:

- a) Foundations and/or
- b) Permanent walls and/ or
- c) Permanent roofs

For the avoidance of doubt, "new" means completed:

- a) Less than 18 months previously, and
- b) After 1<sup>st</sup> October 2013 and before 30<sup>th</sup> September 2016.

New structures are to be considered "completed" when the building or part of the building of which they form part is ready for occupation for the purpose it was constructed unless a completion notice has been served in respect of such a building or part of a building - in which case it would be the date specified in that notice.

Whilst the policy is not intended to capture properties that have been refurbished, it is intended to capture those that have been the subject of substantial structural construction, so for example those properties that are built on existing foundations or built around a retained façade are likely to benefit from the relief.

Where a rateable property is created as a result of a split or merger of other properties, or where the existing property is altered, for example with an extension, in order to benefit from the exemption, the property must be wholly or mainly comprised of new structures completed within the necessary timeframes.

## **BUSINESS RATES RETAIL REOCCUPATION RELIEF**

Businesses that move into retail premises that have been empty for a year or more, will receive up to 100% Discretionary business rates relief for up to 18 months, subject to state aid limits. The relief will operate between 1 April 2016 and 31 March 2018.

### **Properties that benefit from this Relief**

Properties that will benefit from the relief will be occupied hereditaments that:

- When previously in use, were wholly or mainly used for retail as set out below
- Were empty for 12 months or more immediately before their reoccupation (except for occupation by a pop up shop)
- Become reoccupied between 1 April 2016 and 31 March 2018
- Are being used for any use (i.e. not just retail use) except as set out below

There is no rateable value limit for the hereditament in respect of either the previous or reoccupied use. However, State Aid De Minimis limits may limit the amount of relief given.

The new use of the reoccupied premises can be for any use (i.e. not just retail uses) except for hereditaments wholly or mainly being used as betting shops, payday loan shops, and pawn brokers.

### **How much relief will be available?**

Relief will be available for 18 months from the first day the hereditament becomes occupied as long as the first day falls between 1 April 2016 and 31 March 2018, subject to the hereditament remaining continuously occupied.

The relief available for each property is up to 100% of the business rates liability after any mandatory or other discretionary reliefs have been applied, up to State Aid De Minimis limits. The relief should be calculated ignoring any prior year adjustments in liabilities which fall to be liable on the day.

### **What is retail use?**

In relation to a premises' previous use for the purposes of Retail Reoccupation Relief we consider retail to mean:

- i. Hereditaments that were being used for the sale of goods to visiting members of the public:
  - Shops (such as: florist, bakers, butchers, grocers, greengrocers, jewellers, stationers, off licence, chemists, newsagents, hardware stores, supermarkets, etc.)
  - Charity shops
  - Opticians
  - Post offices
  - Furnishing shops/ display rooms (such as: carpet shops, double glazing, garage doors)
  - Car/ caravan show rooms
  - Second hand car lots
  - Markets





- Petrol stations
  - Garden centres
  - Art galleries (where art is for sale/hire)
- ii. Hereditaments that were being used for the provision of the following services principally to visiting members of the public:
- Hair and beauty services (such as: hair dressers, nail bars, beauty salons, tanning shops, etc.)
  - Shoe repairs/ key cutting
  - Travel agents
  - Ticket offices e.g. for theatre
  - Dry cleaners
  - Launderettes
  - PC/ TV/ domestic appliance repair
  - Funeral directors
  - Photo processing
  - DVD/ video rentals
  - Tool hire
  - Car hire
- iii. Hereditaments that were being used for the provision of the following services principally to visiting members of the public:
- Financial services (e.g. banks, building societies, bureaux de change, payday loan shops, betting shops, pawn brokers)
  - Other services (e.g. estate agents, letting agents, employment agencies)
- iv. Hereditaments that were being used for the sale of food and/ or drink to visiting members of the public:
- Restaurants
  - Takeaways
  - Sandwich shops
  - Coffee shops
  - Pubs
  - Bars

### **Splits, mergers, and changes to existing hereditaments**

Where a new hereditament has been created by a split or merger of hereditament(s), the new hereditament will be eligible for the Reoccupation Relief where at least half of the floor area of the new hereditament is made up of retail hereditaments that have been empty for 12 months or more.

Where a hereditament in receipt of Reoccupation Relief splits or merges to form new hereditaments, the new hereditaments will not be eligible for the remaining term of Reoccupation Relief.

Where a hereditament in receipt of Reoccupation Relief becomes unoccupied for any period of time less than 12 months it will not be eligible for any further Reoccupation Relief on





occupation. However, if a hereditament that has previously received Reoccupation Relief becomes empty for 12 months or more it will be eligible for an additional 18 months Reoccupation Relief if the criteria are met.

**Change of ratepayer**

The relief will run with the property rather than the ratepayer. So if a hereditament is in receipt of Reoccupation Relief and a new ratepayer becomes liable for the property they will benefit from the remaining term of the relief, subject to the new ratepayer's State Aid de minimis limits.



**REVISION RECORD**

<b>Date</b>	<b>Version</b>	<b>Revision description</b>
March 2016	V4.0	Revised to update Rural Rate Relief settlements and the Retail Reoccupation Relief Scheme