

TELFORD & WREKIN COUNCIL

CABINET – 23rd MARCH 2010

COUNCIL TAX – DISCRETIONARY DISCOUNT & NATIONAL NON DOMESTIC RATES – DISCRETIONARY RATE RELIEF

REPORT OF HEAD OF LEISURE & CUSTOMER SERVICES (including Revenues & Benefits)

1. PURPOSE

- 1.1 To review guidelines for relief of business rates and council tax in specific limited circumstances.

2. RECOMMENDATIONS

- 2.1 That the proposed new guideline for awarding discretionary Council Tax discount in certain prescribed circumstances be approved as detailed at Appendix 1.
- 2.2 That the refreshed guidelines for the granting of discretionary rate relief for rural businesses be approved as detailed at Appendix 2.
- 2.3 That the refreshed guidelines for the granting of discretionary rate relief for charitable, voluntary and non profit making bodies be approved as detailed at Appendix 3.
- 2.4 That the refreshed guidelines for the granting of hardship rate relief be approved as detailed at Appendix 4.
- 2.5 That Cabinet approve the introduction of a new scheme to review the decision of the Head of Leisure & Customer Services where a taxpayer is dissatisfied with her decision as detailed at Appendix 5.

3. SUMMARY

- 3.1 The Local Government Act 2003 inserted section 13A into the Local Government Finance Act 1992, to enable Councils to reduce the amount of Council Tax payable by Council Tax payers. This allows the Council to introduce a local scheme to meet local situations which are not covered by national discounts and exemptions and provides billing authorities with powers to reduce the charge for individual properties or classes of property by any amount as it sees fit, including remission of the full amount of tax payable.
- 3.2 There are several discretionary business rate relief schemes currently in operation which provide relief to charitable organisations, non profit making bodies, rural businesses and to ratepayers suffering hardship. Members last approved the guidelines for granting discretionary rate relief at a Cabinet meeting on 11th February, 2002.

4 INFORMATION

Council Tax

- 4.1 Billing authorities have unlimited discretion to reduce the Council Tax charge for individual properties or classes of property. This gives Local Authorities powers to introduce local discounts not already covered by the national discount scheme. However Cabinet Members should note that the loss in Council Tax revenue resulting from the granting of local discounts has to be met in full by the billing authority.
- 4.2 The paragraphs below give an outline of those discretions.
- 4.3 The Authority can reduce or remit the amount of Council Tax due, and could, for example introduce a discount to meet local situations. Examples of where discretion could be exercised might include (i) major flooding; (ii) national emergency such as Foot and Mouth; (iii) natural disasters; (iv) other exceptional circumstances.
- 4.4 Where a tax payer is subject to a factor, as exemplified in paragraph 4.2 and it has not been necessary to vacate the property there is no statutory discount or exemption that can be applied and, therefore, the tax payer remains liable to pay the tax as demanded. The ability to award a local discount in such cases will provide the Council discretion to reduce or remit the amount of tax payable.
- 4.5 It is proposed that the determination of applications be delegated to the Head of Leisure & Customer Services or her nominated officer on a case by case basis only. It is also proposed that the creation of classes of case should however be referred to Members; for example if there was a natural disaster and a large number of properties were affected it may result in it being impracticable to deal with on a case by case basis.

Business Rates

- 4.6 The rural rate relief scheme provides 50% mandatory relief to sole small general stores, post offices, pubs and petrol filling stations and all small food shops within pre-designated rural settlements. Councils can top-up this relief up to 100%, and can also provide 100% discretionary rate relief to any small village business which may not qualify for mandatory relief, although there are financial consequences for the Council.
- 4.7 Discretionary Rural Rate relief is currently awarded in accordance with guidelines approved by Cabinet in 2002. Details of awards made in the current financial year are shown in the table in 4.13.
- 4.8 Charitable relief (including relief to other non profit making bodies) is currently awarded in accordance with guidelines approved by Cabinet in 2002.
- 4.9 The guidelines for awarding discretionary charitable rate relief are very narrow and do not allow blanket policies to apply in deciding whether discretionary relief is appropriate or not. This is a requirement of the legislation.
- 4.10 Hardship relief is a discretionary power to award rate relief to relieve hardship for businesses. In considering applications for rate relief the Council must have regard for the interest of the Council Tax payers within the authority. This includes the cost to the community and the benefit or disadvantages of awarding hardship relief. The Council must also be mindful of precedents for all similar cases which are set by individual decisions including their financial cost to the Council.
- 4.11 As a decision to grant hardship relief is discretionary when considering an application the Council must be satisfied that :-

a) The ratepayer would sustain hardship if the Council did not grant a remission.

And

b) It would be reasonable for the Council to grant remission having regard to the interests of the Council Tax payers within the Authority.

4.12 In accordance with government guidelines hardship relief should only be granted in the most exceptional circumstances.

4.13 The funding position for all rate relief and details of awards made in the various categories, in accordance with the current guidelines are shown in the tables below.

	Legislative Provisions For Discretionary Relief (Local Government Finance Act 1988)	Mandatory Element Of NNDR Liability Fully Funded By Central Government	Percentage Of Discretionary Element Funded By Central Government	Percentage Of Discretionary Element Funded By T&W Council
Charitable Occupation	s47(2)(a)	80%	25%	75%
Non Profit Making Bodies	s47(2)(b)	0%	75%	25%
Rural Business To Which Mandatory Relief Applies	S47(3A)	50%	75%	25%
Other Small Rural Businesses	S47(3B)	0%	75%	25%
Community Amateur Sports Clubs	S47 (2ba)	80%	25%	75%
Hardship Relief	s49	0%	75%	25%

Relief Type	No. of Properties	% of relief awarded	Amount of relief awarded £	Percentage Of Discretionary Element Funded By BTW	Financial Cost to T&W for 2009/10
Mandatory Charitable relief	235	80%	£2,272,072.97	0%	Zero
Mandatory Rural Rate relief –	7	50%	£5,645.39	0%	Zero
Discretionary Rural Rate Relief	7	50%	£7367.16	25%	£1,841.79

Discretionary relief – Children & young people	33	20%	£17,770.39	75%	£13,327.79
Discretionary Relief – local culture & heritage	23	20%	£47,412.15	75%	£35,559.11
Discretionary Relief – credit unions	3	20%	659.60	75%	£494.70
Discretionary Relief – Public Halls	33	20%	£44,604.51	75%	£33,453.38
Discretionary Relief - disabilities	16	20%	£22,814.40	75%	£17,110.80
Community Amateur Sports Clubs Mandatory	11	80%	£21,834.70	0	Zero
Community Amateur Sports Clubs discretionary	0	20%	0	75%	Zero
Other	28	20%	£45,038.51	75%	£33,778.88

4.14. The cost to the Council for the awards of discretionary rate relief for the current financial year is £135,566.46. The data was extracted from the Revenues & Benefits data base as at 22nd October 2009.

4.15. In addition, delegated authority should be updated for the awarding of any discretionary rate relief. In effect this means that the Head of Leisure & Customer Services or her nominated representative will have delegated authority to award any of the discretionary relief's outlined in this report and contained in the legislation.

4.16. Members should also be aware that if any existing guidelines are amended which disadvantage a ratepayer, a 12 month advance notification must be given to the ratepayer before increased rates become due and payable. Increased business rates would not take effect until the 1st of April following the 12 month period.

5. EQUALITY AND DIVERSITY

5.1 An Equality Impact Assessment on the revised approach has been approved by the Head of Service. A copy of the impact assessment can be made available on request.

6. ENVIRONMENTAL IMPACT

6.1 There are no environmental impacts.

7. LEGAL COMMENT

- 7.1 The Council has the power and discretion to introduce and implement the discretionary relief schemes as proposed in the report. Further legal advice will be provided if required.

8. LINKS WITH CORPORATE PRIORITIES

- 8.1 The Council aims to protect vulnerable members of the local community and to alleviate hardship where possible. The use of Section 13A to introduce a locally defined discount on a case by case basis, or classes of case, in accordance with the guidelines contained in this report would promote these aims of the Council. The award of charitable relief and hardship relief for businesses also links to these council aims.

9. OPPORTUNITIES AND RISKS

- 9.1 Withdrawal of part or the entire discretionary relief scheme could affect the financial viability of some businesses which would lead to criticism of the council. This is particularly the case given the current economic climate.

10 FINANCIAL IMPLICATIONS

- 10.1 Section 13A of the Local Government Finance Act 1992 enables local authorities to reduce the amount of council tax payable in individual cases or classes of case i.e. to grant local discounts, over and above discounts already granted in the national discount scheme. The ability to give local discounts is only available to billing authorities, such as Telford & Wrekin Council, and the billing authority must meet the full cost of granting such discounts. To-date, Telford & Wrekin Council hasn't awarded any local discounts under this legislation. The proposed guidance will be used to consider any applications received where the Council might exercise its discretion and each application will be considered on its own merits. It is anticipated that there will not be a significant number of awards so the financial impact will be low.
- 10.2 NNDR relief is currently granted providing relief to charitable organisations, non profit making bodies, rural businesses and ratepayers suffering hardship. Where the relief granted is mandatory then the cost is fully funded by central government. Where a discretionary element is granted the cost falls directly on the Council's budget. Details of the types of relief and costs for 2009/10 are shown in para. 4.13 of the report. It is anticipated that the existing budget will be sufficient to cover any discretionary relief awarded in accordance with the proposed guidelines.
- 10.3 In both cases applications for relief/discount will be dealt with on their own merits however it is important that the financial implications of any precedent set is also considered when decisions are made.

11. WARD IMPLICATIONS

- 11.1 Borough wide

12. BACKGROUND PAPERS

Wrekin Council General Purposes Sub-Committee 14 February 1990
Resources & Assets Corporate Board 17th February 1998

Sections 42, 43, 47, 49 Local Government Finance Act 1988 (As Amended)
Local Government Finance Act 1992
Local Government Act 2003

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DISCRETIONARY COUNCIL TAX DISCOUNT GUIDELINES

The Council has discretion to reduce or remit Council Tax for a particular case or classes of case that is not covered by statute set discounts or exemptions.

Criteria for consideration:

These guidelines seek to set criteria that the Council should take into account when considering applications for a reduction in the amount of Council Tax payable. The Council should have defined criteria which will be taken into account when determining an application for discretionary discount.

The council will consider the following in determining applications:-

- Whether the taxpayer has been forced to vacate or partially vacate the property due to serious damage caused by external environmental factors beyond their control.
- Whether the taxpayer has suffered a significant degree of discomfort / inconvenience or upheaval as a result of the change caused by external environmental factors beyond their control.

Where a property has been affected the extent and nature of damage and the degree to which the property has been affected / vacated and the type of property e.g. main home, holiday home, second home etc will be factors in determining an application.

Each case will be considered on its merits however the following criteria should be met for each case:-

- The Council Tax Payers financial circumstances will be taken into account.
- All entitlement to Council Tax Benefit, discounts and exemptions must be applied prior to consideration of an application.
- The Council must be satisfied that the Council Tax payer has taken all reasonable steps to resolve their situation prior to making the application.
- The Councils finances will allow for a reduction to be made.

Applications:

Applications for discretionary discount must be made in writing from the tax payer, their advocate/appointee or recognised third party acting on their behalf by completing a discretionary discount application form, and outlining the reasons why a discount should be awarded. The applicant should explain the impact of not awarding a discount.

The applicant should specify the amount of discount being claimed.

Each discretionary discount award will be time limited for a maximum period of 12 months or less if the property becomes fully habitable. The level of award can be altered following a review period or where there is a change in circumstances during the award period.

Council Tax remains payable as demanded whilst applications are being considered.

RURAL RATE RELIEF GUIDELINES

Rural businesses are defined in the appropriate legislation and must be located in a rural settlement as defined by the rural settlement list published by the Council by the end of December each year.

Criteria for consideration:

Where the property does not fall within the mandatory provisions the following conditions apply:-

- The property is used for purposes which are of benefit to the local community, **and**
- It would be reasonable for the billing authority to make such a decision having regards to the interest of its Council Tax payers.

In the cases of:-

- Sole Post Offices
- Sole General Stores
- Sole Public Houses
- Sole Petrol Filling Stations
- Food stores

applications for discretionary relief to top up the mandatory 50% already awarded will be considered favourably.

The following should be taken into consideration when deciding whether discretionary relief should be awarded:-

- Whether the business employs a significant number of staff who are resident in the local community in which the business is located.
- Whether there are any other suppliers of the service concerned which are easily accessible to residents within the rural settlement.

Applications:

Each application for relief will be considered on its own merits.

Every applicant for discretionary rate relief must submit the latest available trading accounts or equivalent/relevant documentation and evidence as to the proportion of expenditure attributable to rates.

In determining the application, the Authority will give some consideration to the financial viability of the business concerned, thereby having regard to the interests of the council tax payers in general. This will be balanced by the detrimental effect on the rural community should the business have to cease trading either as a direct or indirect result of not awarding relief.

Awards for discretionary rural rate relief will be restricted to businesses with a net profit of less than £30,000 for the financial year that the application relates to.

Any entitlement to relief will only be considered by application from the ratepayer or his/her/company nominated representative.

Every applicant for discretionary relief must state how, in their opinion, the business benefits the local community.

Every applicant for discretionary relief must state what, in their opinion; the local community would lose if rate relief were not awarded.

Rates remain payable as demanded whilst applications are being considered.

**CHARITABLE, COMMUNITY AMATEUR SPORTS CLUBS
& NON PROFIT MAKING BODIES
RATE RELIEF GUIDELINES**

Criteria for consideration:

Discretionary Rate Relief can be granted under three specific circumstances:-

1. The Ratepayer is a registered charity (or community amateur sports club) or trustees for a charity and the property is wholly or mainly used for charitable purposes. Mandatory relief will already have been granted, so 'Top Up' relief and can be anything from 0-20%.
2. The property is not an excepted property and all or part is occupied for the purposes of one or more institutions or organisations not established or conducted for profit & whose main objects are charitable or otherwise philanthropic or concerned with education, social welfare, science, literature or the fine arts. This relief can be granted from 0-100%.
3. The property is not an excepted one and is wholly or mainly used for the purposes of recreation and all or part of it is occupied for the purposes of a club or society or other organisation not established or conducted for profit. This relief can be granted from 0-100%.

(An excepted property is a property occupied by either a Billing or Precepting Authority)

'Top up' relief:

Top up relief will be granted in the following circumstances:-

1. Where the aims and objectives are specifically to help children and young people, in line with council priorities. This will generally exclude organisations principally established for the education of children and young people. Relief may be considered where the provision of education is wholly provided for the benefit of disadvantaged groups.
2. Where the aims and objectives of the organisation are to enhance the provision of local culture and heritage, including theatres and dramatic societies.
3. Formally designated credit unions.
4. Public halls, community centres, and learning centres.
5. Organisations specifically formed to support disadvantaged groups such as people with disabilities, those with a terminal illness, drug and alcohol misuse, the elderly.

Where the property is occupied as a charity shop, it should be used wholly or mainly for the sale of goods donated to the charity and the net proceeds of the sale of goods are applied to the purpose of the charity.

Organisations which do not qualify for mandatory relief:

The same criteria as detailed in 1-5 of the top up relief shown above will be considered.

Additionally, the award will be granted where the council is satisfied that:

1. The organisation meets local needs and benefits local people, providing a valuable service to the community
2. The organisation permits access to all sections of the community, or has restricted access to a specific sector of the community for justifiable reasons such as addressing inequality.
3. The individual ratepayers interests are balanced against the interests of the Council Tax payers of the Borough.

Organisations which are used for the purpose of recreation / club:

Between 0-100% relief may be awarded taking into account the following factors:-

1. Access to the organisation

- Is membership open to all sections of the community?
- Are membership rates set at such a level as to exclude the general community?
- The ratepayer must be able to show that the criteria by which it considers applications for membership are consistent with the principles of open access.
- Are facilities at the premises made available to people other than the members?
- Are the majority of members mainly resident in the borough?

2. Provision of facilities

- Whether the organisation provides facilities which would not otherwise be available in the local community.
- Whether the organisation provides facilities complementary or of a higher standard to those already available
- Have the facilities available been provided by self-help or grant aid?

3. Other considerations

- Is the organisation affiliated to local or national organisations? I.e. are they actively involved in local/national development of their interests?
- Is the organisation encouraging community participation and development?
- Every applicant for discretionary relief must state how, in their opinion, the organisation benefits the local community.
- Every applicant for discretionary relief must state what, in their opinion the local community would lose if rate relief were not awarded.
- Does the organisation operate a bar, and if so what profit is made from this.

Applications:

Each application will be determined on its own merits.

Applications for relief must be submitted in writing together with all supporting documentation such as audited accounts, constitution and membership details

In all cases rates remain payable as demanded whilst applications are being considered.

HARDSHIP RATE RELIEF – GUIDELINES

Criteria for consideration:

Hardship relief is granted at the discretion of the Council which can reduce or remit the amount of rates due, provided it is satisfied that:-

- The ratepayer would sustain hardship if the authority did not do so **and**
- It is reasonable for the authority to do so, having regard to the interests of the persons subject to its council tax.

There is no statutory definition of hardship and, therefore, in accordance with government guidance (issued in 2002), the following will be considered:-

- The test of “hardship” need not be confined strictly to financial hardship; all relevant factors affecting the ability of a business to meet its liability for rates will be taken into account.
- The interests of council taxpayers in the area may be wider than direct financial interests. For example, where the employment prospects in the area would be worsened by a company going out of business, or the amenities of an area might be reduced.
- Where the granting of relief would have an adverse effect on the financial interest of the taxpayers the case for reduction or remission may still, on balance, outweigh the cost to the taxpayers.
- The ratepayer must provide evidence of hardship e.g.: severe loss in trade, a marked decline in trade compared to corresponding periods in previous years.
- The business must be viable.

Reduction or remission on the grounds of hardship should be the exception rather than the rule. In accordance with Government guidelines hardship relief should only be granted only in the most exceptional circumstances.

Application:

Each application will be considered on its own merits.

An application for relief must be made by completing a hardship rate relief application form.

Applications must detail the following:

- An outline of the reasons why relief should be given;
- the impact on the business of not awarding relief;
- the amount of expenditure attributable to rates
- a suggestion of the amount of rate relief that is being claimed.

We aim to give you a decision on your application within 30 working days of receiving all information required to process it.

Copies of accounts for the last three years will be required when submitting an application for relief.

Relief will be granted for short periods of time which could be renewed following a review.

Rates remain payable as demanded whilst applications are being considered.

APPENDIX 5

DISCRETIONARY RELIEF REVIEW PROCESS

Where a ratepayer is dissatisfied with the decision of the Head of Leisure & Customer Services or her nominated officer a review process will be instigated.

Where the taxpayer is dissatisfied with the initial decision in respect of an application for discretionary rate relief, the review will be considered by a Corporate Director following consultation with the appropriate Cabinet Member.

The ratepayer is required to submit details in writing giving their reasons as to why the decision should be subject to a review.

Requests for a review of the decision can be made against unsuccessful applications or against the level of discretionary rate relief awarded where a partial award has been granted and must be made within 30 working days of being notified of the decision.

Applications may only be made by the original applicant or an agent / representative appointed by the applicant.

Each application will be considered on its own merit.

The decision of the Corporate Director and Cabinet Member is final. Where the tax payer remains dissatisfied with the decision the appeal route is by way of judicial review.

Notification of the outcome of the decision will be made in writing within 14 days of the decision being made.

Business Rates remain payable as demanded whilst applications are being considered.