



Oadby & Wigston Borough Council

Non-Domestic Rates

Policy for Granting Discretionary Rate Reliefs

Incorporates –

1. Discretionary Relief for charitable and non-profit making organisations
2. Local Discretionary Relief (Localism Act 2011)
3. Hardship Relief
4. Part Occupied Relief
5. Retail Relief
6. New Build Relief
7. Re-occupation of long term empty property relief

February 2015

Introduction

This document has been formulated to bring the Council's Policy up to date and to consolidate the various discretionary reliefs available to ratepayers into one document.

1. Discretionary Relief for charitable and non-profit making organisations
2. Local Discretionary Relief (Localism Act 2011)
3. Hardship Relief
4. Part Occupied Relief
5. Retail Relief
6. New Build Relief
7. Re-occupation of long term empty property relief

1. Discretionary Relief for charitable and non-profit making organisations

1.1. Background

1.1.1. Under Section 43 of the Local Government Finance Act 1988, charities (including Community Amateur Sports Clubs) are entitled to 80% mandatory rate relief if they occupy a property wholly or mainly for charitable purposes. Under Section 47 of this Act they can apply for up to the remaining 20% as discretionary relief (“top-up relief”).

1.1.2. Other non-profit making organisations can apply for up to 100% discretionary relief (“discretionary only”) from their charges if their main objects are charitable or otherwise philanthropic or religious, concerned with education, social welfare, science, literature or the fine arts, or they are wholly or mainly established for the purposes of recreation and are a club, society, or other organisation not established for profit.

1.1.3. It is important to note that, as this is a discretion, each application must be considered on its own merits. A document issued by the Government in 2002 entitled Guidance on Rate Relief for Charities and Other Non-Profit Making Organisations states “It is very important that billing authorities have readily understood guidelines for deciding whether or not to grant relief and for determining the amount of any relief given. However, we would not recommend authorities to adopt a policy or rule, which allows or requires it to dispose of a case without any consideration of the merits of the individual case. The operation of blanket decisions to refuse relief across the board might well be ultra vires and could involve the authority in litigation. That does not preclude it from having a general basis on which it approaches such cases, but where it has one, it is a matter of good practice that applicants or potential applicants for relief are aware of it.”

1.1.4. The Council in 2000 established some examples of the criteria that may be adopted in considering whether organisations would be considered for discretionary relief in 2000. These are set out below.

“Access

Membership should be open to all sections of the community? There may be legitimate restrictions placed on membership which relate,

for example, to the ability in a sport, or to the achievement of a certain standard in the field covered by the organisation or where capacity of the facility is limited. Clubs and organisations should not be considered if they have membership rates set at such a high level as to exclude the general community. Another consideration is are the facilities made available to people other than members e.g., to schools or for casual public sessions? The authority may consider that the wider use of facilities should be encouraged and use its discretionary powers accordingly. The Council considers the wider use of facilities is important and should be supported. The existence of this criterion will be considered useful support in favour of a discretionary relief application.

Provision of facilities.

Does the organisation provide training or education for its members ? Are there schemes to aid particular groups to develop their skills? The authority could consider that an organisation providing such facilities may deserve more support than one that did not.

Consideration should be given as to whether the facilities available have been provided by self help or grant aid. The fact that a club uses or used self help for construction or maintenance or had facilities funded by grant aid might be an indication that they were more deserving of relief.

Does the organisation run a bar? The mere existence of a bar should not in itself be a reason for not granting relief but the authority must consider what is the main purpose of the organisation. In sports clubs the authority needs to examine the balance between playing and non playing members. A club whose main aim is to bring people together with similar interests should not be excluded from relief just because of the existence of the bar. The Council will carefully consider the relevance of the bar operation to the activities of the applicants. This will be of particular importance where the income is significant.

Does the organisation provide facilities which indirectly relieve the authority of the need to do so or enhance and supplement those that it does provide? The authority should consider the needs of the community as a whole, and whilst not excluding from the relief those organisations which may appear to be in competition with the authority itself, may consider that an organisation which provides a facility identified as a priority but not yet provided by the authority to be particularly deserving of the support. The Council may look favourably upon applicants whose facilities complement the authority's own facilities.

Other Considerations.

Is the organisation affiliated to local or national organisations, for example local sports or arts council or national representative bodies? Are they actively involved in local or national development of their interest.

Is the membership drawn from people mainly resident in Oadby and Wigston BC's area? The authority may consider it inappropriate to support an organisation whose membership is derived from outside its own area. On the other hand particular facilities may be only ones available for a wider area. The Council will consider in making discretionary awards the areas from where the membership is drawn."

1.2. Application process

1.2.1. Applications for discretionary relief must be made in writing using the Council's application form (see Background Paper A) Applicants will need to provide copies of proof of charity's registration (if relevant), copies of memorandum and articles of association or other documents which give details of rules and conditions, copies of accounts and balance sheets for the last two years, and copies of any leaflets about the organisation and its activities.

1.2.2. Any awards of discretionary relief will be for one year only and be reviewed annually.

1.3. Financial Implications

1.3.1. Further to changes in the way Non-Domestic Rates are funded under the Business Rates Retention Scheme from April 2013, the cost of allowing discretionary relief is divided as follows –

Central Government	50%
Oadby & Wigston BC	40%
Leicestershire County Council	9%
Fire Authority	1%

1.4. Determination of application

1.4.1. Authority to determine applications is currently delegated to the Head of Service.

1.5. Appeals process

1.5.1. Although there is no statutory duty to provide an appeals process, it is recommended that a process be established. Therefore, any appeal against a decision not to award discretionary relief may be submitted to the Chief Financial Officer for a review of the decision. This authority has been delegated to the Chief Financial Officer. If the decision is not changed and the ratepayer remains dissatisfied, their only course of action is by way of Judicial Review.

1.6. State Aid

1.6.1. State Aid law is the means by which the European Union regulates state funded support to businesses. Providing discretionary relief to ratepayers is likely to amount to State Aid. However Retail Relief will be State Aid compliant where it is provided in accordance with the De Minimis Regulations

1.6.2. The De Minimis Regulations allow an undertaking to receive up to €200,000 of De Minimis aid in a three year period (consisting of the current financial year and the two previous financial years). To administer De Minimis it is necessary for the local authority to establish that the award of aid will not result in the undertaking having received more than €200,000 of De Minimis aid.

1.6.3. Therefore the Council will continue to issue a declaration to all qualifying ratepayers asking businesses to declare where they have exceeded the State Aid limits. If this is the case the Council will only award any Rate Relief up to the de minimis limit.

2. Local Discretionary Relief (Localism Act 2011)

2.1. Background

2.1.1. Section 69 of the Localism Act 2011 amended Section 47 of the Local Government Finance Act 1988 to give the additional power to local authorities to be able to allow discretionary rate relief to **any** ratepayer in its area, not just to charities and non-profit making bodies. The proviso for these cases would be that it can only do so if it is satisfied that it would be reasonable to do so, having regard to the interests of persons liable to pay council tax set by it.

2.1.2. Unlike other discretionary reliefs, the full amount of any award for such cases previously had to be borne by the Council.

2.1.3. However, from 1 April 2013 , the cost of allowing this discretionary relief is divided as follows –

Central Government	50%
Oadby & Wigston BC	40%
Leicestershire County Council	9%
Fire Authority	1%

2.1.4. Applications for such relief will be judged individually on their own merits, but the Council may look at the following criteria when making a decision to allow relief –

Awards should be made only in exceptional circumstances

The cost to the Council

The benefits to the council tax payers and in particular whether the award will directly result in attracting business, investment, or jobs to the area

The impact on other ratepayers in the area

Can relief be awarded under any other mandatory or discretionary power

The overall profitability of the business

Does the aim of the business fit in with the Council's Corporate Priorities?

2.2. Determination of application

2.2.1. It is recommended that authority to determine such applications should be delegated to the Head of Service.

2.3. Appeals procedure

2.3.1. Although there is no statutory duty to provide an appeals process, it is recommended that a process be established. Therefore, any appeal against a decision not to award discretionary relief may be submitted to the Chief Financial Officer for a review of the decision. This authority has been delegated to the Chief Financial Officer. If the decision is not changed and the ratepayer remains dissatisfied, their only course of action is by way of Judicial Review.

2.4. State Aid

2.4.1. State Aid law is the means by which the European Union regulates state funded support to businesses. Providing discretionary relief to ratepayers is likely to amount to State Aid. However Retail Relief will be State Aid compliant where it is provided in accordance with the De Minimis Regulations

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2.4.3. Therefore the Council will continue to issue a declaration to all qualifying ratepayers asking businesses to declare where they have exceeded the State Aid limits. If this is the case the Council will only award any Rate Relief up to the de minimis limit.

3. Hardship Relief

3.1. Background

3.1.1. Section 49 of the Local Government Finance Act 1988 gives local authorities the power to remit in part or in full the rates liability for a ratepayer if the Council is satisfied that –

a) the ratepayer would sustain hardship if the Council failed to grant the relief

AND

b) it is reasonable to grant such relief having regard to the interests of the council tax payers of the area.

3.1.2. Further to changes in the way Non-Domestic Rates are funded under the Business Rates Retention Scheme from April 2013, the cost of allowing discretionary relief is divided as follows –

Central Government	50%
Oadby & Wigston BC	40%
Leicestershire County Council	9%
Fire Authority	1%

3.1.3. There is no statutory definition of hardship. Applications for such relief will be judged individually on their own merits, but the Council may look at the following criteria when making a decision to allow relief –

Awards should be made only in exceptional circumstances

The cost to the Council

The benefits to the council tax payers and in particular whether the award will directly result in attracting business, investment, or jobs to the area

The impact on other ratepayers in the area

Can relief be awarded under any other mandatory or discretionary power

The overall profitability of the business

Does the aim of the business fit in with the Council's Corporate Priorities?

3.2. Determination of application

3.2.1. Authority to determine applications is currently delegated to the Head of Service.

3.3. Appeals process

3.3.1. Although there is no statutory duty to provide an appeals process, it is recommended that a process be established. Therefore, any appeal against a decision not to award discretionary relief may be submitted to the Chief Financial Officer for a review of the decision. This authority has been delegated to the Chief Financial Officer. If the decision is not changed and the ratepayer remains dissatisfied, their only course of action is by way of Judicial Review.

3.4. State Aid

3.4.1. State Aid law is the means by which the European Union regulates state funded support to businesses. Providing discretionary relief to ratepayers is likely to amount to State Aid. However Retail Relief will be State Aid compliant where it is provided in accordance with the De Minimis Regulations

3.4.2. The De Minimis Regulations allow an undertaking to receive up to €200,000 of De Minimis aid in a three year period (consisting of the current financial year and the two previous financial years). To administer De Minimis it is necessary for the local authority to establish that the award of aid will not result in the undertaking having received more than €200,000 of De Minimis aid.

3.4.3. Therefore the Council will continue to issue a declaration to all qualifying ratepayers asking businesses to declare where they have exceeded the State Aid limits. If this is the case the Council will only award any Rate Relief up to the de minimis limit.

4. Part Occupied Relief

4.1. Background

- 4.1.1. Section 44A of the Local Government Finance Act 1988 gives Billing Authorities discretionary powers to local authorities to allow empty property rates relief where part of a property is unoccupied for a short period of time.

4.2. Policy attached at Background Paper B

- 4.2.1. Members agreed a policy for awarding this relief in July 2013 and this is attached at Background Paper B.

4.3. State Aid

- 4.3.1. State Aid law is the means by which the European Union regulates state funded support to businesses. Providing discretionary relief to ratepayers is likely to amount to State Aid. However Retail Relief will be State Aid compliant where it is provided in accordance with the De Minimis Regulations
- 4.3.2. The De Minimis Regulations allow an undertaking to receive up to €200,000 of De Minimis aid in a three year period (consisting of the current financial year and the two previous financial years). To administer De Minimis it is necessary for the local authority to establish that the award of aid will not result in the undertaking having received more than €200,000 of De Minimis aid.
- 4.3.3. Therefore the Council will continue to issue a declaration to all qualifying ratepayers asking businesses to declare where they have exceeded the State Aid limits. If this is the case the Council will only award any Rate Relief up to the de minimis limit.

5. Retail Rate Relief

5.1. Background

5.1.1. The Government announced in the Autumn Statement on 5 December 2013 that it will provide a scheme to support retail businesses by providing a business rates relief of up to £1,000 to all occupied retail properties with a rateable value of £50,000 or less in each of the years 2014-15 and 2015-16.

5.2. Policy attached at Background Paper C

5.2.1. Members adopted a scheme for delivering this relief on 25 February 2014 and a copy of this scheme is attached at Background Paper C

5.2.2. An update to this scheme is recommended to reflect the fact that the Government announced in the Autumn Statement of 2014 that this relief would be increased from £1,000 to £1,500 for the year 2015-16 and therefore to increase OWBC's retail rate relief scheme to £1,500 for 2015-16.

5.2.3. Application forms for this relief have now been sent to all businesses who were not initially identified as being eligible for this relief in April 2014.

5.3. State Aid

5.3.1. State Aid law is the means by which the European Union regulates state funded support to businesses. Providing discretionary relief to ratepayers is likely to amount to State Aid. However Retail Relief will be State Aid compliant where it is provided in accordance with the De Minimis Regulations

5.3.2. The De Minimis Regulations allow an undertaking to receive up to €200,000 of De Minimis aid in a three year period (consisting of the current financial year and the two previous financial years). To administer De Minimis it is necessary for the local authority to establish that the award of aid will not result in the undertaking having received more than €200,000 of De Minimis aid.

5.3.3. Therefore the Council will continue to issue a declaration to all qualifying ratepayers asking businesses to declare where they have exceeded the State Aid limits. If this is the case the Council will only award any Rate Relief up to the de minimis limit.

6. New Build Relief

6.1. Background

- 6.1.1. Central Government announced in December 2012 that, it would exempt all newly built unoccupied commercial property completed between 1 October 2013 and 30 September 2016 from empty property rates for the first 18 months, up to the state aids limits.
- 6.1.2. The relief is designed to provide an incentive to owners, developers etc. to build new non-domestic premises without the fear of facing unoccupied property rate charges. Central Government is also prepared to finance the relief through the Business Rates Retention scheme.
- 6.1.3. As this is a temporary measure, the Government are not changing the rules on when a property becomes liable for empty property rates. Instead they are providing the exemption by reimbursing local authorities that use their discretionary relief powers (under section 47 of the Local Government Finance Act 1988) to grant relief in prescribed circumstances.
- 6.1.4. It will be for the Council to decide to grant relief under section 47 but Central Government will fully reimburse local authorities for the local share of the discretionary relief (using a grant under s31 of the Local Government Act 2003) based on outturn of relief granted in the circumstances specified. Through this mechanism, central government will guarantee to reimburse local within the rates retention system.
- 6.1.5. This scheme is therefore technically a discretionary scheme but since the Government has provided guidance on how this system should work, expects local authorities to allow such reliefs, and will fund it in full, it is recommended that the Council adopts the scheme in accordance with the detailed Guidance issued by the Government. This can be found at Background Paper D and at

<https://www.gov.uk/government/publications/business-rates-new-build-empty-property>

6.2. Determination of application

- 6.2.1. Its is recommended that authority to determine applications should be delegated to the Head of Service.

6.3. Appeals procedure

6.3.1. Although there is no statutory duty to provide an appeals process, it is recommended that a process be established. Therefore, any appeal against a decision not to award discretionary relief may be submitted to the Chief Financial Officer for a review of the decision. This authority has been delegated to the Chief Financial Officer. If the decision is not changed and the ratepayer remains dissatisfied, their only course of action is by way of Judicial Review.

6.4. State Aid

6.4.1. State Aid law is the means by which the European Union regulates state funded support to businesses. Providing discretionary relief to ratepayers is likely to amount to State Aid. However Retail Relief will be State Aid compliant where it is provided in accordance with the De Minimis Regulations

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6.4.3. Therefore the Council will continue to issue a declaration to all qualifying ratepayers asking businesses to declare where they have exceeded the State Aid limits. If this is the case the Council will only award any Rate Relief up to the de minimis limit.

7. Re-occupation of long term empty property relief

7.1. Background

7.1.1. Central Government has introduced a 50% discount from non-domestic rates for new occupiers of previously empty retail premises, subject to certain exceptions. The discount will last for 18 months and is available from 1st April 2014 until 31st March 2016.

7.1.2. The relief is designed primarily to assist businesses during the recession and, particularly in this case, to encourage the re-occupation of vacant retail premises. Central Government is prepared to finance the relief through the Business Rates Retention scheme.

7.1.3. As this is a temporary measure, the Government are not changing the rules on when a property becomes liable for rates. Instead they are providing the discount by reimbursing local authorities that use their discretionary relief powers (under section 47 of the Local Government Finance Act 1988) to grant relief in prescribed circumstances.

7.1.4. It will be for the Council to decide to grant relief under section 47 but Central Government will fully reimburse local authorities for the local share of the discretionary relief (using a grant under s31 of the Local Government Act 2003) based on outturn of relief granted in the circumstances specified. Through this mechanism, central government will guarantee to reimburse local within the rates retention system.

7.1.5. This scheme is therefore technically a discretionary scheme but since the Government has provided guidance on how this system should work, expects local authorities to allow such reliefs, and will fund it in full, it is recommended that the Council adopts the scheme in accordance with the detailed Guidance issued by the Government. This can be found at Background Paper E and at

<https://www.gov.uk/government/publications/business-rates-reoccupation-relief>

7.2. Determination of application

7.2.1. It is recommended that authority to determine applications should be delegated to the Head of Service.

7.3. Appeals process

7.3.1. Although there is no statutory duty to provide an appeals process, it is recommended that a process be established. Therefore, any appeal against a decision not to award discretionary relief may be submitted to the Chief Financial Officer for a review of the decision. This authority has been delegated to the Chief Financial Officer. If the decision is not changed and the ratepayer remains dissatisfied, their only course of action is by way of Judicial Review.

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