

DARTFORD BOROUGH COUNCIL

BUSINESS RATES
DISCRETIONARY RELIEF
AND
HARDSHIP RELIEF
GUIDELINES

1. Introduction and purpose of the guidelines

1.1. Applications for discretionary rate relief can now be made under the Localism Act 2011 by any ratepayer. However, the Council will only award these if it is judged reasonable for it to do so and with regard to the interests of local council taxpayers.

1.2. The Council will continue to support rural businesses and charitable and non-profit organisations to achieve local objectives. However, it is important that the Council awards relief to those organisations who have a genuine need or those organisations who help support the Council to meet its objectives.

The application and award criteria rules are set out below.

1.3 These guidelines:

- set out the factors that will be considered when making a decision to award or refuse relief;
- set out the delegated authority to award relief in appropriate circumstances as provided for in the Council's constitution;
- establish a review process for customers dissatisfied with the Council's decision;
- safeguard the interest of the local council taxpayers by ensuring that funds that are allocated for the award of relief, are used in the most effective and economic way.

1.4 These guidelines will apply to all decisions made on applications received by the Council after 1 April 2013.

2. General principles

2.1 All decisions in respect of applications for discretionary rate relief will be taken by the Council in accordance with statutory requirements and with due regard to any guidance issued by the Secretary of State.

The interests of the Borough's Council Taxpayers

2.2 Where legislation requires, in determining an award of discretionary rate relief, consideration will be given to the interests of local council taxpayers. Awards will only be made where the benefits to local council taxpayers are considered to outweigh any detriment to those interests, including but not limited to, the financial impact of the award.

Requirement for Applications

2.3 Applications must be submitted in writing, or where the applicant is an organisation, by 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.

2.4 The Council will request such supporting evidence as it considers necessary to enable the merits of the application to be properly assessed.

Awards for retrospective periods

2.5 Except where permitted by the legislation, discretionary rate relief will not be awarded for any day prior to the date of the application. Where backdating is permitted, the relevant sections in these guidelines specify how and when backdating will be applied.

2.6 No consideration will 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 also applied in that period.

Financial Impact of awards of discretionary rate relief

2.7 The Council is required to fund 40% of any discretionary relief granted with the remainder being shared between the Government and the major preceptors (excluding the Police).

Relationship to other forms of rate relief

2.8 Applications for discretionary rate relief will only be considered after consideration of any other forms of rate relief to which the applicant may be eligible (excluding hardship relief).

Authority to award relief

2.9 Decisions on the award or otherwise of discretionary rate relief will normally be taken by Cabinet at the annual review (see paragraph 2.11 below) or by an Officer under delegated authority, if the application is received in-year, following recommendations from the Revenues Manager.

Timescale for decisions

2.10 For applications made in-year, the Council will aim to make a decision within four weeks of receiving the application and all supporting evidence considered necessary to enable the application to be considered.

2.11 At the point of the annual review, existing recipients will be invited to re-apply for the forthcoming financial year.

Publication of decisions and Data Protection

2.12 To ensure there is a fair and consistent approach to the award of discretionary rate relief, all applications will be considered with reference to these guidelines and the outcome of all applications will be published on the Council's website www.dartford.gov.uk Personal data will be processed in accordance with the Data Protection Act 1998 and the publication of information will be compliant with the 1998 Act.

Reviews and Appeals

2.13 These guidelines provide unsuccessful applicants with a review mechanism. Any challenge to the Council's decision would be by way of judicial review in the High Court.

2.14 A decision may only be reviewed on one or more of the following grounds:

- an inconsistent or inappropriately harsh decision;
- extenuating circumstances;
- significant procedural flaw(s) in the decision making process (it is incumbent on an unsuccessful applicant to specify precisely what the significant procedural flaw(s) consists of);
- new evidence subsequently coming to light.

2.15 A request for the review of a decision must be made in writing to the Revenues Manager within four weeks of the date of the Council's decision letter. Reasons supporting each ground for review (see paragraph 2.14) must be fully set out. Any request for a review received outside of the four week period, will only be considered if the Council is satisfied that exceptional circumstances led to the delay in submitting the request.

Where the unsuccessful applicant is an organisation, the request for the review must be submitted by a person authorised on behalf of the organisation.

2.16 The reviewing officer will:

- consider the decision afresh having regard to the original documents submitted by the applicant and/or associated with the application;
- check that the decision has been made in accordance with the relevant sections in these guidelines;
- consider any new evidence submitted;
- consider whether an interview with the applicant is necessary;
- make a determination either:
 - upholding the original decision
 - substituting a revised decision
- prepare a written response for the applicant setting out the review decision and reasons.

2.17 The review decision will be issued within four weeks of the date of receipt by the Council of the review request. The review decision will be final.

2.18 Discretionary rate relief and hardship relief are the subject of separate applications. Should the Council decide to reject the application for discretionary rate relief on review, hardship relief will not be offered as an alternative. However, the applicant can be invited to make a separate application.

Requirement to make payment of amounts falling due

2.19 Business Rate payments remain legally due and payable in accordance with the most recent bill, until such time as any relief is awarded. Applicants must therefore continue to pay any Business Rates that fall due whilst an application is pending. If payments are not kept up to date, the Council may continue with its normal recovery procedures to secure payment.

State Aid

2.20 European Union competition rules restrict Government subsidies to businesses. Relief from taxes, including Business Rates, could be considered as state aid.

2.21 Rate relief for charities and non-profit making bodies is not normally considered state aid because the recipients are not in market competition with other businesses. However, if they are engaged in commercial activities, compete with commercial bodies or have a commercial partner, discretionary rate relief could constitute state aid. In such cases, it would be unlikely that an application for discretionary rate relief would be considered by the Council.

2.22 Hardship relief for applicants engaged in commercial activities, which compete with commercial bodies or have a commercial partner, could constitute state aid. In such cases it would be unlikely that an application for hardship relief would be considered by the Council.

2.23 Rate relief will not be awarded in any circumstances where it appears that an award will result in the applicant receiving state aid above the current de minimis level. Each application must be accompanied by a signed statement setting out

the amount of state aid, including but not limited to discretionary rate relief, which the applicant has received within the previous three years (of the application date). Applications will not be considered until this statement is received.

3. Business Rates – Relief for charities, not for profit organisations, community amateur sports clubs and rural properties

3.1 Unless any of the following circumstances apply, the Council may only award discretionary rate relief if it is satisfied that it is reasonable to do so having regard to the interests of local council taxpayers:

- The applicant is a registered charity or a charitable organisation and the property is wholly or mainly used for charitable purposes;
- The applicant is an organisation which is not established or conducted for profit and the main objects are philanthropic, religious or concerned with education, social welfare, science, literature or fine arts;
- The applicant's property is used for recreational purposes and all or part is occupied for the purposes of a club, society or an organisation not established or conducted for profit;
- The applicant's property is within a Rural Settlement List for the chargeable financial year and the rateable value does not exceed the amount prescribed by the Secretary of State.

3.2 Registered charities and community amateur sports clubs are entitled to mandatory relief of 80%. The Council has the discretion to award further rate relief of up to 20%, which is commonly referred to as a 'top-up'.

3.3 Rural properties are entitled to mandatory relief of 50% providing the relevant qualifying criteria are met. The Council has the discretion to award further rate relief of up to 50%.

3.4 The Council has the discretion to award relief of up to 100% to organisations which are not established for profit and which meet the relevant criteria.

The decision making process

3.5 Each application will be considered on an individual basis. Consideration for awarding discretionary rate relief is based on the applicant's ability to meet its Business Rate liability. Therefore, copies of the last 2 years audited accounts are to be submitted with the application form. Where audited accounts are not available, financial statements prepared by, or approved by, an appropriate representative shall be acceptable. For a new organisation, a 12 months projected cash flow forecast is required. Any award will be based on the applicant's recent income/expenditure results.

3.6 Relief is likely to be awarded where it is clear that the activities of the applicant are of direct benefit to the local community.

- 3.7 Relief may be refused or capped if it is considered that the financial cost to the Council or the local community outweighs the benefits generated through the award of relief.
- 3.8 The Council will notify the applicant of the decision in writing and where less than the maximum amount of relief is granted or the relief is refused, an explanation of the reasons why will be given.
- 3.9 The Council will not consider applications where the applicant has failed to provide information within the timescales stipulated by the Council. The applicant will be notified in writing that the application has been refused.
- 3.10 Where an application has been refused either initially or upon review, further applications will not be considered within the same financial year unless:
- The use of the property changes; or
 - The objectives of the organisation change; or
 - There have been other changes that may affect the Council's decision e.g. where an organisation has taken action to address an issue which had previously precluded an award of relief.
- 3.11 Applications for discretionary rate relief must be made within six months after the end of the financial year for which the application for relief is made. Late applications will not be considered.

Period of relief

- 3.12 Discretionary rate relief will be awarded for one financial year (from 1st April to 31st March) except in circumstances where consideration is being given to awarding relief for a previous financial year within the qualifying timescales outlined in paragraph 3.16.
- 3.13 The recipients of discretionary rate relief will be contacted and invited to reapply for relief on an annual basis.

Calculation of rate relief

- 3.14 Rate relief will be calculated as a percentage of the Business Rates bill. Should the Business Rates bill reduce within the period of an award of discretionary rate relief, the relief will be reduced proportionately.
- 3.15 If the Business Rates bill increases during the period of an award of discretionary rate relief i.e. an increase in rateable value, the amount awarded will not automatically be increased. In such cases, the Council on request of the applicant, will reconsider the application and may award additional relief.

Backdating

- 3.16 The law allows claims received between 1 April and 30 September in any year to be backdated to 1 April of the previous year. Applications for a backdated award of relief i.e. for the previous year, will be dealt with in the same way as applications for the current year.
- 3.17 Applications outside of the qualifying period referred to in paragraph 3.16 will not be backdated beyond 1 April of the year in which it is awarded.

4. Business Rates – General power to award discretionary rate relief

4.1 If the ratepayer does not fall into any category to which Section 3 of these guidelines applies, the Council may only award discretionary rate relief if it is satisfied that it is reasonable to do so having regard to the interests of local council taxpayers.

4.2 Applications 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.

The decision making process

4.3 Each application will be considered on an individual basis but in making a decision on the award, the following factors will be considered by the Council:

- That awards should only be made in exceptional circumstances;
- The value of any previous awards and the benefits to local council taxpayers from previous awards;
- The cost to the Council, including the loss of income or of retained rates yield, in making an award;
- The impact of the cost or loss of income in relation to the Council's overall financial situation;
- The benefits to local council taxpayers, in particular whether the award will directly result in attracting businesses, investment or jobs to the Borough;
- The impact on other business ratepayers in the Borough;
- The extent to which the applicant's activities will support the Council's aspirations to promote and encourage economic growth and in particular, growth in the Business Rates tax base and in employment opportunities for the residents of the Borough;
- The overall profitability of the applicant's business.

Period of relief

4.4 Discretionary rate relief will be normally only be awarded for one financial year, but new applications may be made each financial year.

Calculation of relief

4.5 The Council has the discretion to award relief of up to 100% in any one year.

5. Business Rates - Relief for properties that are partially unoccupied for a temporary period (Section 44a)

5.1 Under section 44a of the Local Government Finance Act 1988 (as amended), the Council has the discretion to allow discretionary rate relief where a property is partly occupied for a *temporary period*.

5.2 The definition of a 'temporary period' is not prescribed by law and therefore the Council has discretion to decide the period relief should be awarded.

5.3 Partially occupied rate relief (also referred to as Section 44a relief) is not intended to be used where part of a property is temporarily not used. The provision is aimed at situations where there are practical difficulties in occupying or vacating part of the property.

5.4 Whilst the Council recognises that awarding this relief is beneficial to local businesses, it must also consider the benefit to the local community. Relief will therefore usually only be awarded on vacation where the applicant's business maintains a presence in the Borough.

5.5 The Council will require a written application and the applicant must supply a plan of the property, with the unoccupied portions clearly identified.

The decision making process

5.6 There are no legal restrictions in the provisions of a Section 44a relief, regarding the type of property or circumstances in which relief can be awarded.

5.7 The Council may require accompanied access to the applicant's property during normal working hours to verify the application. Further access may be required on at least one occasion each month, during normal office hours, during the period for which relief is being awarded.

5.8 Relief will not be awarded under any circumstance where it is not possible to verify the application.

5.9 Relief will not be awarded where the partial occupation may be considered to arise due to the ordinary day to day nature of the business (for example the operation of a warehouse).

5.10 Relief will not be awarded where it appears to the Council that the reason the part of the property is unoccupied is wholly or mainly for the purposes of applying for rate relief.

5.11 The Council will notify the applicant of the decision in writing and where the relief is refused, an explanation of the reasons why will be given.

5.12 The Council will not consider applications where the applicant has failed to provide information within the timescales stipulated by the Council. The applicant will be notified in writing that the application has been refused.

Period of relief

5.13 Section 44a relief will only be applied to a property that is partly occupied for a temporary period. The relief will normally only be awarded to properties that are being progressively occupied or progressively vacated (subject to the restriction set out in paragraph 5.4).

5.14 For the purposes of these guidelines, a period of up to 12 calendar months will be considered to be temporary and relief for longer periods will only be considered in exceptional circumstances.

5.15 Section 44a relief will end under the following circumstances:

- At the end of a financial year, regardless of the date relief was applied;
- Where all or part of the unoccupied property becomes occupied;
- The person liable for Business Rates changes.

5.16 A new application may be submitted immediately by an applicant if relief ends for any of the reasons outlined in paragraph 5.16.

Calculation of relief

5.17 The amount of relief is calculated on a statutory basis, based on the rateable value of the empty portion of the property. The appropriate rateable value is provided to the Council by the Valuation Office Agency.

5.18 Where the Council agrees to award a Section 44a relief, the Council will seek a reduction in the rateable value by notifying the Valuation Officer.

Backdating

5.19 Where a backdated application is received, the applicant will be required to produce evidence to prove the property was unoccupied for the period the relief relates to. Acceptance of such evidence is at the discretion of the Council.

5.20 Retrospective applications, where at the time of the application the property is no longer partly occupied, will not be considered.

6. Business Rates - Hardship Relief

- 6.1 The Council can reduce or remit the payment of rates where it is satisfied that the applicant would sustain *hardship* if it did not do so and that it is reasonable to award relief, having taken into account the interests of local council taxpayers.
- 6.2 There is no statutory definition of 'hardship' and it is for the Council to decide on the facts of each case as to whether to exercise its discretion. The Council may adopt rules for the consideration of hardship, but cannot adopt a blanket policy and each case will be considered individually.
- 6.3 It is the Government's guidance that remission of Business Rates on the grounds of hardship is the exception rather than the rule.
- 6.4 Applications for hardship relief must be accompanied by the following:
- The most recent accounts and the last audited accounts; and
 - An up to date trading statement showing the current financial position of the business; and
 - Details of the amount of relief being requested and the period of time it is being requested for; and
 - An explanation of the benefits to the community arising from an award of hardship relief.

The decision making process

- 6.5 All applications will be considered on an individual basis and decisions will be made in accordance with these guidelines. The following examples (which are not intended to be prescriptive) indicate circumstances where it may be appropriate to award hardship relief:
- The applicant will suffer hardship if the relief is not granted;
 - There is a direct benefit to the applicant or the community or no adverse impact to other ratepayers or the community as a result of awarding relief;
 - The cost to local council taxpayers is proportional to the benefits of the community;
 - The applicant's business has been detrimentally affected by circumstances beyond their control and that do not constitute part of the normal risks in running a business e.g. a natural disaster or an unusual or uncontrollable event in the vicinity of the business;

- Refusal to award the relief may result in the loss of the business. The impact on local amenities must be considered if the business is the sole provider of a service in the local area i.e. the only village shop;
 - Refusal to award the relief may result in the loss of the business. The impact on employment prospects in the local area must be considered i.e. if the closure results in a large number of redundancies, the social aspect of increasing unemployment and the possible negative impact in attracting further investment in the area must be considered.
- 6.6 The Council will only grant hardship relief for a period where there is clear evidence of hardship for the applicant. This will ordinarily be for a short period of time and not on an on-going basis.
- 6.7 Hardship relief may not be awarded if there are alternative facilities within the Borough or if the business is situated in an area with adequate public transport links to alternative businesses. Relief should be in the interests of the community as a whole. If the Council decides that it is not in the interests of the community as a whole to grant hardship relief, then the decision will be final with no rights to appeal.
- 6.8 The Council will also consider applications from new businesses as well as established businesses, recognising that a new business could also be the sole provider of a service in the Borough who contributes to the health and quality of life of local council taxpayers generally.
- 6.9 Awards 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 reasonably have been foreseen when setting up the business.
- 6.10 The Council recognises that there may be occasional circumstances where the exercise of its discretion to reduce or remit payment of rates under the grounds of hardship is beneficial to either an individual ratepayer or the community. However, in accordance with Government guidelines it accepts that the use of this discretionary power is to be used sparingly and only in the most exceptional of circumstances.
- 6.11 The Council will notify the applicant of the decision in writing and where less than the maximum amount of relief is granted or the relief is refused, an explanation of the reasons why will be given.
- 6.12 The Council will not consider applications on the grounds of hardship where the applicant has failed to provide information within the timescales stipulated by the Council. The applicant will be notified in writing that the application has been refused.
- 6.13 No award will 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.

Period of relief

6.14 The Council will normally only award hardship relief retrospectively. However, where the applicant can show that the circumstances will remain the same for a period up to the end of the current financial year, relief may be awarded for the remainder of the year.

6.15 In all cases, hardship relief will end in the following circumstances:

- At the end of a financial year;
- A change of liable person;
- The property becomes empty or unoccupied;
- The applicant enters any form of insolvency proceedings;
- The applicant's financial circumstances change. The onus is on the applicant to inform the Council of a change in their circumstances.

Calculation of relief

6.16 Hardship relief will be calculated as a percentage of the Business Rates bill. Should the Business Rates bill reduce within the period hardship relief is granted, the relief will be reduced proportionately.

6.17 If the Business Rates bill increases during the period for which hardship relief is granted, i.e. an increase in rateable value, the amount awarded will not automatically be increased. In such cases, the Council, at the request of the applicant, will reconsider the application and may award additional relief.

Backdating

6.18 An award may be backdated where it is considered that the applicant suffered hardship during that period.

6.19 No consideration will 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 to that period.

7. Promotion of the availability of relief

7.1 The Council will proactively promote the availability of discretionary rate relief in the following ways:

- Council staff will be made aware of these guidelines and will actively promote the availability of relief when responding to enquiries;

- Information regarding the availability of reliefs will be published on the Council's website www.dartford.gov.uk;
- A copy of these guidelines will be made available on request by contacting revenues@dartford.gov.uk or by calling the Business Rates team on 01322 343008.

8. Review of these guidelines

8.1 These guidelines will be reviewed periodically in order to ensure they remain valid, effective and relevant.