

Granting Rate Relief for Non-Domestic Rates

Criteria & Guidance

19/04/2024



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Scope

These criteria and guidance apply to all Non-Domestic ratepayers within the administrative area of the London Borough of Tower Hamlets Council that are applying for any type of relief or requesting the Council to use its discretion to reduce the organisation's Non-Domestic Rates liability.

Principles

The Council has a duty to consider any requests for relief or remission of Non-Domestic Rates depending on the circumstances of the organisation or individual ratepayers concerned.

The main provision conferring the discretionary power on billing authorities to grant relief is contained in the Local Government Finance Act (LGFA) 1988. This allows billing authorities to have the discretion to grant relief to certain ratepayers from all or part of the amount of rates payable.

The Non-Domestic Rating (Discretionary Relief) Regulations 1989 allow the billing authority to restrict discretionary relief to a fixed period and deal with the notice that must be given if that relief is varied or revoked.

The Localism Act 2011 amended Section 47 of the LGFA 1988 to remove the restriction to grant discretionary relief to charities or other organisations of prescribed types.

Any award of relief can be subject to the UK subsidy control regime and a cash cap.

There is no statutory requirement for organisations or individuals to submit a written application for relief and the lack of a formal application should not preclude the authority from granting the relief if it so wishes. However, to determine if relief is appropriate for individual cases, the Council will only consider applications made using the electronic application form available on the Council's website together with the minimum supporting documentation and evidence being provided.

Objectives

The criteria and guidance aim is to enable equitable and consistent determinations of requests for relief to Non-Domestic Rate liabilities for ratepayers within the borough.

This is not intended to be a "blanket policy" that prescribes the circumstances or individuals or organisations that should receive the relief as each case will be considered on its own merit.

The document is not designed to be a tool for organisations to use to self-assess or as a checklist for them to determine their entitlement. The aim is to provide some practical guidance to assist officers in determining individual requests for relief.

Due to the rules around Business Rates retention, there is a direct impact on the Council Taxpayers of the Borough where some types of relief are awarded. It is incumbent on the Council to ensure that all applications for relief are legitimate and conform to all relevant regulations to ensure that only those organisations or individuals that are eligible receive the appropriate relief.

The government is increasingly using reliefs to assist and enhance different sectors within the business community. The Council will actively promote and maximise take-up of any current or new initiatives introduced by the government where funding is provided by way of a grant under section 31 of the Local Government Act 2003.

In all applications for mandatory and or discretionary reliefs, the Council must be allowed free access to the premises to establish the actual use of the property before making any determination for relief. Where this has not been possible, no relief will be awarded.

UK Subsidy Control Regime

Ratepayers that have received an award of discretionary relief and the total amount will exceed the subsidy control/cash cap levels must notify the council immediately so that a full determination can take place.

The Subsidy Control Act allows an economic actor to receive up to £315,000 in a 3-year period (the 2024/25 year and the 2 previous financial years).

Discretionary relief is likely to amount to being classed as a subsidy. Therefore, reliefs such as Retail, Hospitality & Leisure, Supporting Small Business and CARF would all be classed as subsidies.

It is the responsibility of ratepayers, on a self-assessment basis, to inform the authority if they are in breach of the Minimal Financial Assistance MFA limit.

The new UK subsidy control regime commenced on 4 January 2023. The new regime enables public authorities, including devolved administrations and local authorities, to deliver subsidies that are tailored to local needs. Public authorities giving subsidies must comply with the UK's international subsidy control commitments. The subsidy control legislation provides the framework for a new, UK-wide subsidy control regime. See more information on the [UK subsidy control regime](#).

Mandatory Relief for Charitable Organisations

Section 43(6) of the Local Government Finance Act 1988 provides that relief will be applicable where, on the day concerned, the ratepayer is a charity or trustees for a charity and the hereditament (the property referred to in the application) is wholly or mainly **used** for charitable purposes (whether of that charity or of that and other charities).

Although an organisation may be registered as a charity with the Charity Commission this does not necessarily entitle them to automatically receive mandatory relief from Non-Domestic Rates as the overriding factor relates to what the property is actually being used for. This is especially important to any fee-charging organisations and to qualify for mandatory relief there must be clear and comprehensive evidence that:

- the property in occupation is wholly or mainly used for charitable purposes and;
- where the organisation is not a registered charity, its purpose is carried out for the Public Benefit as stated in section 4 of the Charities Act 2011.

In determining entitlement to mandatory relief the Council takes account of the analysis of the law relating to public benefit published by the Charity Commission and dated September 2013. This provides details of what it considers to be a “Public Benefit” in accordance with the Charities Acts 2006 and 2011. Paragraph 94 states that “if a charity confines the provision of benefits to members, supporters, or subscribers, its purposes may not be carried out for the public benefit. If this is the case then mandatory relief will not be awarded to the organisation.

Discretionary Relief for Charities and Not-for-Profit Organisations

In cases where charitable discretionary relief is requested consideration will only be given to applications where:

- there is no commercial activity being carried out on the premises and;
- it can be demonstrated with satisfactory supporting evidence that the service provided is open to the general public, and;
- the service provided predominately benefits the residents of Tower Hamlets and;
- there is a clear and significant benefit to a substantial number of residents within the borough. There is no set definition of the term “substantial” and individual applications will be assessed on a case-by-case basis.

In addition, the following factors will be taken into account when considering applications for discretionary relief:

- the value of the service to residents of the London Borough of Tower Hamlets and local communities can be shown to exceed the amount of the discretionary relief requested. In this case, there needs to be a tangible

benefit to a significant number of residents in the borough which is proportionate to the amount of relief sought.

- the work undertaken from the property named in the application for relief directly caters for the needs of residents of the borough, benefits the local community and can demonstrate a link to Council priorities and;
- it provides a valuable service to the local community of London Borough of Tower Hamlets which is complimentary to those services provided by the council and can demonstrate a link to Council priorities, or;
- the service it provides relieves the council of the need to provide that service.

The organisation should have no more than 12 months of expenditure in unrestricted reserves unless a business case exists detailing how the reserves are to be used to the benefit of the local community and/or residents of the London Borough of Tower Hamlets. Consideration will also be given to the income generated for the organisation by way of investments.

Generally, no discretionary relief will be given to charity shops as these are in direct competition with conventional shops and relief over and above the 80% mandatory relief could lead to commercially run shops suffering loss of trade.

Under normal circumstances, no discretionary relief will be granted to voluntary schools or colleges that are charitable trusts, or other organisations whose objectives are mainly concerned with education unless there are exceptional circumstances as generally, these are already, to a substantial degree, publicly funded.

Car parks or parking spaces will be excluded from receiving discretionary relief with the exception of disabled parking bays as the authority does not want to encourage the use of motor vehicles within the borough for environmental and sustainability reasons.

Organisations offering similar services or facilities to those that are already established in the immediate locality will generally not be granted discretionary relief unless exceptional circumstances exist.

Housing Associations will not be granted discretionary relief unless there are exceptional circumstances or the property is being used as a community centre.

Any property in which the occupation is concerned with the production of work for sale on a commercial basis will not receive discretionary relief unless there are exceptional circumstances.

Membership of any organisation making an application for relief must be open to all sections of the community (except where the organisation's activities are aimed at specific equality groups) and the organisation must demonstrate that the way in which it operates does not discriminate against any section of the community.

The organisation should not operate a system whereby membership is determined by the votes of existing members.

Any membership fees or subscriptions must not be set at a level that excludes the general community; consideration will also be given to the following:

- reductions in fees offered for certain groups e.g. elderly, disabled, low incomes etc.
- where membership is encouraged from particular groups such as young people, persons with disabilities, ethnic minorities or older age groups.
- facilities are available for people other than members e.g. schools, public sessions.
- any membership selection criterion that requires applicants to have reached a certain standard before membership will be granted.

If the organisation/club has a licensed bar this will not prohibit an application for relief but the following must be evidenced:

- that the bar income aids the overall operation and development of the main aims of the organisation.
- that the operation of the bar and any associated facilities is a minor function of the organisation.
- that the main activity remains the paramount objective of the organisation.
- that the bar is properly licenced.

Relief for Partly Occupied Properties

Section 44a of the Local Government Finance Act 1988 provides Local Authorities with the discretion to grant relief where it appears to the Council that part of a property is unoccupied and will remain so for a 'short period of time only'.

The definition of what may constitute a 'short time only' is not prescribed and will be decided by the Council depending upon the individual circumstances of each case.

Section 44a relief is not intended to be used where part of a property is temporarily not used; it is aimed at situations where there are practical difficulties in occupying or vacating part or parts of the property in a single operation.

The relief commences on the day the premises become partly occupied and ends on the first day of the following:

- where all or part of the unoccupied area becomes occupied;

- where the property becomes fully unoccupied;
- at the end of a financial year (31st March) a new application will be required if the unoccupied period crosses over two financial years;
- the person or organisation liable for Business Rates changes.

The empty part of the property will receive a complete exemption from rates for a maximum period of 3 months (or if it is an industrial property, for a maximum period of 6 months). Once the appropriate exemption period has expired, the occupied charge for the whole property will be applied unless the property becomes exempt for any other reason.

All applications for this relief must enclose a floor plan of the assessment in question which clearly identifies the occupied and unoccupied areas including full details of the volume relating to the area (square footage or square metre etc.).

The application should include specific details and evidence of the practical difficulties faced by the organisation in occupying or vacating a property in a single operation.

Applications will not be considered for retrospective periods after which full occupation has taken place. The relief will not be awarded under any circumstance where it has not been possible to verify the situation as shown in the application by undertaking a visit to the property during the vacant period.

Applications **will not** be considered where a property is partly occupied due to refurbishment or where a reorganisation within an existing building occurs.

Situations that would normally result in an award of the relief include (although not necessarily limited to) the following:

- where there is partial occupation of a warehouse, factory or commercial property to facilitate the permanent relocation of the company
- where fire, flood or other natural disaster prevents full use of the premises

Situations that would not normally result in an award of the relief include (although not necessarily limited to) the following:

- where the owner sublets parts of the premises on a commercial basis
- where the part occupation is likely to continue year on year
- where there appears to be no genuine effort to let, sell or occupy the empty part
- where part occupation is seasonal

A visit to the premises in question will be undertaken by an officer of the Council before any recommendation is made regarding an application.

The provisions of the UK Subsidy Control Regime do not apply to awards granted under Section 44a.

The exercise of discretion with regard to Section 44a applies only prior to the request for a certificate to be issued by the Valuation Office Agency (VOA). Once a certificate has been issued by the VOA confirming the reduced rateable value, the authority has no further discretion in the matter.

Relief on the Grounds of Hardship

Under section 49 of the LGFA 1988, the billing authority is given discretionary powers to reduce or remit the amount a ratepayer is required to pay in respect of either an occupied or unoccupied property where the authority is satisfied that:

- the ratepayer would sustain hardship and;
- it is reasonable for the council to do so having regard to the interests of the persons subject to council tax in its area.

There is no statutory definition of hardship and therefore the council must arrive at its own decision in relation to any application. Guidance was provided by the Government in December 2002 as to the considerations that councils might apply when exercising their discretion in determining applications for hardship relief. These are as follows:

- although rules may be adopted for considering hardship cases a blanket policy on whether or not to grant relief should not be adopted;
- each case should be determined on its own merits and the application process as simple as possible so that decisions can be made quickly;
- reduction or remission of rates on the grounds of hardship should be the exception rather than the rule;
- all relevant factors affecting the ability of the business/ratepayer to meet their liability for business rates should be taken into account;
- the “interests” of Council Tax payers in any area can go wider than direct financial interests, e.g. employment prospects or availability of amenities in an area or the business is the only provider of a service in the area;
- where the granting of relief may have an adverse financial effect on the financial interests of the council taxpayers the case for a reduction or remission may still on balance outweigh the cost to council taxpayers;

- in some cases the hardship will be self-evident, e.g. loss of trade through natural disasters such as severe flooding. However, the authority may wish to consider how the business can demonstrate loss of business or trade. For example, do accounts, order books, till receipts, VAT returns etc. show a marked decline in trade compared to corresponding periods in previous years;
- councils should be clear in granting relief that it will be granted only for the period in which there is clear evidence of hardship for the ratepayer concerned;
- to guard against fraudulent claims, councils should satisfy themselves that the claim is from a ratepayer suffering genuine hardship.

The guidelines for granting relief on the grounds of hardship are as follows:

- all relevant factors affecting the business/ratepayer to meet their liability for business rates will be taken into account;
- the ratepayer must provide evidence that clearly demonstrates loss of business or trade over the relevant period;
- the ratepayer must demonstrate how granting the relief will benefit the local community and detail the impact on the community should the application for relief be refused;
- any relief awarded will be restricted to the period for which there is clear evidence demonstrating the ratepayer concerned suffered hardship;
- if the ratepayer is the subsidiary of a larger organisation or a part of a group then the financial standing and assets of the main organisation and other group members will also be considered;
- the extent and amount of any public funding or grants the business already receives will also be a consideration in determining any application for relief.

The guidance also recommends that hardship relief should only be granted for short periods and be reviewed regularly when the relief can be renewed, rather than granted for extended periods.

Local Discounts

Under section 69 of the Localism Act 2011 authorities have discretion to grant up to 100% relief to any business or organisation. However, where a discretionary rate relief decision would have effect where the occupier is neither a charity or non-profit making organisation, the billing authority may make the decision only if it is satisfied

that it would be reasonable for it to do so, having regard to the other interests of persons liable to pay Council Tax set by the council.

The guidance for considering the award of Local Discounts is as follows:

- the value of the service to residents of the council and local communities can be shown to exceed the amount of the discretionary relief requested;
- the work undertaken from the property named in the application for relief directly caters for the needs of residents of the London Borough of Tower Hamlets and benefits local communities;
- it provides a valuable service to the community that is complementary to those services provided by the Council or;
- the service it provides relieves the Council of the need to provide that service.
- all relevant factors affecting the ability of the ratepayer to meet their liability for business rates should be taken into account;
- the “interests” of council taxpayers in any area can go wider than direct financial interests. e.g. employment prospects or availability of amenities in and around the area or the business is the only provider of a service in the area;
- where the granting of relief may have an adverse financial effect on the financial interests of the council taxpayers the case for a Local Discount may still on balance outweigh the cost to council taxpayers;
- each case should be determined on its own merit and the application process as simple as possible so that decisions can be made quickly.

Small Business Rates Relief

This relief is available to ratepayers who occupy either:

- one property within the local authority; or
- one main property within the local authority and other additional (occupied) properties providing those additional properties each have a rateable value of less than £2,900 (£2,600 prior to April 2017);

The current rateable value of the property mentioned in the first bullet point above, or the aggregate rateable value of all properties mentioned in the second bullet point above, must be under £28,000.

Ratepayers who satisfy these conditions will have the bill for their single or main property calculated using the lower small business non-domestic rating multiplier

rather than the standard non-domestic rating multiplier that is used to calculate the liability of other businesses.

In addition, if the single or main property is currently shown on the rating list with a rateable value of up to £15,000, there will be a percentage reduction in the rates bill for the property (up to a maximum of 100% for a property with a rateable value of not more than £12,000).

If you occupy a second property, you will continue to receive any existing relief on your main property for up to 12 months.

You will still be entitled to Small Business Rate Relief on your **main** property after this if both of the following apply:

- none of your other properties have a rateable value above £2,900 (£2,600 before April 2017)
- the total rateable value of all your properties is less than £28,000
- Once an application has been accepted and the relief is granted provided circumstances do not change, the relief will continue automatically until 2024 provided that the rateable value falls within the value limit.
- The government may change the percentage of relief granted to eligible applicants, where this is the case full details will be available on the Council's website

Supporting Small Business Rates Relief (SSB)

Ratepayers losing Small Business, Rural Rates or 2017 Supporting Small Business Rates Relief as a result of the 2023 revaluation will have their increases limited to a cash value of £600 per year.

Ratepayers receiving 2017 SSB relief in 2022/23, any eligibility for 2023 SSB will end on 31 March 2024. All other eligible ratepayers remain in 2023 SSB for either:

- three years or
- until they reach the bill they would have paid without the scheme.

The relief will automatically be awarded to eligible ratepayers.

A change of ratepayers will not affect eligibility for the Supporting Small Business scheme but eligibility will be lost if the property:

- falls vacant or
- becomes occupied by a charity or Community Amateur Sports Club.

Charities and Community Amateur Sports Clubs, who are already entitled to mandatory 80% relief, are not eligible for 2023 SSB.

Retail, Hospitality & Leisure Relief Scheme

The 2024/25 Retail, Hospitality and Leisure (RHL) relief scheme will provide eligible, occupied, retail, hospitality, and leisure properties with 75% relief, up to a cash cap of £110,000 per business.

Relief will be automatically provided to eligible occupied retail, hospitality and leisure properties in 2024/25. For more information, see the [Business Rates Relief: 2024/25 Retail, Hospitality and Leisure Scheme - GOV.UK \(www.gov.uk\)](https://www.gov.uk/business-rates-relief-2024-25-retail-hospitality-and-leisure-scheme).

Eligibility for the Relief: -

1. Hereditaments that meet the eligibility for Retail, Hospitality and Leisure scheme will be occupied hereditaments which meet all the following conditions for the chargeable day:

They are wholly or mainly being used:

- i. **as shops, restaurants, cafes, drinking establishments, cinemas or live music venues,**
- ii. **for assembly and leisure; or**
- iii. **as hotels, guest & boarding premises or self-catering accommodation**

2. We consider shops, restaurants, cafes, drinking establishments, cinemas and live music venues to mean:

- i. **Hereditaments that are being used for the sale of goods to visiting members of the public:**

- Shops (such as: florists, bakers, butchers, grocers, greengrocers, jewellers, stationers, off licences, 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 are being used for the provision of the following services to visiting members of the public:**

- Hair and beauty services (such as: hairdressers, 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
- Tool hire
- Car hire

iii. Hereditaments that are being used for the sale of food and/or drink to visiting members of the public:

- Restaurants
- Takeaways
- Sandwich shops
- Coffee shops
- Pubs
- Bars

iv. Hereditaments which are being used as cinemas

v. Hereditaments that are being used as live music venues:

- Live music venues are hereditaments wholly or mainly used for the performance of live music for the purpose of entertaining an audience. Hereditaments cannot be considered a live music venue for the purpose of business rates relief where a venue is wholly or mainly used as a nightclub or a theatre, for the purposes of the Town and Country Planning (Use Classes) Order 1987 (as amended).
- Hereditaments can be a live music venue even if used for other activities, but only if those other activities (i) are merely ancillary or incidental to the performance of live music (e.g. the sale/supply of alcohol to audience members) or (ii) do not affect the fact that the primary activity for the premises is the performance of live music (e.g. because those other activities are insufficiently regular or frequent, such as a polling station or a fortnightly community event).
- There may be circumstances in which it is difficult to tell whether an activity is a performance of live music or, instead, the playing of recorded music. Although we would expect this would be clear in most circumstances, guidance on this may be found in Chapter 16 of the statutory guidance issued in April 2018 under section 182 of the Licensing Act 2003.

3. We consider assembly and leisure to mean:

i. Hereditaments that are being used for the provision of sport, leisure and facilities to visiting members of the public (including for the viewing of such activities).

- Sports grounds and clubs
- Museums and art galleries
- Nightclubs
- Sport and leisure facilities
- Stately homes and historic houses
- Theatres
- Tourist attractions
- Gyms
- Wellness centres, spas, massage parlours
- Casinos, gambling clubs and bingo halls

ii. Hereditaments that are being used for the assembly of visiting members of the public.

- Public halls
- Clubhouses, clubs and institutions

4. We consider hotels, guest & boarding premises and self-catering accommodation to mean:

i. Hereditaments where the non-domestic part is being used for the provision of living accommodation as a business:

- Hotels, Guest and Boarding Houses
- Holiday homes
- Caravan parks and sites

5. To qualify for the relief the hereditament should be wholly or mainly being used for the above qualifying purposes. In a similar way to other reliefs (such as charity relief), this is a test on use rather than occupation. Therefore, hereditaments which are occupied but not wholly or mainly used for the qualifying purpose will not qualify for the relief.

6. The list set out above is not intended to be exhaustive as it would be impossible to list the many and varied uses that exist within the qualifying purposes. However, it is intended to be a guide for authorities as to the types of uses that the government considers for this purpose to be eligible for relief. Authorities should determine for themselves whether particular properties not listed are broadly similar in nature to those above and, if so, to consider them eligible for the relief. Conversely, properties that are not broadly similar in nature to those listed above should not be eligible for the relief.

7. The list below sets out the types of uses that the government does not consider to be an eligible use for the purpose of this discount. Again, it is for local authorities to determine for themselves whether particular properties are broadly similar in nature to those below and, if so, to consider them not eligible for the discount under their local scheme.

i Hereditaments that are being used for the provision of the following services to visiting members of the public

- Financial services (e.g. banks, building societies, cash points, bureaux de change, short-term loan providers, betting shops)
- Medical services (e.g. vets, dentists, doctors, osteopaths, chiropractors)
- Professional services (e.g. solicitors, accountants, insurance agents/ financial advisers, employment agencies, estate agents, letting agents)
- Post office sorting offices

ii Hereditaments that are not reasonably accessible to visiting members of the public

Under the cash cap, no ratepayer can in any circumstances exceed the £110,000 cash cap across all their hereditaments in England. Where a ratepayer has a qualifying connection with another ratepayer then those ratepayers should be considered as one ratepayer for the purposes of the cash caps. Furthermore, the Retail Hospitality and Leisure Scheme is likely to amount to subsidy. Any relief provided by Local Authorities under this scheme will need to comply with the UK's domestic and international subsidy control obligations.

Ratepayers are urged to email the business rates team if their business is in breach of the cash cap or subsidy control regime. Email: businessrates@towerhamlets.gov.uk

Renewals for Charitable Discretionary Relief

Awards for any relief will be made for a fixed period and will cease at the end of the financial year in which the award had been made.

The Council may extend the award period for a further 12-month period without carrying out a review and will advise organisations if they are required to submit a new application prior to the start of a new financial year.

Where a review is not carried out at annual billing for the new financial year that commences on the 1st April all ratepayers will receive a demand notice which will detail any relief that has been awarded to eligible organisations. The relief will be granted for a fixed period of 12 months or until any liability ceases, whichever is sooner.

Reviews will be carried out on specific properties or ratepayers on a risk basis in relation to the value of the award, type of use and time elapsed since the last review.

This will ensure that the most up-to-date information is available for a correct determination of eligibility to receive relief.

In cases where a review is necessary, the organisation must submit a completed application form together with appropriate evidence in support of their application for consideration of the claim for relief.

Any organisation that fails to provide the appropriate information or supporting evidence will not be granted the relief.

Appeals

In cases where the award for discretionary relief is refused, the applicant has 21 days from the date of the letter notifying them that their application was not successful to request a review of the decision and consider any other supporting evidence not previously supplied.

Where an appeal is submitted the person making the appeal must set out the full grounds on which the appeal is based and specify the reasons why the relief should be granted based on the criteria operated by the council and provide any further supporting evidence.

The NNDR Relief Panel is convened on a regular basis depending on demand to consider any appeals and the levels of all reliefs awarded to business rate payers.

The NNDR Relief Panel will decide on the outcome and advise the appellant whether their appeal was successful following the panel meeting to determine any requests for a review of the decision.

The NNDR Relief Panel will consist of the Corporate Director of Resources, Corporate Director of Governance and a representative from Revenue Services.

The decision of the NNDR Review Panel will be final and the only recourse available will be way of a Judicial Review. This will only apply if the applicant believes that the council has exceeded its statutory powers, there has been a procedural impropriety or where an action is irrational. Individual organisations are advised to seek independent legal advice should they wish to proceed in that manner.