

## Report to Cabinet 19 March 2014

### Discretionary Rate Relief Guidance

Report of the Head of Finance, Revenues & Benefits – FIN/329

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#### **1. Purpose**

- 1.1 The Council does not have up to date guidelines to help staff make decisions in relation to applications for discretionary rate relief for non domestic rates. This report sets out proposed guidelines.

#### **2. Recommendations**

- 2.1 To the Cabinet

The Cabinet is recommended to:

- a) Approve the guidelines set out in the Appendix to the report
- b) Delegate to the Leader the authority to determine future amendments to the guidelines

#### **3. Reasons for the Recommendations**

- 3.1 Approving the guidelines would provide a framework for staff making decisions on applications for discretionary rate relief.

#### **4. Background**

- 4.1 The Council has the power to grant discretionary rate relief. Until discretionary rate relief under The Localism Act 2011 came into effect, that power was limited to providing relief to charities, community amateur sports clubs and not for profit organisations.
- 4.2 Charities and community amateur sports clubs are entitled to mandatory relief of 80% of the rates due if the property is wholly or mainly used by that organisation. The Council has the power to top this up by an additional amount up to 20%. Not for profit organisations do not receive any mandatory relief. However, the Council can grant discretionary relief up to a maximum of 100%.

- 4.3 The cost of the both mandatory and discretionary rate relief to such ratepayers is part of the retained rates system introduced in April 2013. Therefore the cost falls on the Government, West Sussex County Council (WSSC) and the Council. As a generalisation this means that the Government meets 50% of the cost, WSSC meets 10% and the Council 40%. The actual impact can vary if the Council is in either a safety net or a levy position under the retained rates system.
- 4.4 Under the Council's Constitution, the decision as to whether to agree applications for discretionary rate relief is delegated to the Head of Finance, Revenues & Benefits.
- 4.5 Revised guidance has been drafted. Decisions will continue to be made on the merits of the individual application. However, the guidance identifies those factors that are likely to result in a positive response to an application and those that are not.
- 4.6 The guidance includes a reference to granting relief where this would comply with a Government policy and where the full cost is met by the Government. This is in response to the way in which the Government is dealing with temporary changes it wishes to implement in relation to business rates. Rather than changing legislation, the Government is advising billing authorities what they would want to happen and identifying the circumstances in which they would expect discretionary rate relief to be granted. The Government will then pay a grant to the relevant authorities equivalent to the cost of the relief granted that meets those circumstances.
- 4.7 There are already two examples of this. The first is the extension of empty exemption period to a maximum of 18 months for properties completed from October 2013. The second is the granting of up to £1,000 in relief for retail premises with a rateable value of less than £50,000. In such cases, the intention is to cover the granting of relief in the guidance rather than dealing with it separately.

## **5. The Guidance**

- 5.1 The proposed guidance is attached as an appendix to the report. Other than those areas relating to Government policy and covered in the previous section, it is unlikely that there will be many decisions that would be different from those that would be made under the current arrangements.
- 5.2 The main change in the criteria is that the provision of additional jobs if relief is granted is a consideration. This has not been a factor in decisions under the current arrangements.
- 5.3 The guidance also includes reference to decisions that would result in the budget being exceeded. Under the current arrangements this would not have been considered. That is not considered acceptable and it will require the Leader to approve any grant that would result in the budget being exceeded.
- 5.4 The guidance also introduces a maximum period for a grant of relief before it is reviewed. It is intended that, where appropriate, the review would be a light touch – e.g. a top up relief for a local charity.

## **6. Implications**

- 6.1 It is estimated that the total amount of discretionary rate relief granted in 2014/15 will be £1,060,000. Of this around £635,000 relates to Government policies referred to in paragraphs 4.6 and 4.7 above. The cost of this part of the total will be met by the Government. With this exception, it is not anticipated that the introduction of the guidance will make any material difference to the amount of relief granted.
- 6.2 Section 69 of the Localism Act 2011 amended section 47 of the Local Government Finance Act 1988 to allow authorities to give discretionary rate relief in any circumstances. This is subject to it being reasonable to do so having regard to the interests of the local taxpayer.
- 6.3 In granting awards of discretionary rate relief, the Council has to be mindful of the state aid rules. The approach being taken is detailed in the Guidelines.
- 6.4 It is not anticipated that there will be any equality differences as a result of introducing the guidance. It should be noted that many of the organisations benefiting are charities whose work has a positive impact on disadvantaged groups.

## **7. Background Papers**

- 7.1 None

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## **DISCRETIONARY RATE RELIEF GUIDELINES**

The Council has the power to grant discretionary rate relief. Until the Localism Act was passed, the discretion was limited.

Charities and community amateur sports clubs are entitled to mandatory rate relief of 80% if the property is wholly or mainly used by that organisation. The Council can top this with discretionary relief by an additional amount up to 20%. Not for profit organisations receive no mandatory relief. The Council can provide discretionary rate relief of up to 100% for such organisations.

The cost of these categories of discretionary relief is part of the retained rates system introduced in April 2013. This means that the cost of any discretions granted fall on the Government (50%), West Sussex County Council (10%) and Crawley Borough Council (40%). The net impact on the Council will vary depending whether the Council is paying a levy, in the safety net, or neither.

The Localism Act introduced additional powers. It allows the Council to consider providing relief to any property or category or location of properties. If it does consider doing so it has to consider the state aid rules (as it does in respect of not for profit organisations). The full cost of any relief granted under the Localism Act falls on the Council. (See note on state aid at the end of these guidelines.)

The Council will consider any application for discretionary rate relief on its individual merits. It recognises the cost implications to the taxpayer of granting any relief and expect the benefits from any award to be sufficient to justify that cost. In addition, the decision will be guided by the criteria set out in this document. It is designed to assist staff making decisions on applications and organisations considering applying.

The guidelines do not cover other rate reliefs such as hardship relief or small business rates relief.

### Guidelines

The Council will positively consider applications where:

- The organisation is making a clear contribution to the Council's objectives as set out in its corporate plan (*published version to include link to corporate plan*)
- The activities provide direct benefits to residents of the Borough. Where the benefits go to the membership of the organisation it would be expected that the membership mainly comprises Crawley residents
- Granting the relief would avoid other costs falling on the Council's budget
- Providing relief would result in additional jobs that would not have been created without granting relief

- Granting the relief would comply with a Government policy and the full cost is met by the Government (as with the Government policy to allow 18 months empty rates exemption on new properties completed from 1<sup>st</sup> October 2013 and the retail rate relief of up to £1,000 for properties with a rateable value below £50,000 and any other similar reliefs)

The Council will not normally grant relief where:

- The organisation is entitled to another form of rate relief – e.g. hardship relief or small business rates relief
- Where the organisation has a membership, that membership is restricted. High membership fees would be regarded as restrictive
- A significant proportion of the organisation's income is through the proceeds of a bar and/or the bar prices are subsidised
- The organisations finances are such that it could pay the full rates without any difficulty, or they have received a payment from their landlord that could have been used to do so
- The property is a school, unless it is provided significant community benefits over and above what would be expected from a school
- The rateable occupier is a political party
- The property is unoccupied or largely unoccupied

Normally, decisions on applications for discretionary rate relief will be made by the Head of Finance, Revenues & Benefits. However, the Council has a budget for discretionary rate relief. If a positive decision on an application would result in the budget being exceeded, it will require the agreement of the Leader of the Council as well.

Any award of discretionary rate relief will be limited to a maximum period of two years, after which the award will be reviewed.

Any organisation submitting an application will need to submit evidence to enable the Council to judge the factors set out in these guidelines. It will also have to demonstrate that it both has and is actively implementing a positive equal opportunities policy.

There is no right of appeal against a decision regarding discretionary rate relief. However, a ratepayer may request that an initial decision is reconsidered.

## State Aid

Ratepayers occupying more than one property will be entitled to relief for each of their eligible properties. However, this is subject to State Aid de minimis limits.

State Aid law is the means by which the European Union regulates state funded support to businesses. Providing discretionary rate relief to ratepayers is likely to amount to State Aid. The De Minimis Regulations allow an undertaking to receive up to 200,000 euros in a three year period (being the current year and the previous two financial years). The Council will need to establish that the award of rate relief will not result in the threshold being exceeded. It is likely that large national chains could exceed this threshold.

In some cases the Council will hold enough information to be able to make a reasoned judgment on this point and other relevant factors. However, in all other cases, those qualifying and awarded relief will be required to confirm that the property is occupied and used for the purposes of this scheme and declare that that the State Aid Rules are not contravened.

It will be necessary in such cases that the ratepayer completes a declaration to the Council if they have received any other De Minimis State Aid, including any other retail rate relief they may have received on other properties. The declaration will include confirmation that the award of rate relief does not exceed the 200,000 euros an undertaking can receive under the De Minimis Regulations EC 1407/2013.

Any ratepayer failing to provide these confirmations when requested will have the award withdrawn.