



## EAST SUFFOLK COUNCIL

---

### Non-Domestic Rates Discretionary Rate Relief Guidelines

#### Background

The Local Government Finance Act 1988 provides for Non-Domestic Rate relief to be awarded for certain types of organisations and businesses.

The Council can grant discretionary relief to:

- Properties partly occupied for a temporary period (awards under section 44a of the Local Government Finance Act 1988)
- Ratepayers that would otherwise suffer hardship (awards under section 49 of the Local Government Finance Act 1988)
- In exercise of the Council's general power to award discretionary rate relief (awards under Section 47 of the Local Government Finance Act 1988 as amended by Section 69 of the Localism Act 2011)
- In accordance with the Council's Constitution the Section 151 Officer may determine discretionary rate relief applications which fall outside the scope of these approved guidelines.

Business rates retention enables local government to retain locally a proportion of business rates as well as of any growth.

The scheme is delivered through the Local Government Finance Act and has been implemented from April 2013. Councils and Fire authorities are funded through the scheme.

It aims to:

- Build into the local government finance system an incentive for local authorities to promote local growth over the long term
- Reduce local authorities' dependency upon central government
- Maintain a degree of redistribution of resources to ensure authorities with lower tax bases are able to deliver services in their areas

## **Guidelines Aim**

These guidelines set out the Council's intentions for dealing with discretionary rate relief applications from Businesses and Organisations which are situated within the settlement of East Suffolk Council.

Through these guidelines, the Council is providing a mechanism to reduce or, remove the business rates liability for such charities, non-profit making organisations and certain rural businesses that are providing valuable facilities and services to communities within East Suffolk area

These guidelines aim to provide clarity around the process of administration of applications for Discretionary Rate Relief, consistency in the application of the guidelines and to ensure maximum take-up from potential qualifying organisations, which will in turn make a contribution to achieving the Council's ambitions for the district.

## **Applications for Rate Relief**

Business rate payments remain legally due and payable in accordance with the most recent bill, until such time as any relief is awarded. Written applications will usually be required for each individual property. The Council will ensure that the application forms for discretionary rate relief are made available to ratepayers upon request as well as through the Council's website.

Applications for rate relief must be accompanied by the last 2 years audited accounts. A review of the accounts will be undertaken which will consider any trading activity (bar or retail), annual turnover and unallocated reserves. Where the award is subject to State Aid De Minimus rules the business or organisation will be required to declare their eligibility to the relief.

Where it is necessary, the ratepayer may be required to provide further information to support their applications. Application forms and guidance notes will set out the evidence requirements that need to be met for a decision to be made. Failure to provide the necessary evidence will delay the decision making process.

The Non-Domestic (Business) Rates Team can provide assistance or advice to any organisation or business on the completion of applications.

All qualifying businesses and organisations are required to notify The Council of any change in circumstances that may affect their entitlement to Discretionary Rate Relief.

If an organisation moves address within the period that they are receiving rate relief, a fresh application will need to be made for the new address. Relief will not automatically be carried forward to the new property.

## **How Applications are Processed**

The Non-Domestic (Business) Rates Team will administer all applications for Discretionary Rate Relief.

The Business Rates Team will assess applications for rate relief, and a summary of the analysis will be provided to the Operations Manager for a decision on whether to award discretionary relief. A Decision Notice will be issued by The Business Rates Team. If any single award would exceed £5,000 then further authorisation will be required from the Strategic Revenues Manager.

## **Notification of the Decision**

Successful applications will be notified of the amount of the Discretionary Rate Relief award by the issue of a new Rate Demand Notice. The rate relief will be awarded by means of a reduction in liability shown on the business rates bill issued to the ratepayer. Where this puts the account in credit for the year, a refund will be made by the Council.

Unsuccessful applicants will be notified in writing and reasons for the decision will be provided.

There is provision for reconsideration of a decision by the Strategic Revenues Manager or the Section 151 Officer where the amount under consideration would exceed £5,000.

## **Timescales for New Applications**

Wherever possible, new applications should be made by February of the coming financial year for which the relief is being sought. Accepting applications after this time will be at the discretion of the Council and in any event, applications have to be determined by law within six months of the end of the financial year for which relief is being sought.

## **Period of Award**

The award period for new and renewal applications will be for a period no longer than two years.

## **Annual Review of Relief Award**

All discretionary awards will be granted for a maximum of two years. Continuation of relief will be subject to reapplication or review.

Qualifying businesses and organisations will be invited to renew their application for the next financial year during the last quarter of the preceding year. When completed forms are returned awards will be considered in the light of these or amended guidelines.

Where a renewal application form is not returned, relief will not be awarded and the business or organisation will be sent a rate bill for the full charge.

## **Applications for Discretionary Rate Relief by Charities, Non-Profit Making Organisations, (NPMOs) and Community Amateur Sports Clubs (CASCs)**

The Council wishes to promote equality between organisations when granting discretionary rate relief. Therefore, when considering an application for discretionary rate relief, it will consider awards of relief to bodies of a similar nature to the applicant body. Unless specific considerations apply, the Council is likely to award relief to the same level as awarded to such similar bodies.

**The following categories of charity or non-profit making organisations may be entitled to relief, particularly if the guideline factors shown below are satisfied:**

- Community Engagement
- Health and Welfare
- Children
- Youth Services (Scouts, Guides, Cadet Groups)

- Older People
- Fine Arts
- Employment and Training
- Village Halls and Community Centres
- Community Amateur Sports Clubs
- Crime Reduction
- Local Museums who operate to preserve the heritage and history of the East Suffolk area

**The Council will not usually award discretionary rate relief to any of the types of organisations listed below unless exceptional circumstances apply:**

- Charity Shops and shops operated by trading arms of charities
- Premises used mainly for religious worship
- Overseas Aid organisations
- Administration offices for national charities
- Social Clubs
- Private nurseries
- Schools/Colleges
- Bodies operating a restrictive membership policy
- National or Semi National / County Wide organisations
- Sports clubs that can register with HM Revenues & Customs as a CASC and have not done so
- Political party associations, trade organisations and employment organisation
- Organisations with significant assets or operating surpluses in excess of £50,000

The table below identifies the factors that will usually be considered in deciding whether to award discretionary rate relief to an organisation and the level of the award.

Factors	Guideline Considerations
Open Membership	<p>It is not the Council’s general policy to grant relief to bodies that operate a restrictive membership policy unless restrictions are necessary due to Safeguarding practices. Consideration will be given to organisations who can demonstrate:</p> <ul style="list-style-type: none"> <li>• Fee reductions are offered for certain groups such as under 18’s or over 60’s</li> <li>• Facilities are available to people other than members, e.g. schools, public sessions</li> <li>• 75% of the club’s / organisation’s members should reside in the East Suffolk area.</li> </ul> <p>Discretionary relief will not be awarded to organisations where:</p> <ul style="list-style-type: none"> <li>• Membership rates are at such a high level as to exclude the general community</li> <li>• Membership or attendance is unreasonably restricted, for instance by race, religion or gender.</li> </ul>

Factors	Guideline Considerations
Annual Turnover	The latest audited accounts will be examined to determine the need for financial assistance. The annual turnover of the organisation and its ability to generate income will be a consideration in determining whether to award relief.
Value of unrestricted reserves	Where an organisation has unallocated reserves greater in value than twelve months reasonable running costs, the organisation will be required to demonstrate the reasons for holding those reserves.
Does the body have an actively trading function, for example, a shop or bar?	<p>The mere existence of a bar or retail outlet will not in itself be a reason for not granting relief, the test being whether the bar or retail shop is incidental to the aims of the organisation. In deciding on the incidental nature of the bar or retail shop the following points should be taken into account:</p> <ul style="list-style-type: none"> <li>• Whether the main aim of the club / organisation is to bring together people with similar interests as opposed to general social activities</li> <li>• Whether the club / organisation derives the majority of its income from the bar (and ancillary gaming machines), or retail shop</li> <li>• Whether bar or retail shop profits go towards subsidising cheap drink and goods as opposed to subsidising other activities of the club / organisation</li> </ul>
Affiliation	The club / organisation should be affiliated to an appropriate governing body actively involved in the development of their interest
Is other financial assistance provided by the Council?	Consideration will be given to organisations that already receive other financial assistance from the Council.
What other sources of funding does the body receive?	This is an indication that an organisation is deserving of relief if it has made efforts for self-help or submitted applications for grant aid.
Do the organisations aims and purpose fit with the strategic direction of the Council?	Consideration will be given as to whether the organisation addresses a need which is not being provided by the Council, but is identified as a priority for action and fits with the Council's strategic objectives.
Do the organisations aims link with existing Council policies and strategies?	Consideration will be given as to the extent to which the organisation's aims link with existing Council policies, such as the Sustainable Community Strategy and key priorities.

Factors	Guideline Considerations
Does the organisation have direct benefit to East Suffolk residents?	There will be a cost borne by the Council taxpayers in the area if any relief is granted. Consideration will be given as to whether the presence of a club or organisation directly benefits the residents of East Suffolk and if the cost of awarding relief is deemed to offer value for money to the Council tax payers within the district.
The organisation is able to demonstrate that the way in which it operates does not discriminate against any section of the community	<p>Organisations must be able to show that all facilities are available to members without discrimination. Discrimination includes indirect discrimination and encompasses:</p> <ul style="list-style-type: none"> <li>• Discrimination on the grounds of ethnicity, nationality, sexual orientation, religion or beliefs</li> <li>• Discrimination on the grounds of sex, age or disability, (except as a necessary consequence of the requirements of a particular sport)</li> </ul> <p>This does not prevent an organisation from having different classes of membership depending on:</p> <ul style="list-style-type: none"> <li>• The age of the member</li> <li>• Whether the member is a student</li> <li>• Whether the member is waged or unwaged</li> <li>• Whether the member is a playing or non-playing member</li> <li>• How far from the organisation the member lives</li> <li>• Any restriction on the days or times when the member has access to the organisations facilities</li> </ul>

The Council recognises that there will be occasions when an applicant body does not satisfy the above factors. These factors are not restrictive and nothing in them shall be taken as restricting the Council's ability to depart from its general Guidelines as to the granting of relief if it sees fit to do so bearing in mind the facts of each case.

### **Applications for Mandatory Rural Rate Relief**

Mandatory Rural rate relief applies to certain properties which are situated in a rural settlement. A rural settlement is one which appears to have a population of not more than 3,000 on 31<sup>st</sup> December proceeding the financial year in question, which is wholly or partly within a designated area. Mandatory relief of 100% is awarded to certain properties which meet the following factors:

Property	Factors
Food Shops	<ul style="list-style-type: none"> <li>• Rateable value of £8,500 or less</li> <li>• Selling food which is wholly / mainly for human consumption</li> <li>• It is the only such business within the rural settlement area</li> </ul> <p>Excludes confectionery and the supply of food in the course of catering (this excludes businesses such as restaurants, cafes and take-aways)</p>
General Stores	<ul style="list-style-type: none"> <li>• Rateable value of £8,500 or less</li> <li>• Selling food which is wholly / mainly for human consumption (excluding confectionery) and general household goods</li> <li>• It is the only such business within the rural settlement area</li> </ul>
Post Offices	<ul style="list-style-type: none"> <li>• Rateable value of £8,500 or less</li> <li>• Used for the purpose of a Post Office</li> <li>• Holding a licence under the Post Office Act 1953</li> <li>• It is the only such business within the rural settlement area</li> </ul>
Public Houses	<ul style="list-style-type: none"> <li>• Rateable value of £12,500 or less</li> <li>• With a premises licence granted in accordance with the Licensing Act 2003</li> <li>• Which authorises the retail sale of alcohol for consumption on the premises</li> <li>• The sales are not made on the condition that the buyers reside at or consume food on the premises</li> <li>• It is the only such business within the rural settlement area</li> </ul>
Petrol Filling Stations	<ul style="list-style-type: none"> <li>• Rateable value of £12,500 or less</li> <li>• Sells petrol and / or other automotive fuel to the public</li> <li>• For use in motor vehicles intended or adapted for use on roads</li> <li>• It is the only such business within the rural settlement area</li> </ul>

All applications for Mandatory Rural Rate Relief should be made to the Non-Domestic (Business) Rates Team.

## **Applications for Discretionary Rural Rate Relief**

This relief applies to properties which are in settlement areas with a population of 3,000 or less. The settlement areas are identified in the Council's 'Rural Settlement List'. Discretionary rural rate relief of up to 100% is available for businesses that have a rateable value under £16,500.

All applications for Discretionary Rural Rate Relief should be made to the Non-Domestic (Business) Rates Team.

In granting discretionary rural rate relief, the Council must be satisfied that:

- The property is used for purposes which are of benefit to the local community; and
- Having regard to the interest of its Council Tax Payers it is reasonable for the Council to provide the relief

The Business Rates Team will assess applications for rate relief, and a summary of the analysis will be provided to the Operations Manager for a decision on whether to award discretionary relief. A Decision Notice will be issued by The Business Rates Team. If any single award would exceed £1,000 then further authorisation will be required from the Strategic Revenues Manager.

## **Applications for Discretionary 'Hardship' Relief**

Section 49 of the Local Government Finance Act 1988 allows the Council to reduce or remit the NDR (Business rates) charge if it is satisfied that:

- The ratepayer would sustain hardship if the Council did not do so; and
- Having regard to the interest of its Council Tax Payers it is reasonable for the Council to provide the relief

All applications for Discretionary Rate Relief in relation to 'hardship' should be made to the Non-Domestic (Business) Rates Team.

Applications for rate relief must be accompanied by:

- Copies of the audited accounts and balance sheets for the last 2 years
- A comprehensive Business Plan incorporating a brief history of the business
- Cash Flow forecast for a minimum of the next 12 months

The Business Rates Team will assess applications for rate relief, and a summary of the analysis will be provided to the Operations Manager for a decision on whether to award discretionary relief. A Decision Notice will be issued by The Business Rates Team. If any single award would exceed £1,000 then further authorisation will be required from the Strategic Revenues Manager. Any award exceeding £5,000 would require further authorisation from the Council's Section 151 Officer in consultation with the Cabinet Member for Resources.

Although there is no statutory definition of hardship some guidance has been provided by the Government to assist in the consideration of hardship applications.

- A blanket approach, either to give or not to give relief, should not be adopted by the Authority, each application should be considered on its own merits
- Any relief granted should be the exception rather than the rule



- All relevant factors affecting the ability of a business/ratepayer to meet their liability for rates should be taken into account
- The test of hardship need not be confined to ‘financial’, all relevant factors affecting the ability of a business to meet its liability for rates should be taken into account
- The ‘interest’ of local tax payers in an area may go wider than direct financial interests. For example, where the employment prospects would be worsened by a company going out of business, or the amenities of an area might be reduced by, for instance, the loss of the only shop in a village
- Where the granting of the relief would have an adverse effect on the financial interests of local tax payers, the case for reduction of rates may still on balance outweigh the cost to the local tax payers
- The hardship caused to a ratepayer may be self-evident, for example where a business has been affected by severe loss of trade, due to external factors such as natural disasters. However the council will have to consider how the business can demonstrate such loss of trade or business. For example, do accounts, order books, till receipts of VAT returns show a marked decline in trade compared to corresponding periods in previous years?

The table below identifies factors that will be considered in deciding whether to award discretionary rate relief to an organisation.

<b>Factors</b>	<b>Guideline Considerations</b>
Financial Positions of the organisation	Hardship will often be determined on the basis of the financial position of the ratepayer’s business. In addition to looking at the business ability to pay rates the Council will also want to see evidence of future viability if help is given.
Do the organisations aims and purpose fit with the strategic objectives of the Council?	Consideration will be given as to whether the organisation addresses a need which is not being provided by the Council, but is identified as a priority for action and fits with the Council’s strategic objectives.
How important is the organisation to the local community?	An organisation applying for ‘hardship’ relief must be very important to the local community.
Is the same service available in the same locality?	Consideration may be given as to whether the service provided by the organisation is available in the same locality or within reasonable distance of the property address of the applicant.
Is the same service available by public transport?	Public transport to the nearest alternative service is not available or is very restricted.
How long is the hardship likely to last for?	Awards are less likely to be made if the Council believe that the need may be a medium or long term need.

The Council recognises that there will be occasions when an applicant body does not satisfy the above factors. These factors are not restrictive and nothing in them shall be taken as restricting the Council’s ability to depart from its general Guidelines as to the granting of relief if it sees fit to do so bearing in mind the facts of each case.



### **Applications under Section 44a (Partly Occupied Property)**

The Council has discretion under section 44a of the Local Government Finance Act to award rate relief where part of a property is unoccupied for a temporary period. The amount of rate relief that is awarded is determined by statute and is calculated by reference to the rateable value ascribed to the unoccupied area by the Valuation Office Agency.

Applications will only be considered in respect of unoccupied parts of a property that can be clearly defined and are reasonably segregated from the occupied part of the property.

For the purpose of these guidelines a period of up to 12 calendar months shall be considered to be temporary and longer periods shall not be considered to be temporary.

No award shall be made where it appears to the Council that the reason that part of the property is unoccupied is wholly or mainly for the purposes of applying for rate relief.

A ratepayer making an application under section 44a shall provide a plan of the property showing the dimension of the occupied and unoccupied area of suitable quality to enable the Valuation Office Agency to apportion the rateable value of the property between the occupied and unoccupied areas. Applications will not be considered until such time as the plan is provided.

Rate relief under this section will not be awarded in respect of partly occupied property where the partial occupation of the property may be considered to arise due to the ordinary day to day nature of the business (for example the operation of a warehouse).

### **Termination of Awards**

Awards of rate relief shall end at the earliest occurrence of one of the following;

- a) The end of the statutory period for which relief may be awarded
- b) The end of the financial year
- c) All or part of the unoccupied area becoming occupied
- d) The whole of the property becoming unoccupied
- e) The ratepayer ceasing to be the person or organisation liable to pay non-domestic rates in respect of the property
- f) Where all or part of the unoccupied area has remained unoccupied for one year
- g) The commencement of a further award in respect of the property
- h) The Council is unable to verify that the area remains unoccupied

### **Further Applications**

A further application may be submitted in the following circumstances, however, where any part of an unoccupied area has remained unoccupied for more than 12 months the partial occupation shall no longer be considered to be temporary;

- a) There is a change to the area of the property which is unoccupied
- b) The commencement of a new financial year

## **Verification of Unoccupied Areas**

The ratepayer must allow a Council Officer access to the property during normal working hours within to verify the occupation of the property. Access to the unoccupied area may be immediately without advance notice. In the event that access is not allowed promptly without good cause the award of rate relief may be refused.

Further access may be required on at least one occasion each month, during normal working hours, during the period for which relief is being awarded. In order to enable verification, access to the unoccupied area may be immediately without advance notice. In the event that access is not allowed promptly without good cause the award of rate relief may be withdrawn.

## **Local Business Rate Discount**

Section 69 of the Localism Act 2011 amends Section 47 of the Local Government Finance Act 1988 and allows the Council to grant locally determined business rate discounts (in addition to the already available discretionary rate reliefs).

The new power recognises that the current business rates scheme is broadly prescribed by central government and its aim is to provide increased flexibility to local authorities to support organisation, recognising the variations in economic conditions across and within local authority boundaries.

Where the Council decides to use this discretion separate guidelines will be introduced.

## **Application for Enterprise Zone Rate Relief**

The Council will grant business rate relief of 100% to occupiers of non-domestic properties located within the New Anglia Region Enterprise Zone for a period of five years from their date of occupation provided they occupy within five years of the start of the Enterprise Zone.

This relief will be subject to State Aid provisions and recipients will be required to sign a declaration that they are entitled to receive the relief.

## **State Aid**

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 (EU1407/2013).

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).

Please note: If the European Commission considers that you are not eligible for De Minimis Aid the amount of aid awarded will be recoverable from you with interest. It is therefore important that you are confident that you meet the De Minimis Aid criteria.

Further information on State Aid law can be found at <https://www.gov.uk/state-aid>.

## Promoting and Communicating this Policy

Advice and information relating to this policy is available on the Council's website and from the Non-Domestic Rates Team at the Council.

Renewal applications and reviews will be sent to all organisations whose award period is about to end.

Where, possible, the Council will identify any new ratepayer who may qualify under this policy and provide them with information and guidance at the earliest opportunity.

## Complaints and reconsiderations of refusal to award.

Applicants for discretionary rate relief should note that some of the cost in awarding such relief is borne by the Council. As such, in determining the level of relief to be granted, the Council must consider its budgetary position. Although the Council will aim to achieve equality between organisations in terms of the level of relief that it grants, this might not always be possible. The Council has the right, subject to giving the requisite notice required by law, to vary the level of relief that it has previously granted either in respect of a particular organisation or in respect of a class of organisation or to all organisations in receipt of relief.

Although there is no legal right of appeal against the Council's decisions on discretionary rate relief applications, in keeping with good customer care practice and principles of transparency, this policy provides for a review/reconsideration of any decision.

Decisions on awarding discretionary rate relief are usually made on the basis of the relevant factors and an organisation asking for a reconsideration of a decision should be able to demonstrate that they do satisfy the factors detailed in this guidance or, must provide other evidence that demonstrates that an award should be considered.

There is provision within these guidelines for a request for reconsideration of a decision to be made by the Strategic Revenues Manager or the Section 151 Officer (dependant on the value). It will be necessary to provide further information or, to show that sufficient "weighting" or consideration has not been given to a particular factor or factors raised in the application.

Action	Timescale
If the applicant wishes to ask for a reconsideration of a decision, the request should be made in writing to the Strategic Revenues Manager or by the Section 151 Officer and must demonstrate that some or all of the relevant factors contained within this document are met.	A request for a reconsideration should be sent to the Council within 1 month of the date on the letter of refusal/award.

Action	Timescale
<p>The Council will acknowledge receipt of a request for a reconsideration in writing and advise the applicant of the date that the application will be reviewed by the Strategic Revenues Manager or, by the Section 151 Officer.</p>	<p>Letter advising the date of application review will be sent within one week of the receipt of appeal letter.</p>
<p>The Strategic Revenues Manager or, the Section 151 Officer will review the appeal. A letter will be sent to the applicant advising the final decision of the Council.</p>	<p>The letter will be sent within one week of the final decision.</p>