

# Appendix 1

## The London Borough of Harrow's

### Local Discretionary Business Rates Retail Relief Scheme & Nursery (childcare) discount 2021 to 2022

#### For 2021/22 Financial Year

#### **This policy will replace the previous Retail Relief / Nursery Discount policies adopted.**

#### **Introduction**

Since 2019/20 the government has provided a Business Rates Retail Discount for retail properties which for 2020/21 it expanded to include the leisure and hospitality sectors. On 3 March 2021 the government confirmed that the Expanded Retail Discount would continue to apply in 2021/22 at 100% for three months, from 1 April 2021 to 30 June 2021, and at 66% for the remaining period, from 1 July 2021 to 31 March 2022.

This document sets out the Council's revised policy regarding the local discretionary Retail Relief Scheme for the financial year 1 April 2021 to 31 March 2022.

This policy is in accordance with the announcement made by Central Government on 23 March 2020 and 3 March 2021, that it would provide business rates retail relief for occupied retail properties with a rateable value of any size. The discretionary relief policy has therefore been amended to dovetail with central Government guidance applicable for the financial year 2021/22.

For the year 2021-22 the value of relief will therefore be at 100% for three months, from 1 April 2021 to 30 June 2021, and at 66% for the remaining period, from 1 July 2021 to 31 March 2022.

#### **The Local Discretionary Retail Relief Scheme**

This specific Local Discretionary Business Rate Retail Relief Scheme will apply for the year 2021/22 or 1 April 2021 to 31 March 2022. Under the scheme, support will only be provided where qualifying conditions are met as set out below.

##### **1. Which properties will benefit from relief?**

Properties qualifying for relief under the scheme will be occupied hereditaments with a rateable value exceeding £1, that are wholly or mainly being used as shops, restaurants, cafes, drinking establishments, cinemas and live music venues.

The ratepayer must also not have refused the discount for the eligible hereditament. The ratepayer may refuse the discount for each eligible hereditament anytime up to 30 April 2022. The ratepayer cannot withdraw their refusal for either all or part of the financial year.

For the purposes of section 47 of the 1988 Act, hereditaments where the ratepayer has refused the relief are outside of the scheme and outside of the scope of the decision of which hereditaments qualify for the discount and are therefore ineligible for the relief.

In line with the legal restrictions in section 47(8A) of the Local Government Finance Act 1988, local government hereditaments are excluded from this scheme. As such the billing authority may not grant the discount to itself or a precepting authority. A “precepting authority” includes fire, police and parish councils or a functional body, within the meaning of the Greater London Authority Act 1999.

All property that meet the eligibility criteria below will qualify. The criteria for this scheme considers shops, restaurants, cafes, drinking establishments, cinemas and live music venue 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: hair dressers, 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
- Employment agencies
- Estate agents and letting agents
- Betting shops

**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.

Assembly and Leisure – we consider this 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

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

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. For the avoidance of doubt, hereditaments which have closed temporarily due to the government's advice on COVID19 should be treated as occupied for the purposes of this relief.

In addition to qualifying as an eligible property under the above descriptions, the hereditament must be wholly or mainly being used as a shop, restaurant, café, drinking establishment, cinema or live music venue. Therefore, hereditaments which are occupied but not wholly or mainly used for the qualifying purpose will not qualify for the relief.

The list set out above is not intended to be exhaustive as it would be impossible to list the many and varied retail uses that exist. There will also be mixed uses. However, it is intended to be a guide for Harrow for the purposes of the scheme. Particular properties not listed but broadly similar in nature to those above may be considered eligible for the relief, however any decision by Harrow will be final.

## 2. **Exclusions**

The list below sets out the types of uses that the Government, and therefore Harrow, does not consider to be eligible to this and which will not be eligible to apply under Harrow's scheme. Any properties similar to those below will therefore also not be eligible for the relief under Harrow's 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, payday lenders, pawn brokers)
- Medical services (e.g. vets, dentists, doctors, osteopaths, chiropractors)
- Professional services (e.g. solicitors, accountants, insurance agents/ financial advisers, colleges, educational establishments, tutors)
- Post office sorting offices

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

- Local or Central Government buildings, and
- Precept or Partner organisations, e.g. Police, NHS etc

Additionally, no applications will be entertained relating to Advertising Rights, Car parks and car park spaces, Communication stations and masts, Show flats, land used for storage, and properties in the process of being redeveloped for domestic use; as these hereditaments are specifically excluded under Harrow's scheme.

The award letter will require the ratepayer to confirm that they have not received any other State Aid that exceeds in total €800,000, including any other rates relief (other than exemptions, transitional or mandatory reliefs) being granted for premises other than the one to which the declaration and letter relates, under the Deminimus Regulations EC 1407/2013.

Under the European Commission rules, the applicant must retain the guidance included within the award letter for three years and produce it on any request by the UK public authorities or the European Commission.

## 3. **How much relief will be available?**

Relief under this scheme will apply for the financial years 2021-22 only.

*a. For chargeable days from 1 April 2021 to 30 June 2021 100% of the chargeable amount, and*

*b. for chargeable days from 1 July 2021 to 31 March 2022, 66% of the chargeable amount.*

For clarity the Relief will be at 100% for the first 3 months and at 66% for the remaining period to 31 March 2022, of the business rates bill, after mandatory reliefs and other discretionary reliefs funded by section 31 grants have been applied. Relief will be awarded under this scheme regardless of a properties' rateable value size.

The eligibility for the relief and the relief itself will be assessed and calculated on a daily basis. The following formula will be used to determine the amount of relief to be granted for a chargeable day for a particular hereditament in the financial year 2021-22:

Amount of relief to be granted =  $V \times \text{percentage Expanded Retail Discount}$  as found above, where:

V is the daily charge for the hereditament for the chargeable day after the application of any mandatory relief and any other discretionary reliefs, excluding those where local authorities have used their discretionary relief powers introduced by the Localism Act which are not funded by section 31 grants.

This should be calculated ignoring any prior year adjustments in liabilities which fall to be liable on the day.

Ratepayers that occupy more than one property will be entitled to relief for each of their eligible properties, subject to State Aid De Minimis limits.

#### **4. Nursery Discount**

At the Budget on 3 March 2021, the Chancellor announced that the Nursery Discount would continue to apply at 100% for eligible properties for the first three months of 2021 from 1 April 2021 to 30 June 2021. Subsequently, from 1 July 2021 to 31 March 2022, the Nursery Discount will apply at 66%. From 1 July 2021, the relief will be capped at £105,000 per business

How will the relief be provided?

Subject to the cash cap, the total amount of government-funded relief available for each property for 2021/22 under this scheme is:

*a. For chargeable days from 1 April 2021 to 30 June 2021: 100% of the chargeable amount, and*

*b. For chargeable days from 1 July 2021 to 31 March 2022: 66% of the chargeable amount.*

The relief will be applied after mandatory reliefs and other discretionary reliefs funded by section 31 grants have been applied, excluding those where local authorities have used their wider discretionary relief powers introduced by the Localism Act which are not funded by section 31 grants.

**Which properties will benefit from relief?**

Properties that will benefit from the relief will be hereditaments which are occupied by providers on Ofsted's Early Years Register and which are wholly or mainly used for the provision of the Early Years Foundation Stage.

To qualify for the relief the hereditament should be wholly or mainly being used for the above qualifying purpose. Therefore, hereditaments which are occupied but not wholly or mainly used for the qualifying purpose will not qualify for the relief. For the avoidance of doubt, hereditaments which have closed temporarily due to the government's advice on COVID-19 will be treated as occupied for the purposes of this relief.

A ratepayer may refuse the Nursery Discount anytime up to 30 April 2022. The ratepayer cannot subsequently withdraw their refusal for all or part of the financial year.

For the purposes of section 47 of the 1988 Act, hereditaments where the ratepayers have refused the relief, they will be outside of the scheme and outside of the decision of which hereditaments qualify for the discount and are therefore ineligible for the relief.

5. **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 (1407/2013).

6. **Splits, mergers, and changes to existing hereditaments**

The relief will be applied on a day to day basis using the formula set out above. A new hereditament created as a result of a split or merger during the financial year, or where there is a change of use, will need to be considered afresh for the relief on that day.

7. **CASH CAPS**

Under the cash caps, a ratepayer may only receive Expanded Retail Discount in 2021/22 up to the cash caps set out below and ignoring any relief for the period before 1 July 2021 as no cash caps will apply for the period between 1 April 2021 to 30 June 2021.

£2 million for ratepayers meeting the eligibility for the closed cash cap test set out in Annex B (subject to the paragraphs below), or  
b. £105,000 for all other ratepayers (subject to paragraphs 21-23).

No ratepayer can in any circumstances exceed the £2 million cash cap across all of their hereditaments in England. Where a ratepayer eligible for the closed cash cap also occupies hereditaments which do not meet the criteria for the closed cash cap and the value of the discount on the closed hereditaments is less than £2 million then they may also claim the discount on other eligible hereditaments but only up to the cap of £105,000 in respect of those other eligible hereditaments. For example, such a ratepayer whose rate bill from 1 July 2021 onwards on hereditaments eligible for the closed cash cap is £1 million and also occupies other eligible hereditaments with a rates bill of £3 million is able to claim up to £1,105,000 in discount from 1 July 2021 onwards (£1million on their closed hereditament and then up to the £105,000 cash cap on their other eligible hereditaments).

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. A ratepayer shall be treated as having a qualifying connection with another:

- a. where both ratepayers are companies, and
  - i. one is a subsidiary of the other, or
  - ii. both are subsidiaries of the same company; or
- b. where only one ratepayer is a company, the other ratepayer (the “second ratepayer”) has such an interest in that company as would, if the second ratepayer were a company, result in its being the holding company of the other.

In those cases where it is clear to the local authority that the ratepayer is likely to breach the cash caps then the authority should automatically withhold the discount. Otherwise, local authorities may include the discount in bills and ask the ratepayers, on a self-assessment basis, to inform the authority if they are in breach of the cash caps.

## **8. RIGHT OF APPEAL**

There is no statutory right of appeal against a decision regarding discretionary rate relief made by the Council. However, the Council recognises that ratepayers should be entitled to have a decision reviewed objectively if they are dissatisfied with the outcome.

The Council agrees to abide by the appeals process below, and aggrieved ratepayers should make an appeal in accordance with the process.

Ratepayers will be notified of the appeals process in writing at the time that they are notified of the outcome of their request for rates relief.

This appeals process does not affect a ratepayer’s legal rights.

## 9. APPEALS PROCESS

Appeals may only be made by the original applicant and within 14 days of receiving notification of eligibility. An appellant may appoint an agent to act on their behalf and in such cases the Council will require written authorisation from the appellant before dealing with their agent.

Appeals against the original decision will need to be made in writing to the Divisional Director/Head of Service who will then consider the Appeal in consultation with the Portfolio Holder. A decision made by the Divisional Director in consultation with the Portfolio Holder will be final.

Applicants must make an appeal within two weeks of the issue of the letter notifying them of the Council's decision. Appeals must be made in writing and must give the reasons why it is believed the decision should be amended. New or additional information may be included, but only if it is relevant to the decision making process. Each application will be considered individually on its merit.

## 10. PERIOD OF RATE RELIEF

Rate relief awarded under this policy will be awarded for one financial year commencing from 1<sup>st</sup> April 2021.

Ratepayers will be notified that any relief awarded is for a specific period only.

In order to comply with Regulation 2(3) of the Non Domestic Rating [Discretionary Relief] Regulations 1989 as amended by SI. 616 of 1993 Schedule 2, which states that in the case of an authority **making a variation of a determination or revoking a decision that it must give at least 1 year's notice**, the authority will each year issue a formal notice notifying the claimant that the award is for one year only or other period as specified. This is by way of a note on the reverse of the business rates bill.

## 11. CANCELLATION OF RELIEF

Relief will be cancelled if:

1. The applicant ceases to be the ratepayer
2. The property becomes empty
3. The use of the property changes
4. A split or merger has occurred

Where relief is cancelled for the reason (2), an applicant may make an application as soon as the property becomes re-occupied.

Where relief is cancelled for reasons (3) or (4), a new application may be made straight away so long as the property remains occupied.

## **12. NOTIFICATION OF AWARDS**

The Council will consider applications within four weeks of the application and all supporting information being received, or as soon as practicable thereafter. Notification of the outcome of the decision will be made in writing within fourteen days of the decision being considered.

## **13. ACTION TO RECOVER UNPAID RATES WHILST A DECISION IS PENDING**

Receipt of an application for relief will not negate in any way the ratepayer's right to pay the business rates as demanded.

### **Annex B – eligibility for the Closed Cash Cap (£2 million)**

1. Ratepayers that meet the eligibility criteria for the closed cash cap will be ratepayers who for a chargeable day occupy one or more hereditaments whose use on the chargeable day would, based on the law and guidance applicable on 5 January 2021, have meant that the business or activity would have been mandated to close by the government.

2. For the avoidance of doubt, hereditaments which have closed due to the government's response to coronavirus should be treated as occupied for the purposes of the closed cash cap.

3. If, under this eligibility test, a person would have been required to close its main, in-person service but could have adapted its business to operate takeaway, click and collect or online with delivery services, it will be considered closed and be eligible for the closed cash cap because its substantive business would have been mandated to close.

4. In cases where hereditaments would have remained open to provide services that can continue as they are exempt from the regulations (e.g. post office services, food banks) the ratepayer may still be eligible for the closed cash cap, because they would have been unable to provide their main in-person service.

5. The following hereditaments do not meet eligibility for the closed cash cap:

a. Hereditaments occupied by businesses and other ratepayers that would have been able to conduct their main service because they do not depend on providing direct in-person services from premises and can operate their services effectively remotely (e.g. accountants, solicitors).

b. Hereditaments whose occupiers may have chosen to close but not been required to.

[Business rates: expanded retail discount 2021 to 2022 - local authority guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/business-rates-expanded-retail-discount-2021-to-2022)

[Business rates: nursery \(childcare\) discount 2021 to 2022 – local authority guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/business-rates-nursery-childcare-discount-2021-to-2022)