

# **NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL**

## **DISCRETIONARY NON-DOMESTIC RATE RELIEF** **CRITERIA / PROCEDURES / POLICY**

### **1.0 INTRODUCTION**

- 1.1 The basis of the present Discretionary Rate Relief policy was the policy adopted by the Council in readiness for the introduction of Non-Domestic Rates \* with effect from 1<sup>st</sup> April 1990.

\*this new regime, together with Community Charge (Poll Tax), replacing General Rates from 1<sup>st</sup> April 1990.

- 1.2 Several additions and changes to that initial policy have, intermittently, been approved over the years (necessitated by changes in legislation and other considerations) and this document consolidates those changes in order to present a coherent, up to date version of the current policy.
- 1.3 As well as policy matters, this document provides an explanation of the criteria required to be met and the processes to be followed in determining an application for Discretionary Non-Domestic Rate Relief.

### **2.0 THE LEGAL BASIS FOR DISCRETIONARY NON-DOMESTIC RATE RELIEF.**

- 2.1 Section 47 (as amended) of the Local Government Finance Act 1988 confers on Billing Authorities the discretionary power to grant rate relief to certain ratepayers from all or part of the amount of Non-Domestic Rates payable. The section also provides for “top up” relief to be granted to ratepayers that already qualify for a mandatory rate relief under the provisions of the Act and this “top up” relief may, at the Council’s discretion, be awarded to give extra relief above and beyond the statutory mandatory level so providing for up to 100% relief in total.
- 2.2 Additional provisions and regulations allow Billing Authorities to restrict such discretionary rate relief to a fixed period and provide for the variation or revocation of such an award (giving not less than a full financial year’s prior notice to the recipient where the change would reduce or revoke the existing level of award).

### **3.0 LEGAL RESTRICTIONS ON DISCRETIONARY AWARDS**

- 3.1 The following legal restrictions must be observed.
- 3.2 A decision to award Discretionary Non-Domestic Rate Relief in respect of the last previous financial year (but no earlier financial years) can only be made if that decision is made before 30<sup>th</sup> September of the current financial year.
- 3.3 No award may be made in respect of property that is wholly or partly occupied (otherwise than as trustee) by a Billing Authority or a Precepting Authority.

#### 4.0 FINANCIAL IMPLICATIONS OF DISCRETIONARY AWARDS

- 4.1 Where the ratepayer does **not** qualify for a Mandatory Non-Domestic Rate Relief award, 75% of any Discretionary Non-Domestic Rate Relief award is funded by Central Government. The remaining 25% is met through the General Fund and is, therefore, a cost to the Council Tax payers of the district.
- 4.2 Where the ratepayer qualifies for a Mandatory Non-Domestic Rate Relief award by virtue of being a Charity or trustees for a charity or similar organisation, 25% of any “top up” Discretionary Non-Domestic Rate Relief award is funded by Central Government. The remaining 75% of the “top up” discretionary award is met through the General Fund and is, therefore, a cost to the Council Tax payers of the district.
- 4.3 Where the ratepayer qualifies for a Mandatory Non-Domestic Rate Relief award under the Rural Rate Relief (Village Shop Rate Relief) provisions, 75% of any “top up” Discretionary Non-Domestic Rate Relief award is funded by Central Government. The remaining 25% of the “top up” discretionary award is met through the General Fund and is, therefore, a cost to the Council Tax payers of the district.

#### 5.0 LEVEL OF AWARDS

- 5.1 The maximum permissible amount of Discretionary Non-Domestic Rate Relief award will depend on whether or not the applicant is entitled to Mandatory Non-Domestic Rate Relief and, if so, the statutory level of that relief. The overall total award of both Mandatory plus Discretionary Relief can be up to a maximum of 100%. The minimum amount of Discretionary Non-Domestic Rate Relief award is, of course, nil (no award).
- 5.2 The statutory Mandatory Non-Domestic Rate Relief awards are as follows:
- a) Registered Community Amateur Sports Clubs, Charities (or trustees for a charity) and other qualifying non-profit making organisations = 80%
  - b) Rural Rate Relief (rateable value limits apply):  
Only Post Office, only General Store, only Public House, only Petrol Filling Station, (any) Food Retail Shop = 50%
- 5.3 It follows, therefore, that the maximum permissible amount of Discretionary Non-Domestic Rate Relief award will, in respect of the categories mentioned in 5.2 above, be (respectively):
- a) Registered Community Amateur Sports Clubs, Charities (or trustees for a charity) and other qualifying non-profit making organisations = Up to 20%

- b) Rural Rate Relief (rateable value limits apply):  
Only Post Office, only General Store, only Public House,  
only Petrol Filling Station, (any) Food Retail Shop = Up to 50%

5.4 Where the applicant is not entitled to a Mandatory Non-Domestic Rate Relief award, the award of Discretionary Rate Relief may be up to 100%.

## 6.0 LEGAL CRITERIA FOR DISCRETIONARY RATE RELIEF AWARDS

6.1 In order to even be considered for an award of Discretionary Non-Domestic Rate Relief, certain legal criteria, as specified in Section 47 (as amended) of the Local Government Finance Act 1988, must be met.

6.2.1 In the case of charities and non-profit making organisations, the law requires that one of the following set of circumstances must exist:

(a) the ratepayer is a **charity, or trustees for a charity**, and the hereditament is **wholly or mainly used for charitable purposes**

OR

(ba) the ratepayer is a **registered community amateur sports club** (termed Registered C.A.S.C.) and the hereditament is **not an excepted hereditament** (see 6.2.2 below) and is wholly or mainly used for the purposes of that club, or for the purposes of that club and of other such registered clubs.

OR

(b) the hereditament is **not an excepted hereditament** (see 6.2.2 below) and all or part of it is occupied for the purposes (see main objects for purposes) of one or more institutions or other organisations, **none of which is established or conducted for profit** and each of whose main objects are **charitable or are otherwise philanthropic or religious or concerned with education, social welfare, science, literature or the fine arts**

OR

(c) the hereditament is **not an excepted hereditament** (see 6.2.2 below), it is **wholly or mainly used for purposes of recreation**, and all or part of it is occupied for the purposes of a club, society or other organisation **not established or conducted for profit**.

6.2.2 For the purposes of (ba), (b) and (c) above, a hereditament is an **excepted hereditament** if all or part of it is occupied (otherwise than as trustee) by a Billing Authority (such as N.W.L.D.C.) or a Precepting Authority (such as the County Council, Police Authority, Combined Fire Authority, Parish Councils and Parish Meetings). By law, no Discretionary Rate Relief can be awarded in these instances.

6.2.3 Circumstances (a), above, will arise in the case of a Registered Charity (i.e. where the organisation is registered with the Charity Commission). Such organisations will be entitled to the 80% Mandatory Rate Relief and may be

considered for discretionary “top-up” rate relief of up to a further 20% for a possible maximum overall relief of 100%.

- 6.2.4 Note that where the organisation is a Registered Friendly Society or Registered Industrial & Provident Society, it will only qualify for 80% Mandatory Rate Relief if it has been established exclusively for charitable purposes and uses the property in question in the exercise of those purposes. Such registered societies that are established exclusively for charitable purposes should be in receipt of a letter from H.M.R.C. (Her Majesty’s Revenue & Customs) stating that it is entitled to exemption from taxes under the provisions of Section 505 of the Income and Corporation Taxes Act 1988. This letter would have to be submitted to the Council as proof that the organisation is an ‘Exempt Charity’ and entitled to the same consideration as a Registered Charity.
- 6.2.5 If the organisation is not a Registered Charity and not an Exempt Charity (see 6.2.4 above), then circumstances (ba), (b) or (c), above, might apply but note that they can never apply where any part of the property is occupied (except in the capacity of trustee) by the Council or a Precepting Authority. (See definition of Excepted Hereditament – 6.2.2 above). Also, the organisation must, in cases (b) and (c), be one that is “not established or conducted for profit”.
- 6.3.1 In the case of Discretionary Rate Relief awards in connection with the Rural Rate Relief (Village Shop Relief) scheme, the criteria are as follows:

(a) the property qualifies for a Mandatory award of Rural Rate Relief, i.e. it is the only Post Office or the only General Store or the only Public House or the only Petrol Filling Station or a Food Retail Shop (need not be the only one) in a Designated Rural Settlement and the Rateable Value of the property is not greater than that prescribed by the Secretary of State. In these circumstances, Discretionary “Top-Up” Rate Relief may be awarded in addition to the Mandatory award to make an overall award of up to 100%.

OR

(b) the property does not qualify for a Mandatory award of Rural Rate Relief but is situated in a Designated Rural Settlement, its Rateable Value does not exceed that prescribed by the Secretary of State, it is used for purposes which are of benefit to the local community/settlement and it would be reasonable for the Council to grant such relief, having regard to the interests of its Council Tax payers. (See 4.1 above – Financial Implications of Awards). In these circumstances, any Rate Relief award is purely discretionary.

## **7.0 APPLICATION PROCEDURES**

- 7.1 Whilst, strictly speaking, a written application is not a requirement of law, Best Practice acknowledges the preference for information to be provided in writing. This obviously assists the audit function and justifies the basis of any decision.

7.2 There is a standard application form that covers:

- Charitable and similar organisations
- other non-profit making organisations

and

- Registered Community Amateur Sports Clubs

Where appropriate, this form will be accompanied by a supplementary form for Sports Clubs that are not 'Registered Community Amateur Sports Clubs' but which could meet the Council's criteria for an enhanced Discretionary Relief award by virtue of being a qualifying Community Amateur Sports Club, as defined by the Council in its policy (See Appendix1).

7.3 There is a separate application form for Rural Rate Relief cases. In particular, such applicants are required to include a statement as to why they should receive any Discretionary Rural Rate Relief; details of the type and nature of the business and the contribution that it makes to the local community.

7.4 In each case, the application form is designed to elicit pertinent facts to enable the application to be determined in the light of the legal criteria (See 6.0 above) and also the criteria contained in the Council's Non-Domestic Rate Relief policy. (See 9.0 below and Appendix 1). Details of the applicant's current and recent financial positions are requested in the form of the last 2 available years' audited business accounts (including Balance Sheet).

7.5 In all cases, applicants are required to submit documentation as specified in the form and may submit any additional information or documents in support of their application if they so wish.

7.6 In the case of applications for Rural Rate Relief, the Ward Member(s) of the Ward in which the subject property is situated is asked to provide his/her comments on the application so that these can be taken into account when determining the application.

## **8.0 DECISION MAKING PROCESS**

8.1 Upon receipt of the application, the completed form and accompanying material are checked and assessed by an officer to determine any entitlement to a Mandatory Relief and to ensure that the legal criteria mentioned in 6.0 above are met. Any omissions or required clarification of the information provided are also addressed at this stage. If the application fails to meet the legal criteria the application is refused on those grounds, the applicant informed accordingly and the case closed. Otherwise the application proceeds to the stage of determining any entitlement to Discretionary Rate Relief.

8.2 Having thus determined any entitlement to a Mandatory Relief and eligibility to be considered for Discretionary Relief, the application is then presented, along with details of any Mandatory Relief entitlement, the annual rate charge and a reminder of any reference to the applicant or applicant type contained in the Council's Non-Domestic Rate Relief policy (See 9.0 below and Appendix 1), to

the appropriate parties (see 8.3) for determination of entitlement, if any, to Discretionary Rate Relief.

- 8.3 Authorisation for the determination of applications for Discretionary Non-Domestic Rate Relief under Section 47 (as amended) of the Local Government Finance Act 1988 is as follows:

Charitable and Non-Profit making organisations; Registered C.A.S.C.s

- a) Applications that fall within the Council's schedule of organisations/applicant types in Appendix 1 of the policy (see Appendix 1 of this report) are to be determined by the Director of Corporate Services (i.e. the Section 151 Officer), having special regard to the schedule. [Note: The schedule was amended by way of Cabinet's decision on 31st August 2010 so as to enable determination of Discretionary Rate relief entitlement under delegated powers where the applicant is not a charity, not established or conducted for profit, and has main objects that are charitable or are otherwise philanthropic or religious or concerned with education, social welfare, science, literature or the fine arts.]
- b) Applications that do **not** fall within the Council's schedule of organisations/applicant types in Appendix 1 of the policy (see Appendix 1 of this report) are to be presented in a report to Cabinet for Cabinet's determination.

Rural Rate Relief cases

- a) All applications are to be determined by the Section 151 Officer (under Officers' delegated powers) after consultation with the Ward Member(s) for the settlement concerned and the Portfolio Holder.

- 8.4 Each application is to be determined on its own merits, having regard to the criteria mentioned in Appendix 1 of the Council's Discretionary Rate Relief Policy (see Appendix 1 of this report) and any other criteria specifically required by law. In particular, it will be noted that the Council's policy states that each application shall be assessed on its own merits having due regard to the following criteria:

- (a) The location of the organisation.
- (b) The catchment area for its members or the service provided.
- (c) The resources of the organisation.
- (d) The restrictions on public participation.
- (e) The contribution to the cultural, sporting or social well-being of the District.

In the case of Rural Rate Relief applications, the policy states that regard shall be had to:

- (a) whether the granting of Discretionary Relief will improve the viability/sustainability of the business
- (b) whether the business provides an amenity which is valued by the local community
- (c) the comments of the Ward Member(s).

[ Note: the law concerning Rural Rate Relief also requires that “it must be reasonable for the Council to grant such rate relief having regard to the interests of its Council Tax payers.” – See 4.0 above. ]

## **9.0 THE COUNCIL’S DISCRETIONARY RATE RELIEF POLICY**

- 9.1 In order to achieve consistency and fairness in the levels of Discretionary Non-Domestic Rate Relief awards to similar bodies or applicants with similar circumstances, a schedule was included in the policy showing the levels of award approved for the organisations and types of applicants specified therein. However, it has been approved that, under delegated decision, the level of Discretionary Rate Relief award, shown in the schedule, may be reduced, or a Discretionary Rate Relief award of NIL may be determined in cases where, after investigation, it is determined that the level of financial resources of the applicant appear excessive for purpose and cannot otherwise be justified by the applicant.
- 9.2 Enhancements to the Discretionary Relief award levels shown in the schedule have been approved for unregistered Community Amateur Sports Clubs (falling within the Council’s definition) and those organisations that demonstrate that they are making a real and valued contribution towards the electronic government initiative. Enhancements are, of course, subject to the overall Rate Relief not exceeding 100%.
- 9.3 The current policy Schedule (Appendix 1 of the policy) is attached as Appendix 1 to this document.

## **10.0 REASONS FOR DECISIONS**

- 10.1 Best Practice advocates the recording of full reasons for decisions. This is perhaps more important in relation to a case that is refused an award rather than one that is granted an award but, even in the latter case, it could be that the award is not as great as the applicant would have envisaged or expected and correspondence on the matter could ensue.
- 10.2 The reasons for a refusal should be notified to the applicant at the time he/she is informed of the outcome of their application.

Background papers : Council’s Discretionary Rate Relief Policy - original 1990 policy and subsequent reports relating to additions and amendments.

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## APPENDIX 1

Current as at 20<sup>th</sup> September 2010.

### **SCHEDULE (APPENDIX 1) OF DISCRETIONARY RATE RELIEF POLICY**

**Categories and percentages are shown below. However, the level of Discretionary Rate Relief award shown may be reduced, or a Discretionary Rate Relief award of NIL may be determined (including under delegated decision) in cases where, after investigation, it is determined that the level of financial resources of the applicant appear excessive for purpose and cannot otherwise be justified by the applicant.**

<u>Organisation /Applicant Type</u>	<u>Statutory Mandatory Award (%)</u>	<u>Discretionary Award (%)</u>	<u>Total Award (%)</u>
Adult School (Coalville) - Trustees	Nil	100	100
Aided Schools	80	20	100
Aged Persons Clubs and Day Centres (with charitable status)	80	10	90
Aged Persons Clubs & Day Centres (other)	Nil	40	40
Air Training Corps	Nil	80	80
Army Cadets	80	Nil	80
Building & Social Housing Foundation	80	Nil	80
Boy Scouts (see Scouts & Guides)			
Business Link (Franchise)	Nil	100	100
Castle Donington Volunteer & Information Bureau	80	10	90
Charity Shops (mainly selling donated goods)	80	20	100
Community Centres and Village Halls (with charitable status)	80	10	90
Community Centres and Village Halls (other)	Nil	40	40
Drama Group / Society (with charitable status)	80	Nil	80
East Midlands Housing Association	80	Nil	80
Governors of Ashby School Fund	80	Nil	80
Guides (see Scouts & Guides)			
Heart of the National Forest Foundation	80	Nil	80
Ibstock Community Enterprises Ltd	Nil	100	100
Information Byway Ltd	Nil	100	100
Measham and District Community Enterprise Trust Ltd	Nil	100	100
Midlands Rural Housing	Nil	100	100
Moira Furnace Museum Trust– ancillary units	Nil	100	100
Museums (with charitable status)	80	20	100
Museums (other)	Nil	50	50
National Forest Company	Nil	80	80
Network for Change Ltd	Nil	100	100
North West Leicestershire Council for Voluntary Services (N.W.L.C.V.S.)	80	20	100
Ratcliffe College Trustees – now known as “Grace Dieu Manor School”	80	Nil	80

(Continued...)

**APPENDIX 1 (continued)**

<u>Organisation /Applicant Type</u>	<u>Statutory Mandatory Award (%)</u>	<u>Discretionary Award (%)</u>	<u>Total Award (%)</u>
Recreational / Sports / Social Club /Organisation (having charitable status) <b>or</b> Registered Community Amateur Sports Club with Bar	80	Nil	80
Recreational / Sports / Social Club /Organisation (having charitable status) <b>or</b> Registered Community Amateur Sports Club without Bar	80	10	90
Recreational / Sports * / Social Club /Organisation (without charitable status) with Bar	Nil	20	20
Recreational / Sports * / Social Club /Organisation (without charitable status) without Bar	Nil	40	40

Sports \* Club/Organisation : See below, after end of alphabetical list, for details of available enhancements.

Interpretation of 'Bar'

For the purpose of this policy, organisations that have purely Non-Alcoholic Bar/Sales Service facilities (only) shall be determined under the category of 'without Bar'.

St John Ambulance	80	20	100
Scouts & Guides	80	10	90
Snibston & Desford Colliery Band	80	Nil	80
Social Clubs (See Recreational Clubs etc)			
Sports Clubs (See Recreational Clubs etc)			
Springboard Centre (Coalville) Ltd	Nil	100	100
Stephenson College	80	Nil	80
Sue Ryder Foundation	80	20	100
University of Leicester	80	Nil	80
Village Halls (See Community Centres etc)			
Wyggeston & Queen Elizabeth I College	80	Nil	80
Women's Royal Voluntary Service (W.R.V.S.)	80	20	100
<b>Other Charitable Organisations</b>	80	20	100

**Discretionary Relief applications where the applicant is not a charity, not established or conducted for profit, and has main objects that are charitable or are otherwise philanthropic or religious or concerned with education, social welfare, science, literature or the fine arts** [To be determined under officer's delegated powers]

(Continued...)

APPENDIX 1 (continued)

Available enhancements

**E-Government**

Enhancement for applicants that demonstrate that they are making a real and valued contribution towards the electronic government initiative (Subject to the overall Rate Relief not exceeding 100%)

Discretionary Award (%)

+10

**Sports \* / Social Club Organisation (without charitable status)**

Enhancements for certain qualifying Community Amateur Sports Clubs, and other organisations, that are **not Registered Charities** and **not Registered Community Amateur Sports Clubs #** and that fall within the definition given below \*\*.

<u>Organisation /Applicant Type</u>	<u>Statutory Mandatory Award (%)</u>	<u>Discretionary Award (%)</u>	<u>Total Award (%)</u>
a) Organisation with Bar	Nil	+60	80
b) Organisation without Bar	Nil	+50	90

**\*\* Definition of a qualifying Community Amateur Sports Club, or other organisation, for the purpose of enhanced awards.**

This shall be a club, other than a Registered Community Amateur Sports Club#, without charitable status, or other organisation without charitable status, that meets each of the following criteria:

1. Its facilities are open to the whole community without discrimination (except as a necessary consequence of the requirements of a particular sport) and the level of fees (if any) are set at a level that does not pose a significant obstacle to membership or use of those facilities by the general public
2. It is organised on an amateur basis and is non-profit making (i.e. any surplus income or gains are reinvested in the club/organisation, or donated to a charity or similar amateur sports club/organisation).
3. It has, as its main purpose, the provision of facilities for, and promotion of participation in, one or more sports that are capable of improving **physical health and fitness** (i.e. those sports which, if practised with reasonable frequency, will tend to make the participant healthier and fitter).

In determining whether or not a sport is “capable of improving physical health and fitness”, regard shall be had to any guidance issued by the Charity Commission.

# “Registered Community Amateur Sports Club” means a club that is registered with H.M.R.C. (Her Majesty’s Revues and Customs, previously called Inland Revenue) as a Community Amateur Sports Club.

(Continued...)

**APPENDIX 1 (continued)**

**Rural Rate Relief cases – qualifying properties in a designated rural settlement (limited by rateable value)**

<u>Organisation /Applicant Type</u>	<u>Statutory Mandatory Award (%)</u>	<u>Discretionary Award (%)</u>	<u>Total Award (%)</u>
The <u>only</u> Post Office	50	50	100
The <u>only</u> General Store	50	50	100
The <u>only</u> Public House	50	50	100
The <u>only</u> Petrol Filling Station	50	50	100

**Each application for Discretionary Relief is to be determined on its own merits having due regard to the following criteria :**

- (a) The location of the organisation.**
- (b) The catchment area for its members or the service provided.**
- (c) The resources of the organisation.**
- (d) The restrictions on public participation.**
- (e) The contribution to the cultural, sporting or social well-being of the District.**

**In the case of Rural Rate Relief applications, regard shall be had to:**

- (a) whether the granting of Discretionary Relief will improve the viability/sustainability of the business**
- (b) whether the business provides an amenity which is valued by the local community**
- (c) the comments of the Ward Member(s).**

**Where an application under the Rural Rate Relief provisions fails to qualify for a Mandatory Rural Rate Relief award, an award of purely Discretionary Rural Rate Relief can, by law, only be made if the Council is satisfied that:**

- the hereditament (property) is used for purposes which are of benefit to the local community**
- and**
- it would be reasonable for the Council to make such an award having regard to the interests of its Council Tax payers (See 4.1).**

**END.**