

# Non-Domestic Rates: Policy for the granting of Mandatory and Discretionary Rate Relief

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# 1 Introduction

- 1.1 The purpose of this policy is to determine the level of relief to be granted to certain defined ratepayers within the Borough of East Staffordshire.**
- 1.2 The Local Government Finance Act 1988 and subsequent legislation requires the Council to grant mandatory relief for premises occupied by Charities and similar organisations that own or occupy them wholly or mainly for charitable purposes. Certain premises situated within a rural settlement area will be eligible for mandatory relief. Powers have also been granted under the Localism Act 2011, which allow for the granting of discretionary rate relief to any premises where the Council feels the granting of such relief would be of benefit to the local community.
- 1.4 Whilst the Council is obliged to grant relief to premises which fall under the mandatory category, the Council also has powers to grant discretionary relief to ratepayers subject to certain criteria being met. In some reliefs the Government has granted funding for Local Authorities to award the relief under Section 31 of the Local Finance Act 2003. This ensures that the Council will award the relief to local businesses without any impact on local Council Tax payers. For those reliefs, guidance has been issued by Central Government outlining actions expected to be taken by local authorities.
- 1.5 Full details of the requirements for both mandatory and discretionary relief are given within the following sections of this report.
- 1.6 This document also outlines the following areas:
- Details of the criteria for receiving Discretionary Relief for all relevant areas;
  - The Council's policy for granting all types of Discretionary Relief;
  - Guidance on granting and administering the relief;
  - European Union requirements including provisions for State Aid; and
  - The Scheme of Delegation.
- 1.7 This policy covers all aspects of discretionary rate relief (subject to changes in legislation). Where organisations apply for relief they will be granted (or not granted) relief in line with the following policy.

## **2 Mandatory Relief – Legislative Background**

- 2.1 The powers relating to the granting of mandatory rate relief are set down within Sections 43 and 45 of the Local Government Finance Act 1988. Charities and Trustees of Charities are only liable to pay one fifth of the Non Domestic Rates that would otherwise be payable where property is occupied and used wholly or mainly for charitable purposes. This amounts to mandatory relief of 80%. For the purposes of the Act a Charity is an organisation or trust established for charitable purposes, whether or not it is registered with the Charity Commission. The provision has been extended with effect from 1<sup>st</sup> April 2004 to registered Community Amateur Sports Clubs (CASCs) under the Local Government Act 2003.
- 2.2 The Council has the discretion (under Section 47 of the Local Government Finance Act 1988) to grant relief up to a further 20% for these cases.

## **3 Rural Rate Relief**

- 3.1 From 1<sup>st</sup> April 1998, under powers originally granted to the Council under the Local Government and Rating Act 1997, certain types of businesses in rural settlements, with a population below 3,000 may qualify for mandatory relief of 50%. Businesses that qualify for this relief are:
- The sole general store and sole post office in the village provided it has a Rateable Value of up to £8,500;
  - Any food shop with a Rateable Value of up to £8,500; and
  - The sole pub and the sole petrol station in the village provided it has a Rateable Value of up to £12,500.
- 3.2 The Council has discretion to grant up to a further 50% relief on the remaining rates on such property.
- 3.3 In addition to this the Council may decide to give up to 100% relief to any other business (not in receipt of mandatory relief) in such a rural settlement, with a Rateable Value of up to £16,500, if it is satisfied that the business is of benefit to the community and having regard to the interests of its Council Taxpayers.
- 3.4 Rural rate relief has been awarded to businesses which match the qualifying criteria in settlements such as Denstone, Hanbury, Leigh, Marchington and Yoxall. This is not an exhaustive list but gives indication of rural settlements within the borough.

## **4 Discretionary Relief – Legislative Background**

- 4.1 The original purpose of discretionary relief was to provide assistance where the property does not qualify for mandatory relief, or to 'top up' cases where ratepayers already receive mandatory relief.
- 4.2 Over recent years and particularly since 2011 the discretionary relief provisions have been amended to allow local authorities the flexibility to provide assistance to businesses and organisations. Recent announcements by Central Government have also allowed relief:
- To be targeted to certain business ratepayers;
  - To encourage building of premises even though the developer may not be able to sell or let the premises immediately;
  - To alleviate the effects of the recession; and
  - To encourage the use of retail premises which have been unoccupied for a period of time.
- 4.3 The range of bodies which are eligible for discretionary relief is wide and not all of the criteria laid down by the legislation will be applicable in each case.
- 4.4 Unlike mandatory relief, ratepayers are obliged to make a written application to the Council.
- 4.5 The Council is obliged to consider very carefully every application on its merits, taking into account the contribution that the organisation makes to the amenities of the area. There is no statutory appeal process against any decision made by the Council although, as with any decision of a public authority, decisions can be reviewed by Judicial Review.
- 4.6 Granting of relief falls broadly into the following categories:
- a) Discretionary relief – Charities who already receive mandatory relief;
  - b) Discretionary relief – Premises occupied by organisations not established or conducted for profit whose main objectives are charitable or are otherwise philanthropic or religious or concerned with education, social welfare, science, literature or the fine arts;
  - c) Discretionary relief – Premises occupied by organisations not established or conducted for profit and are wholly or mainly used for recreation;
  - d) Discretionary relief – Rural Rate relief: premises that already receive mandatory relief (not applicable to the Council);
  - e) Discretionary relief – Rural Rate Relief: premises not receive mandatory relief but of benefit to the local community and the rateable value less than £16,500 (not applicable to the Council);
  - f) Discretionary Relief – Granted under the Localism Act 2011 provisions;
  - g) Discretionary relief – Unoccupied new structure (available from 1<sup>st</sup> October 2013)
  - h) Discretionary relief – Retail Relief (available for 2 years from 1<sup>st</sup> April 2014)
  - i) Discretionary Relief – Reoccupation Relief (available for 2 years from 1<sup>st</sup> April 2014)

- j) Discretionary Relief – Local Discretionary Rate Relief (available for 4 years from 1<sup>st</sup> April 2017)
- k) Discretionary Relief – Supporting Small Business Rate Relief (available for 5 years from 1<sup>st</sup> April 2017)
- l) Discretionary Relief – Newspaper Relief (available for 2 years from 1<sup>st</sup> April 2017)
- m) Discretionary Relief – Retail Discount Relief (available for 2 years from 1<sup>st</sup> April 2019)

4.7 The decision to grant or not to grant relief is a matter for the Council although the general principles are a matter of concern to Central Government. In the case of categories f, g, h, l, j, k, l and m Central Government has provided specific guidance and funding via a Section 31 grant.

#### 4.8 Financial Effect

4.8.1 The granting of discretionary relief will involve a cost to the Council. Since the change to funding for Non Domestic Rating in April 2013, the effect of the relief is complex.

4.8.2 Any amounts granted prior to 1<sup>st</sup> April 2013 and continuing since that date will be included in the Council’s baseline within the Business Rates Retention Scheme. For any amounts granted for similar cases after 1<sup>st</sup> April 2013, the costs of the relief will be borne in accordance with the Business Rates Retention Scheme share namely 50% borne by Central Government and 40% by the Council. The remaining cost is borne by the major Precepting authorities.

4.8.3 The new areas for relief, namely:

- g) Discretionary relief – Unoccupied new structure (available from 1<sup>st</sup> October 2013 for 3 years until 30<sup>th</sup> September 2016.)
- h) Discretionary relief – Retail Relief (available for 2 years from 1<sup>st</sup> April 2014)
- i) Discretionary Relief – Reoccupation Relief (available for 2 years from 1<sup>st</sup> April 2014)
- j) Discretionary Relief – Local Discretionary Rate Relief (available for 4 years from 1<sup>st</sup> April 2017)
- k) Discretionary Relief – Supporting Small Business Rate Relief (available for 5 years from 1<sup>st</sup> April 2017)
- l) Discretionary Relief – Newspaper Relief (available for 2 years from 1<sup>st</sup> April 2017)
- m) Discretionary Relief – Retail Discount Relief (available for 2 years from 1<sup>st</sup> April 2019)

are to be financed wholly by Central Government by direct grant under Section 31 of the Local Government Act 2003. A summary of the financial effects are shown in the table below:

Relief Type		Granted after 1 <sup>st</sup> April 2013
<b>Charity Relief</b>		
A	Discretionary relief granted to Mandatory relief recipients	40% borne by the Council

B	Non profit making organisations	40% borne by the Council
C	Sports clubs and societies	40% borne by the Council
	Rural Rate Relief	
D	Discretionary relief granted to Mandatory relief recipients	40% borne by the Council
E	Other premises within a rural settlement under £16,500 RV	40% borne by the Council
<b>Localism</b>		
F	Discretionary relief granted to ratepayers generally and not covered by any other section	40% borne by the Council
<b>Unoccupied New Structures</b>		
G	Granted after 1 <sup>st</sup> October 2013	Funded in full by Central Government under S31 Local Government Act 2003
<b>Retail Relief</b>		
H	Granted after 1 <sup>st</sup> April 2014	Funded in full by Central Government under S31 Local Government Act 2003
<b>Reoccupation Relief</b>		
I	Granted after 1 April 2014	Funded in full by Central Government under S31 Local Government Act 2003
<b>Local Discretionary Rate Relief</b>		
J	Granted after 1 April 2017	Funded in full by Central Government under S31 Local Government Act 2003
<b>Supporting Small Business Rate Relief</b>		
K	Granted after 1 April 2017	Funded in full by Central Government under S31 Local Government Act 2003
<b>Newspaper Relief</b>		
L	Granted after 1 April 2017	Funded in full by Central Government under S31 Local Government Act 2003
<b>Retail Discount Rate Relief</b>		
M	Granted after 1 April 2019	Funded in full by Central Government under S31 Local Government Act 2003

## 5 Charity Relief – Mandatory Relief Recipients

5.1 S43 of the Local Government Finance Act 1988 allows 80% mandatory relief to be granted on premises if the ratepayer is a charity or trustees for a charity and the premises are wholly or mainly used for charitable purposes. No charge is made in respect of unoccupied premises where it appears that **when next in use** it will be used wholly or mainly for those purposes.

5.2 The legislation has been amended by the Local Government Act 2003 to include registered Community Amateur Sports Clubs (CASCs) with effect from 1<sup>st</sup> April 2004. These organisations can also receive the mandatory 80% charity relief.

### 5.3 Charity registration

5.3.1 Charities are defined within the legislation as being an institution or other organisation established for charitable purposes only or by persons administering a trust established for charitable purposes only.

5.3.2 The question as to whether an organisation is a charity may be resolved in the majority of cases by reference to the register of charities maintained by the Charity Commissioners under section 4 of the Charities Act 1960. Entry in the register is conclusive evidence. By definition, under the Non Domestic Rating legislation, there is no actual need for an organisation to be a registered charity to receive the relief and this has been supported by case law. However, in all cases the organisation must fall within the following categories:

- Trusts for the relief of poverty;
- Trusts for the advancement of religion;
- Trusts for the advancement of education; and
- Trusts for other purposes beneficial to the community, but not falling under any of the preceding heads.

5.3.3 Certain organisations are exempted from registration generally and are not required to make formal application to the Charity Commissioners. These are:

- The Church Commissioners and any institution administered by them;
- Any registered society within the meaning of the Friendly Societies Acts of 1896 to 1974;
- Units of the Boy Scouts Association or the Girl Guides Association; and
- Voluntary schools within the meaning of the Education Acts of 1944 to 1980.

5.3.4 The Council would consider charitable organisations, registered or not, for mandatory relief.

### 5.4 Use of premises – wholly or mainly used

5.4.1 Irrespective of whether an organisation is registered as a charity or not, the premises must be wholly or mainly used for charitable purposes. This is essential if any relief (either mandatory or discretionary) is to be granted. In

most cases this can be readily seen by inspection but on occasions the Council has had to question the actual use to which the premises are to be put.

5.4.2 Guidance from the Ministry for Housing, Communities and Local Government (MHCLG) has stated that in the case of 'mainly' at least 51% must be used for charitable purposes whether of that charity or of that and other charities.

5.4.3 The following part of this section gives details on typical uses where relief may be given plus additional criteria that have to be satisfied. The list is not exhaustive but gives clear guidance on premises for which mandatory relief can be granted and therefore premises which could equally be considered for discretionary rate relief.

- Offices, administration and similar premises  
Premises used for administration of the Charity, including offices, meeting rooms and conferences rooms.
- Charity shops  
Charity shops are required to meet additional legislative criteria if they are to receive mandatory relief. Section 64(10) of the Local Government Finance Act 1988 states that a property is to be treated as being wholly or mainly used for charitable purposes at any time if, at the time, it is wholly or mainly used for the sale of goods donated to a charity and the proceeds of the sale of the goods (after any deduction of expenses) are applied for the purposes of the charity.

In order to ascertain whether an organisation meets these requirements, inspections may be made by staff when an application is received.

## 5.5 Charity Relief – Mandatory Relief recipients; the Council's Policy

5.5.1 The decision to award discretionary relief to organisations already in receipt of mandatory relief will be judged on the merits of each individual application. However, the Council does not intend to award discretionary relief to educational establishments that already receive 80% mandatory relief.

5.5.2 A decision to award discretionary relief and how much relief is given will apply to the financial year for which the application is made and any further years up to the end of that Non-Domestic Rating List. Relief will therefore be available for a maximum of three years for the duration of each Non-Domestic Rating List. A new application will be required for each Rating List and three yearly thereafter unless the periods between revaluations are changed.

5.5.3 In determining the application, the following matters will be taken into consideration:

- How the charity supports and links into the Council's corporate priorities and the extent to which it contributes to the local community;
- The purpose of the charity and the specific activity carried out within the premises for which the relief is requested;

- Where the organisation has a bar, the mere existence of a bar or retail outlet will not, in itself, be a reason for not granting relief, but the main purpose of the organisation will be examined and its ability to trade will be a consideration in determining any award granted; and
- Whether the charity operates at a local or national level and where appropriate, the local and national funding streams and financial position of the charity.

## 6 Discretionary Rate Relief – Non Profit Making Organisations, including Recreation

### 6.1 Non Profit

6.1.1 The legislation allows the Council to grant discretionary relief where the property is not an excepted one and all or part of it is occupied for the purposes of one of more institutions or other organisations, none of which is established or conducted for profit, and each of whose main objectives are charitable or are otherwise philanthropic or religious or concerned with education, social welfare, science, literature of the fine arts.

6.1.2 Relief cannot be granted to any premises occupied by the Council, or any Town Council, Parish Council or major Precepting Authority (excepted premises).

6.1.3 A number of issues arise from the term ‘not established or conducted for profit’. This requires the Council to make enquiries as to the overall purpose of the organisation although if surpluses and such amounts are directed towards the furtherance or achievement of the organisation’s objectives then it does not necessarily mean that the organisation was established or conducted for profit.

### 6.2 Recreation Clubs

6.2.1 Ideally all recreation clubs should be encouraged to apply for CASC status, which would automatically entitle them to 80% mandatory relief.

6.2.2 Recreation clubs can also apply to the Charity Commissioners for registration as a Charity (thereby falling under the mandatory provisions for relief) where they meet the following conditions:

- a) The promotion of community participation in healthy recreation and by provision of facilities for the playing of particular sports; and
- b) The advancement of the physical education of young people not undergoing formal education.

6.2.3 Where sports clubs do not meet the CASC requirement, and are not registered charities, discretionary relief can be granted (0%-100%) where the property is not an *excepted* one: i.e. it is wholly or mainly used for purposes of recreation and all or part of it is occupied for the purpose of a club, society or other organisation not established or conducted for profit.

### 6.3 Definition of Recreation

6.3.1 Recreation is clearly defined by the Sports Council as any of the following:

Aikido	Croquet	Judo	Raquetball	Table Tennis
American Football	Crossbow	Kabaddi	Rambling	Taekwondo
Angling	Curling	Karate	Real Tennis	Tang Soo Do
Archery	Cycling	Kendo	Roller Hickey	Tenpin Bowling

Arm Wrestling	Disability Sport	Korfball	Roller Skating	Trampolining
Association Football	Dragon Boat Racing	Lacrosse	Rounders	Triathlon
Athletics	Equestrian	Lawn Tennis	Rowing	Tug of War
Australian Rules Football	Fencing	Life Saving	Rugby League	Unihoc
Badminton	Fives	Luge	Rugby Union	Volleyball
Ballooning	Flying	Modern Pentathlon	Sailing	Water Skiing
Baseball	Gaelic Football	Motor Cycling	Sand/Land Yachting	Weightlifting
Basketball	Gliding	Motor Sports	Shinty	Wrestling
Baton Twirling	Golf	Mountaineering	Shooting	Yoga
Biathlon	Gymnastics	Movement, Dance,	Skateboarding	
Bicycle Polo	Handball	Exercise & Fitness	Skiing	
Billiards and Snooker	Hang/Para Gilding	Netball	Skipping	
Bobsleigh	Highland Games	Orienteering	Snowboarding	
Boccia	Hockey	Parachuting	Softball	
Bowls	Horse Racing	Petanque	Sombo Wrestling	
Boxing	Hovering	Polo	Squash	
Camogie	Hurling	Pony Trekking	Skater/Street Hockey	
Canoeing	Ice Hockey	Pool	Sub-Aqua	
Caving	Ice Skating	Quoits	Surf Life Saving	
Chinese Martial Arts	Jet Skiing	Racketball	Surfing	
Cricket	Ju Jitsu	Rackets	Swimming & Diving	

## 6.4 Access to clubs

6.4.1 Guidance issued by the DCLG also requires the Council to consider access to clubs within the community before granted discretionary relief.

6.4.2 Membership should be open to all sections of the community. There may be legitimate restrictions placed on membership which relate for example to ability in sport or to the achievement of a standard in the field covered by the organisation or where the capacity of the facility is limited, but in general membership should not be exclusive or restrictive.

6.4.3 Membership rates should not be set at such a high level as to exclude the general community. However, membership fees may be payable at different rates that distinguish the different classes of membership such as juniors, adults, students, pensioners, players, non-players, employed and unemployed. In general, the club or organisation must be prepared to show that the criteria by which it considers applications for membership are consistent with the principle of open access.

6.4.4 The Council may also ask the following question to help establish the level of access: 'Does the organisation actively encourage membership from particular groups in the community, eg young people, women, older age groups, persons with disabilities, ethnic minorities, etc?'. Where an organisation encourages such membership, the Council may look more sympathetically at their application. Likewise, where facilities are made

available to people other than members, eg schools, casual public sessions, etc, the Council may generally grant relief.

## 6.5 Provision of facilities

6.5.1 Clubs which provide training or education are encouraged to apply as are those who provide schemes for particular groups to develop their skills, eg young people, the disabled, retired people.

6.5.2 A number of organisations run a bar. The mere existence of a bar should not in itself be a reason for not granting relief. The Council is encouraged to examine the balance between playing and non-playing members. Likewise, the level of bar profits is considered to be a gauge of how much relief should be given and the need for assistance.

6.5.3 Within this area the Council also considers whether the facilities provided relieve the Council of the need to do so, or enhance and supplement those that it does provide.

## 6.6 Discretionary Relief for Non-Profit Organisations including Recreation – The Council's Policy

6.6.1 Applications will be considered from non-profit making organisations which can demonstrate the following:

- a) That the activities of the organisation are consistent with the Council's core values and priorities;
- b) That they are non-profit making associations, groups, clubs which are accessible to all potential users; possess a representative management group and are clearly accountable to all users, beneficiaries and members (eg evidence of constitution, GM membership and/or participation is required);
- c) That the membership comprises mainly residents of East Staffordshire or that activities are of direct benefit to residents of East Staffordshire.

6.6.2 When making decisions on whether to award discretionary rate relief the Council will take into consideration the ability of the application to:

- Generate funds from its activities (eg bar trading); and
- Utilise its current assets to obtain funds/funding.

6.6.3 These organisations may be awarded between 0% and 100% discretionary rate relief depending on individual circumstances.

6.6.4 A decision to award discretionary relief and how much relief is given will apply to the financial year for which the application is made and any further years up to the end of that Non-Domestic Rating List. Relief will therefore be available for a maximum of three years for the duration of each Non-Domestic Rating List. A new application will be required for each Rating List and three yearly thereafter unless the periods between revaluations are changed.

## 7 Discretionary Rate Relief – Localism Act 2011

### 7.1 General explanation

7.1.1 Section 69 of the Localism Act 2011 amended Section 47 of the Local Government Finance Act 1988. These provisions allow all Councils to grant discretionary relief in **any** circumstances where it feels fit having regards to the effect on the Council Tax payers of its area.

7.1.2 The provisions are designed to give authorities flexibility in granting relief where it is felt that to do so would be of benefit generally to the area and be reasonable given the financial effect to Council Tax payers.

### 7.2 Discretionary Relief – Localism – the Council’s Policy

7.2.1 Applications will be considered from any ratepayer who wishes to apply. However, where a ratepayer is suffering severe hardship or severe difficulties in paying their rates liability then relief can be granted under the existing provisions as laid down by Section 49 of the Local Government Finance Act 1988. There will be no requirement to grant relief in such cases under the Council’s Discretionary Relief policy.

7.2.2 Any ratepayer applying for discretionary rate relief under these provisions and who does not meet the criteria for existing relief (charities, non-profit making organisations or rural premises) must meet **all** of the following criteria and the amount of relief granted will be dependent on the following key factors:

- a) The ratepayer **must not** be entitled to mandatory relief (Charity or Rural Rate Relief);
- b) The ratepayer **must not** be an organisation that could receive relief as a non profit making organisation or as a sports club or similar;
- c) The ratepayer **must** occupy the premises (no discretionary rate relief will be granted for unoccupied premises);
- d) The premises and organisation **must** of significant benefit to residents of the Council;
- e) The premises and organisation **must** relieve the Council of providing similar facilities;
- f) The ratepayer **must**:
  - 1) Provide facilities to certain priority groups such as elderly, disabled, minority groups, disadvantaged groups; or
  - 2) Provide significant employment opportunities to residents of the Borough; or
  - 3) Provide residents of the area with such services, opportunities or facilities that cannot be obtained locally or are not provided locally by another organisation;
- g) The ratepayer **must** demonstrate that assistance (provided by the discretionary rate relief) which be for a short time only **and** that any business/operation is financially viable in the medium and long term; **and**
- h) The ratepayer **must** show that the activities of the organisation are consistent with the Council’s core values and priorities.

- 7.2.3 Where a ratepayer can demonstrate that **all** of the above criteria are met, relief will be considered for a period of up to three years, depending on when the application is made during the life of the Non Domestic Rating List..
- 7.2.4 A formal application will be required in each case and any relief will be granted in line with State Aid requirements.
- 7.2.5 A full set of accounts, preferably audited, for the 3 years leading up to the application will be required with each application.

## **8 Discretionary Rate Relief – Funded in full by Section 31 grants**

### **8.1 General Explanation**

- 8.1.1 Since 2013 Central Government has provided certain amounts of additional funding for authorities to implement new reliefs for set periods. These new reliefs are shown in the table under paragraph 4.8.3. With every new relief announced, the Government informs all Local Authorities of the level of funding to be provided and the criteria under which those reliefs are to be applied. The funding is made available by Central Government under section 31 of the Local Government Act 2003.
- 8.1.2 As these reliefs tend to be temporary measures, the Council will implement the reliefs and any new reliefs announced after 1<sup>st</sup> April 2019 that are funded under a Section 31 grant, delegating the administration of the relief to the Shared Service Centre Manager (Revenues, Benefits & Customer Contacts) and the Shared Service Centre Team Leader (Revenues).
- 8.2.2 Where required within the criteria of the relevant relief, applications from the ratepayer(s) will be received and any relief will be granted in line with State Aid requirements.
- 8.2.3 Details of each funded relief (including information, criteria and amounts awarded) will be held by the Shared Service Centre Manager (Revenues, Benefits & Customer Contacts) and the Shared Service Centre Team Leader (Revenues) to be available for Senior Officers and Members when requested.

## 9 Discretionary Rate Relief – Section 44a part-occupied relief

### 9.1 General explanation

9.1.1 The Council receives requests from ratepayers asking that the rateable value of a property that is charged non-domestic rates is split between the occupied and unoccupied portions and that the Council then only charges rates on the occupied portions. This is permitted under Section 44a of the Local Government Finance Act 1988.

9.1.2 The Council has the discretion to grant or refuse such a request. If the request is accepted, the Valuation Office Agency is asked to supply a certificate indicating the relevant values for the occupied and unoccupied portions of the property. This certificate is binding on the Council.

### 9.2 The Law

9.2.1 Section 44a Section 44a of the Local Government Finance Act 1988 allows the Council to charge on the basis of apportioned rateable values certified by the Valuation Officer where a non-domestic property is partly occupied and partly unoccupied so long as this situation exists for a “short period of time”. The phrase “a short period of time” is not defined in law, but is generally accepted to mean a maximum of one year. What is classed as a short period of time is for the authority to determine in view of the particular circumstances of each case.

9.2.2 The law provides a discretionary power, but the decision whether to exercise that power must be taken before the Valuation Office Agency’s Certificate is requested, as the apportioned values are those upon which the charge must be levied once supplied.

9.2.3 The discretionary power does not alter the general rule that occupation of part of a property constitutes occupation of the whole of the property. The effect of the apportioned values applies for the **operative period**, which is defined as the period beginning with the day on which the property became partly unoccupied and ending with the first day on which one or more of the following events occurs:

- The occupation of any of the unoccupied part of the property;
- The ending of the financial year in which the apportionment was required;
- The requiring of a further apportionment;
- The complete occupation of the property; or
- The complete vacation of the property.

### 9.3 Financial Effect

9.3.1 Under Business Rates Retention, income from business rates directly impacts on the Council’s finances. Due to its discretionary nature, any relief granted has a direct impact on the Council’s income and ultimately on Council Tax payers

in East Staffordshire, and therefore any applications will be carefully considered in this context.

#### 9.4 Discretionary Section 44a Part Occupied Relief – The Council’s Policy

- 9.4.1 Applications will be considered by the Shared Service Team Leader (Revenues) and/or the Shared Service Centre Manager (Revenues, Benefits & Customer Contacts). Each application for change to the amount charged under the section 44a legislation from ratepayers, will be based on their own merits, on a case by case basis.
- 9.4.2 The use of Section 44a is intended to apply to those properties where there are practical difficulties in either occupying the property or vacating the property. Therefore it is not intended that all properties which temporarily become partly unoccupied should have their liability reduced.
- 9.4.3 The circumstances when it appears that Section 44a should apply are reasonably infrequent, but generally are found in respect of large manufacturing hereditament and large warehousing hereditaments. In these cases it is often difficult to vacate the property quickly by the size and nature of the equipment used. Conversely there are often difficulties in occupying a property for the same reason.
- 9.4.4 Where there is a gradual occupation of such a property, the part which remains unoccupied could be subject to Section 44a reduction. By definition the lack of occupation is a short term measure in that the intention is soon for the property to be either wholly empty or wholly occupied.
- 9.4.5 Similarly, in a manufacturing or warehousing environment there may be a time when part of the site becomes temporarily redundant and it may be reasonable to take the unoccupied part into account rather than levy full rates on the whole rateable assessment.
- 9.4.6 In determining the application the following matters will also be taken in to consideration:
- 9.4.6.1 Favourable consideration will be given (but not limited to) where:
- There is a partial occupation of a warehouse, factory or commercial property to facilitate relocation of the company into the borough or to extend the current portfolio and associated occupation levels in the borough; or
  - Where fire, flood or other disaster prevents full use of the property.
- 9.4.6.2 Favourable consideration would not normally be given (but not limited to):
- For a period that has now passed;
  - For consecutive periods;
  - To support a business moving its operation outside of the borough of East Staffordshire;

- Where the owner sublets part of the property on a commercial basis;
- Where the part occupation is likely to continue for more than three months (6 if industrial property)
- Where there appears to be no effort to let, sell or occupy the empty part
- Where part occupation is seasonal or cyclical in nature
- Where the unoccupied area is subject to maintenance, modernisation or other building works
- Economic downturn
- Warehouse fluctuations in the area occupied or vacant
- Repeat requests on similar/identical grounds to previous applications; or
- The vacant area location is moved within the hereditament.

At all times consideration will be made for the regulations contained within Section 44a of the Local Government Finance Act 1988 and any relevant caselaw.

## 9.5 Application process

9.5.1 All applications for should be made in writing.

9.5.2 The applicant must also submit a plan, which clearly identifies the areas of occupation and areas unoccupied (estimated size must also be documented).

9.5.3 In considering the application, a visit may be made to the property to confirm the accuracy of the submitted plan.

9.5.4 Independent evidence may also be submitted which may be in the form of (but not exclusive to) surveyors' reports, dated photographs, solicitors' letters and estate or letting agents' records.

## 9.6 Appeals

9.6.1 If an applicant is dissatisfied with the outcome of their application they can ask for a review of that decision.

9.6.2 The decision will be reviewed by the Shared Service Centre Manager (Revenues, Benefits & Customer Contacts) within 21 days of the review request being made. The applicant will be allowed to submit additional or new information or evidence to support the application.

9.6.3 Because the decision to grant a Section 44A relief is discretionary, any challenge relating to the Council not granting the relief would be in accordance with Section 138 of the Local Government Act 1988 by way of judicial review.

## 9.7 Award periods

- 9.7.1 Relief periods will be dependent on the circumstances of the case concerned however it will not normally be granted for longer than three months, or six months for qualifying hereditaments.
- 9.7.2 The Council reserves the right to review the award should the circumstances of the ratepayer change during the period of the award.
- 9.7.3 The Council will be mindful of the State Aid rules during the consideration of each application.

## **10 Discretionary Rate Relief - Hardship Relief**

### 10.1 General explanation

#### 10.1.2 The Council may:

- Reduce any amount of the rates payable; or
- Remit payment of the whole of the amount

For a ratepayer, provided that:

- The ratepayer would sustain hardship if the Council did not do so; and
- It is reasonable for the Council to do so, having regard to the wider interests of local taxpayers.

### 10.2 The Law

10.2.1 Section 49 of the Local Government Finance Act 1988 allows authorities to reduce or remit business rates in cases where the ratepayer is experiencing financial hardship.

10.2.2 Guidance has been issued to all local authorities as to which criteria should be noted in the consideration of applications for Hardship Relief. These are:

- Each case should be considered on its own merit
- Reduction or remission of rates should be the exception and not the rule
- The test of 'hardship' need not be confined strictly to financial hardship: all relevant factors affecting the ability of a business to meet its liability for rates should be taken into account.
- The "interests" of local taxpayers in an area may go wider than direct financial interests. For example, where the employment prospects in the area 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 relief would have an adverse effect on the financial interests of local taxpayers, the case for a reduction or remission of rates payable may still on balance outweigh the cost to local taxpayers.

### 10.3 Financial Implications

10.3.1 Any change to the amount of relief given will be shared with the preceptors and central government under the business rate retention arrangements.

## **11 Discretionary Rate Relief – EU State Aid requirements**

- 11.1 European Union competition rules generally prohibit Government subsidies to businesses. Relief from taxes, including non-domestic rates, can constitute state aid. The Council must bear this in mind when granting discretionary rate relief.
- 11.2 Rate relief for charities and non-profit making bodies is not generally considered to be state aid, because the recipients are not in market competition with other businesses. However, where other bodies receive relief and are engaged in commercial activities or if they are displacing an economic operator or if they have a commercial partner, rate relief could constitute state aid.
- 11.3 Relief will be State Aid compliant where it is provided in accordance with the De Minimis Regulations (1407/2013). 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).
- 11.4 Where the relief to any one business is greater than the De Minimis level then permission will need to be obtained from the European Commission. In such cases the matter will be referred to the MHCLG for advice and then referred back to the Council for consideration. It will be for the ratepayer to provide confirmation as to whether the State Aid provisions apply to them.
- 11.5 In all cases, when making an application, ratepayers will be required to provide the Council with details of all other business rates reliefs they have received for the current financial year and the previous two financial years, plus any other State Aid received in relation to any other purpose. If it becomes apparent that the ratepayer has exceeded its State Aid limits at a later date, the Council reserves the right to rescind any relief it has granted to that ratepayer.

## **12 Administration of Discretionary Rate Relief**

12.1 The following section outlines the procedures followed by officers in granting, amending or cancelling discretionary relief. This is essentially laid down in legislation.

### **12.2 Applications and Evidence**

12.2.1 Discretionary Rate Relief must be applied for in writing by the ratepayer. Application forms are produced within the Council and issued to all ratepayers requesting the relief.

12.2.2 Organisations are required to provide a completed application form, a full set of accounts, (preferably audited) for the 3 years leading up to the application plus any such evidence, documents, financial statements, etc. necessary to allow the Council to make a decision. Where insufficient information is provided, despite reminders, then no relief will be granted.

12.2.3 The Council will consider applications for Discretionary Relief based on their own merits, on a case-by-case basis.

### **12.3 Granting of relief**

12.3.1 In all cases, the Council will notify the ratepayer of decisions made.

12.3.2 Where an application is successful, then the following is notified to them in writing:

- The amount of relief granted and the date from which it has been granted;
- If relief has been granted for a specified period, the date on which it will end;
- The new chargeable amount;
- Details of any planned review dates and the notice that will be given in advance of a change to the level of relief granted; and
- A requirement that the applicant should notify the Council of any change in circumstances that may affect entitlement to relief.

12.3.3 Where relief is not granted then the following information is provided, again in writing:

- An explanation of the decision within the context of the Council's statutory duty;
- An explanation of the appeal rights (see below); and
- The next steps open to the ratepayer should liability remain outstanding for the period that the application was intended to cover.

12.3.4 Relief is to be granted from the beginning of the financial year in which the decision is made. Since 1997 decisions can be made up to 6 months after the end of the financial year for which the application was made.

12.3.5 A decision to award discretionary relief and how much relief is given will apply to the financial year for which the application is made and any further years up

the end of that Non-Domestic Rating List. Relief will therefore be available for a maximum of three years for the duration of each Non-Domestic Rating List. A new application will be required for each Rating List and three yearly thereafter unless the periods between revaluations are changed

12.3.6 Discretionary relief will not be awarded for more than three consecutive years. Where relief is only available for a limited period as defined by Central Government then it will only be granted for that period.

12.3.7 A fresh application for discretionary relief will be necessary for each new Non-Domestic Valuation list or for any of the following reasons:

- Change of use of the property
- Change of property description
- Change of rateable value

12.3.8 Mandatory relief will be reviewed annually, with a requirement to complete a full application where a change is declared.

#### 12.4 Variation of a decision

12.4.1 Variations in any decision will be notified to ratepayers as soon as practicable and will take effect as follows:

- Where the amount is to be increased due to a change in rate charge – from the date of the increase in rate charge;
- Where the amount is to increase for any other reason (other than a general termination of relief under Central Government guidelines) – takes effect at the expiry of a financial year, and so that at least one year's notice is given;
- Where the amount is to be reduced due to a reduction in the rate charge – from the date of the decrease in the rate charge;
- Where the amount is to be reduced for any other reason (other than a general termination of relief under Central Government guidelines) – takes effect at the expiry of a financial year, and so that at least one year's notice is given.

12.4.2 A decision may be revoked at any time and the change will take effect at the expiry of a financial year (other than a general termination of relief under Central Government guidelines).

## **13 Scheme of Delegation**

### **13.1 Granting, Varying, Reviewing and Revocation of Relief**

- 13.1.1 Under powers given to the Council by section 223 of the Local Government Act 1992, all permissions for the granting, varying, reviewing and revocation of discretionary relief is given under the Local Government Finance Act 1988, the Local Government and Rating Act 1997, the Local Government Act 2003 and the Localism Act 2011 be delegated to the Deputy Leader.
- 13.1.2 The method of administration shall be that laid down within this policy document. The level of discretionary relief shall be calculated in accordance with guidance given within this policy and determined by the Deputy Leader.
- 13.1.3 The policy for granting relief will be reviewed where there is a substantial change to the legislation or funding rules. At such time a revised policy will be brought before the relevant committee of the Council.
- 13.1.4 The amount of funding to be provided by the Council in respect of discretionary relief granted shall be determined by the Head of Service and approved by Council in the normal budgeting process.

## **14 Appeals**

- 14.1 Where the Council receives an appeal from the ratepayer regarding the granting, non-granting or amount of any discretionary relief, in line with MHCLG guidelines, the case will initially be reviewed by the Shared Service Centre Manager (Revenues, Benefits & Customer Contacts) in conjunction with the Head of Service and Deputy Leader. Where a decision is revised then the ratepayer shall be informed; likewise if the original decision is upheld.