

# The London Borough of Harrow's Discretionary Retail Rate Relief Policy For 2022/23 Financial Year

**This policy will replace any previous Retail Relief 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 in view of the evolving impact of the Covid 19 pandemic. On 27<sup>th</sup> October 2021, the government announced its intention, as part of the Autumn Statement, to determine a Retail Rate Relief scheme that could apply in 2022/23.

As the relief is a temporary measure for 2022/23 only, the government is not changing the legislation relating to the reliefs available to properties. Instead, the Government will reimburse local authorities that use their discretionary relief powers under section 47 of the Local Government Finance Act 1988 (as amended) to grant relief.

The scope of the relief will return to pre-COVID 19 eligibility criteria for Retail properties, but premises used for Hospitality and Leisure businesses will remain in scope, as per the Expanded Retail Discount scheme that existed for 2020/21 and 2021/22.

The level of relief will be 50% but, will be capped at a maximum amount of £110,000 per business. There will be no rateable value threshold limit, as there was in the pre-COVID 19 scheme, which limited entitlement to those properties with a rateable value of below £51,000.

This document sets out the Council's revised policy regarding the local discretionary Retail Relief Scheme for the financial year 1 April 2022 to 31 March 2023

**At Cabinet on the 17<sup>th</sup> of January 2019, it was resolved that the Corporate Director of Resources could exercise discretion in accordance with the Harrow Council Scheme of Delegation, and under Section 47 of the Local Government Finance Act 1988, (as amended) (hereinafter "LGFA") in order to operate the above scheme. As the Government proposed scheme applies for one year only, the Corporate Director of Resources has agreed to apply the scheme and incorporate any Government proposed changes that may be made for the purposes of the financial year 2022/23 only.**

This policy is in accordance with the announcement made by Central Government on 27<sup>th</sup> October 2021.

For the year 2022-23 the value of relief will be 50% for the period 1<sup>st</sup> April 2022 to 31<sup>st</sup> March 2023.

## The Local Discretionary Retail Relief Scheme

This specific Local Discretionary Business Rate Retail Relief Scheme will apply for the year 2022/23 or 1 April 2022 to 31 March 2023. Under the scheme, support will be provided where qualifying conditions are met on any day within that period, 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 for a qualifying purpose of retail, hospitality or leisure.

The ratepayer must also not have refused the discount for the eligible hereditament. The ratepayer may refuse the discount for each eligible hereditament at any time up to 30 April 2023. 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 accordance with the legal provisions contained within 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 major precepting authority. A “major precepting authority” includes fire, police and parish councils or a functional body, within the meaning of the Greater London Authority Act 1999.

Hereditaments that meet the eligibility for Retail, Hospitality and Leisure scheme will be occupied hereditaments which meet all of the following conditions for the chargeable day:

- a) they are wholly or mainly being used:
  - i. as shops, restaurants, cafes, drinking establishments, cinemas or live music venues
  - ii. for assembly and leisure; or
  - iii. as hotels, guest & boarding premises or self-catering accommodation
- b) We consider shops, restaurants, cafes, drinking establishments, cinemas and live music venues to mean the following:

#### **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: hairdressers, 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

**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 \(https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidanceissued-under-s-182-of-licensing-act-2003\)](https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidanceissued-under-s-182-of-licensing-act-2003) issued in April 2018 under section 182 of the Licensing Act 2003.

c) We consider assembly and leisure 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

d) 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.

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, short-term loan providers, betting shops)
- Medical services (e.g. vets, dentists, doctors, osteopaths, chiropractors)
- Professional services (e.g. solicitors, accountants, insurance agents/ financial advisers, employment agencies, estate agents, letting agents)
- Post office sorting offices

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

Additionally, no applications shall be awarded a reduction under this scheme where they relate 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 also specifically excluded under this scheme.

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

Subject to the £110,000 cash cap per business, the total amount of government-funded relief available for each property for 2022/23 under this scheme is:

- a. For chargeable days from 1 April 2022 to 31 March 2023, 50% of the chargeable amount.

The relief should be applied after mandatory reliefs and other discretionary reliefs funded by section 31 grants have been applied, but before those where local authorities have used their wider discretionary relief powers introduced by the Localism Act 2011, which are not funded by section 31 grants.

However, as required in the NNDR3 return guidance notes, the former categories of discretionary relief available prior to the Localism Act 2011 (i.e. charitable / CASC / rural etc. top up and not for profit) should be applied first in the sequence of discretionary reliefs and, therefore, before Retail, Hospitality and Leisure relief.

Authorities may use their discretionary powers to offer further discounts outside this scheme or additional relief to hereditaments within the scheme. However, where an authority applies a locally funded relief under section 47, this should be applied after the Retail, Hospitality and Leisure relief.

Subject to the cash cap, the eligibility for the discount and the relief itself will be assessed and calculated on a daily basis.

The following formula should be used to determine the amount of relief to

be granted for a chargeable day for a particular hereditament in the financial year 2022/23:

Amount of relief to be granted =

$V \times 0.5$  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 funded by section 31 grants as set out in the above paragraphs.

This will 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 Subsidy Control Limits

#### **4. Limits – Cash Cap and Subsidy Control**

Under the Cash Cap, no ratepayer can, in any circumstances, exceed a £110,000 cash cap across all of their hereditaments in England. Where a ratepayer has a qualifying connection with another ratepayer then those ratepayers should be considered as one ratepayer for the purpose 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.

The Retail Hospitality and Leisure Scheme is likely to amount to subsidy. Any relief provided by local authorities under this scheme will need to comply with the UK's domestic and international subsidy control obligations (See the [BEIS guidance for public authorities](#) which explains the subsidies chapter of the UK-EU Trade and Cooperation Agreement (TCA), World Trade Organisation rules on subsidies, and other international subsidy control commitments).

To the extent that a local authority is seeking to provide relief that falls within the Small Amounts of Financial Assistance Allowance, Article 364 of the TCA allows an economic actor (e.g. a holding company and its subsidiaries) to receive up to 325,000 Special Drawing Rights (£343,000 as at 9 December 2021) in a three-year period (consisting of the 2022/23 year and the two previous financial years). Expanded Retail Discount granted in either 2020/21 or 2021/22 does not count towards the £343,000 allowance but BEIS business grants (throughout the 3 years) and any other subsidies claimed under the Small Amounts of Financial Assistance limit should be counted.

In those cases where it is clear to the local authority that the ratepayer is likely to breach the cash cap or the Small Amounts of Financial Assistance limit, then the authority should automatically withhold the relief.

Otherwise, local authorities may include the relief in bills and ask the ratepayers, on a self-assessment basis, to inform the authority if they are in breach of the cash caps or Small Amounts of Financial Assistance limit.

As part of Harrow's policy to minimise the administration burden of this scheme for the initial bills for 2022-23, the RHL will be granted for any businesses receiving pre-existing discount for the purposes of the 2021/22 year where it reasonably appears that they are eligible. A "refusal" template will be available on our website for businesses to submit if they do not wish to receive the discount and may be uploaded via the web evidence upload facility.

For any new requests, the application form will refer to guidance on our website including this policy and require a declaration to be completed to confirm compliance with the cash cap and subsidy controls.

## **5. Splits, mergers, and changes to existing hereditaments**

The relief will be calculated and 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.

## **6. 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 their entitlement objectively reviewed, if they are dissatisfied with the outcome.

The Council therefore intends to provide a non-statutory appeals process as set out below, and aggrieved ratepayers should submit their representations in accordance with the process outlined.

Ratepayers will be given written notification of the appeals process at the time that they are notified of the outcome of their application for relief.

This appeals process does not affect a ratepayer's rights to seek alternative legal redress.

## **7. Appeals process**

Appeals may be made by the applicant within 14 days of receiving notification of their entitlement and must identify the name and address of the applicant, the grounds on which the appeal is made and may include any new or additional information, provided it is relevant to the decision making process.

An appellant may appoint an agent or third party to act on their behalf but in such instances, the Council will require their prior written authorisation before entering into any correspondence with them.

Appeals against a decision will need to be submitted 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.

Each application will be considered individually on its own merits.

## **8. Period of rate relief**

This policy shall apply for one financial year commencing 1<sup>st</sup> April 2022 and ending on 31<sup>st</sup> March 2023.

Ratepayers will be notified that any relief awarded under this policy, is subject to their eligibility being within that 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 the relevant period of eligibility within the year as shown on the front and explained on the reverse of the ratepayer's bill.

## **9. 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
5. It is established that the ratepayer was ineligible for this relief

Where relief is cancelled for reason (2), an applicant may make an application as soon as the property becomes re-occupied subject to meeting all eligibility criteria of the scheme.

Where relief is cancelled for reasons (3) or (4), a new application may be made straight away so long as the property remains occupied and subject to meeting all eligibility criteria of the scheme.

#### **10. Notification of awards**

The Council will consider applications within four weeks of the application and all supporting information being received, or as soon as reasonably practicable thereafter.

Notification of the outcome of the decision will be made in writing within fourteen days of the decision being determined.

#### **11. Action to recover unpaid rates whilst a decision is pending**

Receipt of an application for relief under this policy, will not negate in any way, a ratepayer's obligation to pay the business rates as demanded.

## **Annex A - £110,000 Cash Cap/Small Amount of Financial Assistance Subsidy**

In line with the conditions set by the government, a ratepayer may only claim up to £110,000 of support under the 2022/23 Retail, Hospitality and Leisure Relief Scheme for all of their eligible hereditaments. This cash cap applies at a Group company level (so holding companies and subsidiaries cannot claim up to the cash cap for each company) and also to organisations which, although not a company, have such an interest in a company that they would, if they were a company, result in its being the holding company.

Furthermore, the Retail, Hospitality and Leisure Relief Scheme is subject to the subsidies chapter within the UK-EU Trade and Cooperation Agreement (TCA). The subsidies chapter within the TCA only applies to subsidies over the value of approximately £343,000 per beneficiary over a 3-year period (consisting of the current financial year and the two previous financial years) (the Small Amounts of Financial Assistance limit). Extended Retail Discounts granted in 2020/21 or 2021/22 do not count towards the limit.

Covid business grants received from local government and any other subsidy claimed under the Small Amounts of Financial Assistance limit over the 3 year period should be counted.

Therefore, to claim the Retail, Hospitality and Leisure relief the ratepayer must not have exceeded either the £110,000 cash cap for 2022/23 or the Small Amounts of Financial Assistance limit of £343,000 over 3 years (including 2022/23).

The government and London Borough of Harrow will not tolerate any business falsifying their records or providing false evidence to gain this discount, including claiming support above the cash cap or the exemption threshold. A ratepayer who falsely applies for any relief, or provides false information or makes false representation in order to gain relief may be guilty of fraud under the Fraud Act 2006.