



DRAFT PORTFOLIO HOLDER DECISION NOTICE

PROPOSED INDIVIDUAL DECISION BY THE PORTFOLIO HOLDER FOR ADMINISTRATION, INNOVATION AND IMPROVEMENT

TOPIC - DISCRETIONARY RATE RELIEF APPEALS PROCEDURE

PROCEDURAL INFORMATION

The Access to Information Procedure Rules – Part 4, Section 22 of the Council's Constitution provides for a decision to be made by an individual member of Cabinet.

In accordance with the Procedure Rules, the Corporate Director (Governance), the Chief Executive and the Head of Finance are consulted together with Chairman and Vice Chairman of The Overview and Scrutiny Committee and any other relevant overview and scrutiny committee. In addition, all Members are notified.

If five or more Members from those informed so request, the Leader may require the matter to be referred to Cabinet for determination.

If you wish to make representation on this proposed Decision please contact the relevant Portfolio Holder and the following Committee Administrator by 5.00pm on Monday 16 January 2012.

Contact Officers:

Case Officer: Gill Cranswick, Tel: 01962 848190, Email: gcranswick@winchester.gov.uk

Committee Administrator: Nancy Graham, Tel: 01962 848 235, Email: ngraham@winchester.gov.uk

SUMMARY

The City Council's Discretionary Rate Relief policy does not include a formal method of appeal. This decision notice proposes that the Policy (see appendix) be amended to include an appropriate method of appeal.

PROPOSED DECISION

That the following provision for appeals is included in the Discretionary Rate Relief Policy –

Appeals against the decision of the Head of Revenues and Portfolio Holder for Administration, Innovation and Improvement will be decided by the

Corporate Director (Governance) in consultation with the Leader (or Deputy Leader) of the Council. The appellant will need to demonstrate that the original decision has not been made with consideration to the Discretionary Rate Relief Policy.

All appeals should be in writing and made within 2 months of the issue of the Council's notice advising that relief has not been awarded or has been awarded in part only

REASON FOR THE PROPOSED DECISION AND OTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

There is no appeal mechanism within rating legislation however a ratepayer can seek judicial review to question a decision that the Council has made under discretionary rating powers. The judicial review process is primarily concerned with the processes and procedures followed in reaching a decision.

Authority to award discretionary relief is delegated to the Head of Revenues in consultation with the Portfolio Holder for Administration, Innovation and Improvement (or in his/her absence the Leader of the Council). The current Policy (see appendix) does not include a formal appeals mechanism. In practice, if a ratepayer questions an award decision, the Head of Revenues and the Portfolio Holder for Administration, Innovation and Improvement review the decision to ensure that it has been made in accordance with the Council's Policy.

It is proposed that Council's Policy is amended to include a formal appeal mechanism. Appeals against the decision of the Head of Revenues and Portfolio Holder for Administration, Innovation and Improvement will be decided by the Corporate Director (Governance) in consultation with the Leader (or Deputy Leader) of the Council. The Leader would not deal with an appeal if he was involved in the initial decision. The appellant will need to demonstrate that the original decision has not been made with consideration to the Discretionary Rate Relief Policy. All appeals should be in writing and made within 2 months of the issue of the Council's notice advising that relief has not been awarded or has been awarded in part only.

Amending the Council's Policy to include an appeal mechanism will ensure that the decision making process is robust and includes appropriate opportunity for ratepayers to challenge decisions.

RESOURCE IMPLICATIONS:

There are no additional costs relating to the proposed change in Policy. Approximately 125 ratepayers are in receipt of discretionary rate relief and only a small number of enquiries are received each year.

CONSULTATION UNDERTAKEN ON THE PROPOSED DECISION

Neighbouring authorities were contacted to research the approach taken elsewhere.

FURTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED FOLLOWING PUBLICATION OF THE DRAFT PORTFOLIO HOLDER DECISION NOTICE

n/a

DECLARATION OF INTERESTS BY THE DECISION MAKER OR A MEMBER OR OFFICER CONSULTED

n/a

DISPENSATION GRANTED BY THE STANDARDS COMMITTEE

n/a

Approved by: (signature)

Date of Decision

Councillor Stephen Godfrey – Portfolio Holder for Administration, Innovation & Improvement

Business Rate Reliefs Legislation and Policy Guidelines

Mandatory Relief for Charitable Organisations and Registered Community Amateur Sports Clubs (80% of charge)

Legislative requirements (Sections 43 & 45 Local Government Finance Act 1988) -

- the ratepayer must be a charity or trustees for a charity or a registered community amateur sports club, and
- the property must be wholly or mainly used for charitable purposes or for the purposes of the club or other registered clubs
- if the property is unoccupied it must appear that when next used it will be wholly or mainly for charitable purposes or for the purposes of the club or other registered clubs.

In the case of Charity shops the property must be wholly or mainly used for the sale of goods donated to the charity and the proceeds (after deduction of expenses) must be applied for the purposes of the charity.

A Charity

A charity is an institution or other organisation established for charitable purposes only or any persons administering a trust established for charitable purposes only.

Charitable status is usually established by reference to an entry in the register of Charities maintained by the Charity Commissioners under the Charities Act to 1993 (as amended). This evidence is conclusive of an organisation's charitable status.

However, the absence of an entry in the register does not necessarily mean that the organisation concerned is not a charity.

Some organisations are excluded from the requirement to register. These “excepted” charities include organisations such as:

- the Church Commissioners and any institution administered by them
- registered societies within the meaning of the Friendly Societies Acts
- units of the Boy Scouts or Girl Guides Associations
- voluntary schools within the meaning of Education Acts

If there is no registration or an organisation is not exempt from registration a decision is made based on the circumstances of each case.

Authority to award this relief is delegated to the Head of Revenues.

The cost of this relief is met in full by an allowance against the Authority’s contribution to the NNDR pool.

Discretionary Rate Relief for Non-Profit Making Organisations (up to 100% of charge), Charitable Organisations and Registered Community Amateur Sports Clubs (up to 20% of charge - in addition to 80% Mandatory Relief)

Non-profit making organisations

Legislative requirements (Section 47, Local Government Finance Act 1988) -

- properties where all or part is occupied for the purposes of one or more institutions or other organisations which are not established or conducted for profit and their main objects are charitable or are otherwise philanthropic or religious or concerned with education, social welfare, science, literature or the fine arts; or
- properties 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.

This relief cannot be awarded if the ratepayer is a billing or precepting authority.

Charitable organisations and community amateur sports clubs

Legislative requirements (Section 47, Local Government Finance Act 1988) -

- the ratepayer must be a charity or trustees for a charity or a registered community amateur sports club; and
- the property must be wholly or mainly used for charitable purposes or for the purposes of the club or other registered clubs.

The definition of a charity is as for Mandatory Relief (see above).

Council Policy Guidelines - Discretionary Rate Relief for Non-Profit Making Organisations, Charitable Organisations and Registered Community Amateur Sports Clubs

The award of discretionary relief will be considered for organisations or bodies which

- a) meet local needs in the district and benefit local people – where the premises in question are used to provide or administer services of a national, County wide or regional nature the City Council will not normally grant discretionary rate relief. The City Council will consider the extent to which the district of Winchester and its residents benefit in determining the level of any discretionary rate relief to be awarded.
- b) provide a valuable service to the community - services provided should be complementary to those provided or supported by the Authority or relieve the Authority of the need to provide such services
- c) are open to all sections of the community generally or have restricted access by providing for a specific sector of the community for justifiable reasons such as addressing inequality
- d) can demonstrate that the way they operates does not discriminate against any section of the community
- e) do not have more than 12 months spending available as free reserves (i.e. not legally 'restricted') unless a business plan exists which details how these are to be used to the benefit of the local community. If the ratepayer wholly or mainly provides services that fall into the following categories
 - facilities for scouts, guides, youth clubs / groups
 - village halls and community centres
 - sports clubs and other organisations providing recreational facilities

the Head of Revenues and Portfolio Holder for Administration, Innovation & Improvement shall specify a maximum level for reserves depending on the ratepayer's liability for maintenance on the property.

- f) the interests of the individual ratepayer must be balanced against the wider interests of Winchester's Council Tax payers
- g) evidence should be provided to support the application
- h) a copy of the previous two years audited accounts for the organisation should be provided
- i) relief will be awarded for a two year period and then reviewed.

The Authority wishes to support organisations providing the following categories of 'service' to the residents of the district

- a) support for disadvantaged groups e.g. disabled, unemployed, the elderly, health problems, drug & alcohol misuse, young people
- b) support with housing needs
- c) provision of education & training opportunities
- d) support with debt & financial management
- e) facilities for scouts, guides, youth clubs / groups
- f) village halls and community centres
- g) general store, post office, village shop that provide the only business of that nature within the settlement area
- h) sports clubs and other organisations providing recreational facilities

- i) theatres, dramatic societies – the maximum amount of mandatory and discretionary relief awarded to this category will be 90%.

Any organisation applying for relief whose work involves dealing with children, young people or vulnerable adults **must** be able to demonstrate that appropriate checks have been carried out on staff and volunteers and that sound child protection policies are in place.

On the question of access, where a membership exists for an organisation or an entry fee is charged, regard will be had to the following

- i. subscriptions or fees must not be set at a high level which exclude the general community
- ii. whether fee reductions exists for certain groups e.g. under 18's, over 60's
- iii. whether the organisation actively encourages membership from particular groups e.g. young people, older age groups, persons with disability, ethnic minority
- iv. whether facilities are made available to people other than members e.g. schools, public sessions.

Regard will also be given to the following where appropriate

- i. whether the organisation provides facilities which would otherwise not be available within the parish / local area that are available to the community
- ii. whether the organisation provides facilities complementary or of a higher standard to those supported or provided by the Council
- iii. the level of social membership in comparison to sport membership of an organisation, as the Council wishes to encourage active participation in sport rather than passive social activity

- iv. whether the organisation is run on a voluntary basis
- v. whether the organisation is registered with the Inland Revenue as a Community Amateur Sports Club – if an organisation is not registered relief will not be awarded unless reasonable justification is given.

Guidance for organisations with licensed bar facilities

Sports Clubs

Relief should be aimed at the sporting activity of the club.

Where bar income assists the overall operation and development of the organisation this is allowable provided that the organisation is still primarily a sports organisation and that such funds can be shown as providing direct support to the organisations sporting activities.

The level of relief awarded will be reduced if the net income derived from bar facilities and gaming machines expressed as a percentage of total income is 30% or greater.

If bar income is less than bar expenditure the organisation is not eligible for relief.

Other organisations

Where bar income assists the overall operation and development of the organisation this is allowable provided that this is a minor function of the organisation and that such funds can be shown as providing direct support to the organisation's activities.

The level of relief awarded will be reduced if the net income derived from bar facilities and gaming machines expressed as a percentage of total income is 30% or greater.

If bar income is less than bar expenditure the organisation is not eligible for relief.

Authority to award relief

Authority to award this relief is delegated to the Head of Revenues in consultation with the Portfolio Holder for Administration, Innovation & Improvement (or in his/her absence the Leader of the Council).

25% of the cost of awarding this relief to non-profit making organisations is met by the Authority.

75% of the cost of awarding this relief to charitable organisations and registered Community Amateur Sports Clubs, who are entitled to mandatory relief, is met by the Authority.

Rural Rate Relief Scheme

There are two types of relief, mandatory (50%) and discretionary (up to 100%).

Legislative requirements (Sections 43(6B) & 47(3B) Local Government Finance Act 1988) -

Mandatory Relief for village shops, post offices (from 1 April 2000) & rural food shops (from 15 August 2001) - to qualify the property must

- i) be within the boundaries of a 'qualifying settlement'
- ii) have a rateable value of not more than £8,500
- iii) be used, in whole or part, as a general store or a post office, or both, or a food shop and,
- iv) where a general store or post office, be either the only general store or the only post office in the settlement

The legislation was amended from 5th April 2001 to include properties that are used, in whole or part, as a **public house or a petrol filling station**, and

- are within the boundaries of a qualifying settlement
- have a rateable value of not more than £12,500, and
- are either the only public house or the only petrol filling station in the settlement.

A 'qualifying' settlement is

- wholly or partly within the Authority's area

- appear to the billing authority to have had a population of 3,000 or less on the preceding 31st December, and
- are wholly or partly within a designated rural area.

A settlement list is compiled and approved by the Council three months prior to each financial year.

A 'qualifying general store' is a business consisting wholly or mainly of the sale of both food for human consumption (excluding confectionery) and general household goods.

A 'qualifying food shop' is defined as one that is wholly or mainly selling food on a retail basis for human consumption. The supply of confectionery and of food in the course of catering is excluded. Catering is defined as the supply of food for consumption on the premises or of hot food that is eaten off the premises. This excludes such establishments as restaurants, cafes, tea-rooms and fast food shops but not food shops that only sell small amounts of such items.

Mandatory relief for former agricultural land – to qualify the property must

- i. have a rateable value shown in the rating list at the beginning of the financial year not greater than £7,000
- ii. have been wholly or mainly agricultural (disregarding domestic property) for at least 183 days in the year preceding the commencement of the Act
- iii. no longer be agricultural
- iv. not qualify for stud farm relief on the relevant day.

The scheme also:

places a 5 year limit on the relief from the date the provisions of the Act come into effect

gives the Secretary of State the power to extend the life of the relief for a further period or periods; and

if the period is extended, limits mandatory relief for properties that include land and buildings already qualifying for relief as part of an earlier property, to a 5 year period commencing on the day that earlier property first qualified for rate relief.

Discretionary Relief - may be granted to a business that is entitled to receive Mandatory relief. It may also be granted to a business provided that

- i) it is within the boundaries of a qualifying settlement
- ii) it has a rateable value of not more than £16,500
- iii) it is used for purposes which are of benefit to the local community, and
- iv) it is reasonable for the Authority to make such a decision having regard to the interests of persons liable to pay council tax set by it.

Council Policy Guidelines for Discretionary Rural Rate Relief

- a) to qualify, a business should generally be that of a general store, a post office or a food shop
- b) the business should generally be the only business of that nature within the settlement area
- c) the business should be open to all sections of the community
- d) the business should be able to demonstrate that the way it operates does not discriminate against any section of the community
- e) the views of the local elected Council Member should be received

- f) the business should not have more than 12 months spending available as free reserves
- g) relief will be awarded for a two year period and then reviewed
- h) that the interests of the individual ratepayer or an individual community must be balanced against the wider interests of the taxpayers
- i) evidence should be provided to support the application
- j) a copy of the previous two years audited accounts for the business should be provided.

Normally former agricultural premises, public houses and petrol filling stations would not come within this policy but each case will be treated on its merits.

Authority to award Mandatory Relief is delegated to the Head of Revenues.

Authority to award discretionary relief is delegated to the Head of Revenues in consultation with the Portfolio Holder for Administration, Innovation & Improvement (or in his/her absence the Leader of the Council).

The cost of mandatory relief is met in full by an allowance against the Authority's contribution to the NNDR pool.

25% of the cost of discretionary relief is met by the Authority.

Hardship Relief (up to 100%)

Legislative requirements (Section 49, Local Government Finance Act 1988) -

The billing authority has the power to reduce the amount a person is liable to pay provided the Authority is satisfied

- the ratepayer would sustain hardship if the authority did not grant relief; and
- it is reasonable for the Authority to grant the relief having due regard to the interests of the Council Tax payers.

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

- a) a blanket approach, either to give or not to give relief, should not be adopted by the Authority, each application should be considered on its own merits
- b) any relief granted should be the exception rather than the rule
- c) the test of hardship need not be confined to 'financial', all relevant factors affecting the ability of a business to meet its liability for rates should be taken into account
- d) the 'interests' of local tax payers in an area may go wider than direct financial interests. For example, where the employment prospects would be worsened by a company going out of business, or the amenities of an area might be reduced by, for instance, the loss of the only shop in a village
- e) where the granting of the relief would have an adverse effect on the financial interests of local tax payers, the case for reduction of rates may still on balance outweigh the cost to the local tax payers.

Council Policy Guidelines for Hardship Relief

- a) Any decision must be balanced against the wider interests of the council tax payers of the District.
- b) There must be proof that hardship exists.
- c) Evidence must be provided to support the application.
- d) A copy of the previous two years audited accounts for the organisation should be provided.
- e) The amount of rates that will be remitted will depend upon the circumstances of each case.
- f) Applications will be effective for a specific period and may then be reviewed. Relief will be withdrawn on the sale of the business.
- g) The purpose of this policy is to support local businesses in the community. In assessing this factor the Council will normally consider the following criteria –
 - the business's contribution to local distinctiveness (e.g. history, character, shopping offer of the district)
 - the nature of the business: is it one of the five core sectors of the Winchester economy (knowledge/creative industries; service; tourism; retail and land-based)
 - the size of the business: the Council would normally prioritise smaller businesses (i.e. employing up to 25 people), although relief is in principle available for all businesses
 - how the granting of rate relief will be in the interest of council tax payers.

Authority to award this relief is delegated to the Head of Revenues in consultation with the Portfolio Holder for Administration, Innovation & Improvement (or in his/her absence the Leader of the Council).

25% of the cost of this relief is met by the Authority.

Appeals Procedure

Appeals against the decision of the Head of Revenues and Portfolio Holder for Administration, Innovation and Improvement will be decided by the Corporate Director (Governance) in consultation with the Leader (or Deputy Leader) of the Council. The appellant will need to demonstrate that the original decision has not been made with consideration to the Discretionary Rate Relief Policy.

All appeals should be in writing and made within 2 months of the issue of the Council's notice advising that relief has not been awarded or has been awarded in part only