
NATIONAL NON-DOMESTIC RATING DISCRETIONARY RATE RELIEF (Minute 257/00)

1 SUMMARY

- 1.1 This report follows the resolution of Council on 25 July 2000 (Minute 257/00) that this Sub-Committee reviews the Discretionary Rate Relief Policy of the Council.
- 1.2 The decisions from this review will in future be the guidelines to be followed when considering claims for Rate Relief by the Finance & General Purposes Committee.
- 1.3 These decisions should enable the application for Rate Relief from the Rochford Hundred Rugby Club and an appeal from the Westcliff Rugby Club to be dealt with.

2 INTRODUCTION

- 2.1 Members are reminded that following a report to the Committee on 30 September 1996 (Minute 480/96) the Council's existing policy guidelines were re-affirmed with the addition of an Annual Review process commencing in 1997/98. The Council's guidelines have generally followed those set out by Central Government and are summarised in paragraphs 5.0 to 5.6 below.
- 2.2 This Annual Review process of Discretionary and Discretionary (Top-Up) Rate Relief has continued and resulted in two reports to the Council's Finance & General Purposes Committee on 21 July 1998 (Minute 349/98) and 30 November 1999 (Minute 473/99).
- 2.3 These two annual reviews which the Head of Service has carried out vigorously have resulted in variations to the relief as detailed below:-
 - 5 cases where the 50% Relief has been withdrawn.
 - 2 cases where Relief has been reduced from 50% to 25%.
 - 4 cases where the 20% (top-up) Relief has been withdrawn.
- 2.4 Generally the withdrawal/variations to relief have been made due to the organisations now either having large capital funds and continuing trading profits, or where membership within the district has fallen below 50%.

3 CURRENT LEGISLATION

3.1 Members are reminded that Sections 43,45,47 and 48, Local Government Finance Act 1988 provide, in essence, for three types of relief which might be granted to charitable and kindred organisations. Relief may be awarded in respect of both occupied and unoccupied premises. They are:-

3.2 Mandatory Relief

This relief is available to all registered charities where the premises they occupy is used wholly or mainly for charitable purposes. The level of relief is fixed at 80% of the Business Rate payable and is funded wholly by Central Government. This includes charity shops which are covered under Section 64(10) of the legislation.

The Corporate Director (Finance & External Services) has delegated authority to grant this Mandatory Relief and the Head of Service recommends this policy should continue.

3.3 Discretionary 'top-up' of Mandatory Relief

This relief is available to those organisations that currently enjoy the Mandatory Relief and allows the Council to increase the level up to the full 100%. The Government's view is that the greater part of this discretionary top-up cost should be borne by the local community. Consequently, only 25% of the top-up relief is recoverable from the Government with the remaining 75% being funded locally.

As can be seen from Appendix "A" current Council policy grants this "top-up" relief to: -

- (a) the promotion of Scouting, Guides or Youth Activities;
- (b) the provision of welfare in the community;
- (c) the provision of Village or Community Halls.

The Head of Service believes this policy should continue.

3.4 Discretionary Relief

This type of relief is designed primarily for voluntary and other non-profit making organisations. The legislation describes these organisations as not being established or conducted for profit and whose main objects are charitable or are otherwise philanthropic, religious, concerned with education, social welfare, science, literature or the fine arts, or has premises used for the purposes of recreation, a club, society or other organisation.

Any relief so granted is funded 75% by the Government with the remaining 25% being funded locally.

- 3.5 The decision making process of both Discretionary and Discretionary (Top-Up) Rate Relief cannot be delegated to an Officer of the Council but must be taken by the Council. Relief can be granted at any level between 1% and 100%.

Reports are submitted to Members upon receipt of the original application and reviewed annually as per para.2.1.

- 3.6 In 1989 the Government issued national guidelines indicating that Local Authorities should adopt a generous stance. This being particularly so in the case of organisations who help fund their own activities by the running of bars and other social functions.

Current Council policy follows the national guidelines, which are listed below:-

4 RATE RELIEF CURRENTLY GRANTED

- 4.1 For information Appendix 'A' gives a complete list and summary of all organisations which are currently receiving Rate Relief together with details of the percentage relief granted.
- 4.2 It can be seen from the summary that currently the total cost to the General Fund is £18,983 of which £16,400 is attributable to the granting of Discretionary (top up) relief, the balance of £2,583 being the normal Discretionary relief. Also when comparing the amounts granted in previous years it can be seen how the Annual Reviews are reducing the amounts charged to the General Fund.

5 NATIONAL GUIDELINES

- 5.1 The Department of the Environment and the Welsh Office issued a joint Practice Note in August 1990 to give guidance to Authorities in England and Wales as to the criteria which they should take into consideration in the exercise of the discretion to grant Rate Relief. The note says that the criteria are not intended as a rigid set of rules and that it is for each authority to judge whether they are applicable in each case and what weight should be attached to them.
- 5.2 The Practice Note which has not been amended since issue recommends that –
- (a) authorities will wish to have readily understood policies for deciding whether or not to grant relief, and for determining the amount of relief. They should not, however, adopt a policy or a

rule, which allows a case to be disposed of without any consideration as to its individual merits. Any criteria by which the individual case is judged should be made public to help interested individuals and bodies;

- (b) although there is no statutory requirement for organisations to submit applications for relief, thus not precluding authorities from taking an initiative to grant relief if it so wished, authorities should encourage organisations to give details of all the matters they wish to be taken into account, and to provide any other relevant information such as audited accounts, constitution, membership details etc.;
- (c) authorities should consider notifying organisations of the reasons why relief has not been granted so that they can take steps to conform with the criteria which the authority has adopted.

5.3 The Criteria contained in the Practice Note is described only as “examples which might be adopted”, and reads as follows:-

5.4 Access:

- (i) Is membership open to all sections of the community? There may be legitimate restrictions placed on membership which relate, for example, to ability in a sport or to the achievement of a standard in the field covered by the organisation or where the capacity of the facility is limited. Clubs or organisations should not be considered if they have membership rates set at such a high level as to exclude the general community. 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 principles of open access.
- (ii) Does the organisation actively encourage membership from particular groups in the community, for example young people, women, older age groups, persons with a disability, ethnic minority's etc? An organisation which encouraged such membership might expect more sympathetic consideration than one which made no effort to attract members from groups which the authority considered to be particularly deserving of support.
- (iii) Are the facilities made available to people other than members, e.g. schools, casual public session's etc? The wider use of facilities should be encouraged, and rate relief might be one form of recognition that an organisation was promoting its facilities more widely.

5.5 Provision of facilities

- (i) Does the organisation provide training or education for its members? Are there schemes for particular groups to develop their skills e.g. young people, the disabled, retired people? An organisation providing such facilities might deserve more support than one, which did not.
- (ii) Have the facilities available been provided by self-help or grant aid? The fact that a club uses or has used self-help for construction or maintenance or had facilities funded by grant aid might be an indicator that they were more deserving of relief.
- (iii) Does the organisation run a bar? The mere existence of a bar should not in itself be a reason for not granting relief. The authority should look at the main purpose of the organisation. In sports clubs, for example, the balance between playing and non-playing members might provide a useful guide as to whether the main purpose of the club is sporting or social activities. A social club whose main aim is to bring together people with similar interests should not be excluded from relief just because of the existence of a licensed bar.
- (iv) Does the organisation provide facilities that indirectly relieve the authority of the need to do so, or enhance and supplement those that it does provide? Authorities should not refuse relief on the grounds that an organisation is in competition with the authority itself, but should look at the broader context of the needs of the community as a whole. Provision of facilities to meet a new need, not being provided by the authority itself but identified, as a priority for action, might be particularly deserving of support.

5.6 Other considerations:

- (i) Is the organisation affiliated to local or national organisations e.g. local sports or arts councils, national representative bodies? i.e. are they actively involved in local/national development of their interests?
- (ii) Is the membership drawn from people mainly resident in the charging authority's area? Although authorities will have in mind that 25% of the cost of any relief given will be borne by Taxpayers in their area, particular difficulties may arise with hereditaments which straddle local authorities' boundaries. In these cases and in those where premises are situated close to an authority's boundary, a proportion of the membership may come from another authority's area. Also, for geographical reasons, or because of the nature of the terrain, particular

facilities may be the only ones available for a wide area. In such case, the joint use of facilities by one or more similar organisations is not uncommon. In most cases there will be a measure of reciprocity between the membership of organisations from different areas.

- (iii) Authorities may wish to add further criteria or substitute relevant criteria that are appropriate to the furthering of their policies and the needs of the community, such as development programmes. They should also bear in mind the need to encourage new activities in the wide range of organisations for which relief from rates is available.

6 CONSIDERATION WHEN EXERCISING DISCRETIONARY RELIEF

- 6.1 The Head of Service considers that when exercising its “Discretionary Powers” the Council should abide by certain principles which apply in general to the exercise of powers which Parliament has entrusted to them. Attention is therefore drawn to the principles set out in “The Wednesbury Principles” and are as a result of Case Law, namely the decision in “Associated Provincial Picture Houses – v – Wednesbury Corporation (1948).
- 6.2 The “Wednesbury Principles” state that a Local Authority must not act unreasonably, or misdirect itself in law. It must not take into account matters which are immaterial, or fail to take into account matters which are material.
- 6.3 Lastly, it must not act so unreasonably that no reasonable authority could imagine that Parliament had given it power to act in that way. In addition, local authorities must not so act as to frustrate the object and purpose of the statute conferring the power.

7 APPEALS PROCEDURES

- 7.1 There is no direct appeals system when Relief is refused apart from “Judicial Review”.
- 7.2 Judicial Review is a High court Remedy which may be resorted to by any person or organisation under the rules of the Supreme Court and which is primarily concerned not with the facts of the case in question but with the way the facts have been considered.
- 7.3 Therefore whilst it is apparent that the Secretary of State’s guidance notes on Discretionary Relief is not authoritative in making decisions it would appear that the Courts would expect authorities to have at the very least, considered it in relation to the case in question and acted within the “Wednesbury Principles”.

7.4 Clearly one matter which comes out of the 'Case Law' with the exercise of Discretion is that decisions should be accompanied by reasons. It is apparent that the Courts do not take a very sympathetic view of decisions that cannot be justified by reasons given at the time the decision is taken.

7.5 For a decision to be reasonable it must have been taken on a logical basis and therefore the reasons should be given to the party affected. Failure to give reasons is likely to weaken a case if the matter proceeds to Court via Judicial Review.

8 SUMMARY

8.1 It is fact that this Council still follows the "National Guidelines" namely, Access (Para 5.4), Provision of Facilities (Para 5.5) and Other Considerations (Para 5.6) when deciding on applications for Discretionary Rate Relief.

8.2 The current application form and notes issued with the application explains these guidelines and are attached, see Appendix B and C.

8.3 However, recent Annual Reviews and Committee decisions have focussed more on the Financial Status of the various organisations who have applied for Relief and this particular area is not covered in our current literature, apart from a note on the application form that a copy of the last audited accounts are required.

8.4 Organisations could be warned when applying for Relief, in the accompanying notes, that their Financial Status may preclude them from being granted relief. However, the financial results of an organisation are often about the management of the organisation rather than an indication of need. It is however difficult to ignore large surpluses disclosed by an organisation.

8.5 Also this Council's decisions do not normally have recorded in the Minutes the reasons for any refusal, this being an area which should be addressed in case of an appeal through the High Court.

8.6 Members should also be aware that when considering cases the "Wednesbury Principles" should be observed namely that matters that are immaterial to any application should not be taken into account when considering cases.

8.7 Another Council requirement, mainly from sports clubs is that they should be registered as a member of the Rochford Sports Council. This is a requirement which should continue and gives greater representation on the Sports Council.

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- 8.8 The organisations should also in future be aware of the Council's Leisure Strategy and where possible explain in their application how they are able to support this strategy.
- 8.9 Finally, where clubs/organisations have less than 50% membership resident in the Rochford District area the amount of relief has been reduced or in one recent case refused altogether. As 25% of the cost of any relief given is borne by local Taxpayers this policy should continue.

9 RESOURCE IMPLICATIONS

- 9.1 Discretionary Relief costs the district 25% of any amount granted. Discretionary (top-up) Relief costs the District 75% of any amount granted.
Mandatory Relief. There is a zero charge to the District.

9 LEGAL IMPLICATIONS

- 9.1 Sections 47/48 Local Government Finance Act 1988 provides Local Authorities with the powers to reduce or remit the Business Rate Liability.

10 PARISH IMPLICATIONS

- 10.1 Any relief granted may help the associations, clubs etc. to financially survive in the local communities.

11 RECOMMENDATION

It is proposed that this Sub-Committee **RECOMMENDS**

- (1) That when considering applications for Mandatory Relief the Corporate Director (Finance & External Services) continues to exercise his delegated authority to grant this Relief.
- (2) That when considering applications for Discretionary Rate Relief:-
 - The Central Government's "National Guidelines" continue to be followed.
 - That "Top-Up" Relief continue to be granted to those organisations highlighted (a) to (c) in paragraph 3.3 of this report.
 - The Financial Status of each club/organisation be scrutinised and a copy of their latest accounts be submitted to the Committee.

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- That consideration be taken as to whether the organisation supports the Council's Leisure Strategy.
 - If Rate Relief is refused the Council Minutes must specify the reasons for refusal.
 - The "Wednesbury Principles" of reasonableness always be observed when considering cases.
 - That sports clubs in particular must be registered members of the Rochford Sports Council.
 - Where membership of clubs/organisations have less than 50% of their members living within the area their relief be reduced pro rata.
 - All Council "handouts" concerning relief be revised to reflect the above recommendations.

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Background Papers:

Local Government Finance Act 1988.

National Guidelines referring to the granting of Rate Relief.

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