

<u>MEETING</u> POLICY AND RESOURCES COMMITTEE
<u>DATE AND TIME</u> WEDNESDAY 22ND FEBRUARY, 2023 AT 7.00 PM
<u>VENUE</u> HENDON TOWN HALL, THE BURROUGHS, LONDON NW4 4BQ

Dear Councillors,

Please find enclosed additional papers relating to the following items for the above mentioned meeting which were not available at the time of collation of the agenda.

Item No	Title of Report	Pages
	BUSINESS PLANNING (INCLUDING BOOST BUSINESS PLAN) - Business Rates Discretionary Relief and Hardship Policy	3 - 16

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London Borough of Barnet Business Rates Discretionary Relief and Hardship Policy 2023 - 2026

February 2023

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1. Introduction

- 1.1. The [Local Government Finance Act 1988](#) makes provision for local authorities to award certain reliefs. This policy relates to the discretionary powers for Barnet Council to award business rates relief under Section 44A, Section 47 and Section 49 of the Local Government Finance Act 1988 as amended by the [Localism Act 2011](#).
- 1.2. This policy document sets out the Council's approach to providing discretionary rate relief to local charities and not-for-profit organisations between 1st April 2023 to 31st March 2026. It outlines how we will use the Council's local discretionary powers to grant discretionary rate relief to organisations that meet the schemes criteria.
- 1.3. The policy recognises that public funds are not unlimited and that a proportion of the costs of any relief granted are borne by Council Tax Payers. Therefore, one of the criteria for making an award under the scheme is ensuring that money invested in this way will result in economic and/or community benefit for residents.

2. Scope of the Policy

- 2.1. The Council's Charity and Not-for-Profit Discretionary Rate Relief policy covers Discretionary Rate Relief under which:
 - Up to **20% relief** can be awarded to registered charities and registered sports clubs that qualify for mandatory rate relief.
 - Up to **100%** relief can be awarded to organisations that do not qualify for mandatory relief, but who meet the eligibility criteria stipulated in this policy.

3. General Information

- 3.1. This policy ensures:
 - There is a framework under which ratepayers applying for relief are treated in a fair, consistent, and equal manner.
 - The overall interest of the Council Tax Payers of the borough is safeguarded by ensuring that funds are allocated and used in the most effective and economic way.
- 3.2. The Council will consider each individual case in accordance with the criteria set out in this policy. Consideration may be given to extenuating circumstances falling outside the stated criteria, providing they meet the general principles of the scheme.

- 3.3. In accordance with the Council's Constitution an Executive Director may determine discretionary rate relief applications which fall outside the scope of this approved policy under exceptional circumstances.
- 3.4. Discretionary Rate Relief is not a matter of right; the Council is entitled through this policy to determine different levels of relief according to the nature and circumstances of individual organisations and the benefits they deliver to the wider community of Barnet.
- 3.5. The Council's ability to grant Discretionary Rate Relief may be limited by other factors, such as for example, Subsidy Limitations. Full guidance on Subsidy Limitations can be found [here](#).
- 3.6. Recipients of relief are required to notify the Council immediately of any changes of circumstances which may have an impact upon the award granted.

4. Maximum Awards

- 4.1. The Council can grant the following levels of relief to organisations applying for Charity and Not-for-Profit Discretionary Rate Relief.

Up to 20% Top Up Discretionary Rate Relief for Registered Charities and Registered Amateur Sports Club:

Charity Top Up Relief of up to 20 per cent can be awarded on premises occupied by organisations in receipt of Mandatory Rate Relief, including:

- Registered Charities (registered with the Charity Commission) for premises which are wholly or mainly used for charitable purposes.
- Registered Community Amateur Sports Clubs (CASC) registered as such under the Corporation Tax Act 2010, for premises wholly or mainly used for the purpose of the club, or for the purpose of the club and other CASCs.

This is because the Local Government Finance Act 1998 (LGFA) requires Local Authorities to grant 80% Mandatory business rate relief reduction to businesses meeting the conditions above.

Up to 100% Discretionary Rate Relief for Charities and Not-for-Profit organisations:

Barnet council will consider awarding Discretionary Rate Relief of up to 100% on premises occupied by certain organisations or institutions that do not qualify for Mandatory Rate Relief, but that meet the criteria in this scheme, including:

- Properties occupied by organisations or institutions that are not-for-profit, and whose main objects are charitable or otherwise philanthropic.
- Properties occupied by not-for-profit sports or social clubs or societies, or other organisations for the purpose of recreation.

- Other organisations meeting the policy criteria that the Council believes should receive relief having regard to the interests of persons liable to pay council tax.
- 4.2. Definitions of Charities and Not for Profit organisations, along with the maximum award values are listed in points 5 to 8 of this policy.

5. Charities and Kindred Organisations

- 5.1. Where a property is occupied by a charity or trustees for a charity, and it is used wholly or mainly for charitable purposes (whether of that charity solely, or of that and other charities), the ratepayers will qualify for a Mandatory Allowance of 80%, and therefore the rate liability will be 20% of the full rate.
- 5.2. Where the ratepayer of an unoccupied property is a charity or trustees for a charity, and it appears that when next in use the property will be wholly or mainly used for charitable purposes (whether of that charity, or of that and other charities), there will be no rates payable.
- 5.3. The Authority has no discretion regarding whether to award Mandatory Relief, however the Authority must satisfy itself that the statutory criteria is met. To assist the Authority in this task, guidance is provided in both the Local Government Finance Act 1988, and by reference to other enactments and case law.

A "CHARITY" is defined as

"an institution or other organisation established for charitable purposes only, or any persons administering a trust established for charitable purposes only".

Confirmation of Charity Status

- 5.4. There are a number of sources that can be used to confirm "charitable status"; the most common is by reference to:
- The Register of Charities maintained by the Charity Commissioners under Section 4 Charities Act 1960, and an entry in this register is conclusive proof that an organisation is a charity.
 - Absence from the register does not mean an organisation has not been established for charitable purposes as certain organisations are exempt from registration.
- 5.5. These are:
- The Church Commissioners.
 - Units of The Scout Association and Girl guiding UK.
 - Any registered society within the meaning of the Friendly Societies Act 1896 - 1974.
 - Voluntary schools within the meaning of the Education Act 1944 - 1980.

- 5.6. If neither of the above are applicable, the determination of whether an organisation has been established for charitable purposes may be difficult.
- 5.7. However, 4 general principles have been established through case law.
1. That it should be a trust for the relief of poverty; or,
 2. A trust for the advancement of religion; or,
 3. A trust for the advancement of education; or,
 4. A trust for other purposes that is beneficial to the community.

and these may be used to consider an organisation's claim if no other evidence is available.

- 5.8. Once it has been established that an organisation is charitable by any of the above methods, to award the relief the Authority must also be satisfied that the hereditament is used wholly or mainly for a charitable purpose. To assist the Authority to confirm these criteria are satisfied, reference can be made to case law.

Charity Shops

- 5.9. Charity shops are entitled to Mandatory Relief if they use premises:
- Wholly or mainly for the sale of goods donated to the charity; and,
 - The net proceeds of the sale of goods are applied to the purpose of the charity.

Charitable and Community Amateur Sports Clubs Relief

- 5.10. Charities are entitled to relief from rates on any non-domestic property that is wholly or mainly used for charitable purposes. Registered Community Amateur Sports Clubs (CASCs) also qualify for relief on any non-domestic property that is wholly or mainly used for the purpose of that club or that club and of other such registered clubs. Relief is given at 80% of the bill. Local councils have discretion to give further relief on the remaining bill.

Discretionary Relief for Charities – 'Top Up'

- 5.11. The Council will consider applications for a discretionary rate relief from charities based on their own merits, on a case-by-case basis.
- 5.12. Discretionary Relief may be awarded where the ratepayer is a charity or trustees for a charity, and the property is wholly or mainly used for charitable purposes (as with Mandatory Relief). In such cases, discretionary relief granted can be anything from 0% to 20%.
- 5.13. In determining the application, the following matters will be taken into consideration:

- Unless a special case for hardship can be proved, ‘Top Up’ relief to national or international charities including charity shops or other premises should not be granted.
- Local charity to be defined as set up with the sole purpose of assisting local residents of Barnet Council and whose main office is situated within the Barnet borough.
- Academy, Free, Grant Maintained, Faith and Trust Status schools are classified as charities and therefore receive 80% mandatory relief. ‘Top Up’ relief for other schools and educational establishments who receive central or local government support will not be granted unless a special case for hardship can be proved.

5.14. The scoring criteria for awards of ‘Top Up’ relief are as follows:

6. Maximum Relief for Registered Charities and Registered Amateur Sports Club 20%

Narrative	% of Relief
National Charity with no specific affiliation to the area	0%
Local Charity affiliated to local area	15%
Reserves as % of gross rate liability less than 300%	5%

7. Not for Profit and Community Interest Companies

Not for Profit (NfP)

- 7.1. Applications for up to 100% discretionary relief can be made to any business that does not qualify for mandatory relief. This will be considered where the property is not an excepted property (see [definition](#)), and where all or part of it is occupied by one or more institutions or other organisations which are:
- not established or conducted for profit,
 - whose aims are charitable or otherwise philanthropic, or
 - concerned with the promotion of social welfare, education, science, literature, or the fine arts.
- 7.2. Also, discretionary relief may be granted where the property is wholly or mainly used for the purpose of recreation and all or part of the property is occupied for the purpose of a club, society or other organisation not established or conducted for profit.
- 7.3. The Council will consider applications for discretionary rate relief from non-profit making organisations based on their own merits, on a case-by-case basis.

7.4. More information on entitlement under these criteria can be found [below](#).

Community Interest Companies (CIC)

7.5. CICs are limited companies designed specifically for those wishing to operate for the benefit of the community rather than for the benefit of the owners of the company. This means that a CIC cannot be formed or used solely for the personal gain of a particular person, or group of people. CICs can be limited by shares, or by guarantee, and have a statutory “Asset Lock” to prevent the assets and profits being distributed, except as permitted by legislation. This ensures the assets and profits are retained within the CIC for community purposes, or transferred to another asset-locked organisation, such as another CIC or charity. A company that is a charity cannot be a CIC, unless it gives up its charitable status.

More information on entitlement under these criteria can be found [below](#).

8. Maximum Relief for Not for Profit or Community Interest Companies

8.1. Relief to any one organisation will be limited to a total Rateable Value of £125,000.

Where clubs or organisations have reserves or savings the Council will expect these to be used as a contribution towards the rates liability outstanding. If following payment, there remains any outstanding rates any application will be considered on the following criteria:

a. Members resident in the borough of Barnet

Whilst the Council accept that clubs and organisations provide a valuable leisure facility, it must be remembered that any relief granted is partially paid for by Council Tax Payers. As such, consideration is given as to the percentage of members/users of the facility who reside in our area.

Barnet residents as Percentage of Overall Membership	% of Relief
75% and over	65%
Between 50% and 74%	35%
Between 25% and 49%	20%
24% and below	0%

b. How are funds raised?

The Council is keen to see how clubs or organisations are trying to help themselves and be self-sufficient wherever possible. Whilst income can be received by external grants from other bodies (e.g.) the lottery or another public-sector body; charging subscriptions and running fundraising events can also raise income.

Self-Financing Income	% of Relief
60% and over	35%
Between 25% and 59%	15%

An Excepted Property

- 8.2. An excepted property is one occupied by a Billing or Precepting Authority and prevents authorities awarding relief to themselves. This does not prevent the Council from being the landlord of a property.

Award of Discretionary Relief

- 8.3. The Authority requests that an application for Discretionary Relief be in writing, and that renewal of applications be made in writing biennially at the beginning of each financial year.

Changes in Liability

- 8.4. The Organisation must inform the Council of any change in circumstances, which might affect eligibility for Relief.

9. Eligibility

- 9.1. Applicants must fulfil all of the following criteria for any application for Discretionary Rate Relief to be considered (evidence may be required):
- a. The applicant must be:
 - i. a charity, or
 - ii. exempt from registration as a charity,
 - iii. a non-profit making organisation
 - iv. a registered community amateur sports club (CASC)
 - b. The property must be wholly or mainly used for the purpose of one or more institutions, or other organisations which are not established or conducted for profit and whose main objectives are charitable or otherwise philanthropic or religious or concerned with education, social welfare, science, literature, or the fine arts; or
 - c. The property must be wholly or mainly used for the purposes of recreation, and wholly or mainly occupied for the purposes of a club, society or other organisation not established or conducted for profit.
- The relevant premises must be in the borough of Barnet.
 - The organisation's registered address must be within Barnet.
 - The organisation is ensuring that money invested will result in economic and/or community benefit for residents.
 - The organisation must not be subject to investigation by a relevant regulator, which may include the Charity Commission, Ofsted or Care Quality Commission.

- The organisation must have filed up-to-date accounts with the appropriate national authority at the time of application, where relevant.

10. Exclusions

10.1 Not all charities and not-for-profit organisations will qualify for Charity and Not-for-Profit Discretionary Rate Relief, though may qualify for Mandatory Rate Relief. The following organisations or premises will not be considered for Discretionary Rate Relief regardless of their status:

- Profit making organisations
- Administration offices for national charities
- Overseas aid organisations
- Charity shops and cafes operated by national charities or associated organisations
- Housing Associations
- Private schools, colleges, nurseries, or schools that are not within the Barnet family of schools
- Buildings used for worship or promotion of religious belief
- Organisations operating a restrictive membership policy for which a fee is payable
- Empty properties
- Car parking spaces

11. Considerations

11.1. The London Borough of Barnet is keen to ensure any relief awarded is justified and directed to those organisations making a valuable contribution to the well-being of residents.

11.2. The following factors will be considered by the Head of Finance, or the Executive Director of Strategy & Resources (S151 officer) when deciding whether to recommend the granting of Discretionary Business Rate Relief for charities and non-profit making organisations.

- The organisation can demonstrate it provides a major local contribution and serves the needs of London Borough of Barnet residents.
- The organisation contributes to the area and provides benefits to the local community.
- The organisation provides facilities that satisfy a local need or indirectly relieve the Council of the need to do so or enhance and supplement those services the Council does provide.
- It is open to all sections of the community (not unduly restricted) and is mainly available to London Borough of Barnet residents. This will need to be evidenced and ensuring that money invested will result in economic and/or community benefit for residents.
- The organisation has a clear policy on equal opportunity.
- The organisation provides training, education, or schemes for its users, or encourages participation from groups in the community, such as young people, the elderly, the disabled, minority groups, etc.

- If there is a licensed bar as part of the premises, this must not be the principal activity undertaken and should be a minor function in relation to the services provided by the organisation.
- The organisation must not have any unauthorised indebtedness with regards to Business rates liability. Business Rates are due and payable until a claim for discretionary rate relief is decided.
- The organisations business plan and how it intends to support itself in future.
- The list here is not exhaustive and the Council will consider other issues put forward by organisations.

12. Duration of Award

- 12.1. All awards will be awarded with a fixed end date of 31 March of the following financial year of award. At the end of the financial year, we reserve the right to extend the relief for a further year to align with 8.3 regarding bi-annual applications.
- ***Example: Discretionary Rate Relief application received August 2023. Period of award will be August 2023 to 31 March 2025.***
- 12.2. Prior to Discretionary Rate Relief ending, applications will be sent inviting recipients to re-apply, this will ensure the conditions on which relief was previously awarded still apply to their organisation. This will help ensure that the Council's records remain accurate.
- 12.3. A change of ratepayer or a change to the property that the ratepayer occupies will automatically end their award of Discretionary Rate Relief from the date of the change. A new application based on the changed circumstances would have to be made for further Discretionary Rate Relief to be considered.

13. Application Process

- 13.1. Applications must be made by the registered ratepayer using the Council's standard forms which are available on the Council website at: [Business rates discounts, exemptions and relief | Barnet Council](#)
- 13.2. Applications must explain the purpose and activities of the organisation, providing details of the charitable objects, or organisational purpose as set out in the organisation's constitution or articles of association, clearly showing how that organisation supports or will support the Council's priorities.
- 13.3. Applicants may be required to supply supporting information with their application as detailed in the application form. If any organisation fails to provide information/evidence within the required time limits, their application will not be considered.
- 13.4. If an organisation is unable to provide any of the above, then a detailed explanation outlining your reason(s) must be provided. In some circumstances we may decide that it is necessary to visit the rated property to assist the decision process.

- 13.5. Business Rates are still due and payable as previously billed during the application process and until a final decision has been advised. Any overpayment will be refunded.
- 13.6. Applicants will be notified in writing of the outcome of their application once a decision has been made.
- 13.7. Discretionary Rates Relief will not normally be awarded in respect of any day prior to the day that an application is received. However, in exceptional circumstances consideration may be given to awarding rate relief for a retrospective period where the ratepayer can demonstrate good cause for not submitting the application earlier.
- 13.8. No consideration shall be given to an award for a retrospective period where the Council is not able to verify to its satisfaction that the circumstances giving rise to the application pertained for that period.
- 13.9. Where an application has been refused but the ratepayer believes there are extenuating circumstances, the ratepayer may ask for the matter to be reviewed by the Executive Director of Strategy & Resources (S151 officer).

14. Withdrawal of Relief

- 14.1. The Local Government Finance Act 1988 requires that the local authority give a minimum 12 months' notice for the withdrawal of Discretionary Rate Relief. This notice will be given alongside the award of relief to successful applicants where applicable.

LB Barnet Hardship Policy 2023 - 2026

15. Hardship Legislative requirements

- 15.1. Section 49 of the Local Government Finance Act 1988 gives the authority the discretion to remit all or part of a ratepayer's debt if it is satisfied that a ratepayer would suffer hardship if it did not do so, and it is reasonable to do so having regard to the interests of the local taxpayers. Hardship should not be confused with competition and this should not normally be a tool to influence market forces.

16. Hardship Considerations

- 16.1. Each application must be carefully considered on its own merits. Individual ratepayers or limited companies can make applications.
- (i) Companies - The interests of local taxpayers go wider than just the financial implications. For example, where the employment prospects in the area could be worsened by a company going out of business, or the amenities available to Barnet residents in an area might be reduced.
 - (ii) Sole Traders - Each application must be individually considered, however Barnet considers that the following criteria can be deemed appropriate for the allowing of relief, provided of course that hardship can be proved and having regard to the interests of the local taxpayers:
 - the ratepayer(s) is/are dying of an incurable illness.
 - the ratepayer has had to close the business to look after a relative dying of an incurable illness
 - the ratepayer manages a shop which provides a service to the local community which could not be replaced if he/she stopped trading.
 - the business has been affected by temporary action by the Council which was unavoidable, and no allowance can be given by the Valuation Officer.

17. Hardship Exclusions

- 17.1. A reduction in business rates on grounds of hardship should be the exception rather than the rule.
- 17.2. Claims for hardship in respect of empty rates will not be considered, on the basis that the premises could be sold or let at a peppercorn rent, if necessary, in order to relieve the owner of rate liabilities.
- 17.3. Relief will only be given for the period where there is clear evidence of hardship; it may be given for short periods subject to review and may be renewed following review.

- 17.4. No relief can be granted for a retrospective period, i.e., for the previous financial year.

18. Hardship Revocation

- 18.1. In the event of a change in circumstances of the ratepayer, the relief awarded would be apportioned, and may be repayable to the council.

19. Hardship Application Process

- 19.1. Ratepayers will be able to apply for hardship relief by contacting the business rates team, and by completing a form available on the council's [website](#). Evidence of registration and/or audited accounts will need to be supplied. Once the application has been made and processed by the business rates team, a recommendation shall be made to the Head of Finance for Exchequer Services or the Executive Director of Strategy & Resources (S151 officer), who would then review the application before confirming the reduction.
- 19.2. Where an application has been refused but the ratepayer believes there are extenuating circumstances, the ratepayer may ask for the matter to be reviewed by the Executive Director of Strategy & Resources (S151 officer).