


Decision maker(s)	Leadership Team Date of report: 31/01/2024 Date of decision: 07/02/2024 Forward Plan reference: KD1008916	 THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA
Report title (decision subject)	Business Rates - Expanded Retail Discount Scheme for 2024-25	
Reporting officer	Sophie Evans, Director of Customer Delivery	
Key decision	Yes	
Access to information classification	Public	

1. EXECUTIVE SUMMARY

- 1.1. In the autumn statement on 22 November 2023, the Government announced a new Expanded Retail Discount Scheme for 2024/25 (“the Scheme”). This is a continuation of the assistance the Government has provided to ratepayers from the start of the pandemic in 2020/21 through to 2023/24. Full guidance for the 2024/25 scheme was published on 15 December 2023. A link to this guidance is under the Supporting and Background papers section and in this report it is referred to as “the Guidance”.
- 1.2. Since 2020 RBKC has distributed nearly £447m through previous iterations of the Scheme to businesses across the borough. Over 3,500 Kensington & Chelsea businesses have benefited from these arrangements to date.
- 1.3. The Scheme for 2024/25 is proposed to provide business rate relief of up to 75% (capped at £110k per business) for qualifying businesses, which include shops, hotels, restaurants and gyms. It is estimated that it will benefit around 2,049 businesses across the borough, with relief estimated at around £50m being distributed.
- 1.4. This Scheme is delivered under discretionary powers which means that billing authorities can, in theory, determine their own schemes locally. However detailed Guidance has been issued by government for the Scheme and in order to receive full reimbursement for their share of the cost of the Scheme, billing

authorities must ensure that the relief awarded falls within the definitions of the Guidance.

- 1.5. This report recommends that the Council adopts the Guidance for the Scheme without variation.

2. RECOMMENDATIONS

The Leadership Team is recommended to:

- 2.1. Adopt a discretionary Expanded Retail Discount Scheme for business rates for 2024/25 as set out in the Government's Guidance and in the report below without variation.
- 2.2. Agree the approach of assessing existing ratepayers' eligibility for the Scheme using Council data rather than requiring individual applications.

3. REASONS FOR DECISION

- 3.1. The Government has asked local billing authorities to deliver the Expanded Retail Discount scheme for 2024/25 ("the Scheme") using their existing discretionary powers under S.47 of the Local Government Finance Act 1988.
- 3.2. The Government will fully reimburse billing authorities for the local share of the Scheme, using a grant under section 31 of the Local Government Act 2003.
- 3.3. In line with S.47 of the Local Government Finance Act 1988, it is for individual billing authorities to adopt local relief schemes and determine in each individual case when, having regard to the guidance, to grant relief using these discretionary powers.
- 3.4. In practice the Government has issued detailed Guidance concerning the operation of the schemes (see Background papers section below for a link to that Guidance). Reimbursement will only be made for by the government for awards of relief that fall within the definitions of this Guidance, as listed in Appendix 1.
- 3.5. It is therefore recommended that the Council adopts the Guidance without variation for both schemes to ensure it can claim reimbursement for relief awarded under the schemes to rate payers. This is in line with the approach the Council has adopted to date.

4. BACKGROUND

- 4.1. The Council collects National Non-Domestic Rates (NNDR) from 8,858 non-domestic properties.
- 4.2. In the autumn statement on 22 November 2023, the Government announced a new Expanded Retail Discount Scheme for 2024/25. This is a continuation of the schemes introduced for 2020/21, 2021/22, 2022/23 and 2023/24 to assist certain types of businesses such as shops, hotels, restaurants and gyms through and post-pandemic. These schemes were delivered under discretionary powers and therefore, while the Government issued detailed advice on the eligibility criteria for them, it required billing authorities to determine their own schemes locally.

- 4.3. Ratepayers qualifying under this Scheme for 2024/25, if approved, would receive relief of 75%, subject to a cap of £110,000 per business. This is received by ratepayers in the form of a discount from their NNDR bills.
- 4.4. In order to receive full reimbursement for the cost of these schemes, billing authorities must ensure that the relief awarded falls within the definitions of the Guidance provided by Government for the scheme.
- 4.5. The range of business types included in the Guidance is extensive, and therefore, the Council adopted the government guidance for the 2020/21, 2021/22, 2022/23 and 2023/24 schemes without variation. A list of the business types eligible for and excluded from the Guidance for 2024/25 is in Appendix A.

5. PROPOSALS AND ISSUES

- 5.1. It is proposed that the Expanded Retail Discount is applied to bills automatically. The Council holds sufficient data to identify qualifying businesses and such an approach will avoid businesses having to go through an application process or having their bills amended.
- 5.2. The Scheme engages the subsidy control regime which came into force in January 2023. All recipients of the reliefs would receive an email or letter providing a link to the Government guidance for the Scheme. This will enable them to refuse the relief (or for the Council to refuse to grant the relief) if, for example, they are likely to exceed the small amounts of financial assistance limit in the subsidy control rules, which, in a three-year period (consisting of the 2024/25 year and the two previous financial years) is a maximum of £315,000 utilising this exemption. Further information on the small financial assistance exemption is included in the Legal implications below, including a possible alternative approach to relying on that exemption.
- 5.3. Ratepayers becoming liable for rates after annual billing will be able to apply for the retail discount by completing an on-line form.

6. OPTIONS AND ANALYSIS

- 6.1. The following options have been explored by officers:

Design of the Scheme

- 6.2. **Option 1** – Do not adopt a local discretionary scheme at all for NNDR relief for retail and other sectors.
- 6.3. This would mean that the Council's taxpayers would not benefit from the relief that the government is prepared to fully reimburse.
- 6.4. **This option is therefore not recommended.**
- 6.5. **Option 2** - Develop a local scheme that varies from Government Guidance
- 6.6. Whilst the Council's discretionary powers under S.47 of the Local Government Finance Act 1988 make this possible, detailed Guidance has been published. Reimbursement of any relief awarded is dependent upon the Guidance being followed.
- 6.7. Any variation from the Guidance would, therefore, introduce a risk that the Council could not recover reliefs paid to businesses.
- 6.8. **This option is, therefore, not recommended.**

- 6.9. **Option 2** – Adopt Government Guidance without variation for the scheme
- 6.10. This approach will ensure that the Council discharges the scheme within the government guidance and can therefore claim reimbursement. It also supports the approach adopted to date and confirms the ongoing award of reliefs to individual ratepayers after 30 September 2024.

- 6.11. **This option is recommended.**

Whether application by individual ratepayers is required

- 6.12. **Option 1** – Require businesses who believe they qualify for the Scheme to apply for relief.
- 6.13. The Council holds sufficient data to identify businesses who qualify for the scheme; asking businesses to provide information, therefore, places an unnecessary burden on them.
- 6.14. Evidence gathered on similar schemes indicates that where an application process is introduced uptake is lower, meaning that less qualifying businesses benefit from the scheme.
- 6.15. **This option is, therefore, not recommended.**
- 6.16. **Option 2** - Automatically apply reliefs to qualifying businesses on the basis of data held by the Council.
- 6.17. The Council holds sufficient data to identify businesses who qualify for either scheme. All recipients will be provided with sufficient information. For those who have received significant relief over past years, they will be subject to further checking and the opportunity to refuse the relief (or be refused it) if there are subsidy control concerns (see Legal implications below).
- 6.18. Processes have been proposed to ensure that ratepayers becoming liable for rates after annual billing will be able to apply for the retail discount by completing an on-line form.

- 6.19. **This option is recommended.**

7. CONSULTATION

- 7.1. The Lead Member for Finance and Customer Delivery and the Lead Member for Local Economy and Employment have been consulted on the report and support the recommendations.

8. EQUALITY IMPLICATIONS

- 8.1. The Council does not hold any demographic data about the affected organisations and so an EqIA cannot be undertaken to determine any impact on particular groups.
- 8.2. It is also noted that there is no mechanism within the Government's guidance to differentiate between ratepayers on this basis. The schemes are open to all qualifying businesses in the borough and the qualifying criteria are extensive.
- 8.3. The relief percentage of 75%, cash cap of £110,000 per business for 2024/25 and subsidy limit of £315,000 for the three years 2022/23, 2023/24 and 2024/25 for the Expanded Retail Relief Scheme for 2024/25 is a matter over which there is no discretion.

9. LEGAL IMPLICATIONS

- 9.1. The power to award local Business Rates reliefs is contained in section 47 of the Local Government Finance Act 1988. This gives the Council, as a billing authority, discretion to administer its own business rates reliefs. The Expanded Retail Discount scheme is a measure for 2024/25 and see the government make available the funding to reimburse authorities that adopt such a scheme. The Government is not changing the legislation relating to mandatory discounts and reliefs available to properties. Instead, the Government will, in line with the eligibility criteria set out in the guidance for the scheme, reimburse local authorities that use their own discretionary relief powers under section 47 of the Local Government Finance Act 1988 (as amended), to grant relief.
- 9.2. Each grant of relief to an individual ratepayer under the Scheme (assuming it is approved) is probably a Subsidy under subsidy control legislation. The Subsidy Control Act 2022 (“the Act”) came into force in January 2023, and means that approaches taken in previous years have to be adapted as the exemptions have changed from the old state aid rules. The Act places certain duties on the Council, including to assess all subsidies under the subsidy control principles set out in the Act. There is also detailed statutory guidance about applying the Subsidy Control Act 2022, to which the Council is required to have regard.
- 9.3. There are two ways of minimising the potential for challenge in relation to the individual subsidies, though challenge is considered unlikely. The first is known as Minimal Financial Assistance (“MFA”), and requires that all subsidies **for which MFA is claimed** (so the subsidy in the form of relief for 2024/25, when taken together with other subsidies received by the ratepayer in the same financial year (from **any** public authority), plus the two previous financial years), is not above £315,000. This is referred to in the Guidance as available to authorities, and accepts self-declaration as a proportionate way of eliciting further information. The Guidance includes a sample letter for sending to ratepayers for them to confirm what subsidies they have received and for which MFA was claimed, to assess whether the threshold of £315,000 was reached,
- 9.4. It is noted that in accordance with the Guidance, relief under the Expanded Retail Discount Scheme is limited to the cap of £110,000 for 2024/25 and where it is clear to the Council that the ratepayer may breach the MFA limit of £315,000 over the three years from 2022/23 to 2024/25 just from business rates relief from the Council, then the Council should automatically withhold the relief. The Council should further monitor this in less clear-cut cases by asking the ratepayer to provide relevant information in response to the automatic award of the relief, supplemented by its own records. Where MFA exemption is available, then the individual relief still has to be registered on the government database as a subsidy if over £100,000.
- 9.5. Secondly, as an alternative to MFA, the Council could choose to register this 2024/25 relief scheme as a subsidy scheme. A search of the government’s central database of subsidies show that other authorities did this for 2023/24 discretionary rate relief. This will require assessment of the scheme against the subsidy control principles, registration and then waiting a month for the challenge period to expire. However once this has been gone through then the individual subsidies can be given without having to individually assess if the MFA level has been already exceeded. It is not considered that following this alternative approach will mean that the Guidance is being departed from, as it is only in a sample letter to ratepayers that the issue of subsidy control is

identified as proceeding via the MFA route, and indeed it is for each local authority to satisfy itself as to compliance with the subsidy control regime.

- 9.6. Overall the adoption of a subsidy scheme is considered to carry less risk for the Council, rather than using the MFA approach, and also does not require the Council to satisfy itself about whether funding received (from any public authority) under the MFA exemption is under £315,000. However the drawback of this approach is that it takes time to assess and register the subsidy scheme, and then waiting 30 days for the challenge period to expire. It may therefore be an approach better explored if the Scheme is carried into future years.
- 9.7. As stated above, it is considered highly unlikely that a challenge to any individual subsidy will be received, however Legal Services is able to advise the service area further about the merits of each approach.
- 9.8. The Council must ensure that the Scheme follow the Guidance issued by the Government so that the ability to be reimbursed is not put at risk.
- 9.9. In line with the restrictions in section 47(8A) of the Local Government Finance Act 1988, billing authorities cannot grant the discount to themselves, nor to most precepting authorities or a functional body within the meaning of the Greater London Authority Act 1999.

10. FINANCIAL AND RESOURCES IMPLICATIONS

- 10.1. The Director of Financial Management has been consulted and is satisfied that the 2024/25 Expanded Retail Discount scheme has been designed to ensure that maximum financial support can be provided to eligible businesses in the borough.
- 10.2. The Government expects the discounts and relief schemes to be delivered and has committed to fully reimbursing billing authorities for the actual cost to them under the rates retention scheme. This is set out in paragraph 8 of the 2024/25 Retail, Hospitality and Leisure Relief Scheme guidance.
- 10.3. The Government has indicated that additional burdens funding may be available to meet the cost of administering the discount scheme, but this is yet to be confirmed. At this stage, any administrative costs are therefore expected to be met from existing budgets.
- 10.4. No adverse budgetary implications are expected to arise in relation to delivery of the schemes.
- 10.5. The estimated cost of the scheme in 2024/25 is shown in Table 1.

Table 1 – Estimated Total Cost of Relief Scheme for 2024/25

Expanded Retail Discount Scheme and Retail, Hospitality and Leisure Relief Scheme	Number of Business Properties Receiving a Discount	Total Estimated Cost £m
2024/25 Expanded Retail Discount Scheme	2,049	50.0

Sophie Evans
Director of Customer Delivery

Background papers used in the preparation of this report:

None

Supporting (published) papers used in the preparation of this report:

Guidance set out in the Department for Levelling Up, Housing & Communities and Ministry of Housing Communities & Local Government’s Guidance published on 15 December 2023, copies of which are available on request or on the link below.

[Business Rates Relief: 2024/25 Retail, Hospitality and Leisure Scheme - GOV.UK \(www.gov.uk\)](https://www.gov.uk/business-rates-relief-2024-25-retail-hospitality-and-leisure-scheme)

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