



**Elmbridge**  
Borough Council  
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# Elmbridge Borough Council Expanded Local Retail Discount Scheme from 1 July 2021 to 31 March 2022

## About the Scheme

This scheme is intended to support local businesses and is to be known as the 'Expanded Local Retail Discount Scheme' in operation from 1 July 2021.

This document sets out the criteria used to determine properties eligible for the 'Expanded Local Retail Discount Scheme' in Elmbridge from 1 July 2021.

## 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. On 3 March 2021 the government confirmed that the Expanded Retail Discount would continue to apply in 2021/22 at 100% for three months, from 1 April 2021 to 30 June 2021, and at 66% for the remaining period, from 1 July 2021 to 31 March 2022. The Government confirmed that there would be no cash cap on the relief received for the period from 1 April 2021 to 30 June 2021. From 1 July 2021, relief will be capped at £105,000 per business, or £2 million per business where the business is in occupation of a property that was required, or would have been required, to close, based on the law and guidance applicable on 5 January 2021.

This scheme applies to the 66% discount for the period from 1 July 2021 to 31 March 2022. A separate determined scheme applies up to 30 June 2021.

Where the Council has applied locally funded relief not reimbursed by Government this is applied after any Retail Discount.

No new legislation is required to deliver the scheme. Instead, we will use our discretionary relief powers, under section 47 of the Local Government Finance Act 1988 to grant relief. The Government will reimburse Elmbridge using grants under section 31 of the Local Government Act 2003 as a result of awarding the relief that falls within the definitions of guidance published by Government.

To ensure the discount is awarded in the manner the Government intended and is fully reimbursed to the council Elmbridge's scheme mirrors guidance issued by Government.

# Which properties will benefit from relief?

Properties that will benefit from the relief in 2021/22 from 1 July 2021 will be occupied hereditaments, where the ratepayer has not refused the relief, which meet all of the following conditions for the chargeable day:

They are wholly or mainly being used:

- a. as shops, restaurants, cafes, drinking establishments, cinemas and live music venues,
- b. for assembly and leisure; or
- c. as hotels, guest & boarding premises and self-catering accommodation.

The government and the council consider shops, restaurants, cafes, drinking establishments, cinemas and live music venues to mean:

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, newsagents, stationers, off licences, chemists, jewellers, 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: hair dressers, 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
- Employment agencies
- Estate agents and letting agents
- Betting Shops

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 issued in April 2018 under section 182 of the Licensing Act 2003

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

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 discount 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. For the avoidance of doubt,

hereditaments which have closed temporarily due to the government's advice on COVID19 will be treated as occupied for the purposes of this relief.

The list set out above is not intended to be exhaustive as it would be impossible to list the many and varied uses that exist within the qualifying purposes. There will also be mixed uses. However, it is intended to be a guide and mirrors the types of uses that Government considers for this purpose to be eligible for relief. The council will determine whether particular properties not listed are broadly similar in nature to those above and, if so, consider them eligible for the relief. Conversely, properties that are not broadly similar in nature to those listed above will not be eligible for the relief.

The list below sets out the types of uses that the Government and the council does not consider to be an eligible use for the purpose of this relief. Again, the council will determine whether particular properties are broadly similar in nature to those below and, if so, to consider them not eligible for this relief.

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)
- Medical services (e.g. vets, dentists, doctors, osteopaths, chiropractors)
- Professional services (e.g. solicitors, accountants, insurance agents/ financial advisers)
- Post office sorting offices

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

In line with the legal restrictions in section 47(8A) of the Local Government Finance Act 1988, Elmbridge cannot grant the discount to ourselves, a precepting authority (e.g. Surrey County Council), or a functional body, within the meaning of the Greater London Authority Act 1999

## Refusing the relief

The ratepayer may notify us of their refusal of the discount for each eligible property at any time up to 30 April 2022.

Once refused, the ratepayer cannot withdraw their refusal for either all or part of the discount period.

For the purposes of section 47 of the Local Government Finance Act 1988, where the ratepayer has refused the relief on a property then that property is outside of the scheme and outside of the scope of the decision of which properties qualify for the discount and are therefore ineligible for the relief.

## How much relief will be available?

Subject to the cash caps, the total amount of government-funded relief available for each property in 2021/22 under this scheme is 66% of the chargeable (billed) amount from 1 July 2021 to 31 March 2022, after mandatory reliefs and other discretionary reliefs funded by section 31 grants have been applied, excluding those where the council has used its discretionary relief powers introduced by the Localism Act which are not funded by section 31 grants.

Subject to the cash cap, the eligibility for the discount and the discount itself will be assessed and calculated on a daily basis. The following formula is used to determine the amount of relief to be granted for a chargeable day for a particular hereditament in the financial year 2021/22 from 1 July 2021:

$$\text{Amount of relief to be granted} = V \times 66\%$$

V is the daily charge for the hereditament for the chargeable day after the application of any mandatory relief and any other discretionary reliefs, excluding those where the council has used its discretionary relief powers introduced by the Localism Act which are not funded by section 31 grants.

This will be calculated ignoring any prior year adjustments in liabilities which fall to be liable on the day.

Relief will be awarded for 2021/22 only for periods on or after 1 July 2021. All awards are for a fixed period up to 31 March 2022 whilst the eligibility conditions are met.

Ratepayers that occupy more than one property will be entitled to relief for each of their eligible properties subject to the cash caps explained below.

## The cash caps

Under the cash caps, a ratepayer may only receive up to the following cash caps of Expanded Retail Discount in 2021/22 ignoring any relief for the period before 1 July 2021:

- a. £2 million for ratepayers meeting the eligibility for the closed cash cap requirements set out below, or
- b. £105,000 for all other ratepayers (subject to below).

No ratepayer can in any circumstances exceed the £2 million cash cap across all of their hereditaments in England. Where a ratepayer eligible for the closed cash cap also occupies hereditaments which do not meet the criteria for the closed cash cap and the value of the discount on the closed hereditaments is less than £2 million then they may also claim the discount on other eligible hereditaments but only up to the cap of £105,000 in respect of those other eligible hereditaments. For example, such a ratepayer whose rate bill from 1 July 2021 onwards on hereditaments eligible for the closed cash cap is £1 million and also occupies other eligible hereditaments with a rates bill of £3 million is able to claim up to £1,105,000 in discount from 1 July 2021 onwards (£1million on their closed hereditament and then up to the £105,000 cash cap on their other eligible hereditaments).

Where a ratepayer has a qualifying connection with another ratepayer then those ratepayers will be considered as one ratepayer for the purposes 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.

In cases where it is clear that the ratepayer is likely to breach the cash caps then Elmbridge may automatically withhold the discount. Otherwise, Elmbridge may include the discount in bills and ask the ratepayer, on a self-assessment basis, to inform the authority if they are in breach of the cash caps.

## Eligibility for the Closed Cash Cap (£2 million)

Ratepayers that meet the eligibility criteria for the closed cash cap will be ratepayers who for a chargeable day occupy one or more hereditaments whose use on the chargeable day would, based on the law and guidance applicable on 5 January 2021, have meant that the business or activity would have been mandated to close by the government.

For the avoidance of doubt, hereditaments which have closed due to the government's response to coronavirus may be treated as occupied for the purposes of the closed cash cap.

If, under this eligibility test, a person would have been required to close its main, in-person service but could have adapted its business to operate takeaway, click and collect or online with delivery services, it will be considered closed and be eligible for the closed cash cap because its substantive business would have been mandated to close.

In cases where hereditaments would have remained open to provide services that can continue as they are exempt from the regulations (e.g. post office services, food banks) the ratepayer may still be eligible for the closed cash cap, because they would have been unable to provide their main in-person service.

The following hereditaments do not meet eligibility for the closed cash cap:

a. Hereditaments occupied by businesses and other ratepayers that would have been able to conduct their main service because they do not depend on providing direct in-person services from premises and can operate their services effectively remotely (e.g. accountants, solicitors).

b. Hereditaments whose occupiers may have chosen to close but not been required to.

## Fraud and change of circumstances

Any change in circumstances that would affect the discount, including exceeding cash cap limits, must be informed to the council within 28 days. Where this is not complied with the council reserves the right to cancel all relief granted and refuse any further application for local relief(s).

The government and Elmbridge Borough Council will not tolerate any business falsifying their records or providing false evidence to gain this discount, including claiming support above the cash cap. 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.

Any relief found to have been awarded in error will be removed.

## Splits, mergers, and changes to existing hereditaments

The relief will be 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 be considered afresh for the relief on that day.

## Delegated Authority to Award Relief

Delegated to Head of Finance or any officer delegated by the Head of Finance, with appeals to Section 151 Officer, Strategic Director and Deputy Chief Executive.

# Application Process

Where the property appears to be occupied for an eligible use the council may apply the discount automatically and instruct the ratepayer to inform us should they not be entitled (for example, incorrectly identified usage or the award will exceed a cash cap) and to complete a cash cap declaration where relevant.

Where we have not determined the usage an application can be submitted by the ratepayer, or an agent authorised to act on their behalf.

Section 47 of the Local Government Finance Act 1988 states any decision to award must be made before six months after the end of the financial year in which the award days falls. Therefore, no new decision to award relief will be made after the 30 September 2022.

# Appeals Process

There is no statutory right of appeal against a decision regarding discretionary rate relief unless the decision is so unreasonable that no reasonable person could have reached it ('Wednesbury Rules').

However, the Council recognises that ratepayers should be entitled to have a discretionary decision reviewed if dissatisfied with the outcome. Only the ratepayer or authorised agent may appeal against the decision not to award relief or the level of relief awarded. Appeals must be made within four weeks of the notification of decision.

Appeals must be in writing specifying reasons why a decision should be amended and supported by relevant new or additional evidence.

An appeal will be deemed to be discontinued if further evidence requested from the ratepayer has not been received within four weeks of the request.

Appeals against decisions made under delegated authority by the Head of Finance will be considered by the Section 151 Officer, Strategic Director and Deputy Chief Executive.