



Elmbridge
Borough Council
... bridging the communities ...

Elmbridge Borough Council Retail, Hospitality and Leisure Discount Scheme from 1 April 2023 to 31 March 2024

About the Scheme

This scheme is intended to support local businesses and is to be known as the 'Retail, Hospitality and Leisure Discount Scheme'.

This document sets out the criteria used to determine properties eligible for the Retail, Hospitality and Leisure Discount Scheme in Elmbridge from 1 April 2023.

Introduction

At the Autumn Statement on 17 November 2022 the Chancellor announced the introduction of a new business rates relief scheme for retail, hospitality and leisure properties in 2023/24 to support businesses that make our high streets and town centres a success and help them to evolve and adapt to changing consumer demands.

The 2023/24 Retail, Hospitality and Leisure Business Rates Relief scheme will provide eligible, occupied, retail, hospitality and leisure properties with a 75% relief, up to a cash cap limit of £110,000 per business.

This scheme is separate to all previous retail discount schemes that applied in previous years.

Where the Council has applied locally funded relief not reimbursed by Government this is applied after any Retail, Hospitality and Leisure 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 2023/24 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 or 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: hairdressers, 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

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.

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. 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 discount. 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, betting shops)
- Medical services (e.g. vets, dentists, doctors, osteopaths, chiropractors)
- Professional services (e.g. solicitors, accountants, insurance agents/ financial advisers, employment agencies, estate agents, letting agents)
- 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.

How much relief will be available?

Subject to the £110,000 cash cap per business, the total amount of government-funded relief available for each property in 2023/24 under this scheme is 75% of the chargeable (billed) amount. The relief will be applied after mandatory reliefs and other discretionary reliefs funded by section 31 grants have been applied, but before those where the council has used its discretionary relief powers introduced by the Localism Act 2011, which are not funded by section 31 grants. The former categories of discretionary relief available prior to the Localism Act 2011 will be applied first in the sequence of discretionary reliefs and, therefore, before Retail, Hospitality and Leisure relief. The ordering will be applied in the following sequence:

- Transitional Relief
- Mandatory Reliefs (as determined by legislation)
- S.47 Discretionary Relief in the following order:
 - I. 2023 Supporting Small Business (SSB)
 - II. Former categories of discretionary relief available prior to the Localism Act 2011
 - III. Other discretionary (central Government funded)
 - IV 2023/24 Retail Hospitality and Leisure relief scheme
 - V Other locally funded schemes.

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 2023/24:

Amount of relief to be granted = $V \times 0.75$ where:

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 2011 which are not funded by section 31 grants in line with the above.

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

All awards are for a fixed period up to 31 March 2024 whilst the eligibility conditions are met.

Ratepayers that occupy more than one property will be entitled to relief for each of their eligible properties up to the maximum £110,000 cash cap, per business.

The cash cap and subsidy control

The Cash cap

Under the cash cap, no ratepayer can in any circumstances exceed the £110,000 cash cap across all of their hereditaments in England.

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 cap. 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 cap 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 cap.

Subsidy control

The Retail Hospitality and Leisure discount scheme is likely to amount to subsidy. Any relief provided under this scheme will need to comply with the UK’s domestic and international subsidy control obligations (See: <https://www.gov.uk/government/collections/subsidy-control-regime>)

To the extent that a local authority is seeking to provide relief that falls below the Minimal Financial Assistance (MFA) thresholds, the Subsidy Control Act allows an economic actor (e.g. a holding company and its subsidiaries) to receive up to £315,000 in a three-year period (consisting of the 2023/24 year and the two previous financial years). MFA subsidies cumulate with each other and with other subsidies that fall within the category of ‘Minimal or SPEI financial assistance. Expanded Retail Discount granted in 2021/22 does not count towards the £315,000 allowance but business support grants made by the council during the pandemic (which fall within the three-year period) and any other subsidies claimed under the Small Amounts of Financial Assistance limit of the Trade and Cooperation Agreement should be counted under the £315,000 allowance.

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

MFA subsidies above £100,000 are subject to transparency requirements. This is not cumulated per beneficiary but applies per subsidy award. This means that for every individual subsidy provided of more than £100,000, the council will record details of the subsidy on the Government subsidy control database.

Therefore, to claim the Retail, Hospitality and Leisure discount the ratepayer must not have exceeded either the £110,000 cash cap for 2023/24 or the MFA Subsidy limit of £315,000 over 3 years (including 2023/24).

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 2024.

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.

Splits, mergers, recalculations 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.

The amount of relief awarded will be recalculated in the event of a change of circumstances. This could include, for example, a backdated change to the rateable value or the hereditament. This change of circumstances could arise during the year in question or during a later year.

All Retail, Hospitality and Leisure discount decisions are conditional upon the eligibility criteria. If a change in circumstances renders a property ineligible, the relevant bill(s) will be amended from the change of circumstances date to reflect the loss of the relief. This includes where a change in rateable value is backdated.

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.

Fraud and change of circumstances

Any change in circumstances that would affect the discount, including exceeding the cash cap or subsidy 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.

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 the cash cap or subsidy limit) and to complete a cash cap and/or subsidy 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 2024.

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.