

## Introduction of a Discretionary Local Business Rate Relief Discount Policy

Report to: **Council**

Date: **29 September 2015**

Title: **Introduction of a Discretionary Local Business Rate Relief Discount Policy**

Portfolio Area: **Cllr Robert Baldwin,  
Deputy Leader of the Council  
Strategy & Commissioning**

Wards Affected: **All**

Relevant Scrutiny **N/A**

Committee:

Approval and clearance obtained: **Yes**

Urgent Decision: **N/A**

Date next steps can be taken:

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### Recommendations:

#### That Council be RECOMMENDED:

- a) to offer local businesses discretionary business rate relief where it is in the interest of local Council tax payers to do so
- b) to ratify a new discretionary business rate relief policy as detailed within Appendix one and approve the rate relief application form as shown in Appendix two attached to this report
- c) to agree the formation of a discretionary business rate relief decision panel, who will appraise and determine applications on an as-needs basis as set out in paragraph 1.6 of this report
- d) to delegate authority to the Group Manager, Business Development in consultation with the Deputy Leader of West Devon Borough Council to make minor legal amendments to the Policy shown in Appendix one prior to it being published and adopted as appropriate
- e) to review the policy after one year
- f) to refer decisions made by the panel to the Audit Committee

**Executive summary**

- 1.1. This report recommends that the Borough Council utilises its powers to apply discretionary business rate relief.
- 1.2. Section 69 of the Localism Act 2011 amends Section 47 of the Local Government Finance Act 1988 and allows billing authorities such as West Devon Borough Council, to grant discretionary rate relief in any circumstances, provided it is in the interests of the local Council tax payers to do so.
- 1.3. The purpose of these new powers is to give billing authorities the ability and scope to encourage, sustain and improve local economic performance by temporarily lowering the business rate burden while local businesses grow and create significant additional employment within the Borough.
- 1.4. Appendix one contains the recommended policy, whilst Appendix two contains the recommended discretionary rate relief application form.
- 1.5. Members are requested to agree the formation of a new discretionary business rate relief decision panel, who will review and determine applications in line with this report and appended policy.
- 1.6. It is suggested that this panel is formed by three Members: the Mayor; the Leader of the Council, and; the Deputy Leader of the Council. Two further Members are to be nominated as substitute panellists, in the event that one of the core three cannot attend a review panel meeting within a timely manner (or have a conflicting declaration of personal interest). The Chair of the O&S Committee and the Economy Portfolio Member of the Hub Committee are suggested as stand-by panellists. Where applicable, the local Ward Member will be invited to attend a decision panel meeting in order to support the application decision process.

**2. Background**

- 2.1. In order to stimulate local business growth and retain local businesses and jobs within the Borough, it is proposed that the Council applies powers available to it to offer discretionary business rate relief, where there is a tangible benefit to local tax payers.  
  
The relief will offer growing businesses discretionary financial assistance through their growth transition and can help to safeguard jobs. Without a Policy, growing businesses would not be able to receive assistance from this billing authority and could be attracted by the financial benefits offered by local enterprise zones or soft landing policies in other Districts / Boroughs.
- 2.2. When West Devon receive business rates, it has to pay other public bodies a share of the revenue it receives. 50% is returned

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to Central Government; 9% is paid to Devon County Council and 1% is paid to the Fire Authority. 40% is retained by West Devon.

Offering discretionary business rate relief will reduce the revenue generated by West Devon in the short term and consequently reduce the amount payable to these other authorities. This is currently the case with other discretionary awards made by the Council, such as non-profit making bodies and charitable occupation relief.

- 2.3. West Devon is part of the Devon Business Rate Pool for the current year. Other pool members, including Teignbridge and Plymouth already offer similar schemes.

### **3. Outcomes/outputs**

- 3.1. The aim of this policy is to attract, nurture and retain businesses within the billing authority and encourage them to expand and create more jobs and economic value for the Borough. Once in place, the policy will help the Borough compete with other areas looking to attract growing businesses.
- 3.2. It is not possible to forecast the amount of business rate income that will be foregone by adopting this policy. Applications and therefore awards will vary according to the type of business applying and their individual circumstances and the panel's decision on what level of discount and discount duration to award.
- 3.3. It is expected that the policy will apply to all premises irrespective of ownership.
- 3.4. The panel will use its discretion to determine discount applications, paying due attention to safeguard local businesses, including those competing with the discount applicant.

### **4. Options available and consideration of risk**

- 4.1. Members could opt to do nothing – however, this could realistically result in local businesses opting to move and expand their operations outside of the Borough. Such a move could result in local job losses, vacant property and an eventual reduction in business rate revenue.
- 4.2. Members could facilitate an alternative method of offering local businesses financial support to grow and create additional job opportunities. At present no other funding streams or reserves are available to small and medium sized businesses other than grant applications to the South Devon Coastal Local Action Group (SDC LAG) and / or the Greater Dartmoor Local Enterprise Action Fund (GD LEAF). Applications of this type are typically restricted to certain business types and for defined purposes. GDLEAF and

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SDC LAG can offer one-off grants of £50,000 or less, however applications are not currently being accepted due to delays experienced by the Rural Payments Agency. Applications are expected to be accepted from October.

### 5. Proposed Way Forward

- 5.1. It is recommended that West Devon Borough Council Members agree to utilise its power to offer local businesses discretionary business rate relief where it is in the interest of local Council tax payers to do so. This policy will be used in exceptional circumstances at its absolute discretion, where the criteria of the policy has been met and the principles of the policy followed.
- 5.2. Appendix one sets out the principles and criteria whilst the discretionary business rate relief application form is shown in appendix two.
- 5.3. A discretionary business rate relief decision panel will be formed of three Members, with two stand-by substitutes in order facilitate a timely decision on applications. Where applicable, the local Ward Member will be invited to attend a decision panel meeting in order to support the application decision process.
- 5.4. The policy and applications will be promoted on an as-needs basis to relevant businesses in the locality.

### 6. Implications

Implications	Relevant to proposals	Details and proposed measures to address
Legal/ Governance	Y	<p>The Council has a Discretion under section 69 of the Localism Act whether to grant rate relief provided that it is in the interests of the local council tax payers, and in order to exercise that discretion the Council needs to adopt a Policy.</p> <p>Care must be taken to ensure that any relief awarded must not contravene state aid laws. There is provision within the policy principles and criteria to request that applicants state all prior state aid assistance and evidence to ensure any award does not exceed the 'de minimis' threshold level of €200,000 over a rolling three year period from any Government body / organisation.</p> <p>The Council must have regard to its fiduciary duty to Council tax payers – by awarding temporary relief, Council tax payers are in effect subsidising businesses to grow. The policy and principles are based around a rapid return on investment, i.e. greater business rate returns after the initial relief period.</p>
Financial	Y	<p>Relief will only ever be awarded for a defined time period. Business rate income could reduce in the short term as applications are accepted and relief is awarded. However, beyond the initial relief period, business rate revenue is expected to increase. Applicants will be</p>

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		<p>required to evidence a long lease / freehold to remain in the locality in order to apply for the relief. Clawback provisions are included in the event the business were to relocate within a 5 year time period after application.</p> <p>There is a financial impact to awarding rate relief discounts under Section 47 of the Local Government Finance Act 1988 and the cost to the Council is 40% of the relief awarded. Applications will be assessed on a case by case basis. There is no Government support for such awards, thereby having a direct impact on the taxpayers of the Borough. The policy and principles are based around a rapid return on investment, i.e. greater business rate returns after the initial relief period.</p> <p>It should be noted that when a business relocates from within the Borough to a new property within the Borough, rates on the former premises (which would then be empty) are subject to 100% mandatory relief for 3 months (extendable to 6 months depending on premises type). This would further reduce income for the period. After the 3/6 months, rate liability for the landlord / freeholder reverts to the full amount on the former premises.</p>
Risk	Y	<p>The policy must not set an unwelcome precedent. It has been drafted to ensure that it protects the interests of local Council tax payers and will only help businesses who are intending and in a position to grow.</p> <p>Not having a defined policy could result in the Council having to determine discretionary rate relief applications without a defined set of criteria or principles and could result in unfair and anti-competitive awards.</p>
<b>Comprehensive Impact Assessment Implications</b>		
Equality and Diversity	N/A	
Safeguarding	N/A	
Community Safety, Crime and Disorder	N/A	
Health, Safety and Wellbeing	N/A	
Other implications	N/A	

**Please refer to Appendix 1 for the full policy and Appendix 2 for the suggested discretionary local business rate relief discount Application form.**

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<b>Process checklist</b>	<b>Completed</b>
Portfolio Holder briefed	Yes
SLT Rep briefed	Yes
Relevant Exec Director sign off (draft)	Yes
Data protection issues considered	Yes
If exempt information, public (part 1) report also drafted. (Executive/Hub/Scrutiny)	n/a

## **Appendix One: Draft Discretionary Business Rate Relief Policy**

### **Powers to apply discretionary business rate relief**

Section 69 of the Localism Act 2011 amends Section 47 of the Local Government Finance Act 1988 to allow billing authorities such as West Devon Borough Council, to grant discretionary rate relief in any circumstances, provided it is in the interests of the local Council tax payers to do so.

The purpose of this new power is to give billing authorities the ability and scope to encourage, sustain and improve economic performance by having the power to lower the business rate burden while businesses grow and create significant additional employment within the Borough.

### **Local Business Rate Relief Discount (LBRRD) Requirements**

The following principles apply when considering LBRRD applications:

- i. The Council will consider the cost of funding the LBRRD and the burden this places on its finances
- ii. The LBRRD will support opportunities for new business growth, expansion, employment and the safeguarding of jobs within the Borough and the effect this will have on competing local businesses
- iii. If it is reasonable to offer a LBRRD having taken into account the interests of the Council tax payers as a whole
- iv. Any LBRRD award will be at the absolute discretion of the billing authority. The LBRRD may be awarded to any property or business of the Councils choosing, at any level between 0% and 100%. For example, 20% or 100% or for companies who are relocating within the Borough, the discount awarded may equal the difference between the old premises business rates payable and the new premises business rates payable
- v. Claims for LBRRD cannot be backdated
- vi. The Council reserves the right to withdraw the LBRRD scheme at any time
- vii. Whether the award of a LBRRD may constitute State Aid. The 'de minimis' threshold for State Aid granted to any undertaking of any size must not exceed €200,000 over any rolling period of three fiscal years from any source. The onus is on the applicant to provide sufficient evidence to the billing authority to confirm that the 'de minimis' threshold is not and will not be breached. Applications which may constitute state aid will not be considered

### **Criteria for valid LBRRD applications**

Each application will be considered on its individual merits against the criteria set out below:

- 1) Does the LBRRD incentivise the creation of new permanent contract (not zero hour contract) jobs for local people (paying the living wage as a minimum)?
- 2) Will the LBRRD provide a return on investment from higher future rates income?
- 3) Are there social or economic implications for the area if the LBRRD is not applied? e.g. the loss of a substantial number of jobs or skills from the area
- 4) Is the request for temporary relief (LBRRD will not be repeated year after year)
- 5) To be considered for an award under this policy the applicant must be either :
  - a) A new business starting up in the area
  - b) A business relocating to the area

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- c) An existing business expanding within the area and creating additional or safeguarding existing jobs
- 6) Applications will not normally be considered where the Applicant's business premises are held on a lease with less than seven years remaining at the time of application
- 7) No LBRRD will be awarded for greater than 2 years
- 8) No LBRRD will be awarded if the applicant has received financial assistance worth a cumulative total of greater than €200,000 over three years, from any source that could be considered as State Aid
- 9) LBRRD will not normally be considered until the Applicant has all required permissions, licences, leases and other provisions in place in order to begin lawfully trading from the premises at which the rate relief will be applied
- 10) In considering an application for a LBRRD, applicants may be asked to provide certain information. This may include, but is not limited to, the last two years of financial accounts; a business plan, and; evidence of its ownership of a freehold or a minimum remaining lease term of seven years for commercial premises
- 11) All LBRRD decisions are to be made by the discretionary business rate relief panel within four weeks of receipt of a fully completed application form and all requested supporting evidence
- 12) Any LBRRD awarded will be made by crediting the business rate account to which it applies
- 13) There is no statutory right to appeal against a decision made by the discretionary business rate relief panel other than a Judicial Review. An applicant may make a request for the decision panel to review a decision within four weeks of notification of a decision but only where additional relevant information becomes available that was not available at the time the decision was made. Cases will be reviewed by the same discretionary rate relief panel. A request for review must set out the reasons for the request to review and include the relevant new information.
- 14) The applicant must sign a statement of intent to operate the business in the Borough for a minimum of five years.
- 15) If in the Council's opinion any of the clawback events or termination events listed in Appendix A occur, the Council may at its absolute discretion:
  - a) Suspend the LBRRD awarded under this Policy for such period as the Council shall determine;
  - b) Vary the LBRRD awarded under this Policy, in which case the discount shall thereafter be made in accordance with a written variation notified to the Applicant;
  - c) Terminate any agreement to award the LBRRD under this Policy whereupon the Council shall cease to be under any obligation to provide any further LBRRD to the Applicant and (in addition) the Council may require the Applicant to repay the whole or any part of the LBRRD previously enjoyed by the Applicant and the Applicant agrees that upon receipt of written notice requiring repayment the Applicant shall repay the sums required within 30 days of receipt of such notice.

Notwithstanding the provisions of Clauses (a) and (b) above, in the event that an applicant relocates the business for which the LBRRD is awarded to a location outside of the Borough, within a period of five years from the date of the decision to award the LBRRD, the Council shall be entitled to recover some or all of the LBRRD on the following basis:



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If the relocation occurs before 5 calendar years have expired beginning with the date of the decision, 100% of the LBRRD awarded shall be recoverable, at the Council's discretion.

### **APPENDIX A - CLAWBACK AND TERMINATION EVENTS**

The following Clawback and Termination Events apply to this Policy:

1. There is any change in the Applicant's legal status and such a change is likely to adversely affect the LBRRD; or
2. Any claim and/or report submitted by the Applicant does not properly comply with the requirements detailed in this Policy; or
3. Any information supplied by the Applicant under or in connection with the LBRRD proves to be materially incorrect or misleading; or
4. The Applicant does not comply with or observe any condition of this Policy; or
5. The assistance exceeds European Community State Aid limits to the extent that any LBRRD paid should not have been paid or if a decision of the European Commission or of the European Court of Justice requires payment to be withheld or recovered; or
6. There is an unsatisfactory report from the auditors. This will be the case if the auditors refer to a fundamental uncertainty, a disagreement or a limitation to their opinion, or if the auditors are unable to form an opinion; or if they report that the statement of grant does not give a true and fair view; or
7. There is any evidence of irregularity, impropriety or negligence in connection with a LBRRD application; or
8. If:
  - a. the Applicant, being an individual, an incorporated or an unincorporated body, becomes bankrupt, has a receiving order or administration order made against it, makes any composition or arrangement for the benefit of creditors, makes any conveyance or assignment for the benefit of creditors or purports to do so, or is the subject of an application under the Insolvency Act 1986 (or superseding legislation) for the sequestration of the Applicants estate or of a trust on behalf of the Applicant's creditors; or
  - b. the Applicant, being an unincorporated body is dissolved; or
  - c. the Applicant, being an incorporated body passes a resolution that the Applicant should be wound up, is ordered by the High Court to be wound up, has an administrator appointed by order of the Court, has an administrative receiver appointed, or being a company is struck from the register at Companies House.

## Appendix Two

### Discretionary Local Business Rate Relief Discount Application Form

Please complete all fields and supply supporting evidence where applicable

Account Reference number:

Applicant name:

Contact address:

Postcode:

Telephone number:

Mobile number:

Email Address:

Address in respect of which application is made:

Description / Type of business:

How long have you been trading in West Devon?

Number of staff employed?

Date lease due to expire?

Reasons why a local business rate relief discount should be awarded

Please state how the granting of a discount will support opportunities for new business growth, expansion and employment or the safeguarding of employment within the area:

Social or economic implications

What are the social or economic implications for the Borough?

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### Period and percentage of discount requested

Please state the period and percentage of discount requested:

### Other support (Note, responses below should include where the applicant / business has premises in other parts of the country and where any business rate relief has been awarded)

Please give details of all other financial assistance that the business / organisation is receiving or has applied for, that could be considered as State Aid:

Please declare any financial assistance received by the applicant from any source in the last rolling three year period, that could be considered as State Aid:

**Please attach** (for the business and premises which will benefit from the Discretionary Local Business Rate Relief):

- ✓ The last two years of financial accounts
- ✓ A business plan (including growth forecast)
- ✓ Evidence of freehold ownership OR evidence of a minimum of seven years remaining on the lease of your commercial premises

**I certify that the particulars given in this application are correct to the best of my knowledge and belief. By signing this form, I agree to the applicant / business being bound by the criteria detailed within the Discretionary Business Rate Relief Policy.**

Name:

Position:

Signature:

Date:

Telephone number:

Email:

**The billing authority will aim to make a decision regarding this application within four weeks of receipt of all supporting evidence considered necessary to enable the application to be considered.**

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### **Please Note:**

- Business rates remain payable whilst any application is being processed
- Any discount awarded will only be for a defined temporary period
- You must provide any other supporting evidence deemed necessary as requested by the billing authority
- Incomplete applications will not be considered

### **Please return this completed form and the required supporting evidence to:**

Business Rates Team  
West Devon Borough Council  
Kilworthy Park  
Drake Road  
Tavistock  
PL19 0BZ

Or email to: [businessrates@westdevon.gov.uk](mailto:businessrates@westdevon.gov.uk)