

 <b>Executive – 11<sup>th</sup> September 2013</b>		<b>Agenda Item No.</b>  <b>9</b>
<b>Title</b>	<b>Discretionary Partly unoccupied relief – Revised guidance notes</b>	
<b>For further information about this report please contact</b>	David Leech, Exchequer Manager 01926 456052 e mail: david.leech@warwickdc.gov.uk	
<b>Wards of the District directly affected</b>	All	
<b>Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?</b>	No	
<b>Date and meeting when issue was last considered and relevant minute number</b>	N/A	
<b>Background Papers</b>		

<b>Contrary to the policy framework:</b>	No
<b>Contrary to the budgetary framework:</b>	No
<b>Key Decision?</b>	No
<b>Included within the Forward Plan? (If yes include reference number)</b>	No
<b>Equality &amp; Sustainability Impact Assessment Undertaken</b>	Yes

<b>Officer/Councillor Approval</b>		
<b>Officer Approval</b>	<b>Date</b>	<b>Name</b>
Chief Executive/Deputy Chief Executive	28/08/13	Andy Jones
Head of Service	28/08/13	Mike Snow
CMT	28/08/13	Chris Elliott, Bill Hunt and Andy Jones
Section 151 Officer	28/08/13	Mike Snow
Monitoring Officer	28/08/13	Andy Jones
Finance	28/08/13	Mike Snow
Portfolio Holder(s)	28/08/13	Cllr Mobbs
<b>Consultation &amp; Community Engagement</b>		
<b>Final Decision?</b>		

## 1. SUMMARY

- 1.1 This report provides details of proposed revised guidelines for consideration of requests for discretionary rate relief where non-domestic properties are partly unoccupied for short periods. The key changes from the original guidelines which make up the revised guidelines are highlighted in 7.5.

## 2. RECOMMENDATION

- 2.1 It is recommended that the Executive approves the proposed revised guidelines set out in Appendix A for considering applications for discretionary rate relief where non-domestic properties are partly unoccupied for short periods.

## 3. REASONS FOR THE RECOMMENDATION

- 3.1 Guidelines to assist with the decision making and transparency of the process were initially drafted and approved by Executive in 2001 and now require updating.
- 3.2 These revised guidelines will deter businesses from submitting applications where the reason that part of the property is unoccupied is wholly or mainly for the purposes of applying for rate relief rather than as a business necessity and therefore against the spirit of the Act.
- 3.3 From April 2013 as a result of the implementation of the business rates retention scheme there will be a cost to Warwick District Council in awarding relief.

## 4. POLICY FRAMEWORK

- 4.1 Awarding partly unoccupied relief is beneficial to local businesses especially during periods of downturn or in the event of fire or flood for example. This relief can be the difference in a business remaining open or closing. Given the new financial impact in awarding this relief it is essential that relief is only given to the most deserving cases.

## 5. BUDGETARY FRAMEWORK

- 5.1 From April 2013 there is a cost to Warwick District Council and Warwickshire County Council in awarding relief as detailed below;

Organisation	Central Government	WDC	WCC
	50%	40%*	10%

\*This is the share in relation to a baseline position where there is no growth. In the event of growth there is a levy in place which would mean the actual cost would be 20%.

- 5.2 Prior to April 2013 the full cost of awarding relief was met by Central Government
- 5.3 The level of relief awarded is dependent on the number of applications received and the size of the property where relief is being sought. Consequently it is impossible to predict the level of relief in any one year. However businesses and their agents are becoming ever more creative in exploiting this relief to reduce expenditure hence the relief figure to date is as high as in previous years with half the year still remaining. The amount of relief awarded in recent years is as detailed below;

Year	13/14 – to date	12/13	11/12	10/11	9/10
Relief	£99,996	£85,281	£72,742	£45,120	£100,672
Cost to WDC	£39,998	Nil	Nil	Nil	Nil

## 6. **ALTERNATIVE OPTION(S) CONSIDERED**

- 6.1 To leave the existing guidelines in place. This could encourage applications which are against the spirit of the Act and could potentially leave the Council open to challenge if we refused such applications.
- 6.2 To cease awarding sec 44a partly unoccupied relief. This would constitute a blanket policy and Councils are required to exercise their discretionary power by considering the merits of each individual case and not by reference to an inflexible policy rule.

## 7. **BACKGROUND**

- 7.1 This relief is only applicable to properties that are partly unoccupied. Under Council Tax Legislation occupation of part of a property is deemed to be occupation of the whole in which case full charges are levied. However in certain situations the Council has the discretion to award relief on the unoccupied portion. Wholly unoccupied properties do not qualify for this relief however they are entitled to statutory 100% relief up to a period of 3 months or 6 months where the property is industrial.
- 7.2 Under section 44a of the Local Government Finance Act 1988 the Council has the discretion to allow rate relief where a property is partly unoccupied for a temporary period. In exercising its discretionary powers the Council must not adopt a blanket approach to applications and consequently each application should be considered on its own merits and in accordance with the intentions of the Act. If the Council is not seen to exercise discretion in a fair and unfettered way it could be challenged via judicial review or through the Local Government Ombudsman.
- 7.3 If relief is agreed the Valuation Office Agency will certify the rateable value of the occupied and unoccupied parts and relief calculated based on the unoccupied rateable value. Relief may only be awarded for a period up to 3 months or 6 months where the property is industrial. The Council has previously resolved that the discretion is delegated to the Exchequer Manager with any appeals to be considered by the Head of Finance.
- 7.4 The intention of the Act is to support businesses in situations where there are practical difficulties or business reasons for occupying or vacating part of the property for short periods. The Act is silent on what constitutes a short period and is therefore part of the discretion for Councils to decide together with the circumstances under which relief should be awarded.
- 7.5 In order that applications may be considered and decisions made in a consistent and transparent manner guidelines were drafted and approved by the Executive in 2001 (Appendix B) and decisions have been made on that basis ever since. It now requires updating and the key areas where the new guidelines differ from the original area are as follows;

- 1) Previously applications have been considered retrospectively i.e. after the property has been fully occupied again providing independent documentary evidence has been supplied to corroborate that the property was partly unoccupied. However the regulations state that relief can be given where the property “appears” to be partly unoccupied which would indicate that it is not appropriate to award relief where an application has been made and the property is no longer partly unoccupied. It is therefore proposed that relief will no longer be awarded unless the Council have visited and confirmed the empty part of the property.
- 2) Recently we have received applications from businesses and their agents where it has been obvious that the reason for the property being partly unoccupied is wholly or mainly for the purposes of taking advantage of the legislation and applying for the relief rather than there being a business necessity for the property being partly unoccupied. Additionally as relief may only be awarded for a maximum of 3 or 6 months repeat applications are often received in situations where the empty part may have only changed from one part of the building to the other. It is proposed that relief will only be considered where there is a clear business case for the partly unoccupied state.
- 3) Prior to April 2013 the cost of any partly unoccupied relief awarded was fully borne by the Government with no cost to the Council. The introduction of business rates retention now means that the cost of relief will be shared 50% by the Government, 40% by Warwick District Council and 10% by Warwickshire County Council. Given that relief could have a significant financial impact on the Council it is proposed that the cost of awarding relief will be a factor in the consideration of any application.

## Appendix A

# Warwick District Council

### **Policy guidelines for consideration of requests for rate relief under Section 44A in respect of temporarily partly occupied properties**

1. All applications must be made in writing and be made either by the occupier or owner (if different) or persons acting on their behalf, e.g. agents, solicitors or accountants.
2. The applicant will be asked to submit a plan which clearly identifies the areas of occupation and those areas that are temporarily unoccupied.
3. Applications will only be considered in respect of unoccupied parts of a property that can be clearly defined and are reasonably segregated from the occupied part of the property.
4. Applications must be made in good time, so that the premises can be inspected by a Council Officer to confirm the applicants plan.
5. The ratepayer must allow a Council Officer access to the property by appointment during normal working hours in order to verify the occupation of the property. Further access may also be required during the award period.
6. It will not be possible for an award to be considered in retrospect i.e. for a period after which the empty part of the property has become reoccupied.
7. No award shall be made where it appears to the Council that the reason that part of the property is unoccupied is wholly or mainly for the purposes of applying for rate relief.
8. Applications where favourable consideration would be likely, would include (although not necessarily limited to) the following:
  - Where there is potential occupation of a warehouse, factory or commercial property to facilitate relocation of the company.
  - Where because of a temporary downturn in trade, there is part occupation of the premises.
  - Where fire, flood or other natural disaster prevents full use of the premises.

9. Applications where favourable consideration would **not** normally be forthcoming would include (although not necessarily limited to) the following:
- For a period that has now passed.
  - Where the owner sublets parts of the premises on a commercial basis e.g. a market hall or antiques centre.
  - Where the part occupation is likely to continue year on year.
  - Where there appears to be no effort to let, sell or occupy the empty part.
  - Where part occupational is seasonal.
  - Where the empty area (or part of) has been subject to a previous application
10. The introduction of Business Rates retention means that awarding partly occupied relief places a greater financial burden on the Council and therefore this will be a factor in the consideration of any application.
11. For the purposes of this policy, a period of up to 12 calendar months shall be considered to be temporary and longer periods shall not be considered to be temporary.
12. At all times regard will be had for the regulations contained within Section 44a of the Local Government Finance Act 1988 and any relevant case law.
13. Any guidance from the Department for Communities and Local Government or the Institute of Revenues Rating & Valuation will be considered.
14. Right of appeal for refusal to grant part occupied relief under section 44a Local Government Finance Act 1988 can be challenged by judicial review under Section 138 Local Government Finance Act 1988.

## **Appendix B**

WARWICK DISTRICT COUNCIL  
GUIDELINES FOR CONSIDERATION OF REQUESTS FOR RATE RELIEF UNDER  
S44A IN RESPECT OF PARTLY OCCUPIED PREMISES.

1. All applications must be made in writing and be made by either the occupier or owner [if different] or persons acting on their behalf, e.g. agents, solicitors or accountants.
2. The applicant will be asked to submit a plan which clearly identifies the areas of occupation and areas unoccupied.
3. Application should be made in good time so that the premises can be inspected to confirm the applicants plan.
4. It will not normally be possible for relief to be considered in retrospect i.e. for a period after which full occupation has taken place. An exception to this would be when it was possible to obtain independent evidence to support a backdated claim.
5. Applicants where favourable consideration would be likely would include [although not necessarily limited to] the following:
  - Where there is partial occupation of a warehouse, factory or commercial property to facilitate relocation of the company.
  - where because of a temporary downturn in trade, there is part occupation of the premises
  - where fire, flood or other natural disaster prevents full use of the premises
6. Applicants where favourable consideration would *not* normally be forthcoming would include [although not necessarily limited to] the following:
  - for a period that has now passed
  - where the owner sublets parts of the premises on a commercial basis e.g. a market hall or antiques centre
  - where the part occupation is likely to continue year on year
  - where there appears to be no effort to let, sell or occupy the empty part
  - where part occupation is seasonal.
7. At all times regard will be had for the regulations contained within section 44a of the Local Government Finance Act 1988 and any relevant case law.
8. Any guidance from the Department of Environment, Transport and the Regions or the Institute of Revenues Rating & Valuation will be considered.
9. Although there is no definition of 'a short time' within the legislation, the view has been taken that up to 12 months would normally be the limit for this relief.