

## **Report to Portfolio Holder for Resources and Reputation**

**Subject:** National Non-Domestic Rates - Discretionary Relief Application – We R Here

**Date:** 20<sup>th</sup> April 2023

**Author:** Senior Clerical Assistant

### **Wards Affected**

All

### **Purpose**

The purpose of this report is to seek approval for discretionary charitable relief under section 47 of the Local Government Finance Act 1988.

### **Key Decision**

This is not a key decision.

### **Recommendation(s)**

#### **THAT:**

The application for discretionary relief under section 47 of the Local Government Finance Act 1988 is allowed at a rate of 20% of the annual National Non-Domestic Rates due.

## **1 Background**

- 1.1 An application for discretionary charitable relief was received on 12<sup>th</sup> March 2021 from We R Here Charity of The Lodge, Arnot Hill Park, Nottingham Road, Arnold, Nottingham, NG5 6JQ for Office 9, Ground Floor, Arnot Hill House, Arnold, Nottingham, NG5 6LU and Room 5, Ground Floor, Arnot Hill House, Arnold, Nottingham, NG5 6LU (Appendix 1)

- 1.2 The legislation governing the application for charitable relief from National Non-Domestic Rates is sections 43, 45 and 47 of the Local Government Finance Act 1988.
- 1.3 Section 43 provides that where, on the day concerned, the ratepayer is a charity or trustees for a charity and the hereditament is wholly used for charitable purposes (whether of that charity or of that and other charities), the chargeable amount is to be calculated using the following formula:

$$\frac{A \times B}{C \times 5}$$

This is in effect a charge of 20% of the original charge, and therefore a mandatory relief of 80%.

- 1.4 A charity does not necessarily need to be registered with the Commissioner for Charities to be deemed a charity in its legal sense. The principles of charitable status were expressed by Lord McNaughten in *Income Tax Special Commissioners v Pemsell* (1891) in the following four principle divisions:
- i) trusts for the relief of poverty;
  - ii) trusts for the advancement of religion;
  - iii) trusts for the advancement of education;
  - iv) trusts for other purposes beneficial to the community, but not falling under any of the preceding heads.
- 1.5 Discretionary relief under section 47 may be granted as long as the criteria for mandatory relief are met. The amount of discretionary relief given can be any amount up to the remaining 20% charge after mandatory relief is applied, meaning the chargeable amount could be 0.
- 1.6 A Practice Note issued by the Department for the Environment and the Welsh Office jointly in 1990 recommends that although authorities may wish to have readily understood policies for deciding whether or not to grant relief, and for determining the amount of relief to grant, they should not adopt a policy or rule which allows a case to be disposed of without any consideration as to its individual merits.
- 1.7 The billing authority may not award discretionary relief unless it is satisfied that the hereditament is used for purposes which are of benefit to the local community and that it would be reasonable for the billing authority to award relief, having regard for the interests of the persons liable to pay its Council Tax.

## **2. Proposal**

- 2.1 We R Here Charity is a registered charity (Number 1147478) with the Commissioner for Charities in England and Wales (Appendix 2).
- 2.2 The application form at (Appendix 1) states the charity's main objectives are 'The provision of services to support mental and emotional health and well-being, to enhance the lives of local residents, to provide stronger chance of positive life outcomes'.
- 2.3 The hereditaments for which relief is requested is used for the provision of therapeutic and support services for families.
- 2.4 The financial accounts published for 2019, 2020 and 2021 are included (Appendix 3, 4 and 5)
- 2.5 It is proposed that relief is allowed in this case at a rate of 20% of the National non-domestic Rate chargeable, as it is considered that the objectives of this charity are in line with the Council's objectives to enable a resilient, connected, inclusive and healthy community as stated in the Gedling Plan 2023 – 2027.

## **3 Alternative Options**

- 3.1 An alternative to the proposal would be to refuse relief.
- 3.2 Another alternative to the proposal would be to grant relief at a different rate to the proposed 20%. Relief could be granted at any rate between 1% and 20%. This alternative is not proposed as it is considered that the charity's objectives are suitably aligned with the Council's plan to afford a grant of relief at 20%.

## **4 Financial Implications**

- 4.1 Under the arrangements for local business rate retention in England, the cost of all reliefs is split between the Government, Gedling Borough Council and the major precepting authorities.
- 4.2 The rates payable after mandatory relief for the financial years 2020/21 is £105.88 and £72.15. The rates payable if the 20% discretionary relief were applied would be zero.

The rates payable after mandatory relief for the financial year 2021/22 is £161.25 and £119.85. The rates payable if the 20% discretionary relief were applied would be zero.

- 4.3 The rates payable after mandatory relief for the financial year 2022/23 is £189.44 and £140.80. The rates payable if the 20% discretionary relief were applied would be zero.

The rates payable after mandatory relief for the financial year 2023/24 is £199.26 and £148.05. The rates payable if the 20% discretionary relief were applied would be zero.

- 4.4 The accounts of the charity have been scrutinised by one of the Council's Accountants and advice has been given that there is no excess surplus, and no excess debt. The charity appears to be operating in a financially responsible and solvent manner.
- 4.5 Copies of the charity's accounts and documents showing the charity's current financial standing are held on file by the Revenues Services team.

## **5 Legal Implications**

- 5.1 Section 47 of the Local Government Finance Act 1988 permits the billing authority to grant discretionary rate relief. Regard as been given to relevant government guidance in relation to discretionary relief when coming to this recommendation.
- 5.2 Discretionary rate relief could amount to financial assistance governed by the Subsidy Control Act 2022. A subsidy refers to a grant, a tax relief, a loan, or other form of financial assistance paid from public resources. The new statutory subsidy control regime introduced on 4<sup>th</sup> January 2023 replaced the EU state aid rules, which applied in the UK until the end of the transition period in December 2020 and the Trade and Cooperation Agreement (TCA). The updated scheme rules do not apply retrospectively. The United Kingdom remains bound by its international commitments, including subsidy obligations set out in the TCA with the EU. Business rates discretionary relief and grants to ratepayers could amount to subsidy. Any relief provided by Local Authorities under these schemes will need to comply with the UK's domestic and international subsidy control obligations.
- 5.3 Financial assistance will be considered a subsidy where it satisfies all four limbs of the subsidy test. The second limb of the test is to establish whether or not an entity is carrying out an economic activity. If it can be said that the entity is not carrying out economic activity, then it is not an 'Enterprise' and no subsidy will arise. Section 7 (2) of the Subsidy Control Act 2022 provides that "an activity is not to be regarded as an economic activity if or to the extent that it is carried out for a purpose that is not economic." Provided the entity receiving financial assistance is not considered to be an enterprise the entity may receive public support

without giving rise to subsidy control, under the Subsidy Control Act 2022. A charity performing a charitable function not for profit, receiving tax relief from a public body would not give rise to a subsidy.

## **6 Equalities Implications**

6.1 There are no equalities implications arising from this report.

## **7 Carbon Reduction/Environmental Sustainability Implications**

7.1 There are no carbon reduction/sustainability implications arising from this report.

## **8 Appendices**

8.1 Appendix 1 – Application Form

8.2 Appendix 2 – Charity Overview

8.3 Appendix 3 – 2019 Published Accounts

8.4 Appendix 4 – 2020 Published Accounts

8.5 Appendix 5 – 2021 Published Accounts

## **9 Background Papers**

9.1 None identified

## **10 Reasons for Recommendations**

10.1 The main objectives of the organisation are aligned with the Council's objectives to enable a resilient, connected, inclusive and healthy community as stated in the Gedling Plan 2023 – 2027.

### **Statutory Officer approval**

**Approved by:**

**Date:**

**On behalf of the Chief Financial Officer**

**Approved by:**

**Date:**

**On behalf of the Monitoring Officer**