



National Non-Domestic Expanded Retail Discount & Nursery Discount Schemes 2021/22

Version number 1
March 2021

Tracking

Policy Title	National Non-Domestic Expanded Retail Discount 2021/22		
LT sign off	N/a		
Committee	Strategy and resources	Date approved	16 April 2021
Review due date	N/A	Review completed	N/A
Service	Digital & Service Transformation		

Revision History

Revision Date	Revisor	Previous Version	Description of Revision

Document Approvals

Each revision requires the following approvals:

Sponsor Approval		Name	Date
Head of Digital and Service Transformation		Judith Doney	

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Introduction

- 1.1. This document sets out Epsom & Ewell Borough Council's ('the Council') policy for awarding the Expanded Retail and Nursery (Childcare) Discount to Non-Domestic properties in the borough.
- 1.2. 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.
- 1.3. On 18 March 2020, the Government announce the business rates Nursery Discount 2020/21 as part of the response to the COVID-19 pandemic. At the Budget on 3 March 2021, the Chancellor announced that the Nursery Discount would continue to apply at 100% for eligible properties for the first three months of 2021 from 1 April 2021 to 30 June 2021. Subsequently, from 1 July 2021 to 31 March 2022, the Nursery Discount will apply at 66%.
- 1.4. As both the discounts are only a measure for 2021/22, the government is not changing the legislation relating to the discounts available to properties. Instead, the government will, in line with the eligibility criteria set out in the government guidance, reimburse local authorities that use their discretionary discount powers under section 47 of the Local Government Finance Act 1988 (as amended), to grant discount.
- 1.5. It is for individual local billing authorities to adopt a local scheme and determine in each individual case when, having regard to the government guidance, to grant discount under section 47. The government will fully reimburse local authorities for the local share of the discretionary discount, using a grant under section 31 of the Local Government Act 2003.

Qualifying properties

Expanded Retail Discount

- 2.1. Properties which benefit from the discount will be those which for a chargeable day in 2021/22:
 - a. meet the eligibility criteria set out below
 - and**
 - b. the ratepayer for that chargeable day has not refused the discount for the eligible property. The ratepayer may refuse the discount for each eligible property anytime up to 30 April 2022. The ratepayer cannot withdraw their refusal for either all or part of the financial year.

- 2.2. For the purposes of section 47 of the 1988 Act, properties where the ratepayer has refused the discount are 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 discount
- 2.3. Properties that meet the eligibility for Expanded Retail Discount will be occupied properties which meet all of the following conditions for the chargeable day are wholly or mainly being used:
- (i) as shops, restaurants, cafes, drinking establishments, cinemas and live music venues,
 - (ii) for assembly and leisure;
- or
- (iii) as hotels, guest & boarding premises and self-catering accommodation
- 2.4. We consider shops, restaurants, cafes, drinking establishments, cinemas and live music venues to mean:

Properties that are being used for the sale of goods to visiting members of the public:

- | | | |
|--|----------------------------------|----------------------------|
| • Florists | • Bakers | • Butchers |
| • Grocers | • Greengrocers | • Jewellers |
| • Stationers | • Off licenses | • Chemists |
| • Newsagents | • Hardware stores | • Supermarkets |
| • Charity shops | • Opticians | • Post Offices |
| • Markets | • Petrol stations | • Garden centres |
| • Art Galleries which sell or hire art | • Furnishing shops/display rooms | • Car/caravan showrooms |
| • Second-hand car lots | • Carpet shops | • Double Glazing showrooms |

Properties that are being used for the provision of the following services to visiting members of the public:

- | | | |
|-----------------------|-----------------------------|----------------------------|
| • Hairdressers | • Nail bars | • Beauty salons |
| • Tanning shops | • Travel agents | • Ticket offices |
| • Dry cleaners | • Launderettes | • PC/TV repairs |
| • Funeral directors | • Photo processing | • Tool hire |
| • Car hire | • Betting shops | • Property Agents |
| • Employment agencies | • Domestic appliance repair | • Shoe repairs/key cutting |

Properties that are being used for the sale of food and/ or drink to visiting members of the public:

- Restaurants
- Coffee shops
- Takeaways
- Public Houses
- Sandwich shops
- Bars

Properties which are being used as cinemas

Properties that are being used as live music venues

Live music venues are properties wholly or mainly used for the performance of live music for the purpose of entertaining an audience. Properties cannot be considered a live music venue for the purpose of business rates discount 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).

Properties 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.

2.5. We consider assembly and leisure to mean:

Properties 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
- Nightclubs
- Stately homes & historic houses
- Tourist attractions
- Wellness centres, spas, massage parlours
- Museums and art galleries
- Sport and Leisure Facilities
- Theatres
- Gyms
- Casinos, gambling clubs and bingo halls

Properties that are being used for the assembly of visiting members of the public.

- Public halls
- Clubhouses, clubs and institutions

- 2.6. We consider hotels, guest & boarding premises and self-catering accommodation to mean:

Properties, 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
- 2.7. In a similar way to other discounts (such as charity discount), this is a test on use of the property, rather than occupation. Therefore, properties which are occupied but not wholly, or mainly used for the qualifying purpose will not qualify for the discount. For the avoidance of doubt, properties which have closed due to the government's advice on COVID19 should be treated as occupied for the purposes of this discount.
- 2.8. The lists above are not intended to be exhaustive and may be added to. It is based on the types of uses that the Government considers to be retail use for the purpose of this discount.

Nursery Discount

- 2.9. Properties that will benefit from the discount are those which are occupied by providers on Ofsted's Early Years Register and which are wholly or mainly used for the provision of the Early Years Foundation Stage.
- 2.10. To qualify for the discount the property should be wholly or mainly being used for the above qualifying purpose. In a similar way to other discounts (such as charity discount), this is a test on use rather than occupation. Therefore, properties which are occupied but not wholly or mainly used for the qualifying purpose will not qualify for the discount. For the avoidance of doubt, properties which have closed temporarily due to the government's advice on COVID-19 should be treated as occupied for the purposes of this discount.

Non-Qualifying properties

Expanded Retail Discount

- 3.1. The list below is of properties that do not qualify for Retail Discount and is based on the types of uses that the Government does not consider to be retail use for the purpose of this discount.

Properties that are being used for the provision of the following services or similar 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

Properties that are not reasonably accessible to visiting members of the public

Nursery Discount

- 3.2. Properties that are not those which are occupied by providers on Ofsted's Early Years Register and which are wholly or mainly used for the provision of the Early Years Foundation Stage.

Amount of discount available

- 4.1. Subject to the cash caps, the total amount of government-funded relief available for each property for 2021/22 under these schemes are:
- a. For chargeable days from 1 April 2021 to 30 June 2021 100% of the chargeable amount, and
 - b. for chargeable days from 1 July 2021 to 31 March 2022, 66% of the chargeable amount.
- 4.2. 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 should be used to determine the amount of relief to be granted for a chargeable day for a particular hereditament in the financial year 2021/22:
- 4.3. Amount of relief to be granted = $V \times$ percentage Expanded Retail Discount/Nursery Discount as found at paragraph 4.1 above, where:
- 4.4. 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 local authorities have used their discretionary relief powers introduced by the Localism Act which are not funded by section 31 grants
- 4.5. This should be calculated ignoring any prior year adjustments in liabilities which fall to be liable on the day.

- 4.6. 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

No cash caps will apply for the period between 1 April 2021 to 30 June 2021.

- 5.1. Under the cash caps, a ratepayer may only receive up to the following cash caps of Expanded Retail Discount or Nursery 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 test set out below
 - or**
 - b. £105,000 for all other ratepayers (subject to paragraphs 5.2 – 5.4).
- 5.2. 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).
- 5.3. Where a ratepayer has a qualifying connection with another ratepayer then those ratepayers should 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.
- 5.4. In those cases where it is clear to the local authority that the ratepayer is likely to breach the cash caps then the authority should automatically withhold the discount. Otherwise, local authorities may include the discount in bills and ask the ratepayers, on a self-assessment basis, to inform the authority if they are in breach of the cash caps. Annex D of this guidance contains a sample cash cap ratepayer declaration, which local authorities may wish to use to discharge this responsibility

Eligibility for the Closed Cash Cap (£2 million)

- 5.5. 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.
- 5.6. For the avoidance of doubt, hereditaments which have closed due to the government's response to coronavirus should be treated as occupied for the purposes of the closed cash cap.
- 5.7. 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.
- 5.8. 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.
- 5.9. 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.

Instalments

- 6.1. The standard payment arrangement for business rates is for the liability for the year to be paid in 10 or 12 instalments. However, for those eligible for the Extended Retail Discount or Nursery Discount for 2021/22, this would mean those ratepayers having to make instalments in the first three months of the year when 100% relief is available.
- 6.2. Therefore, authorities should ensure in line with this guidance and in accordance with Part 1, Schedule 1 of The Non-Domestic Rating (Collection and Enforcement) (Local Lists) (Regulations) 1989 (SI 1989/1058), as amended, that ratepayers eligible for the Extended Retail Discount are not asked to make an instalment in respect of 2021/22 for the three month period of 100% relief is available for.

- 6.3. We will provide an alternative installment arrangement for ratepayers which spreads the liability for the period from 1 July 2021 to 31 March 2022 over some or all of the remaining nine months of the year.

Splits, mergers and changes to existing properties

- 7.1. The discount will be applied on a day to day basis using the formula set out above. A new property 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 discount on that day.

Other discretionary discounts reimbursed by Section.31 grants

- 8.1. If a property is eligible for discount under other schemes for which section 31 grant is payable, discount should be first awarded under those schemes.

Application process

- 9.1. For both the Retail and Nursery Discount entitlement is established based on information already held within the Council's Business Rates system for the period 01 April 2021 to 30 June 2021. Therefore, awards will be applied automatically where entitlement is found and this will be shown on the bill. Ratepayers may request we review their account where no automatic award has been made.
- 9.2. From 01 July 2021 all discounts will be removed from Business Rates accounts and revised notices will be issued. Businesses who feel they are still eligible to receive a discount after this date will have to complete an application form, declaring they are still eligible for discount and the awarding of which would not breach the cash caps limits outlined above. The application form for this period will be available on our website from mid-June 2021.
- 9.3. On receipt of a successful application, a ratepayer's Business Rates account will be amended and a further revised notice will be issued. Instalments remain payable as set out on the latest notice received, until a further revised notice is issued.
- 9.4. A ratepayer may refuse the either discount for each eligible hereditament anytime up to 30 April 2022. The ratepayer cannot withdraw their refusal for either all or part of the financial year. If you wish to refuse the discount, this must be done in writing to businessrates@epsom-ewell.gov.uk

Appeals process

- 10.1. There is no statutory right of appeal against a decision regarding Retail Discount, since it is a local discretionary discount. Decisions can be challenged by way of judicial review in the normal way, but are unlikely to be set aside unless the decision was so unreasonable that no reasonable person could have reached it ('Wednesbury Rules').
- 10.2. However, the Council recognises that ratepayers should be entitled to have a retail discount decision reviewed if dissatisfied with the outcome. Only the ratepayer, or authorised agent may appeal against the decision not to award discount or the level of discount awarded. Appeals must be made within four weeks of the notification of decision.
- 10.3. The appeal process for this discount will follow our current appeal procedure for discretionary rate discount:-
 - 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 Revenues Manager will be considered by Head of Revenues and Benefits and the Chief Finance Officer.

State aid / UK subsidy limits

- 11.1. For 2020/21 and the first three months of 2021/22, the Government have confirmed that subsidy limits based on EU State Aid do not apply to discounts awarded under this scheme.
- 11.2. Whilst the UK left the EU on 31 January 2020, the Withdrawal Agreement negotiated by the Government and the EU provides that during a transition period State aid rules continued to apply and will be subject to control by the EU Commission.
- 11.3. The De Minimis Regulations allow an undertaking to receive up to €200,000 of De Minimis aid in a three year period (consisting of the current financial year and the two previous financial years)