

Harlow Council

Discretionary Business Grant Scheme policy 2020 to 2021

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1.0 Purpose of the scheme

- 1.1 The purpose of this document is to determine eligibility for a payment under the Council's Discretionary Business Grants Scheme.
- 1.2 The new Discretionary Business Grant Scheme has been developed in response to an announcement made by the Secretary of State for Business, Energy and Industrial Strategy made on 1 May 2020 which sets out circumstances whereby a grant payment **may** be made by the Council to a business who has not previously qualified for a direct business grant and is suffering a significant fall in income due to the COVID-19 crisis.
- 1.3 Whilst the awarding of grants will be at the total discretion of the Council, the Department for Business, Energy and Industrial Strategy (BEIS) has set down criteria which **must** be met by each business making an application for a discretionary grant. The department has also indicated the types of business which should be given priority in all cases.
- 1.4 This document sets out the criteria which BEIS have provided to the Council to determine eligibility for the Discretionary Business Grant. It also outlines the approach the Council will take in determining whether an award should be paid or not.

2.0 Funding

- 2.1 Central government has provided the Council with a sum of £515,500, which represents 5% of the projected allocation for the Direct Business Grants. The funding level is finite and therefore the Council, although keen to ensure that grants are given to the maximum number of businesses, is conscious that its expenditure cannot exceed that amount.
- 2.2 The Council will limit the total awards to the level of funding available from central government.

3.0 Eligibility criteria of the fund

- 3.1 Central government, whilst wanting Councils to exercise their local knowledge and discretion, have set national criteria for the funds. In all cases, the Council will only consider businesses for Discretionary Business Grant where **all** of the criteria are met.
- 3.2 Any business failing to meet the criteria or failing to provide the Council with sufficient information to determine whether they meet the criteria, will not be awarded a Discretionary Business Grant.
- 3.3 Government has stated that the intention of the scheme is to provide assistance to businesses that meet the following criteria:

- Small and micro businesses, as defined in Section 33 Part 2 of the Small Business, Enterprise and Employment Act 2015 and the Companies Act 2006;
- Businesses with relatively high ongoing fixed property-related costs;
- Businesses which can demonstrate that they have suffered a significant fall in income due to the COVID-19 crisis;
- Businesses which occupy property, or part of a property, with a rateable value or annual rent or annual mortgage payments below £51,000; and
- Businesses must have been trading on 11 March 2020.

3.4 In addition, businesses which are **eligible** for any of the following are **ineligible for any Discretionary Business Grant**:

- Small Business Grant Fund;
- Retail, Hospitality and Leisure Grant;
- The Fisheries Response Fund;
- Domestic Seafood Supply Scheme (DSSS);
- The Zoos Support Fund;
- The Dairy Hardship Fund;

4.0 Definitions – Eligibility Criteria

4.1 For the sake of clarity the following definitions are provided in respect of the criteria set out in paragraphs 3.3 and 3.4:

- **Small Businesses under the Companies Act 2006** must meet two of the following requirements in a year:
 - Turnover must not be more than £10.2 million per annum;
 - The Balance sheet total should not be more than £5.1 million; and
 - The number of employees should be less than 50.
- **Micro Businesses under the Companies Act 2006** must meet two of the following requirements in a year:
 - Turnover must not be more than £632,000 per annum;
 - The Balance sheet total should not be more than £316,000; and
 - The number of employees should be less than 10.
- **Businesses must have relatively high ongoing fixed building-related costs** – for the purpose of this scheme, the Council determines fixed building-related costs to be:
 - Payments of mortgage, lease, rent or licence for business premises and **not** domestic premises (apart from the exception of bed and breakfast premises as defined in part 6 of this scheme);
 - The payments must represent a high proportion of expenses in relation to the overall income of the business; and
 - The payments are unavoidable and are ongoing.

The Council has determined that each business will have to provide evidence of high on-going fixed building-related costs. The Council may require the business to provide evidence of liabilities including mortgage, lease, tenancy, service charges or licence documentation.

- **Businesses must demonstrate that they have suffered a significant fall in income due to the COVID-19 crisis** – the Council has determined that businesses certify that there has been a significant fall in income for the period April and May 2020 compared with the same months in 2019. The Council must be sure that the fall in income is due to the COVID-19 crisis and not a general failure of business. Where necessary businesses may need to provide evidence to the Council to support their application;
- **Businesses must be trading on 11 March 2020** – the Council will require proof that the business was trading on 11 March 2020 and was not dormant, subject to a winding up order, in administration or subject to striking off. The Council considers a business as trading if it is engaged in its business activity. This should be interpreted as carrying on a trade or profession or buying and selling goods or services with a view to making a profit or surplus;
- **Eligible to a grant under the Small Business Grant Scheme or the Retail Hospitality or Leisure Scheme¹** – where the business is either eligible to receive or has received a grant under either of the two schemes administered by the Council, no Discretionary Business Grant shall be awarded;
- **Eligible to assistance under the Fisheries Response Fund** – as administered by the Marine Management Organisation (MMO) and funded by HM Treasury and the Department for Environment, Food and Rural Affairs. Where the business or person is eligible to assistance under this fund, no Discretionary Business Grant shall be awarded;
- **Eligible to assistance under the Domestic Seafood Supply Scheme (DSSS)** as administered by the Marine Management Organisation (MMO) and funded by HM Treasury and the Maritime and Fisheries Fund. Where the business or person is eligible to assistance under this fund, no Discretionary Business Grant shall be awarded;
- **Eligible to assistance under the Zoos Support Fund** as administered by the Department for Environment, Food and Rural Affairs. Where the business or person is eligible to assistance under this fund, no Discretionary Business Grant shall be awarded;
- **Eligible to assistance under the Dairy Hardship Fund** as administered by the Department for Environment, Food and Rural Affairs. Where the business or person is eligible to assistance under this fund, no Discretionary Business Grant shall be awarded;

¹ Eligibility Criteria for either the Small Business Grant or Retail Hospitality and Leisure Grant as determined by the Department for Business, Energy and Industrial Strategy and administered by the Council.

- **Businesses which occupy property, or part of a property, with a rateable value or annual rent or annual mortgage payments below £51,000** – The Council has decided that this shall be a key determinant of priority under the scheme and, as such, where businesses have rateable values of £51,000 or more or make payments of mortgage, lease, rent or licence of £51,000 or more per annum, no Discretionary Business Grant shall be awarded. For the avoidance of doubt, the Council has decided that in calculating the figure of £51,000, **all** buildings occupied by the business (or the responsibility of the business) shall be taken into account.

5.0 National Priority Businesses

- 5.1 Government are asking Councils to prioritise the following types of businesses for grants from within this discretionary fund:
- a) **Small businesses in shared offices or other flexible workspaces** e.g. industrial parks, science parks, incubators etc., which do not have their own business rates assessment;
 - b) **Regular market traders who do not have their own business rates assessment;**
 - c) **Bed and Breakfast premises which pay Council Tax instead of business rates;** and
 - d) **Charity properties in receipt of charitable business rates relief which would otherwise have been eligible for Small Business Rates Relief or Rural Rate Relief.**
- 5.2 The list set out above is not intended to be exhaustive, but it is intended to guide Councils as to the types of uses that the government considers should be a priority for the scheme. The Council will decide whether particular situations not listed are broadly similar in nature to those above and, if so, whether they may be eligible for grants from this discretionary fund.

6.0 Definitions - National Priority Businesses

- 6.1 In line with government's priorities for the fund, the following definitions have been used to determine whether any particular business should be treated as a priority for the funding:
- Small businesses in shared offices or other flexible workspaces which do not have their own business rates assessment**
- 6.2 These are defined by the Council as businesses which do not have a separate assessment for Non-Domestic Rating (i.e. those businesses who do not occupy a separate hereditament within the 2017 Rating List) and who, on the 11 March 2020 were trading and shared the premises with other businesses.
- 6.3 Primarily, these businesses will not be assessed individually for Non-Domestic Rating on the basis that the landlord has paramount occupation of the premises.

Regular market traders who do not have their own business rates assessment

- 6.4 As with the other priority businesses for this fund, these will be businesses who do not have a separate assessment for Non-Domestic Rating (i.e. those businesses who do not occupy a separate hereditament within the 2017 Rating List).
- 6.5 The Council has decided that for the purpose of this scheme, market traders shall be defined as: “ a business or person who sells goods wholly or mainly to visiting members of the public from a stall, pitch or similar, from a place or market recognised by the Council as a market”. Where the business is street trading, the business or person must hold a valid street market licence issued by the Council.
- 6.6 All market traders must prove to the Council that as at 11 March 2020, they had a regular pitch or stall within the Council’s area from which they sold goods to visiting members of the public.
- 6.7 For the purposes of this scheme, ‘regular’ is defined as at least weekly. Where the market trader traded less frequently, the Council will not consider the business as priority for a grant.
- 6.8 Where a market trader operates in more than one local authority area, the applicant will need to certify that they trade primarily in the Council’s area or have fixed business base within the Council’s area. Where a grant is claimed from another authority, no grant will be awarded by the Council.

Bed and Breakfast premises which pay Council Tax instead of business rates

- 6.9 For the purpose of this scheme, these businesses are those who do not occupy a separate hereditament within the 2017 Rating List and who the Valuation Office Agency would deem to fall within the Council Tax Valuation List.
- 6.10 For the avoidance of doubt, the Council will consider this as a priority business if:
- a) the Bed and Breakfast property is domestic and therefore subject to Council Tax rather than business rates;
 - b) it provides short stay accommodation for no more than six persons at any one time within the past year;
 - c) the property is the sole or main residence of the proprietor(s) and the bed and breakfast use is subsidiary to the private use; and
 - d) the business was trading on 11 March 2020.
- 6.11 In determining subsidiary use the Council shall take into account:
- Whether the majority of the premises is being used for business purposes: and
 - If the premises have been adapted to alter the character of the property beyond that of a private house.

- 6.12 Only those businesses that are registered with the Council will be eligible to make an application for a Discretionary Business Grant. Where the Council deems that the Bed and Breakfast premises should have been subject to Non-Domestic Rating, the business shall not be considered as a priority for a Discretionary Business Grant.
- 6.13 The Council has determined that any premises where it considers that the Bed and Breakfast business is basically 'home sharing' and where advertising is wholly undertaken through 'home sharing' websites will not take priority for the fund.

Charity properties in receipt of charitable business rates relief which would otherwise have been eligible for Small Business Rates Relief or Rural Rate Relief

- 6.14 In certain cases, where a charity was in receipt of mandatory relief under Section 43 of the Local Government Finance Act 1988, it would not have been entitled to either Small Business Rates Relief or Rural Rate Relief. As such it would not have been able to receive a grant under the Small Business Grant Fund.
- 6.15 The Council will give priority to charities who, were it not for the receipt of mandatory relief, would have met the qualifying criteria for the Small Business Grants (see the Council's policy for Direct Business Grants). It should be noted that this only relates to premises that would, but for the receipt of mandatory rate relief, have received a percentage reduction under the Small Business Rates Criteria. In the main this will be premises with a rateable value of £15,000 or less and where the ratepayer occupies only one premises (excluding any premises which would be disregarded under the Small Business Rates Relief scheme).
- 6.16 The Council has decided that any charitable business receiving other help from public funds (i.e. from government, local authorities etc.) shall not be priority for a Discretionary Business Grant.

7.0 Local Fund Priorities

- 7.1 In addition to the national fund priorities, the Council has decided that it will accept applications from all local businesses meeting the criteria although It should be noted that, as the grant fund is limited, the Council will look to award businesses who meet the national priorities first and any residual funds awarded to businesses who meet the local priorities.
- 7.2 The Council has decided that local priority businesses will be those that did not qualify for either a Small Business or a Retail, Hospitality and Leisure Grant and service the retail, hospitality and leisure industry.
- 7.3 In all cases, the business **must** meet the eligibility criteria stated in sections 3 and 4.

8.0 How will grants be provided to businesses?

- 8.1 The Council is fully aware of the importance of grants to assist businesses and support the local community and economy. The Discretionary Business Grant scheme will offer a lifeline to businesses who are struggling to survive due to the COVID-19 crisis.
- 8.2 In all cases, a simple application form **is** required, and this can be completed online at the Council's website; <https://www.harlow.gov.uk/coronavirus/businesses> Supplementary information may also be required, and all businesses should look to provide this, where requested to the Council as soon as possible.
- 8.3 An application for a Discretionary Business Grant is deemed to have been made when a duly completed application form is received via the Council's online procedure.

9.0 How much grant will be payable

- 9.1 Central government has determined that there shall be a 'cap' on grants of £25,000 per business and that the next level of grant shall be £10,000. However, the Council under central government guidance, has the following discretion:
- (a) Whether to award grants at the £25,000 or £10,000 level; and
 - (b) To determine whether grants of less than £10,000 should be awarded.
- 9.2 The Council has decided that, for the purposes of this scheme, the following grants will be payable. All grants will be based on the businesses meeting the criteria and definitions within this scheme:
- £25,000 in exceptional circumstances where the failure of the business would result in a significant impact on the economy of the District;
 - £10,000 for small businesses meeting the criteria in sections 3 and 4;
 - £5,000 for micro businesses meeting the criteria in sections 3 and 4;
 - £2,000 for Bed and Breakfast businesses meeting the criteria in sections 3 and 4; and
 - £1,000 for market traders meeting the criteria in sections 3 and 4.
- 9.3 Depending on the number of applications received, the Council reserves the right to either increase or decrease the level of grants as necessary.
- 9.4 Only one Discretionary Business Grant will be awarded to any business. This will also apply if more than one Limited Company has the same director (s) or where more than one business has the same proprietor (either sole traders or partnerships).

10.0 Limitation of funds and applications

- 10.1 All monies paid through the Discretionary Business Grant scheme will be funded by central government and paid to the Council under S31 of the Local Government Act 2003. However, as mentioned in paragraph 2, the funds are limited and, as such, the Council is not able to award a grant where funds are no longer available.
- 10.2 In order to fairly administer the scheme, the Council has decided that awards will be determined as follows:
- a) There will be a two-week period during which applications can be made;
 - b) Any businesses wishing to claim should complete the necessary form on the Council's website as shown in paragraph 8.2. This will also include the provision of such evidence as required by the Council;
 - c) All claims will be made online;
 - d) Once the application period is closed, all awards will be considered against the criteria laid down within this scheme, as soon as practicable;
 - e) Depending on the number of applications and the amount left in the grant fund, the Council reserves the right to provide other application periods if appropriate.

11.0 EU State Aid requirements

- 11.1 Any Discretionary Business Grant is given as aid under the temporary framework for State Aid measures to support the economy in the current COVID-19 outbreak published on 19 March 2020. This means that businesses receiving support under these provisions can receive up to €800,000 in aid over three years (being the current and the previous two years).
- 11.2 Any grant awarded is required to comply with the EU law on State Aid. This will involve the applicant declaring to the Council if they have received any other de minimis State Aid or aid provided under the EU Commission Covid-19 Temporary Framework.
- 11.3 If the applicant has not received any other de minimis State Aid, they are not required to make that declaration to the Council or to complete any declaration statement.

12.0 Scheme of delegation

- 12.1 The Chief Executive, in line with delegated powers, has approved this scheme on behalf of the Council.
- 12.2 Officers of the Council will administer the scheme and the Chief Executive Officer and the Deputy to the Chief Executive, Head of Finance and Property are authorised to make technical scheme amendments to ensure it meets the criteria set by the Council and, in line with central government guidance.

13.0 Notification of decisions

- 13.1 Applications will be considered by the Revenues and Benefits service.
- 13.2 All decisions made by the Council shall be notified to the applicant either in writing or by email. A decision shall be made as soon as practicable after the closure of the application period.

14.0 Reviews of decisions

- 14.1 The Council will operate an internal review process and will accept an applicant's request for an appeal of its decision.
- 14.2 All such requests must be made in writing to the Council, within 14 days of the Council's decision, and should state the reasons why the applicant is aggrieved with the decision of the Council. New information may be submitted at this stage to support the applicant's appeal. The application will be reconsidered as soon as practicable and the applicant informed in writing or by email of the decision.

15.0 Complaints

- 15.1 The Council's 'Complaints Procedure' (available on the Councils website) will be applied in the event of any complaint received about this scheme.

16.0 Other scheme conditions

- 16.1 The Council has been informed by treasury that all grants are taxable. Applicants should make their own enquiries to establish any tax position or liability.
- 16.2 The Council recognises that there will be occasions when a business does not satisfy the above criteria. The criteria are not restrictive and nothing in them shall be taken as restricting the Council's ability to depart from its general policy as to the award of grants if it sees fit to do so bearing in mind the facts of the case.

17.0 Managing the risk of fraud

- 17.1 Neither the Council, nor the government will accept deliberate manipulation of the scheme and fraud. Any applicant caught falsifying information to gain grant money or failing to declare

entitlement to any of the specified grants will face prosecution and any funding issued will be recovered from them.

17.2 Applicants should note that, where a grant is paid by the Council, details of each individual grant may be passed to government.

17.3 The Council reserves the right to reclaim any grant paid in error.