



Tonbridge & Malling Borough Council Omicron Hospitality and Leisure Grant Scheme December 2021

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Definitions

The following definitions are used within this document:

'COVID-19' (coronavirus); means the infectious disease caused by the most recently discovered coronavirus;

'Department for Business, Energy & Industrial Strategy (BEIS)'; means the Government department responsible for the scheme and guidance;

'Effective date'; means, for eligibility of the grant. For the purpose of this scheme, the date cannot be before 30th December 2021;

'Hereditament(s); means the assessment defined within Section 64 of the Local Government Finance Act 1988;

'Hospitality, Leisure and Accommodation'; as defined within this scheme;

'In-person services' means services which are wholly or mainly provided by the business to their customers face to face and which **cannot** be provided by other means such as online or remotely by telephone, email, video link, or written communication;

'Local lockdown'; means the same as **'Local restrictions';**

'Local rating list'; means the list as defined by Section 41 of the Local Government Finance Act 1988

'Local restrictions'; and **'Localised restrictions'** means legally binding restrictions imposed on specific Local Authority areas or multiple Local Authority areas, where the Secretary of State for Health and Social Care requires the closure of businesses in a local area under regulations made using powers in Part 2A of the Public Health (Control of Disease) Act 1984 in response to the threat posed by coronavirus and commonly as part of a wider set of measures;

'Rateable value'; means the rateable value for the hereditament shown in the Council's local rating list at the date of the local restrictions;

'Ratepayer'; means the person who will receive the grant will be the person who, according to the Council's records, was the ratepayer liable for occupied rates in respect of the hereditament at the date of the local restrictions;

'State Aid Framework'; means the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak published on 19 March 2020;

'Subsidies'; means the Government's replacement scheme for the previous state aid framework; and

'Temporary Framework for State aid'; means the same as the **'State Aid Framework'**.

1.0 Purpose of the Scheme, background, and funding

- 1.1 The purpose of this document is to determine eligibility for a payment under the Council's Omicron Hospitality and Leisure grant scheme. The scheme is effective from 30th December 2021 and is not retrospective.
- 1.2 The grant scheme has been developed by the Council in response to an announcement made by Government on 21st December 2021 which introduced additional grant support for hospitality and leisure businesses in England.
- 1.3 The scheme provides support to hospitality, leisure, and accommodation businesses, in recognition that the rise of the Omicron variant means that some businesses are likely to struggle over the coming weeks.
- 1.4 Whilst the awarding of grants will be the Council's responsibility, the Department for Business, Energy & Industrial Strategy (BEIS) has set down criteria which **must** be met by each business making an application. The Department has also indicated the types of business which should be given the grant.
- 1.5 This support will take the form of a one-off grant funding scheme. Funding is available for the 2021/22 financial year only and is to be administered by the Council as the Billing Authority.
- 1.6 No grant shall be paid for any period prior to 30th December 2021.

2.0 Eligibility criteria

- 2.1 Government, whilst wanting Councils to exercise their local knowledge and discretion, has set national criteria for these funds. In all cases, the Council will only consider businesses for grants where **all** of the criteria are met.
- 2.2 Businesses that are eligible are those that:
 - (a) are liable for local non-domestic rating (business rates) and have premises (hereditaments) on the Council's local rating list on 30th December 2021;
 - (b) the hereditament must be occupied on 30th December 2021;
 - (c) the business must be trading on 30th December 2021; and
 - (d) the business must fall into scope as hospitality, leisure and accommodation as defined within this section.
- 2.3 Businesses will only be eligible where their main service falls within hospitality, leisure, or accommodation. If a business operates services that could be considered hospitality or leisure, and falls into another category, the Council has decided the main service can be determined by assessing which category constitutes 50% or more of their overall income. The main service principle will determine whether a business receives funding.

- 2.4 For the purposes of this grant scheme, a business is considered to be trading if it is engaged in business activity. This should be interpreted as carrying on a trade or profession or buying and selling goods or services in order to generate turnover.
- 2.5 Fully constituted businesses in liquidation, dissolved, struck off or subject to a striking-off notice are not eligible under these conditions.

Hospitality

- 2.6 For the purposes of this scheme, a hospitality business is defined as a business whose main function is to provide a venue for the consumption and sale of food and drink.
- 2.7 The Council will use the following criteria to assess whether a business is eligible for a grant under this threshold:
- Businesses offering in-person food and drink services to the general public; and
 - Businesses that provide food and/or drink to be consumed on the premises, including outdoors.
- 2.8 For these purposes, the definition of a hospitality business excludes food kiosks and businesses whose main service (generating 50% or more of income) is a takeaway.
- 2.9 This is not applicable to those businesses that have adapted to offer takeaways during periods of restrictions, in alignment with previous COVID-19 business grant schemes.

Leisure

- 2.10 For the purposes of this scheme, a leisure business is defined as a business that provides opportunities, experiences, and facilities, in particular for culture, recreation, entertainment, celebratory events and days and nights out.
- 2.11 The Council has decided that for these purposes, the definition of a leisure business excludes all retail businesses, telescopes, coach tour operators, and tour operators.

Accommodation

- 2.12 For the purposes of this scheme, an accommodation business can be defined as a business whose main lodging provision is used for holiday, travel and other purposes. The Council will take into account the following when making its decision:
- Does the business provide accommodation for 'away from home' stays for work or leisure purposes? and
 - Does the business provide accommodation for short-term leisure and holiday purposes?
- 2.13 The Council has decided that the definition of an accommodation business will **exclude**:
- private dwellings;
 - education accommodation;

- residential homes and care homes,
- residential family centres; and
- beach huts.

3.0 Awards

3.1 The Omicron Hospitality and Leisure grant is a one-off grant as follows:

- Businesses occupying hereditaments appearing on the local rating list with a **rateable value of exactly £15,000 or under** on 30 December 2021 will receive a payment of **£2,667**;
- Businesses occupying hereditaments appearing on the local rating list with a **rateable value over £15,000 and less than £51,000** on 30 December 2021 will receive a payment of **£4,000**;
- Businesses occupying hereditaments appearing on the local rating list with a **rateable value of exactly £51,000 or over** on 30 December 2021 will receive a payment of **£6,000**

3.2 Any business failing to meet the criteria will not be awarded a grant. However, subject to subsidy allowance conditions, businesses will be entitled to receive a grant for each eligible hereditament.

4.0 Excluded businesses – general exclusions

4.1 The following businesses will **not** be eligible for an award:

- (a) Businesses that are not within the rating system;
- (b) Businesses that have already received grant payments that equal the maximum permitted subsidy allowances will not be eligible to receive funding; and
- (c) Businesses that are in administration, insolvent or where a striking-off notice has been made, are not eligible for funding under this scheme.

5.0 The Effective Date

5.1 The effective date for eligibility is determined as the 30th December 2021

The hereditament

5.2 In **all** cases, the following must have existed at the effective date:

- The hereditament **MUST** be shown in the local rating list;
- Any changes to the local rating List (Rateable Value or to the hereditament) after the effective date, including changes which have been backdated to this date, will be ignored for the purposes of eligibility;
- The Council is not required to adjust, pay or recover grants where the local rating list is subsequently amended retrospectively to the effective date;

- In cases where it was factually clear to the Council that, at the effective date, the local rating List was inaccurate on that date, the Council *may* withhold the grant and/or award the grant based on their view of who would have been entitled to the grant had the list been accurate. (The Department for Business, Energy and Industrial Strategy (BEIS) has stated that this provision is entirely at the discretion of the Council and is **only** intended to prevent manifest errors. It is not intended for ratepayers who subsequently challenge their Rateable Value); and
- Where a hereditament is exempt from rating as at the effective date, no grant shall be payable.

The Ratepayer

5.3 In **all** cases the following shall apply:

- The person who will receive the grant will be the person who, according to the Council's records, was the ratepayer in respect of the hereditament at the effective date;
- The ratepayer must be liable to occupied property rates at that date. It should be noted that grants will not be awarded where the hereditament is unoccupied;
- Where the Council has reason to believe that the information it holds about the ratepayer at the effective date is inaccurate, it may withhold or recover the grant and take reasonable steps to identify the correct ratepayer;
- Where, it is subsequently determined that the records held are incorrect, the Council reserves the right to recover any grant incorrectly paid; and
- Where any ratepayer misrepresents information or contrives to take advantage of the scheme, the Council will look to recover any grant paid and take appropriate legal action. Likewise, if any ratepayer is found to have falsified records in order to obtain a grant.

6.0 How will grants be provided to Businesses?

6.1 The Council is fully aware of the importance of these grants to assist businesses and support the local community and economy. The Omicron Hospitality and Leisure grant scheme together with the Council's Additional Restrictions Grant (ARG) scheme will offer a lifeline to businesses who are struggling to survive during to the COVID-19 crisis.

6.2 Details of how to obtain grants are available on the Council's website:
www.tmbc.gov.uk/localrestrictions

6.3 The closing date for applications is 28th February 2022 and **no** payments can be made by the Council after 31st March 2022.

6.4 In all cases, businesses will be required to confirm that they are eligible to receive the grant. Businesses are under an obligation to notify the Council should they no longer meet the eligibility criteria for any additional grants.

- 6.5 The Council reserves the right to request a further application or any supplementary information from businesses, and they should look to provide this, where requested, as soon as possible.
- 6.6 An application for an Omicron Hospitality and Leisure grant is deemed to have been made when a duly completed application form is received via the Council's online procedure.
- 6.6 Businesses should be aware that the Council will undertake extensive pre and post payment checks to prevent and detect fraud whether actual or attempted

7.0 Subsidies and EU State Aid

- 7.1 The EU State aid rules no longer apply to subsidies granted in the UK following the end of the transition period.
- 7.2 The United Kingdom, however, remains bound by its international commitments, including subsidy obligations set out in the Trade and Cooperation Agreement (TCA) with the EU.
- 7.3 The Council can still pay out subsidies under previously approved schemes and this includes subsidies related to COVID-19 that have previously been given under the EU State aid Temporary Framework.
- 7.4 Businesses should make themselves aware of their obligations under Government's subsidies arrangements available on via the following link:

<https://www.gov.uk/government/publications/complying-with-the-uks-international-obligations-on-subsidy-control-guidance-for-public-authorities>

8.0 Scheme of Delegation

- 8.1 The Council has approved this scheme.
- 8.2 Officers of the Council will administer the scheme and the Director of Finance & Transformation is authorised to make technical scheme amendments to ensure it meets the criteria set by the Council and, in line with Government guidance.

9.0 Notification of Decisions

- 9.1 Applications will be considered on behalf of the Council by the Revenues and Benefits Service.
- 9.2 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 an application is received.

10.0 Reviews of Decisions

- 10.1 The Council will operate an internal review process and will accept an applicant's request for a review of its decision.
- 10.2 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.
- 10.3 The application will be reconsidered by a senior officer, as soon as practicable and the applicant informed in writing or by email of the decision.

11.0 Complaints

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

12.0 Taxation and the provision of information to Her Majesty's Revenues and Customs (HMRC)

- 12.1 The Council has been informed by Government that all payments under the scheme are taxable.
- 12.2 The Council does not accept any responsibility in relation to an applicant's tax liabilities and all applicants should make their own enquiries to establish any tax position.
- 12.3 All applicants should note that the Council is required to inform Her Majesty's Revenue and Customs (HMRC) of all payments made to businesses.

13.0 Managing the risk of fraud

- 13.1 Neither the Council, nor Government will accept deliberate manipulation of the schemes or 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.
- 13.2 For the avoidance of doubt, the Council is required to undertake pre- payment checks and post-payment checks for all Omicron Hospitality and Leisure grant payments. This is a stricter position than that taken for previous COVID-19 business support grant schemes. This will include access to and cross-checking with Government data as well as data already held by the Council.

14.0 Recovery of amounts incorrectly paid

14.1 If it is established that **any** award has been made incorrectly due to error, misrepresentation or incorrect information provided to the Council by an applicant or their representative(s), the Council will look to recover the amount in full.

15.0 Data Protection and use of data

15.1 All information and data provided by applicants shall be dealt with in accordance with the Council's Data Protection policy and Privacy Notices which are available on the Council's website.