

Scrutiny committee

Date: Thursday, 22 November 2018

Time: This item will not be taken before 18:00

Venue: Mancroft room, City Hall, St Peters Street, Norwich, NR2 1NH

Committee members:

Councillors:

Wright (Chair)
Fullman (Vice-chair)
Carlo
Coleshill
Fulton-McAlister (M)
Hampton
Manning
Raby
Sands (S)
Smith
Stewart
Thomas (Va)
Thomas (Vi)

For further information please contact:

Committee officer: Lucy Palmer
t: (01603) 212416
e: lucypalmer@norwich.gov.uk

Democratic services
City Hall
Norwich
NR2 1NH

www.norwich.gov.uk

Information for members of the public

Members of the public and the media have the right to attend meetings of full council, the cabinet and committees except where confidential information or exempt information is likely to be disclosed, and the meeting is therefore held in private.

For information about attending or speaking at meetings, please contact the committee officer above or refer to the council's website



If you would like this agenda in an alternative format, such as a larger or smaller font, audio or Braille, or in a different language, please contact the committee officer above.

Supplementary Agenda

Page nos

- 7 Call in - Community Infrastructure Levy Exceptional Circumstances Relief Policy**
Purpose - To consider the call in in relation to the cabinet decision made on 14 November 2018 that council approves the introduction of the Community Infrastructure Levy Exceptional Circumstances Relief Policy.

3 - 26

EXEMPT ITEMS:

(During consideration of these items the meeting is not likely to be open to the press and the public.)

To consider whether the press and public should be excluded from the meeting during consideration of an agenda item on the grounds that it involves the likely disclosure of exempt information as specified in Part 1 of Schedule 12 A of the Local Government Act 1972 or it being confidential for the purposes of Section 100A(2) of that Act.

In each case, members are asked to decide whether, in all circumstances, the public interest in maintaining the exemption (and discussing the matter in private) outweighs the public interest in disclosing the information.

Page nos

Date of publication: **Monday, 19 November 2018**

Norwich City Council
SCRUTINY COMMITTEE

Item No 7

REPORT for meeting to be held on 22 November 2018

Call in

Community Infrastructure Levy Exceptional Circumstances Relief Policy

Summary: A call in has been received by the director of business services. from Councillors James Wright and Denise Carlo

The call in is in relation to the cabinet decision made on 14 November 2018 that council approves the introduction of the Community Infrastructure Levy Exceptional Circumstances Relief Policy.

Conclusions: In accordance with paragraph 15.5 of appendix 6 of the council's constitution, scrutiny committee can:

- (1) Not refer the matter back to cabinet and the decision will stand
- (2) Refer the matter back to cabinet setting out in writing the nature of its concerns
- (3) Refer the matter to council

Recommendation: To consider the call in of the cabinet decision to recommend to council the introduction of the Community Infrastructure Levy Exceptional Circumstances Relief Policy

Contact Officers: Lucy Palmer, Democratic team leader
01603 212416
lucypalmer@norwich.gov.uk

Report

1. The scrutiny committee is being asked to consider a call in of the cabinet decision to recommend to council the introduction of the Community Infrastructure Levy Exceptional Circumstances Relief Policy.
2. Attached are the cabinet report of 14 November 2018 relating to the introduction of this policy and the relevant extract of the minutes of that meeting.

Report to Cabinet

Item

14 November 2018

Report of Director of Regeneration and Development
Subject Introduction of a Community Infrastructure Levy
Exceptional Circumstances Relief Policy

5

Purpose

To report further information on this matter further to the consideration by Cabinet in September and to consider the merits of introducing a Community Infrastructure Levy (CIL) Exceptional Circumstances Relief (ECR) policy.

Recommendations

To:

- 1) recommend that council approves the introduction of the Community Infrastructure Levy Exceptional Circumstances Relief Policy, as set out in appendix 1 of the report to September cabinet as amended and reattached as part of Appendix 3;
- 2) resolve that should council approve the introduction of the policy that authority is delegated to the director of regeneration and development, in consultation with the portfolio holder for sustainable and inclusive growth to introduce a charging policy similar to the one described in para 18 of this report; and
- 3) recommend that council amends appendix 4 to the council's constitution to include the "Power to determine applications for Exceptional Circumstances Relief from the Community Infrastructure Levy" within the list of powers available to planning applications committee.

Corporate and service priorities

The report helps to meet the corporate priority a healthy city with good housing.

Financial implications

Please see the report to September cabinet for a fuller consideration but the overall financial effect will depend on the number of Exceptional Circumstances Relief (ECR) applications received, the amount of ECR claimed in each application, and whether the council decides to approve such applications. However the introduction of an ECR Policy will offer a mechanism to enable growth and deliver development in circumstances where Community Infrastructure Levy (CIL) may otherwise prevent development occurring. It is therefore considered more likely that on balance the overall financial impact will be positive rather than negative for the council over the long term. The regulations provide a mechanism for the council to withdraw the ECR Policy in the future should it desire to do so and as such the financial effect of the ECR Policy can be kept under regular review.

Ward/s: All

Cabinet member:

Councillor Waters - Leader

Councillor Stonard - Sustainable and inclusive growth

Contact officers

Dave Moorcroft, director of regeneration and development 01603 212225

Graham Nelson, head of planning 01603 212530

Background documents

None

Report

Background

1. In September cabinet considered a report on whether to recommend the introduction of a Community Infrastructure Levy (CIL) Exceptional Circumstances Relief Policy (ECR). This report is attached as Appendix 3.
2. Following debate cabinet resolved to request that a further report is prepared in advance of the council debate, examining how Community Infrastructure Levy Exceptional Circumstances Relief policies have been applied elsewhere and best practice in councils recovering the revenue costs of dealing with such applications.
3. In order to address this resolution further work has been done to establish:
 - How common is it for CIL charging councils to have an ECR policy in place?
 - Identify examples of where the policy has been used and relief granted.
 - Best practice in terms of cost recovery for local planning authorities.

The findings of this work are summarised in turn below.

4. In addition to the work specifically requested by cabinet, officers have also prepared a generic flowchart to illustrate the process through which an individual proposal must pass before Exceptional Circumstances Relief can be granted. This is included as Appendix 2 for information.
5. Finally, officers are also recommending a slight change to the ECR policy itself for clarity. In the version attached to the September cabinet report it was noted “that the CIL Regulations give the council the ability to withdraw this policy at any time with two weeks’ notice.” Whilst this is technically correct it is proposed to clarify this sentence to make clear that, as the introduction of the policy needs to be agreed by full council, its withdrawal would also require a decision by full council under the constitution so would in practice take longer than the two weeks referred to. This clarification is shown in italics within Appendix 1 of the attached September cabinet report to reflect this.

How common is it for CIL charging councils to have an ECR policy in place?

6. In order to research these issues officers’ reviewed nationally published material on all the local planning authorities that had introduced CIL in London, south east, east of England, east Midlands and north west regions. This was based on published research from Oct 2017 so it may underestimate the number of CIL charging authorities.
7. From the national research there appeared to be 127 authorities in these regions that had introduced CIL. However, from their websites it wasn’t possible to establish readily whether or not 41 of these authorities had an ECR policy in place. Of the 86 where it could be established, 45 had made it clear that they would not entertain applications for ECR but 41 appeared to have an ECR policy in place.
8. So overall it appears that around half of all CIL charging authorities do have a policy in place to allow them to grant ECR. The authorities with the policy in place appear

to be quite diverse in the nature, however comparing the list of authorities with the ECR in place with the long list of all CiL charging authorities it would appear that ECR policies are more commonly found in urban areas than rural ones. The list of authorities found to have an CiL ECR policy in place is attached as Appendix 1.

Examples of use of the policy where in place

9. Notwithstanding the comparatively large number of authorities that have an ECR policy in place examples of its use of the policy proved far harder to find following e-mails being sent to all of the 41 authorities. It would appear that nowhere is applying the ECR policy frequently and most authorities that had introduced an ECR had never had cause to use it, although it should be remembered that in a number of cases the policy may not have been in place for very long and officers' understand that in a number of instances authorities suggested that possible schemes were in the pipeline.
10. As the name suggests the use of the policy would appear to be the exception rather than the rule. Only three examples have been found where the policy has been applied. However, this is likely to be an underestimate as the ability to find examples appears to be restricted by concerns over confidentiality of commercially sensitive data. However, the following examples have been found of where CIL ECR policies have been applied:
11. **Taunton Deane Borough Council And West Somerset Council** who have granted relief on a scheme for 100% affordable homes on a particular site where the affordable housing did not qualify for social housing relief.
12. **Weymouth and Portland Borough Council** opened the window for claims for a short period of time in 2016 so they could accept 2 claims on a regeneration site which had severe viability issues due to the abnormal development costs associated with bringing the site forward and conversion of existing buildings. The proposals were for a number of cultural and community spaces (a museum, exhibition space and cultural experience space) as well as four A1/A3 units and a total of 53 residential units.
13. **The Royal Borough of Kingston upon Thames** granted CIL ECR relief for the redevelopment of the Eden Walk shopping centre. Details of the consideration of the ECR have been treated in confidence although the description of the associated planning application is as follows:

"The demolition and redevelopment of Eden Walk Shopping Centre, including Millennium House and Neville House to provide a mixed use development consisting of retail units and kiosks (Use Classes A1-A5), leisure including a cinema (Use Class D2), media screens, offices (Use Class B1a) and residential (Use Class C3); plant (including CHP); public and residential car parking; formation of new access for residential basement car parking, refurbishment of the existing multi-storey car park including new access ramp, extension of basement; public realm works including pedestrian routes and public spaces, improvements to Memorial Gardens, and associated works. Listed Building Consent for the relocation of the War Memorial to a location in Memorial Gardens, and for works abutting the United Reformed Church."

14. In addition to the above three examples, two further examples of schemes of ECR proposal are in the pipeline:
15. **Chesterfield** are considering an application at the moment it involving additional costs claimed to be arising as a result of heritage conservation requirements through the re-development of a listed building. They also have a further planned regeneration scheme in the Borough which is a longstanding local plan allocation, which requires the refurbishment of a listed building with exceptional associated costs which is expected to have challenging viability and anticipate that this will need to be considered against their ECR policy as and when it comes forward.
16. **Cheshire west and Chester** - Only introduced the ECR very recently, and have one scheme where it is considered that it may be necessary to apply the ECR Policy. The scheme is described as :
 - Restoring a derelict Grade II listed building; and
 - Gifting the Council some atelier units and a walled garden which will then be rented out to Community Groups on a pepper corn rent for a minimum of 25 years
17. Finally, the **London Borough of Greenwich** appear to have dealt with an interested case but this resulted in refusal of the application. The details we have are as follows: "An initial application for 9 units was submitted pre-CIL. A revised application for 10 units was submitted once CIL had been adopted and therefore the developer had to pay CIL on all 10 units, not just the additional 1. The developer therefore sought ECR along with a viability assessment as initial figures for the development hadn't factored in CIL. Due to the lack of skills in house and to maintain an independent hand on the case an external consultant was hired to review the viability assessment. They found the assessment to be significantly flawed as 80-90% of the units had been sold but figures were based on no units being sold and therefore limited cash flow. As a result the application for exceptional relief was refused."

Best Practice on Costs

18. In relation to costs it would appear possible to insist that potential claimant's agree to cover our in house and legal costs in full before an application is entertained. The following information has been found about practice in Sheffield who appear to have a two stage assessment process – but basically have an hourly charge "In addition to meeting the costs incurred by the independent person, the applicant will be required to reimburse any costs incurred by the council in considering an application. Rates are £60 per hour of officer time spent processing and determining the ECR application. It is expected that this would normally amount to around £300 to assess a Preliminary Stage submission and £1,500 where a full consideration of an assessment of economic viability is required as part of the Full Application Stage of the process set out above. These fees will apply to any advice requested prior to an ECR application being made, such as a draft application. Fees will be required to be paid up front before the assessment is made, but can be part refunded if the time spent on the assessment is less than anticipated."
19. It is suggested that should council agree to the introduction of the ECR policy that authority is delegated to allow a similar approach to charging to be introduced in Norwich. This should have the advantage of covering the council's costs in dealing

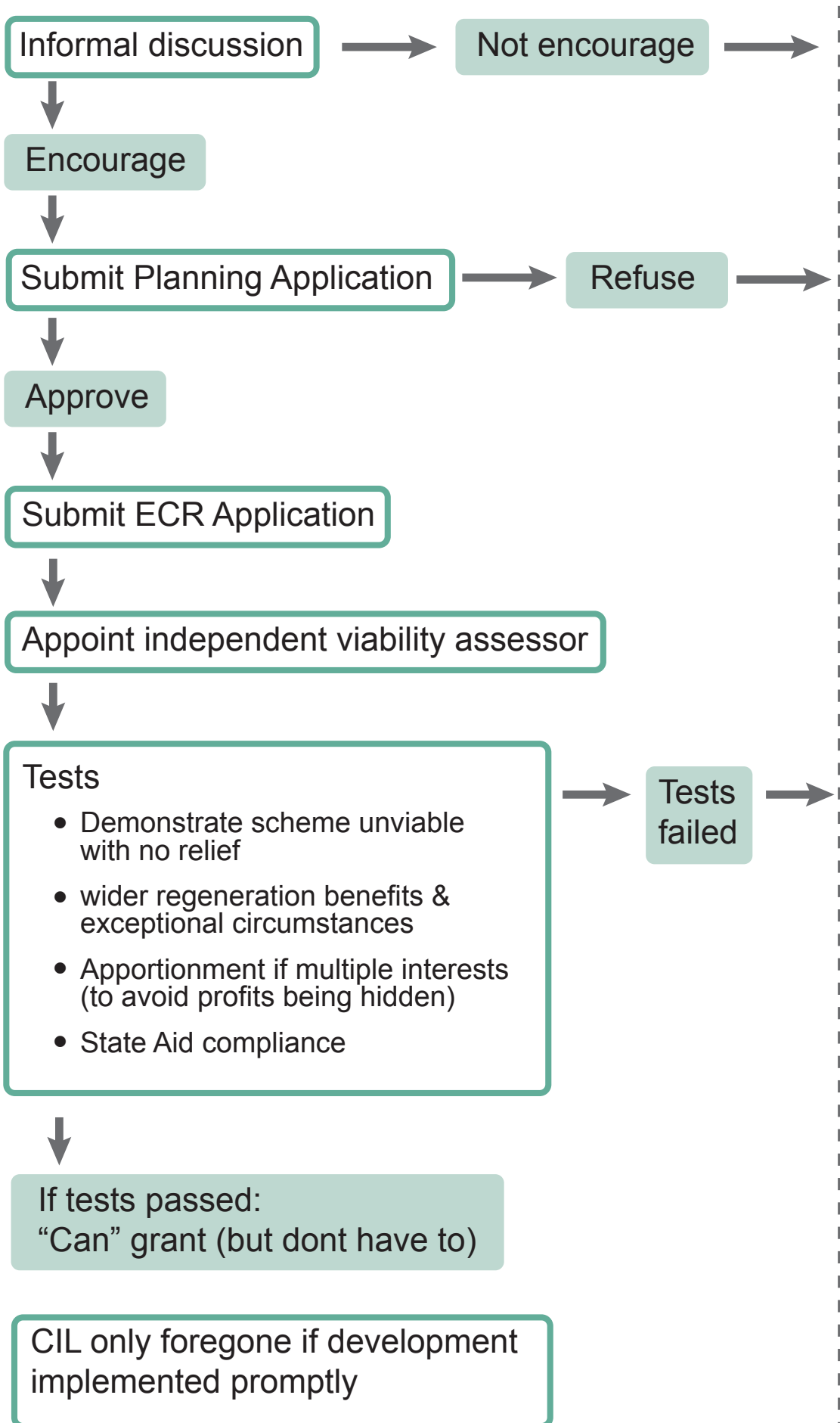
with such applications but may also reduce the prospects of any such applications being made on a speculative basis.

Authorities with Community Infrastructure Levy exceptional circumstances relief policy in place

Bassetlaw District Council	London Borough of Waltham Forest
Bath and North East Somerset	London Borough of Westminster
Bedford Borough Council	London Legacy Development Corporation
Chelmsford Borough Council	New Forest District Council
Cheshire West and Chester	Northampton Borough Council
Chesterfield Borough Council	Oxford City Council
Dacorum Borough Council	Peterborough City Council
Epsom and Ewell District Council	Poole Council
Horsham District Council	Rutland County Council
Huntingdonshire District Council	Sedgemoor District Council
London Borough of Barking and Dagenham	Southampton City Council
London Borough of Barnet	South Ribble District Council
London Borough of Brent	Stroud District Council
London Borough of Camden	Taunton Deane Borough Council
London Borough of Greenwich	Teignbridge District Council
London Borough of Hackney	Three Rivers District Council
London Borough of Kensington and Chelsea	Torbay Council
London Borough of Kingston upon Thames	Trafford Council
London Borough of Lambeth	Wealden District Council
London Borough of Lewisham	Weymouth and Portland Borough Council
London Borough of Southwark	

GENERIC SITE - if CIL ECR is in place

No ECR



Report to	Cabinet	Item 8
	12 September 2018	
Report of	Director of regeneration and development	
Subject	Introduction of a Community Infrastructure Levy Exceptional Circumstances Relief Policy	

Purpose

To consider the merits of introducing a Community Infrastructure Levy (CIL) Exceptional Circumstances Relief (ECR) policy. The policy would only apply in exceptional circumstances and would make provision for developers to claim full or partial exemption from the payment of CIL.

Recommendation

To:

- 1) recommend that council approves the introduction of the Community Infrastructure Levy Exceptional Circumstances Relief Policy, as set out in appendix 1 of this report; and
- 2) recommend that council amends appendix 4 to the council's constitution to include the "Power to determine applications for Exceptional Circumstances Relief from the Community Infrastructure Levy" within the list of powers available to planning applications committee.

Corporate and service priorities

The report helps to meet the corporate priority a healthy city with good housing.

Financial implications

The financial implications of introducing a CIL ECR policy are difficult to predict in detail although it should be noted that sums involved may be significant. Between its introduction in July 2013 and the end of March 2018 the city council has collected a total of £2.529m of CIL. This level is expected to increase in future years owing both to CIL rates increasing faster than the rate of inflation and a lower proportion of development being built having been consented prior to the introduction of CIL.

It is anticipated that the proposed ECR policy will allow for some developments to come forward without paying CIL. However, the number of such developments is considered to be relatively few as the regulations require that ECR is only granted where it appears to the council that there are exceptional circumstances, which justify doing so and where the council considers it "expedient" to do so. ECR would also only be available in respect of developments where the council is satisfied that to require payment of CIL would have an unacceptable impact on the economic viability of the development. Economic viability would be objectively tested by a requirement that applicants for relief must submit a viability report

prepared by a suitably qualified professional approved by the council. The operation of the regulations and the proposed ECR policy is such that the developments that would qualify for relief would be ones that would be unlikely to go ahead without relief being made available.

It also should be noted that developments on which relief is granted would still contribute towards other benefits through section 106 agreements, for example through the provision of affordable housing or financial contributions. The regulations provide that ECR can only be made available where an applicant has already entered into a S106 agreement in respect of the development in question. There may also be administrative costs associated with the handling of any ECR applications which are hard to quantify.

The overall financial effect will depend on the number of ECR applications received, the amount of ECR claimed in each application, and whether the council decides to approve such applications. However the introduction of an ECR Policy will offer a mechanism to enable growth and deliver development in circumstances where CIL may otherwise prevent development occurring. It is therefore considered more likely that on balance the overall financial impact will be positive rather than negative for the council over the long term. The regulations provide a mechanism for the council to withdraw the ECR Policy in the future should it desire to do so and as such the financial effect of the ECR Policy can be kept under regular review.

Ward/s: All Wards

Cabinet member: Councillor Stonard - Sustainable and inclusive growth

Contact officers

Dave Moorcroft, director of regeneration and development 01603 212225

Graham Nelson, head of planning 01603 212530

Background documents

None

Report

Introduction

1. The Community Infrastructure Levy (CIL) is a charge through which the council raises funds from new developments in the area. The money raised is then used to deliver the infrastructure needed to support development such as schools, transport initiatives and leisure facilities. Much of the CIL raised in Norwich is pooled with that raised in South Norfolk and Broadland Council areas and spent via the Greater Norwich Growth Board.
2. Council agreed to adopt and implement the CIL in Norwich in June 2013 and it was brought into force on 13 July 2013. There is a single charging zone covering all of the city council's area with the exception of the small part lying within the area for which the Broad's Authority is the responsible planning authority.
3. When CIL was introduced in 2013 the council considered whether to introduce a policy to allow exceptional circumstances from CIL to be claimed. At the time it was considered the benefits of offering discretionary relief outweighed the disadvantages. The relevant extract from the report agreed by council is produced below.

Extract from Council report of June 2013:

"A further matter that needs to be agreed upon implementation, relates to discretionary relief of CIL. It is important that the Council's position on discretionary relief is made clear to those submitting planning applications. Regulation 55 allows a charging authority to grant discretionary relief in exceptional, specified circumstances. The charging authority may agree to a reduction for developments accompanied by a section 106 agreement where the developer can demonstrate that development of the site is not viable (taking into account the CIL charge and Section 106 contribution) and the cost of complying with the S106 obligation exceeds the CIL charge. In such cases the developer will be expected to demonstrate this (as set out in regulation 57) by providing an independent assessor with "open book" accounts. In practice, the scope of relief which could be offered is likely to be very limited by European state aid regulations. The process is quite onerous and it would be the responsibility of the local authority to ensure state aid regulations are not breached. The availability of discretionary relief, to some degree at least, undermines certainty and predictability that is such an advantage of CIL.

At this time, it is not considered that the benefits of offering discretionary relief outweigh the disadvantages. However, this will be kept under review and the authorities will consider introducing a policy allowing discretionary relief in the light of experience."

4. Since the introduction of CIL the council has become aware of a small number of pipeline developments sites with complex issues that may be unviable if they are required to pay CIL in full. This report therefore seeks approval for an exceptions policy, which would allow the council to determine, on a case by

case basis, whether there is a justification for setting aside the CIL requirement in such cases.

Exceptional Circumstances Relief

5. The CIL Regulations (Regulations 55 to 58) allow CIL charging authorities to set discretionary relief for exceptional circumstances. This allows the council the discretion to offer ECR where individual sites with specific and exceptional cost burdens would not be viable due to the payment of the CIL charge. Use of an exceptional circumstances policy enables the charging authority to avoid rendering sites with specific and exceptional cost burdens unviable.
6. The CIL Regulations make clear that relief can only be granted where there are 'exceptional circumstances' which justify doing so, and where the council considers it "expedient" to do so. ECR would also only be available in respect of developments where the Council is satisfied that to require payment of CIL would have an unacceptable impact on the economic viability of the development. Economic viability would be objectively tested by a requirement that applicants for relief must submit a viability report prepared by a suitably qualified professional approved by the council.
7. It is important to note that existing CIL rates were set in 2013 at a level where evidence was held to demonstrate that most development could afford to pay the CIL charge. This was supported by viability evidence and took into account affordable housing requirements and other planning policy requirements. Since 2013 in general local development values have increased at a faster rate than development costs so it is expected that the exceptional circumstances where this policy will be applied will be rare (as intended by the regulations).
8. There are alternative ways of improving the viability of development schemes, such as by phasing development (so that the phases form separate, chargeable schemes), phasing or reducing other planning policy requirements. Our adopted Instalments Policy was introduced alongside the CIL Charging Schedule and allows developers to pay CIL over a number of weeks or months (depending on the level of CIL liability) rather than the total on the commencement of development.
9. The proposed ECR Policy set out in Appendix 1 lists the proposed tests which would need to be met before such relief will be granted. The policy also makes clear that each case will be considered individually and that the council retains the discretion to make judgements about the viability of the scheme and whether the exceptional circumstances policy applies. It is also important for the council to ensure that any relief would not constitute State Aid, in accordance with the regulations.
10. If council does approve the ECR Policy on 25 September, it will come into force at some point during the autumn. Under the CIL Regulations the council could decide to withdraw it at any time giving two weeks' notice.

Integrated impact assessment



NORWICH
City Council

Report author to complete

Committee:	Cabinet
Committee date:	12 September 2018
Director / Head of service	Director of regeneration and development
Report subject:	Introduction of Community Infrastructure Levy Exceptional Circumstances Relief Policy
Date assessed:	22 August 2018

	Impact			
Economic (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Finance (value for money)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	See financial assessment. Impacts considered difficult to predict with any certainty but as the introduction of an ECR Policy will offer a mechanism to enable growth and deliver development in circumstances where CIL may otherwise prevent development occurring it is considered more likely that on balance the overall financial impact will be positive rather than negative for the Council over the long term.
Other departments and services e.g. office facilities, customer contact	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
ICT services	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Economic development	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Policy is designed to facilitate schemes with a wider regeneration benefits that would otherwise not be viable due to the impact of CIL
Financial inclusion	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Social (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Safeguarding children and adults	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<u>S17 crime and disorder act 1998</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Policy is designed to facilitate schemes with a wider regeneration benefits that would otherwise not be viable due to the impact of CIL. Such regeneration is considered likely to reduce the incidence of crime and asb that is associated with run down environments

	Impact			
Human Rights Act 1998	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Health and well being	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Equality and diversity (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Relations between groups (cohesion)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Eliminating discrimination & harassment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Advancing equality of opportunity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Environmental (please add an 'x' as appropriate)	Neutral	Positive	Negative	
Transportation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	It is possible that an ECR policy may result in less CIL money being paid in the short term and so have a negative impact on funds available to deliver capital improvements to transportation infrastructure.
Natural and built environment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Waste minimisation & resource use	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Pollution	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

	Impact			
Sustainable procurement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Energy and climate change	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
(Please add an 'x' as appropriate)	Neutral	Positive	Negative	
Risk management	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Introduction of the policy would increase risks to the Council particularly in terms of ensuring compliance with state aid rules

Recommendations from impact assessment	
Positive	
Promoting development on certain sites which have exceptional circumstances which otherwise mean they would either not come forward for redevelopment or come forward for less desirable forms of development may provide significant benefits to economic development and regeneration albeit owing to the exceptional circumstances that need to be applied it will only be applied rarely.	
Negative	
It is possible that the ECR policy will result in development which places demands on existing infrastructure without providing CIL funds to mitigate this. This may be partly offset by contributions through sec 106 agreements.	
Neutral	

Issues
<p>A matter of balance of whether the positives outweigh the negatives and much will depend on the circumstances of each individual case but as any decisions to apply the policy need to meet strict criteria and there is little scope to challenge any decision of the Council it is considered that adequate safeguards exist.</p>

Community Infrastructure Levy: Exceptional Circumstances Relief Proposed Introduction and Policy

Introduction

The CIL Regulations (Regulations 55 to 58) allow Norwich City Council as a CIL charging authorities to grant relief from liability to pay CIL if it appears to the authority that there are exceptional circumstances which justify doing so.

It is important to note that CIL rates in Norwich City have been set at a level where most development can afford to pay the CIL charge, supported by viability evidence, taking into account affordable housing requirements and other planning policy requirements. In view of this, it will be a rare occurrence where exceptional circumstances are found to exist so as to justify the grant of ECR.

There are alternative ways of improving the viability of development schemes, such as by phasing development (so that the phases form separate, chargeable schemes), phasing or reducing other policy requirements and/or by use of the Council's CIL Instalments policy. These should be fully explored before considering an application for exceptional circumstances relief.

ECR Policy

This document gives notice that Norwich City Council has determined to make relief for exceptional circumstances available, in accordance with Regulations 55 to 57 of the Community Infrastructure Levy Regulations 2010 (as amended).

Relief for exceptional circumstances will be available until further notice. (It should be noted that the CIL Regulations give the Council the ability to withdraw this policy at any time with two weeks' notice, *although this two week period could only commence following a formal decision of the Council to do so.*)

Exceptional Circumstances Relief (ECR) will be considered where individual sites with specific and exceptional cost burdens would not be economically viable due to the payment of the CIL Charge (see CIL Regulations 55 to 57). The Regulations state that the Council may grant relief from liability to pay CIL if it appears to the Council that there are exceptional circumstances which justify doing so and the Council considers it expedient to do so. Each case will be considered individually by the Council, which retains the discretion to make judgements about the viability of the scheme and whether exceptional circumstances exist.

In addition Norwich City Council may make a judgement in individual cases that exceptional circumstances are not solely based on economic viability. Even where the CIL may give rise to an unacceptable impact on the economic viability of the chargeable development, the Council may also require a demonstration of wider regeneration benefits and/or the need for the applicant to show that a particular site has to be brought forward imminently in order to achieve wider benefits.

The Regulations require that there must be a planning obligation in place in relation to the planning permission which permits the chargeable development.

A person claiming relief must be an owner of a material interest in the relevant land. Any claim for relief must be submitted in writing, using the appropriate form, and must be received and approved by Norwich City Council before commencement of the chargeable development¹. Any claim must be accompanied by:

- a) an assessment carried out by an independent person², of the economic viability of the chargeable development and the cost of complying with the planning obligation,
- b) an explanation of why payment of the chargeable amount would have an unacceptable impact on the economic viability of that development
- c) an apportionment assessment (if there is more than one material interest in the relevant land) ; and
- d) A declaration that the claimant has sent a copy of the completed claim form to the owners of the other material interest in the relevant land (if any).

The chargeable development can cease to be eligible for exceptional circumstances relief if:

- a) before the chargeable development is commenced, charitable or social housing relief is granted; or
- b) the site (or part of the site) is sold; or
- c) the chargeable development is not commenced within 12 months from the date on which the charging authority issues its decision on the claim

Before granting exceptional circumstances relief for an individual scheme, the Council also must be satisfied that the relief would not constitute notifiable state aid.

¹ A chargeable development ceases to be eligible for relief for exceptional circumstance if before the chargeable development is commenced there is a disqualifying event. This is where the development is granted charitable or social housing relief, is disposed of, or has not been commenced within 12 months.

² For the purposes of the above paragraph, an independent person is a person who is appointed by the claimant with the agreement of the charging authority and has appropriate qualifications and experience.

CABINET**17:30 to 19:35****14 November 2018**

Present: Councillors Waters (chair) Harris (vice chair), Jones, Kendrick, Maguire, Packer and Stonard

Apologies: Councillor Davis

Also present: Councillors Carlo and Wright

3. Introduction of a Community Infrastructure Levy Exceptional Circumstances Relief Policy

Councillor Waters, leader of the council presented the report. He said the report identified how Exceptional Circumstances Relief policies (ECR) were applied elsewhere; including the costs for applications for ECR and where these costs would lie. The report proposed that the costs of an independent assessor, and officer time for the work on any application would be borne by the applicant.

He highlighted that there were a mix of councils operating ECR policies. He said a greater number of these were urban authorities inevitably, because they had brown field sites which required development.

He emphasised that the adoption of the policy would enable complex development sites to go forward. These sites would not go forward without ECR and logically there could be no loss of Community Infrastructure Levy income as they would not progress without relief.

This policy was for exceptional cases. The bar to accept an application would be high; the council's planning applications committee would need to be convinced of the wider regeneration benefits of a development and satisfied there was a genuine financial need for relief to be granted. The applicant would have no right of appeal for any refusal to grant relief, they could ask for reconsideration only. It would be possible following an assessment of an application to grant full relief or a proportion of that.

He said that the report to council would include greater detail on how transparency would be achieved, a descriptor of wider regeneration and greater detail on the process for appointing an independent viability assessor.

In response to member questions the head of planning said that it was theoretically possible for a planning application to be granted and then an application for ECR to be made. However, it was anticipated that in the vast majority of cases, bearing in mind these applications were envisaged to be rare, that the planning applications

committee would know that an application for ECR was to be made when considering a planning application. There was provision in the policy to stop a site being sold to another developer once ECR was granted.

The head of planning said as the policy would be used in exceptional circumstances it was difficult to have in place a criteria for the type of development which would qualify. The research conducted showed there were many examples of councils adopting an ECR policy but few examples of the policy being used. The sites where it had been used were not of one particular type or characteristic and due to the exceptional nature of applications the councils where ECR was in place did not set a great deal of criteria for determining applications. He referred to appendix 1 of the report and noted that most councils with an ECR policy did not include a paragraph on regeneration as Norwich had.

He said that there was no rule within the proposed ECR policy to stop a developer applying for other sources of funding but the expectation would be that these would have been applied for prior to an application for ECR being made. It was not possible to determine which sites in Norwich had not been developed due no ECR in place. However, it was possible to highlight a number of sites in Norwich which had not been developed.

He clarified that before ECR could be granted a planning permission would have to be in place. Part of determining a planning application included the consideration of section 106 funding to provide the necessary infrastructure for a development to go ahead.

RESOLVED to:

- 1) recommend that council approves the introduction of the Community Infrastructure Levy Exceptional Circumstances Relief Policy, as set out in appendix 1 of the report to September cabinet as amended and reattached as part of Appendix 3;
- 2) resolve that should council approve the introduction of the policy that authority is delegated to the director of regeneration and development, in consultation with the portfolio holder for sustainable and inclusive growth to introduce a charging policy similar to the one described in para 18 of this report; and
- 3) recommend that council amends appendix 4 to the council's constitution to include the "Power to determine applications for Exceptional Circumstances Relief from the Community Infrastructure Levy" within the list of powers available to planning applications committee.

(Councillor Packer left the meeting at this point)

