

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

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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
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.

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Appendix 1

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.)

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.