

Report to Council

Item

27 November 2018

Report of Director of regeneration and development
Subject Introduction of a Community Infrastructure Levy
Exceptional Circumstances Relief Policy

6

Purpose

To consider whether to introduce a Community Infrastructure Levy Exceptional Circumstances Relief Policy.

Recommendations

To:

- 1) approve the introduction of the Community Infrastructure Levy Exceptional Circumstances Relief Policy, as set out in appendix 1 of this report;
- 2) amend appendix 4 to the constitution to include the “Power to determine applications for Exceptional Circumstances Relief from the Community Infrastructure Levy. Approval of such applications is not to be delegated to officers” 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

See paras 26-32 of the report.

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

Introduction

1. Cabinet considered the possible introduction of a Community Infrastructure Levy (CIL) Exceptional Circumstances Relief Policy (ECR) at its meetings in September and November. At the meeting on 14 November it agreed to recommend to Council the introduction of an Exceptional Circumstances Relief Policy and to change the constitution to enable Planning Applications Committee to determine such applications.
2. At the cabinet meeting on 14 November, cabinet resolved that should council approve the introduction of an Exceptional Circumstances Relief 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 which is intended to minimise any cost burden on the authority.

The Community Infrastructure Levy

3. 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.
4. 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 and where no CIL is charged.
5. 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 not considered that 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.”

6. 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

7. 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 such specific and exceptional cost burdens unviable.
8. 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.
9. Following a request made at the Cabinet meeting in September research was completed on the following:
 - 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 apart from cost recovery which was decided by cabinet previously.

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

10. 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.

11. 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.
12. 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 3.

Examples of use of the policy where in place

13. 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 emails 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.
14. 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. The following examples have been found of where CIL ECR policies have been applied:
15. **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.
16. **Weymouth and Portland Borough Council** opened the window for claims for a short period of time in 2016 so they could accept two 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.
17. **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.”

18. In addition to the above three examples, two further examples of schemes of ECR proposal are in the pipeline:
19. **Chesterfield** are considering an application currently which involves 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.
20. **Cheshire west and Chester** - Introduced 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
21. 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 had not 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.”

Proposed Policy for Norwich

22. 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. It is therefore expected that the exceptional circumstances where this policy will be applied will be rare (as intended by the regulations).
23. 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.

24. 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.
25. From the review carried out of ECR policies that are in place elsewhere it is apparent that most are very similar in their form, simply setting out the legislative requirements. The ECR policy proposed for Norwich goes further than most of these other ECR policies insofar as it enables the City Council to make a judgement in individual cases that is not solely based on the economic viability of proposals and allows the Council to consider whether wider regeneration benefits are achieved and whether there is a need for these to be delivered imminently before granting relief from CIL.
26. Furthermore following the discussion at cabinet on 14 November this aspect of the proposed policy has been strengthened to allow the Council to consider community benefits including the delivery of affordable homes and community facilities alongside other regeneration benefits.

Financial Implications of the proposed policy

27. The financial implications of introducing a CIL ECR policy are difficult to predict and will need to be assessed on a case by case basis 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.
28. It is anticipated that the proposed ECR policy will allow for some developments to come forward without paying CIL or paying it at a reduced level. 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.
29. 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.
30. 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 Section 106 agreement in respect of the development in question.

31. The operation of the regulations and the proposed ECR policy are considered likely to result in developments which would qualify for relief where it would be highly unlikely for the development to go ahead without relief being made available. Therefore whilst CIL income may theoretically be foregone, if the site were to remain undeveloped it would not generate any CIL income anyway. Indeed, if developments do deliver significant regeneration benefits they may actually increase the prospects of further development coming forward within the area which over time may increase the level of CIL generated within the area. Finally it should also be noted that even if CIL relief is granted this carries no relief from other forms of taxation so enabling development to take place where it otherwise would not due to exceptional costs is likely to increase Council Tax and Business Rates income.
32. In addition to the possible implications of the policy for funding for infrastructure and other purposes, there may be significant administrative costs associated with the handling of any ECR applications. These are hard to quantify but may be considerable owing to the issues that need consideration and the need for legal advice to be received particularly to ensure compliance with state aid legislation. In order to minimise these costs cabinet agreed that, should council agree to the introduction of the ECR policy, to delegate authority to officers to introduce a similar approach to charging to that which has been adopted in Sheffield. This should cover the council's costs in dealing with such applications in full and may also reduce the prospects of any such applications being made on a speculative basis.
33. Although the financial implications of the policy are very hard to predict in the absence of the detail of individual cases 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 for the reasons set out above. 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.

Process for determining applications for ECR received

34. Following discussion at Cabinet in September, officers 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 and it is suggested that should Council agree to the introduction of the ECR policy then this is published on the website alongside the policy and the approach to charging for the information of potential applicants.
35. This process illustrates there are a number of significant safeguards in place to minimise the risk of an application for ECR being granted in circumstances other than where such relief is necessary to allow a development with significant benefits to proceed.
36. Notable features of this process in this regard include:
 - The requirement in the regulations for an assessment of the economic viability of the development to be carried out by an appropriately qualified and experienced independent person who is appointed by the claimant but with the

need for the agreement to the appointment of the charging authority (this will effectively prevent the appointment of an assessor with any form of prior commercial relationship with the applicant);

- The requirement for an apportionment assessment to be conducted if there is more than one material interest in the relevant land;
- The policy allowing the consideration of factors such as wider benefits of a scheme and the need for imminent development to take place before granting relief;
- The absence of a right of appeal to an external body in the event of an application being refused;
- The requirement to establish that any relief does not constitute notifiable state aid; and
- The potential for developments to cease to become eligible for relief if the development is not commenced promptly or the site (or part of it) is sold.

37. Additionally the proposed amendment to the constitution to give the power to planning applications committee to determine any applications will maximise transparency and accountability in how the policy is applied. It is further proposed following the discussion at cabinet in November that this constitutional change is amended to ensure that the approval of any application of relief is done by the committee and not delegated to officers. This will ensure that any such applications are dealt with in the public domain.

Integrated impact assessment



NORWICH
City Council

Report author to complete

Committee:	Council
Committee date:	27 November 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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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.

Exceptional Circumstances Relief 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 community and regeneration benefits including the delivery of affordable homes and community facilities 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:

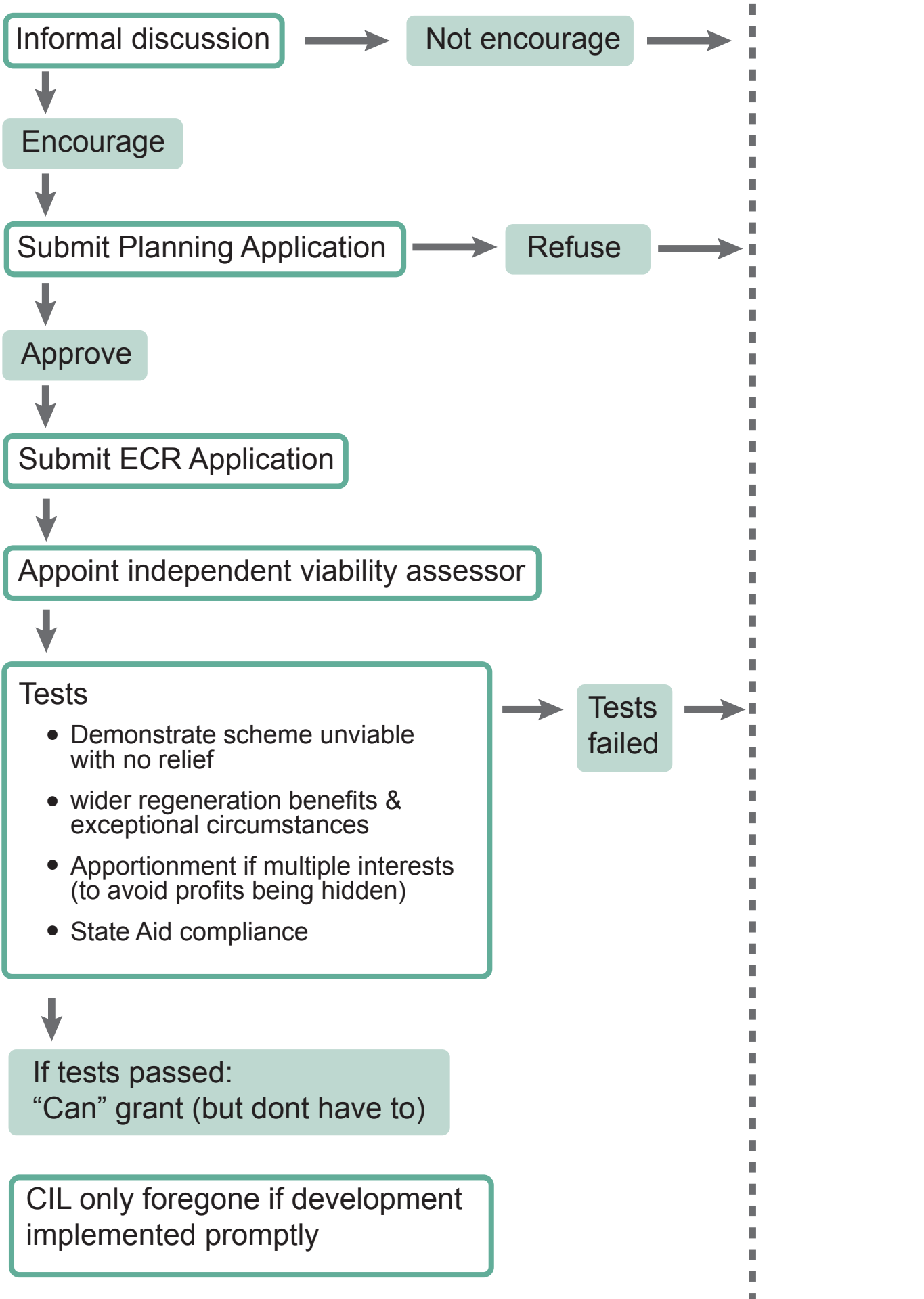
- a) before the chargeable development is commenced, charitable or social housing relief is granted; or
- b) the site (or part of the site) is sold; or
- c) the chargeable development is not commenced within 12 months from the date on which the charging authority issues its decision on the claim

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.

GENERIC SITE - if CIL ECR is in place



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	