NORWICH City Council

Committee name: Cabinet

Committee date: 22/11/2023

Report title: **Determination of Applications for Community Infrastructure Levy Exceptional Circumstances Relief (CIL ECR) for Phases 1 and 2 of Anglia Square redevelopment**

Portfolio: Councillor Stonard, Leader of the council and cabinet member for inclusive and sustainable development

Report from: Executive director of development and city services

Wards: Mancroft

OPEN PUBLIC ITEM

KEY DECISION

Purpose

For Cabinet to consider granting Exceptional Circumstances Relief (ECR) for the payment of Community Infrastructure (CIL), in respect of phases 1 and 2 of the redevelopment proposals at Anglia Square which received planning permission on 18 July 2023

Recommendation:

That Cabinet agree:

1. There are exceptional circumstances (within the meaning of the CIL Regulations 2010 as amended) that justify the grant of Exceptional Circumstances Relief in respect of phase 1 Anglia Square development (REF 22/00434/F) and that it is therefore expedient to grant Exceptional Circumstances Relief;

2. To grant Exceptional Circumstances Relief for the phase 1 of the Anglia Square development (22/00434/F) in accordance with the Council's adopted Exceptional Circumstances Relief policy.

3. There are exceptional circumstances (within the meaning of the CIL Regulations 2010 as amended) that justify the grant of Exceptional Circumstances Relief in respect of phase 2 Anglia Square development (REF 22/00434/F) and that it is therefore expedient to grant Exceptional Circumstances Relief;

4. To grant Exceptional Circumstances Relief for the phase 2 of the Anglia Square development (22/00434/F) in accordance with the Council's adopted Exceptional Circumstances Relief policy.

Policy framework

The council has five corporate priorities, which are:

- People live independently and well in a diverse and safe city.
- Norwich is a sustainable and healthy city.
- Norwich has the infrastructure and housing it needs to be a successful city.
- The city has an inclusive economy in which residents have equal opportunity to flourish.
- Norwich City Council is in good shape to serve the city.

This report meets the “Norwich has the infrastructure and housing it needs to be a successful city” and “The city has an inclusive economy in which residents have equal opportunity to flourish corporate aims” priorities.

This report addresses the corporate aim 3 that Norwich has the infrastructure and housing it needs to be a successful city. In particular:

- to develop and regenerate areas such as East Norwich and Anglia Square;

- to provide and encourage others to provide new homes, open spaces and infrastructure for residents;

This report helps to meet the housing, regeneration and development objective of the COVID-19 Recovery Plan.

Background

1. Planning permission for the comprehensive redevelopment of Anglia Square application ref: 22/00434/F was granted on 18th July 2023 (the Anglia Square Planning Permission). The planning application comprised a hybrid (part Full/part Outline) application for: up to 1,100 dwellings and up to 8,000sqm (NIA) flexible retail, commercial and other non-residential floorspace including Community Hub, up to 450 car parking spaces (at least 95% spaces for class C3 use, and up to 5% for class E/F1/F2/Sui Generis uses), car club spaces and associated works to the highway and public realm areas (the Scheme). The development is subject to compliance with planning conditions set out on the decision notice, a S106 Agreement and the payment of Community Infrastructure Levy (CIL).

2. The Scheme will be constructed in four phases. Full details of phases 1 and 2 have been approved under application reference 22/00434/F. Phases 3 and 4 will be subject to further reserved matters applications. Subsequent applications 23/01145/NMA and 23/00985/D (approved 11/10/23) have amended the detailed phasing plan and increased the number of affordable homes in phases 1 and 2. The table below sets out the details of each phase of the Scheme.

Phase	**Blocks**	**Total number of dwellings**	**No. affordable dwellings**	**Indicative delivery dates**
1	A, B, C, D and M	264	52 *(46)**	2024-2027
2	K/L and J3	89	54 *(28)**	2024-2027
3	H, G and J	322	0	2026-2030
4	E/F and F	1100	0-4 *(32-36)**	2028-2031
Total		**Up to 1100**	**Up to 110 (10%)**	

*()** affordable homes in each phase as originally approved under planning application reference 22/00434/F

3. Regulation 9 (4) of the Community Infrastructure Levy Regulations 2010 as amended (CIL Regulations) states that in the case of a phased development, each phase of the development is a separate chargeable development. Regulation 65 (1) requires the collecting authority to issue a liability notice as soon as practicable after the day on which a planning permission first permits development. In the case of phased development that is specified as being on the day final approval is given for any pre-commencement condition associated with that phase. Accordingly, two CIL liability notices were issued on 11 October 2023 for phase 1 and phase 2 development:

CIL Liability notice for:	**Total CIL chargeable amount**
Phase 1 development	£2,224,657.91
Phase 2 development	£592,112.01

4. Columbia Threadneedle (company names are Sackville UK Property select II (GO) No 3 Limited and Sackville Property select II Nominee (3) Limited), as the current landowner, have assumed liability (100%) for the payment of CIL in relation to phase 1 and phase 2 of the Scheme.

5. This report relates to two applications that have been made for Exceptional Circumstance Relief (ECR) (received 23 October 2023). Each application seeks relief from the payment of the total CIL chargeable amount for that respective phase as set out in the table at paragraph 3 above.

Exceptional Circumstances Relief

6. The CIL Regulations set out the provisions for exemptions and relief from the payment of CIL. Regulation 55 relates to discretionary relief for exceptional circumstances and regulation 57 sets out the relevant procedure.

7. Regulation 55 allows a charging authority (Norwich City Council is a charging authority) to grant relief from liability to pay CIL in respect of a chargeable development if:
   (a) it appears to the charging authority that there are exceptional circumstances which justify doing so; and
   (b) the charging authority considers it expedient to do so.

8. Under Regulation 55(3) it is stated that a charging authority may only grant relief for exceptional circumstances if:
   (a) it has made relief for exceptional circumstances available in its area;
   (b) a planning obligation under section 106 of TCPA 1990 has been entered into in respect of the planning permission; and
   (c) the charging authority considers that to require the payment of CIL charged by it in respect of the development would have an unacceptable impact on the economic viability of the development.

9. On 1st July 2019 relief for exceptional circumstances was made available within the Norwich city administration area. Norwich City Council's Exceptional Circumstances Relief Policy and accompanying guidance set out the relevant CIL Regulations and local requirements that apply to Norwich (Appendix 1).

10. A S106 Agreement has been entered into in respect of the Anglia Square planning permission.

Exceptional circumstances procedure - making a claim

11. The procedure for making an application for ECR is set out in Regulation 55 and summarised in the table below along with details of the ECR application received.

Regulation 57	**Requirements**	**In relation to both ECR applications:**
(3)	The person claiming relief (“the claimant”) must be an owner of a material interest in the relevant land	The landowner of Anglia Square (Columbia Threadneedle (Saville Holdings)) is claiming relief:

		the ‘Claimant’.
(4)	A claim for relief must:	
(a)	be submitted to the charging authority in writing on a form published by the Secretary of State (or a form to substantially the same effect)	The applications have been made on the requisite form.
(b)	be received by the charging authority before commencement of the chargeable development;	Development permitted by application 23/00434/F has not commenced
(c)	include the particulars specified or referred to in the form; and	The forms have been fully completed
(d)(i)	be accompanied by, an assessment carried out by an independent person of the economic viability of the chargeable development	With the agreement of the council, the Claimant has appointed Avison Young to carry out the assessment
(ii)	be accompanied by, an explanation of why, in the opinion of the claimant, payment of the chargeable amount would have an unacceptable impact on the economic viability of that development	The Claimant has submitted an accompanying statement and viability appraisal for each phase and for the wider whole development
(iii)	where there is more than one material interest in the relevant land, an apportionment assessment	The Claimant comprises Sackville UK Property Select II (GP) No. 3 Limited and Sackville UK Property Select II Nominee (3) Limited; The Claimant companies hold joint ownership of their material interest and they jointly make this ECR claim. They make reference to their interest throughout the application on the basis that they jointly own 100% of such interest. Other minor interests include Eastern Power, Norfolk County Council and Abbey Memorials

		(Stonecraft)Limited. The apportionment exercise attributes 0% to these interests.
(iv)	a declaration that the claimant has complied with paragraph (6) of the Regulations in relation to communicating and notify owners of other material interests.	The declaration is included on the submitted form.

12. The claims are considered to have been made in accordance with Regulation 57.

13. The claims have been accompanied by the following documents (relevant appendix to this report noted for ease of reference):

    1 Norwich City Council Exceptional Circumstances Relief Policy (Guidance Note 7) (2019)
    2 Financial Viability Appraisal (FVA) CIL ECR Phase 1 (Avison Young)
    3 FVA Phase 1 – Appendices (Avison Young) parts I, II, III attached and part IV linked here
    4 Anglia Square Phase 1 – ECR Supporting Statement (CPW Planning on behalf of Claimant)
    5 Financial Viability Appraisal (FVA) CIL ECR Phase 2 (Avison Young)
    6 FVA Phase 2 – Appendices (Avison Young) parts I, II, III attached and part IV linked here
    7 Anglia Square Phase 2 – ECR Supporting Statement (CPW Planning on behalf of Claimant)

Assessing the Claims

14. National planning guidance states that a charging authority can 'consider claims for relief on chargeable developments on a case-by-case basis', provided the conditions set out in regulation 55 are met. With reference to the CIL Regulations, matters to be assessed by the charging authority when considering whether to grant relief are:

    Whether it appears to the charging authority that there are exceptional circumstances which justify doing so (Regulation 55(1)(a); and

    Whether the charging authority considers it expedient to do so (Regulation 55(1)(b).

15. The Regulations only allow ECR to be granted if the charging authority considers that to require payment of CIL would have an unacceptable impact on the economic viability of development (Regulation 55(3)(c). Furthermore, Norwich City Council's Exceptional Circumstances Relief Policy further states judgements on individual cases 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.

16. National planning practice guidance on ECR states 'relief may be granted for all or part of the liability in relation to a chargeable development. This can mean the whole development or a part of a scheme where a development proceeds in phases as separate chargeable developments. Even if exceptional circumstances relief is available in a charging authority area, each case is considered individually by the authority, and it is at their discretion whether they wish it to apply in that case or not. However, use of an exceptions policy enables charging authorities to avoid rendering sites with specific and exceptional cost burdens unviable'.

Viability

17. At the planning application stage, viability evidence (in the form of a financial viability assessment (FVA)) was prepared on behalf of the applicant by Carter Jonas (CJ) and reviewed on behalf of the council by Avison Young (AY). Development viability was addressed in paragraphs 221 – 259 of the report to Planning Application Committee (PAC) dated 27 April 2023 and reference was made to the impact of CIL on development viability (the committee report can be found here). It should be noted that at each stage of the development process the developer will continue to monitor viability and update costs and values based upon the most up-to-date data. At planning application stage, the costs used in the FVA were based upon the Building Cost Information Service index (BCIS).

18. In accordance with the CIL Regulations, the ECR application has been accompanied by an assessment of the economic viability of the chargeable development (the individual phase(s)). The Regulations require this to be carried out by an independent assessor, appointed by the claimant with the agreement of the charging authority. Regulation 57(5) requires the independent assessor to have appropriate qualifications and experience. Prior to submission of the ECR applications the council agreed to the appointment of Jonathan Bernstein of Avison Young (AY) as an independent person to carry out the assessments.

19. National planning guidance states that 'it is important to ensure that any exceptional circumstances relief is based on an objective assessment of viability as set out in viability guidance.'

20. Two claims for ECR have been made and AY have carried out separate FVAs for 1) chargeable development comprising phase 1 development (Appendices 2 and 3) and, 2) chargeable development comprising phase 2 development the development (Appendices 5 and 6). Both have been prepared in accordance with national guidance. In addition, an overarching assessment of the viability of the whole scheme is included with each FVA. Whilst Regulation 57 of the CIL Regulations does not specifically prescribe that whole scheme viability evidence should be submitted with an ECR claim, the council considers such evidence provides important context and has received confirmatory legal advice on this point. This is relevant given that with multi-phased developments, viability varies between phases with a significant proportion of costs incurred in early phases and higher values being achieved in later phases as the scheme approaches fruition.

21. The AY FVAs supporting each ECR claim adopts the same methodology as the planning application stage FVA namely it includes:

- An assessment of the realisable value of the Scheme;
- An assessment of the costs of delivering the Scheme;
- A benchmark land value which is treated as a development cost;
- A calculation of developer's profit.

22. The AY assessments are based on:

i) Sales valuation of the residential and commercial development based on 2023 Norwich market data. In relation to residential values the AY report refers to St James' Quay, St Anne's Quarter and Canary Quay as large scale residential led developments (in excess of 200 new homes) with ancillary commercial floorspace, as providing the best comparable evidence for Anglia Square. Account has been taken of the location and situation of these comparable sites and the stage of development for each phase, as there is the expectation that values will increase over the duration of the development. On the basis of this local evidence, AY have adopted a base residential value of £350 per sq ft in phase 1. Over the duration of the Scheme, there is potential to achieve an uplift above today's values, given the scale and significance of the development. Phase 1 will deliver a significant number of new homes and commercial floorspace, alongside key infrastructure works, which will help to regenerate the area. AY have therefore assumed that residential values will increase from phase 2 onwards, adopting a premium of 12.5% for phase 2, 20% for phase 3 and 27.5% for phase 4, from the 2023 base position. The value of residential parking spaces has also been factored in.

   The valuation of the affordable homes is based on: a social rent unit being values at 47% of private residential value (PRV) and an intermediate tenure unit at 80% of PRV, reflecting the appropriate amount registered providers pay for S106 units.

   Commercial floorspace has been valued at £25 per sq ft (based upon comparable data) in order to ensure the commercial space makes a return.

ii) Homes England Homes Infrastructure (HIF) grant has been included as additional revenue and apportioned across phases 1 (70%) and 2 (30%).

iii) Benchmark Land Value based on Existing Use Value plus (EUV+) of £11,674,000 (excluding stamp duty and fees).

iv) Construction costs – two approaches have been adopted to modelling build costs, those being:

   - Approach 1) - costs based on an independent cost review produced by Exigere (September 2023) (independent cost advisers) and subject to an AY cost audit. For phase 1 The FVA adopts a build costs figure of £262 per sq ft ('the AY build costs') (relative to the Exigere figure of £267 per sq ft). Costs are representative of market costs and rates for materials and labour and an unspecified developer undertaking the development.

- Approach 2) - costs derived from Weston Homes' (Developer) data as achieved on similar sites and reflecting their operating model as a vertically integrated developer. This equates to build costs of £180 per sq ft and £232 per sq ft respectively for commercial and residential. Approach 2 reflects the existing contract between landowner and developer and Weston's profiling of their costs for building out the consented development commencing in 2024. This position is endorsed by AY as AY consider the Weston Homes' position is achievable given their vertically integrated model.

v) Cost of off-site highways works – phase 1: £912,960, phase 2: £683,199. Nothing attributed to Phases 3 or 4.

vi) S106 costs: phase 1 - £1,050,057, phase 2 - £343,691, phase 3 - £1,598,417 and phase 4 £1,515,881.

vii) CIL Costs – phase 1: £1,761,967 (CIL liability minus social housing relief), phase 2: £400,452 (CIL liability minus social housing relief), phases 3 & 4: £6,104,254 (estimate).

viii) Professional fees - 4%.

ix) Sales, Marketing and letting fees – 1%, 1% and 15% respectively.

x) Purchasers' fees – 5.8% (SDLT, agency fees, legal fees and VAT).

23. It should be noted that it would be normal practice to include finance costs (costs of borrowing) in the viability modelling. Borrowing costs are currently in the order of 7-8%. It is stated in the FVA that the Developer *has financial arrangements for borrowing as a group rather than financing developments on a project-by-project basis, therefore it is uncertain at this stage how much equity and debt will be drawn down for Anglia Square. Weston Homes is willing to commit a sum of substantial equity to facilitate the development in order to mitigate costs, however finance will also be required.* At this stage the Developer cannot confirm the detailed finance arrangements and therefore an accurate finance cost cannot be applied to the modelling. Finance costs are therefore omitted but in reality, will be an additional cost to development.

24. The output of the AY assessments for phase 1 development are summarised in table 1 below:

Table 1: Phase 1 Appraisal Results - derived from Anglia Square phase 1 Financial Viability Assessment (Avison Young October 2023)

	Phase 1		**All phases**	
	With CIL	**With ECR**	**With CIL**	**With ECR**
GDV	£66.9m	£66.9m	£321.9m	£321.9

HIF & additional income	£10.9m	£10.9m	£15.4m	£15.4
Net realisation	£77.4m	£77.4m	£335.7m	£335.7m
Approach 1 Total costs	£113.4	£111.6	£335.7	£335.7
Profit	-£36.0m (-53.7% on GDV)	-£34.2m (-51.1%on GDV)	-£43.4m (-13.5% on GDV)	-£35.1m (-10.9% on GDV)
Approach 2 Total costs	£94.5m	£92.7	£312.0	£303.8
Profit	-£17.1m (-25.5% on GDV)	-£15.3m (-22.8% on GDV)	£23.7m (7.4% on GDV)	£32.0m (9.9% on GDV)

25. The output of the AY assessments for phase 2 development are summarised in table 2 below. In order to provide clarity around the cumulative effect of phase 1 and 2 together, the FVA has included this as an additional appraisal to show the position for phase 2 alone, at the end of phase 1 and 2 and for all phases.

Table 2: Phase 2 Appraisal Results - Anglia Square phase 2 Financial Viability Assessment (Avison Young October 2023)

	Phase 2		**Phases 1& 2**		**All phases**	
	With CIL	**With ECR**	**With CIL**	**With ERC**	**With CIL**	**With ECR**
GDV	£33.5m	£33.5m	£100.4m	£100.4m	£321.9m	£321.9m
HIF & additional income	£4.5m	£4.5m	£15.4m	£15.4m	£15.4m	£15.4m
Net realisation	£37.1m	£37.1m	£114.6m	£114.6m	£335.7m	£335.7m
Approach 1 Total Costs	£38.6m	£38.6m	£152.0m	£149.8m	£379.1m	£370.8m
Profit	-£1.5m (-4.4% on GDV)	-£1.1m (-3.2% on GDV)	-£37.4m (-37.3% on GDV)	-£35.3m (-35.1% on GDV	-£43.4m (-13.5% on GDV)	-£35.1m (-10.9% on GDV
Approach 2 Total Costs	£29.7m	£29.3	£124.2	£122.0m	£312.0m	£303.8m
Profit	£7.4m (22.2% on GDV)	£7.8m (23.4% on GDV)	-£9.6m (-9.6% on GDV)	-£7.5m (-7.4% on GDV)	£23.7m (7.4%on GDV)	£32.0m (9.9% on GDV)

26. Officers have critically reviewed the FVAs supporting both claims for ECR and make the following observations.

27. The assumptions around sales valuations are considered to be reasonable and based on a sound evidence base. The uplift in residential values in phases 2, 3 and 4 reflects the aspiration of the Developer to deliver transformative change in the northern city centre. There is financial risk to the Developer if the

development does not achieve the placemaking quality and the anticipated residential premium values. In relation to affordable residential values, officers are aware that at this time there is some doubt as to whether the Developer will be able to achieve the affordable housing value (AHV) of £13.1m factored into the appraisals. Weston Homes are currently marketing the affordable housing. The council are considering its options and whether we would wish to bid to take on part, or all, of the proposed affordable housing. A decision on this would be subject to a full business case being made, and further Cabinet approval. Sensitivity testing has been carried out by AY which shows the effect of a 10% and 20% reduction in AHV. Based on Weston's costs (Approach 2 - whole scheme with ECR) profit on GDV would be reduced from 9.9% to 9.6% with a 10% reduction and down to 9.2% with a 20% reduction in receipts.

28. In terms of land value, the FVA applies a value of £11.6million. At planning application stage, AY assessed the EUV (+15%) of the site to be £11.65m. The FVA shows the effect of a higher land acquisition cost of circa £13.1m (the sum agreed in the contract between Developer and the landowner). This higher level acquisition costs is equivalent to EUV+28%. Although this level is higher than the 15% referred to in the council's Affordable Housing SPD (2019) it is marginally below the 30% brownfield land uplift applied in the viability testing of policies in the Greater Norwich Plan. The AY sensitivity testing of the two land values shows that the impact of the higher value reduces profit on GDV by 0.4% (based on whole scheme profit phases 1-4).

29. In terms of viability modelling, Approach 2 outputs are considered to be the most accurate representation of profit given that they are based on the projected costs of Weston Homes undertaking the scheme. Officers consider this developer specific approach to be critical to ensuring the assessment process is rigorous and underpinned by the best available evidence. It is important to note that an application for ECR can only be made at the time consented development becomes CIL chargeable and before development commences. Furthermore, in the event of relief being granted, if development does not commence with 12 months the relief expires and ceases to be available. Therefore, in relation to ECR, timing is a critical factor, linked with the requirement to consider up-to-date viability evidence and the economic position facing the development partners at the time the consented Scheme, from a planning perspective, could commence.

30. The Developer has been transparent about their operating model and provided projected costs based on £per sq ft figures achieved on similar sites. The Developer has identified areas where it is able to make efficiencies and savings. These include: build cost savings (achieved through owning and operating their own plant e.g. forklifts, cranes etc, direct employment of site staff; direct purchasing of materials) and reduced professional fees (4% rather than industry norm of 7.5% as a result of in-house specialists – reducing the use of external consultants). The scale of these efficiencies is illustrated when a comparison is made to the comparable cost headings in the Approach 1 assessments. Overall, the Developer's costs are 'lean' with 'all phases' costs around 10% lower in comparison to industry levels.

31. On this basis, officers are satisfied that the AY FVAs submitted in support of each of the ECR claims is based on up-to-date residential and commercial market data and on best available evidence in relation to estimated development costs.

Profit

32. As referred to in paragraph 29, the modelling based on the Developer's costs (Approach 2) is considered to be the most representative of the viability position at this point in time. Therefore, the following paragraphs relating to profit are based on the output of the Approach 2 assessments. However, Approach 1 should not be entirely disregarded as it illustrates a viability position in the event of the sale of land to the contracted Developer not going ahead. With HIF funding, the modelling shows substantial financial deficits, in Phase 1 (-£36m), by the end of Phase 2 (-£37.4m) and for the Scheme as a whole (-£43.4m). In reality, the current HIF funding would not be available as the grant will be withdrawn by Homes England in the event of a contract not being agreed. Under these circumstances with CIL or with ECR, development is not viable.

33. In relation to phase 1, based on the Developer's costs, around 30% of total development costs are incurred in Phase 1. Dwelling numbers in phase 1 account for 24% of the Scheme total (up to 1100 dwellings). The scale of phase 1 development costs takes account of upfront costs associated with site preparation including: demolition/clearance, site remediation, highway works and significantly, land acquisition. Homes England HIF grant is important in offsetting some of the upfront costs and is factored into the viability assessment. However, despite this level of public subsidy, the assessment shows a substantial financial deficit in phase 1. The payment of the CIL chargeable amount for phase 1 development has an adverse impact on the viability position by increasing this deficit (see table below).

	Phase 1		**All phases**	
Profit	**With CIL**	**With ECR**	**With CIL**	**With ECR**
£ On GDV	-£17.1m -25.5%	-£15.3m -22.8%	£23.7m 7.4%	£32.0m 9.9%

34. The Claimant has submitted a statement with the ECR application for phase 1. In relation to development viability, it is stated:

Based on the WH build costs, the Phase 1 chargeable development is not viable – even including CIL ECR – due to the significant upfront costs. Notwithstanding, ECR is required in order to optimise viability and demonstrate a commercial return (on the scheme as a whole) of circa 9.9% profit on GDV which is sufficient to incentivise WH as the developer to commence development with some confidence that a higher profit margin is achievable on the scheme as a whole, primarily through a premium in residential values in Phases 3 and 4 as the scheme becomes more established. Without CIL ECR, the profit level is 7.4%, which materially increases the risk to the developer – thus making the commencement of the scheme much less likely.

The scheme is not capable of viably supporting the payment of CIL; and relief on the Phase 1 chargeable development is therefore required in order for the development to progress and benefit from the £15m of time-limited HIF funding.

35. In relation to phase 2, based on the Developer's costs, around 9.5% of total

development costs are incurred in phase 2. Dwelling numbers in phase 2 account for 7.5% of the Scheme total (up to 1100 dwellings). Viewed in isolation phase 2 is profitable but this position takes no account of the deficit generated in phase 1 and carried forward into phase 2. Considering the cumulative position, by the end of phases 1 and 2 the assessment continues to show, with HIF funding, a significant financial deficit, albeit an improved position compared to the first phase. The payment of the CIL chargeable amount for phase 2 development has an adverse impact on the viability position by increasing this deficit (see table below).

	Phase 2		**Phases 1& 2**		**All phases**	
Profit	**With CIL**	**With ECR**	**With CIL**	**With ERC**	**With CIL**	**With ECR**
£ On GDV	£7.4m 22.2%	£7.8m 23.4%	-£9.6m -9.6%	-£7.5m -7.4%	£23.7m 7.4%	£32.0m 9.9%

36. The Claimant has submitted a statement with the ECR application for phase 2. In relation to development viability the position as reported in paragraph 34 is reaffirmed.

37. With large scale multi-phased development, it is often the case that early phases of development are loss making. Developers when considering whether to invest in a scheme will look at the balance sheet for the whole development, and risk that capital receipts and revenue from later phases will recoup early losses and generate an overall surplus. The surplus in later phases is what incentivises developers to bring forward development and to build out the entirety of the scheme.

38. In relation to what constitutes an acceptable profit level for development to come forward, the Planning Practice Guidance (PPG) states that for the purposes of plan making "*an assumption of 15-20% of gross development value (GDV) may be considered a suitable return to developers in order to establish the viability of plan policies. Plan makers may choose to apply alternative figures where there is evidence to support this according to the type, scale and risk profile of planned development. A lower figure may be more appropriate in consideration of delivery of affordable housing in circumstances where this guarantees an end sale at a known value and reduces risk. Alternative figures may also be appropriate for different development types." (Reference 10-018-20190509).*

39. Norwich's Affordable Housing SPD states *that given the significant need for affordable housing in Norwich, the council will require reasonable profit for the developer to be at the lower end of the range set out in the PPG (i.e. at around 15%) but will consider enabling this to rise to 17.5% only if it is demonstrated by the applicant that this is justified on grounds of risk and could impact on delivery of the scheme. However, there may be exceptions to this approach, for example, as referenced in the PPG, where a lower rate of profit may be more appropriate for affordable housing schemes where the risk to the developer is significantly reduced.*

40. In relation to the SPD considerations, the risk profile of this development is considered to be high. With CIL, the AY FVA estimates the 'all phases' profit at 7.4% on GDV, well below scheme profit levels sought by the wider

development sector and by financial institutions (offering borrowing to developers). Profit at this level has limited ‘incentivising draw’ and poses financial risk to the developer in the event of unforeseen costs being incurred or target values not being achieved. In the case of this Scheme, the grant of ECR in Phase 1 and Phase 2 mitigates against both losses and Developer risk in the early phases and allows for the prospect of achieving an overall profit level closer to 10%. Without ECR, there is a significant risk that the land sale between the Developer and the landowner would not proceed, and the likelihood of the Scheme being delivered by an alternative developer is remote. Furthermore, in the event of phase 1 commencing, such marginal viability and risk around development costs, may jeopardise delivery of the Scheme as a whole, given a commercial return may not be attainable. Given these considerations along with the AY financial evidence supporting the two claims for ECR, officers consider the payment of the CIL chargeable amount for phase 1 and phase 2 of the Scheme would have an unacceptable impact on the economic viability of the development.

Exceptional circumstances

41. For the past two decades successive development plans and policy guidance notes have promoted the regeneration of Anglia Square and the northern city centre:

- City of Norwich Local Plan 2004
- Northern City Centre Area Action Plan (2010)
- Joint Core Strategy (2011)
- Anglia Square Policy Guidance Note 2017

42. Despite this permissive policy context, Anglia Square, along with many sites close to it, remain undeveloped. Although major schemes have been proposed by previous owners and have been granted planning approval in 2008 and 2013, these retail-led developments proved unviable to implement. In the case of the 2018 planning application, the Secretary of State agreed with the Inspector’s conclusion that if planning permission was to be granted there was a reasonable prospect that the scheme would be delivered as a whole. However, the Secretary of State went on to refuse permission on other grounds.

43. In all these cases viability has had a bearing on either the decision made by a developer not to proceed with development or in the case of the 2018 and 2022 planning applications, influenced the quantum and mix of development being promoted by the developer.

44. Anglia Square remains the most significant regeneration opportunity in the northern part of the city centre and one of Norwich City Council’s most important priorities for regeneration. Draft Greater Norwich Local Plan (GNLP) Strategic Policy 7.1 relates to Norwich City Centre and the role it plays as a driver for the Greater Norwich economy. Under draft policy GNLP0506 Anglia Square is allocated for a residential-led, mixed use development as the focus for an enhanced and improved large district centre and to act as a catalyst for wider investment and redevelopment within the Northern City Centre strategic regeneration area. Norwich’s Corporate Plan 2022-26 identifies the regeneration of Anglia Square under Corporate aim 3.

45. Without development proceeding, the site will continue to decline and blight this part of the city. Substantial parts of the site are either undeveloped or underutilised. Sovereign House and Gildengate House have not been used as offices since the late 1990s and the multi-storey car park and cinema closed in 2012 and 2019 respectively. Of the 49,241sqm Gross Internal Area (GIA) of existing floorspace on the site, currently 67% (33,267sqm GIA) is vacant. The shopping centre is tired and outdated. The site is highly prominent at the northern gateway to the city centre. The degraded appearance of Sovereign House and the site in general, is detrimental to the local historic townscape and a highly visible indicator of decades of dereliction and lack of developer interest in this part of the city. The local impact area, in which the site is located, is amongst the 10% of most deprived neighbourhoods in England in terms of income, employment, health and disability and crime. Focusing more closely on income, the site is also in a neighbourhood within the top 10% in the country for the indices of income deprivation affecting older people and children. The Health Impact Assessment submitted with the planning application highlighted that circa 18.3% of the population within the local impact area has a long-term health problem or disability. There is high unmet need for affordable housing. Across Norwich there are currently 2017 applicants on the choice-based lettings (Homes Options) register requiring a social rent one bedroom property. Of these 663 are single people or couples registered in the NR3 postcode area.

46. The Secretary of State in his decision on an earlier scheme 18/00330/F agreed that the current condition of the Anglia Square site is a barrier to investment. The site is large, highly constrained and supports an operational district shopping centre. Comprehensive redevelopment requires the demolition of a complex, multi-level precinct structure which includes one of the largest buildings in Norwich (containing high levels of asbestos). The site is located in an area of archaeological interest and has a high potential to contain heritage assets with buried archaeological remains of local and regional significance. These include potential for evidence of Anglo-Saxon and later settlement, the Anglo-Saxon defensive ditch and the remains of St Olave's Church and St Botolph's Church and their associated burial grounds. As a consequence, development of the site is conditional on extensive archaeological investigation. Former industrial uses on the site introduce the requirements for contamination remediation. The location of the site within city centre location imposes constraints on construction programming given both physical restrictions and vehicular access. When compared to other city centre sites, the up-front costs of developing this site are considered abnormally high and there are additional logistical costs associated with maintaining an operational shopping centre. Furthermore, in terms of development value, given the scale and characteristics of the site, the time lag between costs being incurred and new development being able to be sold is considerable, and current values in this part of the city are low.

47. The need for regeneration, the specific site circumstances, the predicted imbalance of development cost and value and the disincentive this creates to investment in Anglia Square, are all matters that constitute exceptional circumstances and underpinned the council's 2018 bid for marginal viability funding from the Homes England Housing Infrastructure Fund (HIF). Homes England's grant approval process included their commission of an independent development viability assessment. The award of £15million of grant funding,

reflected the scale of the viability gap and the need for public subsidy to facilitate delivery. In October 2019 Homes England confirmed that the 'availability period' for the HIF grant had been extended to March 2024 given the call-in of the previous scheme and in the knowledge that the developer was actively working on an alternative scheme. Following extensive negotiations, Homes England has confirmed a new Availability Period to June 2025. Meeting this date remains extremely challenging and is dependent on the developer taking ownership of the site and starting the main development programme no later than March 2024. If this delivery timetable is not met the £15million of HIF money could be reallocated to another Homes England priority. Work continues to agree revised milestones for inclusion in the Deed of Variation to the original contract with Homes England and it is hoped this will be signed by year end.

48. The assessment of economic viability of the Scheme demonstrates that both HIF and ECR for phases 1 and 2 are necessary to bridge the viability gap and that without this level of public subsidy, development profit and developer risk would be at a level which would militate against the Scheme proceeding. A contract is in place between the landowner and the Developer for the sale of Anglia Square. The timescale for the signing of this contract would allow Homes England HIF to be secured.

Demonstration of wider community and regeneration benefits.

49. The assessment of the planning application for the development at Anglia Square (ref: 22/00434/F) identified a number of regeneration benefits. These were summarised in the report to Planning applications committee as:

With developer costs in the order of £280million, the level of investment will be a 'statement of confidence in the city of Norwich and boost the city's profile and attractiveness to inward investment'. The investment will:

- *after two decades, unlock a large-scale brownfield site for regeneration*
- *remove highly prominent unsightly vacant buildings, that currently blight the northern city centre;*
- *enhance the physical appearance of the site through the construction of high quality buildings, streets and public realm that have regard to both the historic environment and the unique character of Anglia Square;*
- *boost the city's housing supply through the creation of a highly sustainable residential quarter which will have good connectivity to the existing surrounding community;*
- *provide much needed affordable homes, the majority of which will be delivered in the first two phases of the development* (52 in phase 1 and 54 in phase 2);
- *through the introduction of new housing and improvements to the quality and viability of the retail offer at Anglia Square, support the long-term role and vitality of the Anglia Square and Magdalen Street*

Large District Centre;

- *create much-needed local employment for Norwich residents including construction jobs with apprenticeship opportunities and skills training in the eight-year building development stage;*

- *deliver outcomes capable of having a permanent, moderate to major beneficial impact on levels of deprivation in this part of the city;*

- *supply a much-needed stimulus to rejuvenate other neglected or derelict sites within the city.*

Significant inward investment in this site would be a statement of confidence in the city of Norwich and boost the city's profile and attractiveness to other inward investors. In relation to the planning application the council's economic development manager advised that major redevelopment would be very high profile, the scale of the investment would put Norwich on the "investment map" and would likely act as a catalyst attracting further new investment into the city which could transform the myriad of stalled brownfield city sites which currently await redevelopment. Key sites including Barrack Street site, St Mary's Works on Duke Street, and St George's Works are all within approximately 500m of Anglia Square. The development has the ability to act as a stimulus for transformative change within the wider northern city centre area. The timely development of Anglia Square is considered of strategic importance and a factor in determining whether Norwich achieves its full economic potential.

50. In relation to housing delivery, the consented scheme delivers up to 1100 homes. Norwich's annualised housing requirement based on the adopted Joint Core Strategy is 477 units per annum over the period 2008-26. When figures for both care homes and purpose-built student accommodation are excluded, annual housing delivery targets have been met in only two of the last eight years. Going forward, the draft GNLP includes 38 sites within Norwich to deliver new housing up to 2038. For Norwich, Anglia Square is the second largest proposed brownfield allocation after East Norwich. The site is of a size to make a significant contribution to Norwich's commitment to deliver new homes in sustainable locations over the new plan period. The 1100 dwellings would represent 16% of Norwich's future housing commitment proposed to be met on newly allocated sites. The consequence of the continued dereliction of the site undermines the ability of the city council to meet identified housing need both for market and affordable homes.

51. In terms of affordable housing provision, under the recently amended scheme 106 affordable homes will be delivered in the first two phases of development: 52 in phase 1 and 54 in phase 2. The majority (88) of these homes will be for social rent, the remainder intermediate tenure. In the event of the total of number homes exceeding 1060, additional affordable homes (1-4) will be delivered in phase 4.

52. In relation to community facilities the consented scheme includes:

- A community hall/space - available for hire by new residents, members of the existing community and local groups and societies.
- A community hub - a mixed-use space. A significant element of the

community hub would be a management suite for the development, to oversee the management of the new residential community. Also intended to act as a gathering space for new residents promoting social cohesion.
- Creation of multi-functional public realm comprising a new public square, garden and areas of public realm.
- Public realm scheme for under the flyover

53. At the planning application stage, the delivery of the development was judged to have a significant long term beneficial impact on the Anglia Square and Magdalen Street Large District Centre, the northern city centre and the wider Norwich economy. Accordingly, the development positively shows compliance with the following adopted development plan policies – JCS policies 4, 5, 8,11,19, DM1, 12, 16, 18 and 20. The scale and breadth of identified benefits fulfils Norwich City Council's Exceptional Circumstances Relief Policy which requires a demonstration of wider community and regeneration benefits including the delivery of affordable homes and community facilities.

The HIF Contract

54. Members should note that at present, the HIF contract with Homes England includes a clause which states that 'the Local Authority shall confirm that CIL ECR has been granted on phase 1 prior to the drawdown of any funding (Schedule 4, clause 1.16).

55. This clause is considered to fetter Members' discretion when considering whether to grant or otherwise the CIL relief. As such officers are working to reword the clause to seek clarification that a decision has been made, not that the relief *has* been granted. The suggested new wording is as follows: 'The Local Authority shall confirm that a determination has been made in respect of CIL ECR on the Works prior to any drawdown'.

56. Homes England has confirmed verbally that it sees no reason why this clause cannot be amended but formal sign off to the change is required from the Board of Homes England on this point. This will only be secured when the fully revised Deed of Variation to the Contract is agreed which is not expected until the end of the calendar year.

57. As such, Members should note this in their decision making and be mindful that any decision to refuse the CIL relief may still pose a risk to the ability to draw down the HIF funding of £15m.

CIL Funded Infrastructure

58. CIL is used for the funding of infrastructure on the Regulation 123 list which includes transportation, education, green infrastructure, sport and play provision and community infrastructure. In considering the negative effects of this development not contributing CIL for these purposes the following considerations are capable of being weighed in the balance:

- Transportation: The development is providing an upgraded section of the Yellow pedalway which runs through the site. The route will be segregated from pedestrian and motorised traffic and connect to a new E-W cycle route connecting to Magdalen Street. This will improve the cycle network and connectivity, benefiting cyclists accessing and moving around the city, delivering wider that site benefits.

The development will also fund improvements to public transport facilities on Magdalen Street. This will benefit the operation of all bus services using this route and will have a wider than site benefit.

- Education: The majority of the new homes comprise 1 and 2 bedroom flats. The development is likely to attract fewer families with children than development of a similar number of houses. At the time of the planning application there was capacity in the school and colleges for projected numbers.

- Green Infrastructure: The development will fund improvements to green infrastructure in the vicinity of the site, namely Gildencroft Park and Wensum Park. The Scheme includes play opportunities within the public realm areas. These improvements will have wider than site benefit.

- Community infrastructure: The development provides a new community hall. This will benefit existing residents and groups as well as new.

Conclusions regarding the Claims

59. With reference to the CIL Regulations, the council's ECR policy and National planning practice guidance on ECR.

Claim 1) in relation to phase 1 chargeable development:

60. The viability evidence demonstrates that the payment of the CIL chargeable amount for phase 1 development results in a substantial financial deficit in that phase. The evidence further indicates that based on current best estimations of development values and costs, later phases of development will not generate a surplus sufficient to reduce the risks of the Developer incurring these early losses. The risk of the Developer not realising a reasonable return on their investment is high. With reference to Regulation55(3)(c) it is considered that the requirement for the payment of CIL for phase 1 development would have an unacceptable impact on the economic viability of development

61. The grant of ECR will reduce the risk of the land sale not proceeding and/or the risk to the Developer incurring losses in phase 1 which may jeopardise delivery of the Scheme as a whole. The past and current planning policy context of Anglia Square, the specific site circumstances and the identified regeneration benefits of the Scheme are considered to amount to exceptional circumstances which justify the granting of ECR under Regulation 55(1)(a).

62. The use of ECR avoids rendering sites with specific and exceptional cost burdens unviable. Granting ECR for phase 1 provides the framework for the Anglia Square redevelopment to commence in March 2024 thereby securing Homes England HIF grant. On this basis it is considered expedient to grant the relief (Regulation 55(1)(b).

Claim 2) in relation to phase 2 chargeable development:

63. The viability evidence demonstrates that the payment of the CIL chargeable

amount for phase 2 development results in a significant financial deficit by the end of that phase. The evidence further indicates that based on current best estimations of development values and costs, later phases of development will not generate a surplus sufficient to reduce the risks of the Developer incurring these early losses. The risk of the Developer not realising a reasonable return on their investment is high. With reference to Regulation55(3)(c) it is considered that the requirement for the payment of CIL for phase 2 development would have an unacceptable impact on the economic viability of development

64. The grant of ECR will reduce the risk of the Developer incurring losses in phase 2 which may jeopardise delivery of the Scheme as a whole. The past and current planning policy context of Anglia Square, the specific site circumstances and the identified regeneration benefits of the Scheme are considered to amount to exceptional circumstances which justify the granting of ECR under Regulation 55(1)(a).

65. The use of ECR avoids rendering sites with specific and exceptional cost burdens unviable. Granting ECR for phase 2 provides the framework for the Anglia Square redevelopment to commence in March 2024 thereby securing Homes England HIF grant. On this basis it is considered expedient to grant the relief (Regulation 55(1)(b).

S106 details and Review Mechanism

66. The CIL Regulations Regulation 55 (3)(b) states a charging authority may only grant relief for exceptional circumstances if a planning obligation under section 106 of TCPA 1990 has been entered into in respect of the planning permission. Planning permission 22/00434/F is subject to a S106 Agreement securing matters set out in the table below.

Planning requirement	**Details**	**Cost (where applicable)**
Affordable housing provision	• Provision of min of 10% affordable dwellings • 85% social rent, 15% intermediate tenure. • Phased delivery of affordable units - with blocks B and C in phase 1, KL in phase 2 and the remaining in phase 4	
Viability Review	At the following stages: - reserved matters stage - in the event of substantial delay in the development commencing - in the event of the development not being built out at an agreed rate. - fixed reviews at 30%, 60% and 90% occupancy of the development.	

	In the event of improved viability (profit level reaching /exceeding 16.5% of GDV) additional housing units to be secured on site unless the council agrees to financial contribution instead. In the case of final review additional affordable housing provision would be in the form of an affordable housing commuted sum.	
Nutrient Neutrality	• Prior to the commencement of each phase of development purchase mitigation credits sufficient to mitigate the nutrient budget requirement for that phase • Not to commence until the council has confirmed available mitigation headroom and the payment for credits had been made. • Cost of credits to be indexed linked to CPI	£ 3,790,393.7 (estimated using base cost only)
RAMS Recreation Avoidance	£185.93 per dwelling - indexed linked	£231,924
EGI (Enhanced Green Infrastructure	Payment to fund EGI on Wensum and Gildencroft Parks	£61,140
Car club	• Provision of car club spaces – min of 3 and subject to review up to 5. Active EV provision. • Funding of car club incentives for new (first) households (£100 per household) • Management and maintenance arrangements	£110,000
Under the Flyover	Phase 1 - Delivery of a public realm scheme for land under the flyover Either delivered directly by the developer or by the council with a commuted sum	£284,589 (only payable in the event of the council delivering the scheme)
Public Toilet and Changing Places facility.	Submission and agreement of Management Plan. Requirement for owners to construct, manage and maintain or procure the management and maintenance of the Public Toilets and Changing Places Facility in accordance with the agreed plan	

Community Hub	Submission and agreement of a management plan. To include
	
	• Provision of 'village' hall (approx. 146 sqm (NIA) floorspace) for hire by public and residents. Scheme for fit out to include: fixtures - accessible toilet facilities, kitchen area and suitable furniture to provide for flexible use.
	• Community hub (approx.550sqm (NIA) floorspace) for use by public and residents including:
	    o Toilet
	    o Social spaces – to include social gathering areas, bookable meeting rooms/hot desk areas
	    o cafe / kitchenette for refreshments
	    o Lift and stairs to mezzanine floor
	    o Managed parcel and foodshop deliveries (for onsite residents only)
	    o Reception area to manage bookings and residents deliveries
	• Management arrangement for all public facilities	

Anglia Square Management Plan	Agreement and implementation of a strategy: measures to mitigate the impact of the development on existing businesses and tenants. To include: • Payment of commuted sum to fund independent business advice and information regarding tenants and vacant floorspace. • Reasonable endeavours to allow continued occupation of current business premises (up until vacant possession is required on either health and Safety grounds or to allow demolition) • Reasonable endeavours to identify vacant floorspace (on site) and make available for displaced tenants. • To support continued access to site and business premises. • Provision of temporary signage	£30,000

	• Proactive marketing including holding of events. • Updating and communication with tenants within the site and the local business community.	
Employment and Skills Strategy	To optimise the local labour supply chain and procurement: • Reasonable endeavours to source site-based staff from the Norwich policy area • To liaise with local agencies for eligible staff positions • Covenant to offer training (NVQ or other work-related training) • Monitor and report. • Requirement to apply to subcontractors. To optimise engagement with education - covenant to liaise with local agencies to arrange for secondary school pupils who are considering choice of GSCEs to visit the Development construction site.	
Sustainable Communities Strategy	Agreement and implementation of a strategy: measures for achieving an inclusive community and encourage social cohesion between the new and existing communities. Strategy to include (but not limited to) arrangements and measures for new residents, proactive marketing of Anglia Square as a shopping and community destination; measures to optimise community use of public spaces (including for events and cultural activities); measures to foster communication and engagement with the existing community (including residents, businesses, local organisations and charities).	
Public access rights	Agreement of a Public Realm Strategy and the requirement to manage and maintain the public realm for the lifetime of the development. Strategy to include: Delivery quality; maintenance and management body; delivery timeframe; construction period; use of the entire public realm (including	

	access rights for the public at large on foot and bicycle and to foster use as a social and civic space); arrangements for carrying out works.	
Healthcare Floorspace Reservation	Blocks J3 (in phase 2) and F (in phase 4) Owner to notify Norfolk and Waveney ICS of commencement of phases 2 and 4 Owners to undertake reasonable endeavours to liaise with ICS and enter into contract for lease of units within each phase for medical and health services. Owners to reserve the units for 6 months	
Total cost		**£4,508,046**

67. Attention is drawn to the review mechanism which will result in the re-assessment of the financial viability of the Scheme during the construction of the development at identified trigger points. Should it be proven that viability has improved above the agreed Scheme Profit Margin Percentage of 16.5%, then the surplus will split on a 60/40 basis between the council and the owners respectively. Such surplus would be used to deliver additional affordable housing units on site or off-site if agreed by the council. The re-assessment does not allow for the recovery of CIL once ECR has been granted.

Consultations

68. The planning application in relation to the redevelopment of Anglia Square has been subject to statutory consultation throughout the planning application process, with responses received from a number of individuals, groups and bodies and various statutory undertakers.

69. The CIL Regulations do not require consultation in relation to ECR applications or decisions.

Timescales

70. Regulation 57 of the CIL Regulations sets out the following requirements as related to timescales and disqualifying events.

Regulation		
57(9)	A claim for relief for exceptional circumstances will lapse where the chargeable development to which it relates is commenced before the charging authority has notified the claimant of its decision on the claim	The development has not yet commenced

57(10) 57(11)	A chargeable development ceases to be eligible for relief for exceptional circumstances if there is a disqualifying event. A disqualifying event occurs if - (a) before the chargeable development is commenced (i) charitable or social housing relief is granted in respect of the chargeable development (ii) an owner of a material interest in the relevant land makes a material disposal of that interest; or (b) at the end of the period of 12 months beginning with the day on which the charging authority issues its decision on the claim, the chargeable development has not been commenced	Officers will monitor development for a disqualifying event.

Financial and resources

71. Any decision to reduce or increase resources or alternatively increase income must be made within the context of the council's stated priorities, as set out in its Corporate Plan 2022-26 and budget.

72. Members are being asked to grant Exceptional Circumstances Relief (ECR) to the Claimant in accordance with its (ECR) policy which was approved in July 2019. This decision would result in the council as a CIL charging authority foregoing CIL income amounting to £2,162,419 (after Social Housing Relief), 5% taken as administration fee the remaining split 85/15 between the Greater Norwich Growth Board (GNGB) and neighbourhood pool. This decision applies to phases 1 and 2 of the approved development and does not prevent CIL from being charged on later phases; a separate decision on that would be required in relation to the granting of any further ECR.

73. In deciding whether to grant ECR Members are being asked to consider whether the conditions set out in CIL regulation 55, and reflected in the council's policy, have been met [paragraph 7 et. al.] The report sets out that without the ECR being granted, phases 1 and 2 of the scheme are financially unviable even with the inclusion of significant funding from the government's Housing Infrastructure Fund. The HIF funding of £15m is time limited and there is a risk that the HIF funding will be lost if the scheme does not proceed promptly.

74. In considering viability Members should note that the viability appraisal has been carried out independently (by Avison Young) and has been reviewed by officers to confirm that it appears reasonable given that, by its nature, it includes assumptions about future costs and sales information that is unknown and therefore subject to estimation. Members will want to assure themselves

that any decision they take is based on a robust evidence based approach as it may create a precedent and form the basis of other similar applications for ECR.

75. The main impact on council finances will be through circa £270m of investment in a deprived ward, uplift in Council tax and change in business rates resulting from development. The economic benefits associated with employment generation, reversing the process of decline, increasing business confidence and strengthening the economic base of the northern city centre are set out in detail in paragraphs 363-385 and summarised in 794, 800 and 801 of the report to Planning Application Committee (PAC) dated 27 April 2023.

Legal

76. The provisions within the CIL Regulations relating to the grant of ECR have been set out in detail in this report.

77. Whether exceptional circumstances exist is a question of judgement for Members taking into account all of the relevant factors. Members must consider whether the circumstances described in this report are indeed exceptional (that is to say unusual, and not typical). This report indicates that the principal matters that should be taken into account are as follows:

(1) that the requirement to pay CIL would have an unacceptable impact on the financial viability of the Scheme, as evidenced by the independently assessed viability information provided by the Developer in support of the ECR application;

(2) failure to grant ECR could prevent the Scheme from coming forward;

(3) the regeneration of Anglia Square is a key policy objective of the Council, and the Scheme would deliver compelling social economic and environmental benefits

78. Even where it appears that exceptional circumstances exist, Members must also be satisfied that it is "expedient" to grant ECR. Members must consider whether the grant of ECR is convenient and practical, and a means of achieving a desired end. This report indicates that granting ECR would be expedient, because it would enable the development to come forward, thereby delivering a key policy objective of the Council.

79. A charging authority must act in compliance with the requirements and duties set out in the Subsidy Control Act 2022 when any discretionary exemption or relief is granted. Officers have undertaken a subsidy Control Principles Assessment under the 2022 Act and concluded that the benefits of the subsidy (as they relate to the Council's policy objectives) outweigh the subsidy's anticipated negative effects, including in particular any negative effects on competition and investment within the UK or on international trade and investment.

80. The Council is required to promptly publish required information about this subsidy on the UK Subsidy Control database and this will be done as necessary depending on Member's decision.

81. The proposed ECR subsidy does not qualify as a subsidy of particular interest under the Subsidy Control (Subsidies and Schemes of Interest or Particular Interest) Regulations 2022. Therefore, the Council may proceed to award the subsidy without having to obtain a report from the Competition and Markets Authority.

Statutory considerations

Consideration	**Details of any implications and proposed measures to address:**
Equality and diversity	The ECR policy was adopted in 2019 and has therefore been available to any landowner of any development site to make a claim for relief. It is not considered third parties have been prejudiced by this application. The Subsidy Control Assessment made as referenced in paragraph 78 sets out in detail how equality is achieved.
Health, social and economic impact	It is not considered there are any health or social impacts arising from this decision. The economic impact of this decision on the development is the focus of this report and is considered to be covered in detail. The wider economic impacts if the Scheme goes ahead have also been detailed at length in the report and the preceding Planning Applications Committee report (linked).
Crime and disorder	As this report references, this site is based in one of the most deprived neighbourhoods in terms of crime, and blighted sites increase the risk of anti-social behaviour. This decision can help to facilitate development of the site, reducing the potential for crime and disorder.
Children and adults safeguarding	It is not considered there are any impacts on children or adults safeguarding arising from this decision.
Environmental impact	It is not considered there are any environmental impacts arising from this decision. The environmental impacts of the redevelopment scheme have been assessed under the planning application.

Risk management

Risk	Consequence	Controls required
The development does not proceed if CIL ECR is not granted	The redevelopment proposals granted planning permission and wider positive economic impacts of the redevelopment are not realised and the site continues to fall into decline.	Officers are working closely with the Developer to understand if this would become a reality in the event a decision not to grant ECR is made. Ultimately the decision whether to proceed in these circumstances is for the Developer and one over which the council has no control.
The total £15m HIF funding may be withdrawn if CIL ECR is not granted and officers cannot successfully negotiate an amendment to clause 1.16 of Schedule 4 of the contract with Homes England.	The redevelopment proposals granted planning permission and wider positive economic impacts of the redevelopment are not realised and the site continues to fall into decline.	Officers are negotiating with Homes England on this point. Early indications are that this will not be an issue, but this is not confirmed.

Other options considered

Options

82. Several alternative options have been considered, including:

Option 1 - To **not grant ECR at all** for Phase 1 nor Phase 2 chargeable developments.

Option 2 - To **grant ECR for Phase 1**, the first phase of development with the highest cost burden and not grant ECR for Phase 2.

Option 3 - To **grant partial ECR** (lesser amount than 100%) for Phase 1 and Phase 2 chargeable development.

83. If option 1 is pursued, it should be noted that Social Housing Relief of £654,350.43 would apply across both phases, statutorily. This is not payable if CIL ECR is granted.

84. In the case of options 2 and 3 these are not considered to address the overall viability burden of paying CIL on the development.

85. It is therefore considered that there are no other reasonably viable options that considering the grant of CIL ECR on both phases 1 and 2.

Reasons for the decision/recommendation

86. The redevelopment of Anglia square is a long-standing corporate objective for the council and has been an allocated site in Local Plans and strategies for nearly 2 decades.

87. As set out above, the development viability of the Scheme is marginal, and it has been sufficiently evidenced by an independent assessor, and agreed by officers, that the granting of CIL ECR for both phases 1 and 2 of the Anglia Square redevelopment proposals is both justified and expedient on the basis of viability and wider regeneration benefits in accordance with the council's Exceptional Circumstances Relief Policy (adopted 2019).

Background papers:

Anglia Square application 22 00434 F Planning Application Committee (PAC) dated 27 April 2023

Appendices:

1. Norwich City Council Exceptional Circumstances Relief Policy (Guidance Note 7) (2019)
2. Financial Viability Appraisal (FVA) CIL ECR Phase 1 (Avison Young)
3. FVA Phase 1 – Appendices (Avison Young) parts I, II, III attached and part IV linked here
4. Anglia Square Phase 1 – ECR Supporting Statement (CPW Planning on behalf of Claimant)
5. Financial Viability Appraisal (FVA) CIL ECR Phase 2 (Avison Young)
6. FVA Phase 2 – Appendices (Avison Young) parts I, II, III attached and part IV linked here
7. Anglia Square Phase 2 – ECR Supporting Statement (CPW Planning on behalf of Claimant)

Contact officer:

Name: Sarah Ashurst, Head of Planning and Regulatory Services

Telephone number: 01603 987856

Email address: sarahashurst@norwich.gov.uk

IN TRAN communication for all	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.