Rutland County Council
CIL Guidance Note
DISCRETIONARY EXCEPTIONAL CIRCUMSTANCES
RELIEF – CIL GUIDANCE NOTE

Introduction

This note sets out the Council's Exceptional Circumstances Relief (ECR) Policy.

The Policy

The Council has determined to make relief for exceptional circumstances available, in accordance with Regulations 55 and 56 of the Community Infrastructure Levy Regulations 2010 (as amended).

This Relief is discretionary and will be available from dd/mm/yyyy (date to be inserted following Cabinet approval) until further notice. Regulation 56 allows the Council to withdraw this relief offer at short notice.

The onus is on the applicant to demonstrate they qualify for relief and appropriate evidence must be submitted to do so.

In accordance with the Regulations, the Council has decided to adopt a two-stage process in determining an application:

Preliminary Stage: An application for Exceptional Circumstances Relief may **only be approved if:**

- it appears to the Council that there are **exceptional circumstances** which justify doing so, taking account of a Section 106 Agreement which has been entered into **and**
- the Council consider it **expedient** to do so.

A proposal that fails one of these tests will be rejected. If the Council consider that these requirements have been met, then it will give further consideration to a full application, as follows:

Full Application Stage: A Section 106 Agreement has been entered into and:
- the Council considers that payment of the CIL would have an **unacceptable impact** on the **economic viability** of the development**, and**
- granting relief would not constitute **State Aid**.

The need to meet all of these criteria means that very few schemes are likely to be considered eligible for relief and, consequently, Exceptional Circumstances will be rarely granted. This conclusion is in accordance with Government guidance as set out in the National Planning Practice Guidance on ECR (paragraphs 076 to 081).

Each case will be considered individually by the Council, which retains the discretion to make judgements about whether the exceptional circumstances policy applies to an individual scheme. Determination of applications for Exceptional Circumstances relief in line with this Policy will be delegated to the Strategic Director of Places.

The CIL rates set have been set at a level where most development can afford to pay the charge and include significant margins for flexibility. They have been set in accordance with standard assumptions, and with a cautious approach to these assumptions, that include an element of non-CIL obligations and a buffer, to ensure viability. These assumptions and this approach were agreed as appropriate and reasonable by an independent Planning Inspector. Schemes can also be made more viable by phasing payments.

Practical considerations

Any application for ECR must follow the procedures set out in CIL Regulation 57. An applicant must address all of the requirements set out above, particularly why the individual development is considered exceptional and why the applicant considers the Council should look favourably on an exception.

Applicants will need to have agreed with a Planning Officer at least one Section 106 obligation contribution that the development will be liable for, so that the total infrastructure costs of the development can be taken into account.

A claim cannot be approved prior to planning permission being granted and an application for ECR cannot be made after development has commenced. The claimant of the relief must also be an owner with a material interest in the land.

Process

Prior to the formal ECR application stage, if a developer is intending to apply for ECR, they should notify the Council in writing and provide a statement of no more than 500 words setting out the 'exceptional circumstances' of the scheme and the reason(s) why it would be 'expedient' to grant the application. If the Council agrees with the applicant that there are exceptional circumstances and it is expedient to consider the impact of the CIL on economic viability, then a formal ECR application may be made using the form available on the Planning Portal Website (Form 11: Exceptional Circumstance Relief Claim).

Prior to the formal application, the applicant must address the following points:-

The appointment of an 'independent person' by the applicant, to undertake the assessment of the economic viability will need to be agreed with The Council.

The 'independent person' will need to demonstrate that they have appropriate qualifications and experience by submitting appropriate examples of previous viability appraisal work carried out of adequate quality before appointment.

There must not be a client relationship between the independent person appointed to undertake the Viability Appraisal and the land owner / developer seeking the exemption other than that created by the commissioning of the Viability Appraisal.

The Viability Appraisal will need to be set out in a format of a recognised Viability Appraisal Tool or any other format agreed by the Council.

The assumptions included in the Viability Appraisal will need to be clearly set out and evidenced, to inform the Council's understanding.

If the proposal fails the Preliminary Stage of the process, there will be no need for an applicant to go to the time and expense of submitting a full application to include all of the information set out above as the application will be refused.

Fees

The applicant will be responsible for meeting the costs incurred by the independent person and the applicant will be required to reimburse any costs incurred by the Council in considering this. The costs will vary depending on the scale and complexity of the proposal.

Review and appeal rights

The Strategic Director of Places will make the final decision on whether to grant ECR. A letter will be sent to the applicant setting out the Council's decision and a brief explanation of the reason(s) for that decision. There is no right of appeal, but a review can be requested by another senior officer unconnected with the original decision. This will incur additional costs.

Timescales

The Regulations state that the decision should be made *"as soon as practicable".* The Council will endeavour to make a decision within 4 weeks. If a scheme is granted relief, it must be commenced within 12 months of the relief decision.

Vexatious Claims and Potential Withdrawal of ECR

If the Council considers it is receiving an unreasonable number of ECR applications, or many applications do not meet the criteria set out above, it may consider this an abuse of a voluntary offer and valid reason for withdrawing discretionary ECR.

Relief from part of the charge

Relief would only be granted on the basis that the CIL charge in itself is considered to render a development unviable. Consequently, it is unlikely that the whole of the CIL liability will be unaffordable. In these cases, the Council will determine what the level of CIL Relief and charge will be, based on the details set out in the economic assessment.

Circumstances that may result in the development ceasing to be eligible for relief

Eligibility ceases

- o In the event of disposal of a material interest in the land.
- o At the end of 12 months of the date of a decision on a claim if the development has not commenced.
- o Subsequent to the granting of social or charitable housing relief.

In these cases the owner must notify the Council and the full chargeable amount (i.e. the levy that would have been payable if the exemption has not been applied) becomes payable.

Further Information

For further information regarding this policy please contact cil@rutland.gov.uk

NOTE: This Guidance Note does not set out the Community Infrastructure Levy regulations in detail and is simply a summary of the relevant provisions. You should seek your own advice if you are in any doubt as regards how the Community Infrastructure Levy operates or affects your own position