

Sheffield City Council Planning Service

DISCRETIONARY EXCEPTIONAL CIRCUMSTANCES RELIEF – CIL GUIDANCE NOTE 10

Introduction

This note sets out the Council's Exceptional Circumstances Relief (ECR) Policy, with some additional guidance, where considered helpful.

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 15 July 2015 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 will adopt a two-stage process in determining an application:

Preliminary Stage - An application for ECR may **only be approved if:**

- it appears to the Council that there are **exceptional circumstances** which justify doing so, **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, ECR will be rarely granted. This conclusion is in accordance with Government guidance as set out in the [National Planning Practice Guidance on ECR](#) (paragraphs 129-134).

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.

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 large buffer, to ensure viability. These assumptions and this approach were agreed as appropriate and reasonable by an independent Government Planning Inspector. Schemes can also be made more viable by phasing payments (see Payment by Instalments Policy - CIL Guidance Note 3).

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. It must also address the assumptions used in the CIL Viability Study (produced by independent consultants and agreed by the independent Inspector) and identify why the development differs specifically from the standard assumptions used in the Viability Study, which is available on the same webpage as this Guidance Note. Tables 4.37.1 and 4.40.1 in Section 4 of the Viability Study in particular set out the assumptions used.

Applicants will need to have agreed with Planning Service officers at least one Section 106 obligation and Section 278 highway contributions 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 of 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. Prior to the formal application, the applicant must agree with the Council on the appointment of an 'independent person' by the applicant, to undertake the assessment of the economic viability.

Once the assessment of economic viability is completed, the application may be made, which will be done using the form available on the [Planning Portal Website](#) (Form 2: Claiming Exemption or Relief, Section A2).

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

In addition to meeting the costs incurred by the independent person, the applicant will be required to reimburse any costs incurred by the Council in considering an application. Rates are £60 per hour of officer time spent processing and determining the ECR application. It is expected that this would normally amount to around £300

to assess a Preliminary Stage submission and £1,500 where a full consideration of an assessment of economic viability is required as part of the Full Application Stage of the process set out above. These fees will apply to any advice requested prior to an ECR application being made, such as a draft application. Fees will be required to be paid up front before the assessment is made, but can be part refunded if the time spent on the assessment is less than anticipated. Payment can be made by telephone – please call Claire Woods on 0114 2734219.

Review and appeal rights

The Head of Planning, or any manager delegated to do so, 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 a more senior officer unconnected with the original decision (see also the Appeal Process – CIL Guidance Note 4). 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.