



**Stratford-on-Avon District  
Community Infrastructure Levy (CIL)**

**Guidance note on CIL  
Exemptions Policy**

**November 2017**

## **Guidance note on CIL Exemptions Policy**

The CIL Regulations 2010 (as amended) Regulations 55 and 56 make provision for three classes of development that are exempt from any CIL liability. These are:

- Affordable housing;
- Charitable developments that are used wholly, or mainly for charitable purposes; and
- Self-build housing.

The Council will also enable two other areas of discretionary exemptions, as set out in the regulations, namely:

- Developments by charities which are held as an investment from which the profits are applied for charitable purposes; and
- Where a specific scheme cannot afford to pay the levy. Relief is only possible in these circumstances where it can be demonstrated that paying the full charge would have an unacceptable impact on the development's economic viability and that, in being granted an exemption from CIL, the developer/liable party is not considered to be receiving state aid. These claims would be considered on a case by case basis.

Certain conditions apply as follows:

- A claim cannot be made after development has commenced.
- Exceptional circumstances relief can be considered where a Section 106 agreement is in place as well as a levy charging schedule.
- A charging authority can give relief from the levy if it deems that the levy would have an unacceptable impact on the economic viability of a development.
- There is no statutory definition of what constitutes the economic viability of a development.
- The charging authority has the discretion to make judgements about the viability of the scheme in economic terms (for example, see National Planning Policy Guidance on viability).
- Any exceptional circumstances relief will be based on an objective assessment of economic viability.

When relief is granted for 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.

### **Exceptional circumstances relief**

Each case is considered individually by the Authority and it is at its discretion whether it wishes to apply it in that case or not. Regulation 56 allows the Council to withdraw this relief offer at short notice. However, use of an exceptions policy

enables charging authorities to avoid rendering sites with specific and exceptional cost burdens unviable.

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<sup>1</sup>, the Council will adopt the following process in determining an application:

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 considers it expedient to do so.
- a Section 106 Agreement has been entered into on the grant of planning permission 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.

### **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 website.

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.

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<sup>1</sup> Regulation 55 CIL Regulations 2010 (as amended)

## **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. 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.

## **Determination of Application**

The relevant Planning Committee will determine each application. There is no right to an internal appeal or review.

## **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.