

Community Infrastructure Levy - Exceptional Circumstances Relief

Preamble

The CIL Regulations (Regulations 55 to 58) allow CIL charging authorities to grant relief from liability to pay CIL if it appears to the authority that there are exceptional circumstances which justify doing so, and that the authority considers it expedient to do so. Use of an exceptional circumstances relief policy enables the charging authority to avoid rendering sites with specific and exceptional cost burdens unviable. It is a mechanism to enable growth and deliver development where CIL and S.106 conflict.

The CIL Regulations make clear that relief should only be granted in truly 'exceptional circumstances'. The fact that a development might be unviable at the time a planning application is considered is unlikely to constitute 'exceptional circumstances' in relation to the CIL Regulations.

It is important to note that CIL rates in Chesterfield Borough have been set at a level where most development can afford to pay the CIL charge, supported by viability evidence, taking into account affordable housing requirements and development specific S106 obligations. In view of this, the exceptional circumstances where this policy will be applied will be rare.

There are alternative ways of improving the viability of development schemes, such as by phasing development (so that the phases form separate, chargeable schemes), phasing other Section 106 payments and/or by use of the Council's CIL Instalments policy.

Community Infrastructure Levy: Exceptional Circumstances Relief Policy

This document gives notice that Chesterfield Borough Council has determined to make relief for exceptional circumstances available, in accordance with Regulations 55 to 57 of the Community Infrastructure Levy Regulations 2010 (as amended)

Exceptional Circumstances Relief (ECR) will be offered where individual sites with specific and exceptional cost burdens would not be viable due to the payment of the CIL Charge (see CIL Regulations 55 to 57). The Regulations state that the Council may grant relief from liability to pay CIL if it appears to the Council that there are exceptional circumstances which justify doing so and the Council considers it expedient to do so. Each case will be considered individually by the Council, which retains the discretion to make judgements about the viability of the scheme and whether the exceptional circumstances policy applies.

The Regulations also require that there must be a planning obligation in place in relation to the planning permission which permits the chargeable development.

Relief for exceptional circumstances will be available from 9th May 2016 until further notice. (It should be noted that the CIL Regulations give the Council the ability to withdraw this policy at any time with two weeks' notice.)

In addition Chesterfield Borough Council may make a judgement in individual cases that exceptional circumstances are not solely based on economic viability. Even where the CIL may give rise to an unacceptable impact on the economic viability of the chargeable development, the Council may also require a demonstration of wider regeneration benefits 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.

A person claiming relief must be an owner of a material interest in the relevant land. Any claim for relief must be submitted in writing, using the appropriate form, and must be received and approved by Chesterfield Borough Council before commencement of the chargeable development¹. Any claim must be accompanied by:

¹ A chargeable development ceases to be eligible for relief for exceptional circumstance if before the chargeable development is commenced there is a disqualifying event. This is where the development is granted charitable or social housing relief, is disposed of, or has not been commenced within 12 months.

- a) an assessment carried out by an independent person², of the economic viability of the chargeable development and the cost of complying with the planning obligation,
- b) an explanation of why payment of the chargeable amount would have an unacceptable impact on the economic viability of that development
- c) an apportionment assessment (if there is more than one material interest in the relevant land) ; and
- d) A declaration that the claimant has sent a copy of the completed claim form to the owners of the other material interest in the relevant land (if any).

The chargeable development can cease to be eligible for exceptional circumstances relief if:

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

Before granting exceptional circumstances relief for an individual scheme, the Council also must be satisfied that the relief would not constitute notifiable state aid.

² For the purposes of the above paragraph, an independent person is a person who is appointed by the claimant with the agreement of the charging authority and has appropriate qualifications and experience