

**FOR PUBLICATION**  
**COMMUNITY INFRASTRUCTURE LEVY (CIL)**  
**EXCEPTIONAL CIRCUMSTANCES RELIEF POLICY (J010R)**

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MEETING:	COUNCIL
DATE:	27 APRIL 2016
REPORT BY:	ECONOMIC GROWTH MANAGER
WARD:	ALL
COMMUNITY ASSEMBLY:	ALL
KEY DECISION:	620

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BACKGROUND PAPERS FOR PUBLIC REPORTS:	None
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## **1.0 PURPOSE OF REPORT**

1.1 To update Members on the introduction of the Community Infrastructure Levy (CIL) public examination and to recommend the introduction of a CIL Exceptional Circumstances Relief Policy.

## **2.0 RECOMMENDATIONS**

2.1 To approve the introduction of a Community Infrastructure Levy (CIL) Exceptional Circumstances Relief Policy, as set out in Appendix 1 of this report.

2.2 To amend the Council's corporate delegation scheme to enable decisions on applications for exceptional circumstances relief to be delegated to the council's Planning Committee.

## **3.0 BACKGROUND**

3.1 The Community Infrastructure Levy (CIL) is a new way of seeking contributions from developers towards providing essential infrastructure that is needed to support new development. The Council approved the introduction of a Community Infrastructure Levy (CIL) in December 2011. A draft Charging Schedule was

prepared and subject to independent examination over two days during August 2014. At the time, there was no evidence that an exceptional circumstances relief policy (which is allowed for by the CIL regulations) was required and one was not included in the draft Charging Schedule.

- 3.4 In October 2015, the Council approved the introduction of a CIL Charging Schedule, Infrastructure List and Instalments Policy, and a commencement date of 1<sup>st</sup> April 2016 (i.e. when a Charging Schedule takes effect and developers begin to pay the levy).
- 3.3 Since approving the introduction of CIL, it has become clear through pre-application discussions with developers that CIL may result in a very small number of developments with complex issues becoming unviable, with the potential to hold up the regeneration of key sites. This report therefore seeks approval for an exceptions policy, which would allow the council to determine, on a case by case basis, whether there is a justification for setting aside the CIL requirement in such cases.

#### **4.0 KEY ISSUES TO CONSIDER**

##### **Exceptional Circumstances Relief (ECR)**

- 4.1 The CIL Regulations (Regulations 55 to 58) allow CIL charging authorities to set discretionary relief for exceptional circumstances. This allows the Council the discretion to offer ECR where individual sites with specific and exceptional cost burdens would not be viable due to the payment of the CIL charge. Use of an exceptional circumstances policy enables the charging authority to avoid rendering sites with specific and exceptional cost burdens unviable should exceptional circumstances arise. It is a mechanism to enable growth and deliver development where CIL and S.106 conflict.
- 4.2 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 on its own to constitute 'exceptional circumstances' in relation to the CIL Regulations.
- 4.3 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.

- 4.4 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. Members have agreed that the Instalments Policy is introduced alongside the Charging Schedule and Infrastructure List. The Instalments Policy will allow developers to pay CIL over a number of weeks or months (depending on the level of CIL liability) rather than the total on the commencement of development.
- 4.5 The proposed Exceptional Circumstances Relief Policy sets out the proposed tests which would need to be met before such relief will be offered. The Policy also makes clear that each case will be considered individually and that the Council retains the discretion to make judgements about the viability of the scheme and whether the exceptional circumstances policy applies. It is also important for the Council to ensure that any relief would not constitute State Aid, in accordance with the regulations.

### **Next steps**

- 4.6 The CIL Charging Schedule has been formally approved by resolution of Full Council and took effect across the Borough from 1<sup>st</sup> April 2016.
- 4.7 If members are minded to approve the proposed Exceptional Circumstances Relief Policy, relief for exceptional circumstances will be available from 9th May 2016 until further notice.
- 4.8 It should be noted that the CIL Regulations give the Council the ability to withdraw this policy at any time with two weeks' notice.
- 4.9 The proposed Exceptional Circumstances Relief Policy is included at Appendix 1.

## **5.0 CONCLUSION**

- 5.1 The Council approved the introduction of a CIL Charging Schedule and set a date for its introduction across the Borough of 1 April 2016. From this date, the Council can begin collecting the levy with a view to funding local infrastructure improvements.
- 5.2 Alongside this, it is recommended that the Council introduces an Exceptional Circumstances Relief Policy.
- 5.3 If members resolve to approve the introduction of an Exceptional Circumstances Relief Policy, in order that the process can work efficiently, it is recommended that members also resolve to amend the Council's corporate delegation scheme to enable decisions on applying the Policy to be delegated to Planning Committee.

## **6.0 FINANCIAL & OTHER CONSIDERATIONS**

### **Capital or revenue financial implications**

- 6.1 The financial ramifications of introducing a CIL were reported to Cabinet in December 2011 and in subsequent reports. Whilst the introduction of the Relief will allow for some developments to come forward without paying CIL, the number of such developments, whilst difficult to predict in detail, is likely to be very small as the regulations require that it only apply in 'truly exceptional circumstances'. It would also only apply to developments that would otherwise not go ahead due to viability concerns, and therefore would not contribute to CIL anyway. Such development may still contribute towards other benefits through Section 106, such as provision of affordable housing, on-site public open space or public art. The overall effect is therefore expected to be at worst financially neutral and may in some cases see a small benefit through section 106 planning obligations. The introduction of an Exceptional Circumstances Relief Policy will offer a mechanism to enable growth and deliver development in circumstances where CIL and Section 106 conflict and would otherwise prevent development occurring.

### **Legal and human rights**

- 6.2 The preparation of CIL, and the introduction of an Exceptional Circumstances Relief Policy has been in accordance with the

statutory requirements of the Planning Act 2008 and CIL regulations 2010 (as amended).

### Public consultation

- 6.3 There is no requirement for public consultation on the introduction of an Exceptional Circumstances Relief Policy under the Planning Act 2008 and CIL regulations 2010 (as amended).

### Environmental sustainability and bio-diversity

- 6.4 Local authorities have a duty to have regard to the conservation of biodiversity in exercising their functions in accordance with the Natural Environment and Rural Communities Act which came into force on 1 October 2006.
- 6.5 The introduction of a CIL will provide funds to protect enhance and promote the borough's existing green infrastructure assets.

### Risk Management

- 6.6 The potential risks of introducing a CIL Charging Schedule were considered by Members in October 2015 and are shown below. The introduction of an Exceptional Circumstances Relief Policy has been added to the original Risk assessment as a Mitigating Action.

<b>The council approves and introduces a CIL Charging Schedule</b>			
Risk	Likelihood (H/M/L)	Impact (H/M/L)	Mitigating action
The introduction of a CIL Charging Schedule makes residential and retail development unviable and deters new development in the Borough.	L	H	The Council has the discretion to remove a Charging Schedule at any time.  Introduction of an Exceptional Circumstances Relief Policy
<b>The council does not approve and introduce a CIL Charging Schedule</b>			
Risk	Likelihood (H/M/L)	Impact (H/M/L)	Mitigating action
The Council misses out on much needed funding for infrastructure projects.	H	H	The Council utilises a scaled-down Section 106 system in an attempt to remedy infrastructure deficiencies.

## **Equalities Impact Assessment (EIA)**

- 6.7 A preliminary EIA was undertaken as part of the adoption of the CIL charging schedule and no negative impacts on protected groups were identified (Considered by Members in October 2015). Consequently, given the obvious public benefits of CIL a full EIA was not required.
- 6.8 The introduction of an Exceptional Circumstances Relief Policy will have the effect of allowing development to come forward that would not otherwise do so, with the potential benefit of additional S106 planning obligation benefits. The loss of potential CIL income will therefore be balanced by the positive benefits that the policy would bring about in enabling the achievement of wider regeneration benefits and it is therefore considered that no additional EIA is required.

## **7.0 RECOMMENDATIONS**

- 7.1 To approve the introduction of a Community Infrastructure Levy (CIL) Exceptional Circumstances Relief Policy, as set out in Appendix 1 of this report.
- 7.2 To amend the Council's corporate delegation scheme to enable decisions on applications for exceptional circumstances relief to be delegated to the council's Planning Committee.

## **8.0 REASONS FOR RECOMMENDATIONS**

- 8.1 To allow the Council the discretion to offer ECR where individual sites with specific and exceptional cost burdens would not be viable due to the payment of the CIL charge. Use of the proposed Policy will enable the Council to avoid rendering sites with specific and exceptional cost burdens unviable. This will offer a mechanism to enable growth and deliver development where CIL and Section 106 conflict.
- 8.2 To enable the efficient working of the proposed policy.

## **Appendix 1**

Community Infrastructure Levy: Exceptional Circumstances Relief Policy.