

Protocol for Dealing with Applications for Exceptional Circumstances Relief (ECR) from the Community Infrastructure Levy.

Introduction

1. The Council have decided to introduce a discretionary exception circumstances relief (ECR) policy in relation to Community Infrastructure Levy (CIL) liability of a chargeable development. The policy came into effect on 13th October 2025 and from that date applications for relief can be submitted to the Council. This protocol sets out the process for doing so and how such applications will be considered.

Background

2. The Council introduced CIL in 2016, and since then certain developments have been liable to make a payment under the levy depending on the floor space of the development. These details are set out in the Charging Schedule (CS).
3. When setting the rates, the Council had to strike an appropriate balance between additional investment to support development and the potential effect on the viability of developments. The CS was set in order to help deliver infrastructure in connection with the nature and extent of development expected as a result of the Solihull Local Plan (2103).
4. In developing the CS, the Council relied on viability evidence and the Infrastructure Delivery Plan. Prior to adopting the CS, it was subject to independent examination undertaken by a Planning Inspector.
5. Having adopted a CS, the Council should keep it under review. It was intended that the CS would be updated in order to support development of the scale and nature included in the Draft Submission Local Plan 2020. However, as that plan was withdrawn, potential updates to the CS will now be considered in the context of the emerging plan when that has reached a sufficiently advanced stage.
6. In the meantime, it is considered prudent to review how CIL currently operates in order to avoid the levy having an undue impact on the type of developments that were key to the PDL first approach in the 2020 plan, or other large scale, place

making developments that were at the heart of the strategy, which are also expected to be included in the emerging plan. Some of these developments are expected to come forward in advance of the new plan being adopted.

Principles Relating to Exceptional Circumstances Relief

7. A charging authority wishing to offer exceptional circumstances relief in its area must first publish a notice of its intention to do so. A charging authority can then consider claims for relief on chargeable developments from an owner of a material interest in the land on a case-by-case basis, provided the conditions set out in the regulations are met.
8. It is expected that cases for ECR will be **truly exceptional** (and few and far between) rather than more ordinary cases that could be claimed to have challenging viability issues. The truly exceptional circumstances are likely to include developments that include major regeneration schemes; large scale place-making developments with extensive infrastructure requirements that are expected to rely on public funding initiatives to ensure development; and large scale PDL related developments. Schemes unlikely to be exceptional relate to greenfield developments, especially of agricultural (or similar) land.
9. Should it be considered that the policy is being abused in some way, for instance by vexatious requests, then with two weeks' notice the policy could be withdrawn.

Qualifying Developments

10. To be eligible for ECR, the following conditions must be met:
 - It must appear to the Council that there are exceptional circumstances which justify doing so;
 - It must consider it expedient to grant relief for exceptional circumstances;
 - A planning obligation under s. 106 of the Town and Country Planning Act 1990 must have been entered into in respect of the chargeable development; and
 - The Council must consider that to require payment of the CIL charged by it in respect of the chargeable development would have an unacceptable impact on the economic viability of the chargeable development.
11. In addition to the above, the Council will need to be satisfied that granting relief does not amount to state aid under the Subsidy Control Act 2022.
12. It should be noted that viability alone may not be sufficient for the Council to consider it expedient to grant ECR.

13. As part of the demonstration of expediency, applicants for ECR will need to show wider public benefits that would arise from the development.
14. Applications must be submitted by or on behalf of an owner of a material interest in the land and will need to be submitted before development commences.

The Application Process - Submissions

15. The process for submitting an application is split into two parts:
 - An initial screening process that will prevent cases with little likelihood of success from incurring the costs of compiling and submitting a full and detailed submission.
 - A full and detailed submission.
16. There will be no guarantee that applications that pass the initial screening process will also succeed at the full and detailed submission stage.
17. Any decision to grant ECR can only be made after the relevant planning application has been approved. In certain circumstances the application process to claim relief can commence before the planning application has been determined. This will be the case where the planning application determination process has reached an advanced stage such that exceptional circumstances are likely to be known, and viability considerations can be understood fully. However, please be aware that should claimants apply before permission is granted this could result in additional work should circumstances change and is no guarantee that permission would be granted.

Initial Screening Application

18. This process can be undertaken by writing to the Council with the following information:
 - Details of the relevant planning application, including date of the associated S106 agreement.
 - A statement explaining why exceptional circumstances exist in the particular circumstances of the case.
 - A broad outline of the viability case that would be put forward at the detailed stage.
 - A fee of £500 which is non-refundable.

Full and Detailed Submission

19. This is the formal part of the process and must be completed in accordance with the CIL regulations if a decision to grant relief can be made. Forms for completion are available on the Planning Portal¹.
20. The application must include or be accompanied by the following:
 - Details of the relevant planning application, including date of the associated S106 agreement.
 - A statement explaining why exceptional circumstances exist in the particular circumstances of the case.
 - An assessment carried out by an independent person² of the economic viability of the chargeable development.
 - An explanation of why, in the opinion of the claimant, payment of the chargeable amount would have an unacceptable impact on the economic viability of that development,
 - Where there is more than one material interest in the relevant land, an apportionment assessment, and
 - A declaration that the claimant has complied with paragraph 57 (6) of the regulations. This relates to notifying any other owners that may have a material interest in the land.
 - A statement that sets out why, in the opinion of the claimant, that the granting relief is consistent with the Subsidy Control Act 2022³.
 - A fee of £5,000. In particular complex cases a greater fee may be required. This will be discussed with applicants on a case-by-case basis.

The Application Process – Consideration by the Council

21. The Council will aim to issue a decision on initial screening applications within 21 days of receipt. Such decisions will be issued by the Head of Planning, Design and Engagement Services following a review by a planning officer. In cases where a submission makes a compelling case for exceptional circumstances, it is likely that a decision to proceed to the full and detailed stage can be made more quickly.

¹ Form 11 at <https://www.planningportal.co.uk/planning/policy-and-legislation/CIL/download-the-forms>.

² An independent person is a person who is appointed by the claimant with the agreement of the council; and has appropriate qualifications and experience.

³ This relates to issues formally known as 'State Aid'.

22. For full and detailed submissions a panel including the following shall review such applications:
- A policy planning officer.
 - A development management officer.
 - A representative from the Council's Strategic Land Team and/or a consultant that the Council may engage to advise on viability matters.
23. Such a panel shall make a recommendation to the Head of Planning, Design and Engagement Services as to whether ECR should be granted, and if so to what extent. If ECR is recommended to be granted, then the decision-making authority will be as follows⁴:
- Less than £10,000 – The Director for Economy & Infrastructure.
 - From £10,000 to £50,000 – The Cabinet Member for Climate Change and Planning.
 - Over £50,000 – Full Cabinet.
24. There will be no appeal against the Council's decision.
25. The fee associated with processing full and detailed applications will be used on a cost recovery basis only and should any funds not be fully utilised then a refund will be made of the unused portion.

Phased Developments

26. ECR can be made in relation to phased developments with each phase being assessed separately with individual ECR applications being submitted at the relevant stage. Each phase will be considered as an individual chargeable development and so applications will need to be made before that particular phase commences.
27. Each individual application will need to be accompanied by the fee set out in the paragraphs above.

Disqualifying Events and Other Points to Note

28. A claim for relief for exceptional circumstances will lapse where the chargeable development to which it relates is commenced before the charging authority has notified the claimant of its decision on the claim.

⁴ For phased developments the thresholds shall apply to the development authorised by the planning permission as a whole, not individual phases.

29. A chargeable development ceases to be eligible for relief for exceptional circumstances if there is a Disqualifying Event before it commences, these include:

- Receiving CIL relief for charitable or social housing.
- The site (or part of the site) is sold.
- The development does not commence within 12 months of the Exceptional Circumstances Relief being granted.

Further Information

30. For further information about ECR please contact the team at cil@solihull.gov.uk.

13th October 2025

Version 1