



Determination: Application for Exceptional Circumstances Relief

Introduction:

PLANNING APPLICATION: 14/03184/FUL

SITE ADDRESS:

Brogyntyn Hall, Brogyntyn, Oswestry, SY10 7DA

PROPOSAL:

Change of hall from offices to residential with associated alterations to include demolition of service wing; conversion of Home Farm into 11 residential units; demolition of estate office and agricultural sheds; alterations to existing farm house and Dairy Cottage; erection of 50 dwellings within grounds; formation of vehicular access to B4580

APPLICATION RECEIVED: 12th September 2014 – Supplementary information provided on the 11th November 2014 and the 25th November 2014.

Consideration of the Application for Exceptional Circumstances Relief:

Shropshire Council can offer Exceptional Circumstances Relief where development can demonstrate compliance with the criteria identified within:

- The CIL Regulations (Regulation 55 and 57); and
- The Shropshire Notification of CIL Relief.

The CIL Regulations state that this relief from CIL is **only** available under very exceptional circumstances, in accordance with Regulation 55 and 57 of the CIL Regulations. Relief for exceptional circumstances can **only** be granted where **all** of the eligibility criteria are fulfilled.



Within the Shropshire Council Notification of CIL Relief, criteria are introduced which must be met to enable the Council to grant requests for Exceptional Circumstances Relief. These criteria are in addition to those required nationally.

The table below specifies the National and Local eligibility criteria, and summarises the evidence of compliance with these requirements provided within the Application for Relief.

Criteria	Evidence provided within Application for Relief	
National Criteria		
1. The Council has made exceptional circumstances relief available in its area.	Shropshire Council introduced exceptional circumstances relief alongside its CIL Charging Schedule on the 1 st January 2012. This relief is offered at the discretion of Shropshire Council and is available where a development demonstrates compliance with all National and Local eligibility criteria.	✓
2. The claimant owns a material interest in the relevant land.	The applicant has completed Annex A: Apportionment Assessment to indicate if they own the relevant land.	✓

Appendix 1: Shropshire Council Cabinet 10 June 2015:
Community Infrastructure Levy: Brogyntyn Hall (14/03184/FUL) - Exceptional Circumstances Relief

	The applicant has also completed an Assumption of Liability for the development.	
3. A Section 106 Agreement has been entered into in respect of the planning permission which permits the chargeable development.	A Section 106 Agreement has been agreed in principle to link the profit made from the enabling development (phases 1-3) to the conservation and conversion of Brogyntyn Hall, the Grade II* Listed Building.	✓
4. The Charging Authority considers that:		
a. Requiring payment of the charge would have an unacceptable impact on the economic viability of the chargeable development.	A viability assessment has been provided and endorsed by an independent professional. It is clear that J Ross (Pickstock) have already assumed a lower level of profit than that which would normally be commercial for a scheme of this nature, even assuming that no CIL is paid. Whilst <u>any</u> further financial contribution will further undermine the viability of the scheme, J Ross have indicated that they are prepared to pay £10,000 in CIL. This outcome was corroborated (in writing) by the Historic England Quantity Surveyor Jon Kiely.	✓
b. Granting relief would not constitute a notifiable state aid.	As the development results in the formation of private dwellings which would be sold on the open market, it could be considered a form of state aid. The Applicant has commissioned the completion of a state aid appraisal which indicates that granting relief would not be considered state aid. This assessment has been reviewed with support from BIS and an expert from Historic England who conclude that they do not consider that this project infringes State Aid Rules, (even if it falls under their jurisdiction) as the exemption for heritage assets would apply. The evident shortfall between the repair and refurbishment costs and the value of disposal at completion of the listed assets justifies the enabling development, the scope of which has been checked and validated by the required competent professionals. There is no direct grant funding that would require state aid certification. Granting relief would therefore not constitute a notifiable state aid.	✓
5. An exceptional circumstances claim has not already been previously granted to bring the development back into viability.	No previous application for exceptional circumstances relief has been approved for the development.	✓
6. The independent person undertaking the viability assessment has suitable qualifications and has been appointed by the claimant with the agreement of the Council.	Shropshire Council has previously approved Mr Jones of John Pidgeon Partnership as a suitably qualified person for the performance of a viability assessment to support an application for Exceptional Circumstances Relief. The Applicant has confirmed that Mr Jones of John Pidgeon Partnership is an independent person in the context of this development/application for relief. Shropshire Council approved Mr Jones of John Pidgeon Partnership to undertake a viability assessment to support an application for Exceptional Circumstances Relief prior to the work being undertaken.	✓

<p>7. The claimant has provided sufficient justification that payment of the chargeable amount would have an unacceptable impact on the economic viability of that development.</p>	<p>A viability assessment has been provided and endorsed by an independent professional. Whilst <u>any</u> further financial contribution will further undermine the viability of the scheme, J Ross have indicated that they are prepared to pay £10,000 in CIL. This outcome was corroborated (in writing) by the Historic England QS Jon Kiely</p>	
<p>Local Criteria</p>		
<p>1. Shropshire Council will consider whether relief from the Levy, or a reduction in the Section 106 contribution, is appropriate in light of community priorities and the circumstances of the case. In order to demonstrate compliance with this criterion, development must contribute to the delivery of identified community priorities. Community priorities include facilities, services or infrastructure that has been identified within the LDF Implementation Plan or relevant Place Plan.</p>	<p>The enabling development seeks to raise sufficient funds to allow the conservation and conversion of Brogyntyn Hall, the Grade II* Listed Building.</p> <p>Relevant community infrastructure investment priorities are identified in the Oswestry Area Place Plan, which contains two sections, one which seeks to identify the infrastructure necessary to support development and the other which identifies the wider infrastructure requirements in the area. Ultimately the infrastructure necessary to support development will be considered the first priority.</p> <p>Brogyntyn Hall and the associated proposed development are located within Selattyn and Gobowen Parish. Therefore the infrastructure requirements for the communities within this Parish are of the highest concern when determining which infrastructure requirements could potentially be delivered through the application of CIL arising from this development. These communities are covered within the Gobowen Hub and the Selattyn Cluster, for which a range of development related infrastructure requirements have been identified. These are the infrastructure requirements that ensure new development is sustainable. Furthermore, a range of wider infrastructure requirements have also been identified. These are the infrastructure and wider priorities that would be beneficial, but are not necessarily required to support the sustainability of development in the area.</p> <p>Within the Oswestry Place Plan there is no priority within the section identifying the infrastructure necessary to support development relating to Brogyntyn Hall. However, there are a significant range of infrastructure requirements within this section considered Critical and Priority in order to support development in the area. Within the wider infrastructure requirements section of the Oswestry Place Plan, reference is made to the English Heritage at Risk Register, which identified Brogyntyn Hall as 'at risk'. However, the actual conservation and conversion of the Hall to a private dwelling is not listed as a Place Plan priority.</p> <p>It has become clear that the scheme will not deliver any significant benefits in kind which are consistent with the local priorities identified in the relevant Place Plan. However, whilst <u>any</u> financial contribution will further undermine the viability of the scheme, the developer has indicated that they are prepared to pay a financial contribution of £10,000</p>	

	to help deliver identified community priorities, thus satisfying this test.	
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Conclusion:

Following due consideration it is recommended that, given that the refurbishment of the Hall itself actually makes a loss, that element of the scheme should be given 100% relief to allow it to proceed without delay. The developer has already assumed a lower level of profit than that which would normally be commercial for a scheme of this nature and that any financial contribution will further undermine the viability of the overall scheme. Subject to final completion of an appropriate S106 legal agreement (currently agreed in principle) it is therefore recommended that Exceptional Circumstances Relief is given on the enabling development to reduce the remaining CIL liability to a financial payment of £10,000, paid in accordance with normal phasing arrangements for a project of this scale.