



Portfolio Holder Decision
Making Session and date/time

Portfolio Holder Decision
Making Session: 24th April
2015

10 am

Item

1

Public

COMMUNITY INFRASTRUCTURE LEVY (CIL): EXCEPTIONAL CIRCUMSTANCES RELIEF

Responsible Officer: Andrew Evans, Head of Economic Growth and Prosperity
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1. Summary

- 1.1. Shropshire Council (as the CIL Charging Authority), introduced its CIL Charging Schedule on the 1st January 2012. This CIL Charging Schedule specifies the types of development that are liable for CIL and the rates payable for liable development.
- 1.2. Alongside the CIL Charging Schedule, Shropshire Council also introduced the ability to offer two forms of relief, these were:
 - Charitable Relief from CIL; and
 - Exceptional Circumstances Relief from CIL.
- 1.3. Both these forms of relief were discretionary. Therefore, each Charging Authority must determine if it is appropriate to introduce the relief mechanism, based on local circumstances.
- 1.4. Charitable Relief, where implemented, allows a Charging Authority to offer relief to charitable organisations, where all eligibility criteria, as specified within Regulations 44 to 48 of the National CIL Regulations (as amended); and the Shropshire Notification of CIL Relief are met. This includes the requirement that the resultant development will be held by the charitable organisation as an investment from which the profits will be applied for charitable purposes.
- 1.5. Exceptional Circumstances Relief, where implemented, allows a Charging Authority to grant relief for all or part of the CIL Liability associated with a development, where the development demonstrates exceptional circumstances. Exceptional circumstances are defined within Regulations 55 to 57 of the National CIL Regulations (as amended); and the Shropshire Notification of CIL Relief. Exceptional Circumstances Relief can only be granted where all of the eligibility criteria are fulfilled.
- 1.6. The Charitable Relief mechanism, whilst not heavily utilised, fulfils an important function, allowing charitable organisations to form assets in the area, and invest the associated profits in charitable activities – also often within the area.
- 1.7. The Exceptional Circumstances Relief mechanism fulfils a less significant role, particularly as the key local eligibility criteria for this form of relief is that the development must contribute to “community priorities”. This means that development must contribute to the delivery of infrastructure priorities identified within the relevant

Place Plan Document. As these are the same priorities that CIL will be used to deliver, it is often more appropriate to invest the CIL associated with the development in the associated infrastructure priority, rather than navigating the complex procedures for approving Exceptional Circumstances Relief.

- 1.8. This has been further exacerbated by recent amendments to the National CIL Regulations, which have introduced:
- Amendments to the eligibility criteria for Exceptional Circumstances Relief;
 - The ability to accept the provision of infrastructure on a development site as 'payment in kind'.
 - Alternative mandatory forms of relief, such as charitable relief; self-build relief and social housing relief.

2. Recommendations

- 2.1. It is recommended that the Portfolio Holder approves the withdrawal of Exceptional Circumstances Relief in Shropshire.

Reasons for decision:

- 2.2. It is recommended that Shropshire Council withdraws Exceptional Circumstances Relief in Shropshire for the following reasons:
1. The limited use of Exceptional Circumstances Relief mechanism in Shropshire.
 2. The availability of alternative mechanisms for re-investing CIL funds in those projects associated with developments likely to comply with current national and local eligibility criteria for Exceptional Circumstances Relief.
 3. The availability of alternative forms of relief.
 4. The increasing constraint on funds available for the delivery of infrastructure projects.
 5. The administrative burden involved in the appraisal of applications for Exceptional Circumstances Relief.

REPORT

3. Risk Assessment and Opportunities Appraisal

- 3.1. The Council would be unable to offer Exceptional Circumstances Relief to any developments in the area. However there are alternative mechanisms available as identified below.

4. Financial Implications

- 4.1. Exceptional Circumstances Relief is a discretionary form of relief from CIL. Where introduced, it allows a Charging Authority to offer relief to a development, where it demonstrates exceptional circumstances.
- 4.2. The intention behind the relief is that in situations where a development has exceptional circumstances which impact on the viability of the development, offering relief from some or all of the CIL contribution may make the development viable (Please Note: Exceptional Circumstances Relief is not purely a consideration of the economic viability of the development).

- 4.3. Equally however, where development is offered relief from CIL, this also reduces the amount of potential funds available for infrastructure delivery (albeit that one of the eligibility criteria for Exceptional Circumstances Relief is that the development should contribute to community infrastructure priorities).
- 4.4. Furthermore, due to the complexity of the relief procedures, there is a significant administrative burden placed on both the applicant and the Council, even though, if approved, the resultant development would contribute a reduced amount/not contribute to the Councils administration costs, as a reduced/no CIL liability would be payable.
- 4.5. Within Shropshire the key local eligibility criterion for Exceptional Circumstances Relief is that the development must contribute to “community priorities”. This means that development must contribute to the delivery of infrastructure priorities identified within the relevant Place Plan Document. As these are the same priorities that CIL will be used to deliver, it is often more appropriate to invest the CIL associated with the development in the associated infrastructure priority, rather than navigating the complex procedures for approving Exceptional Circumstances Relief.
- 4.6. Additionally, recent amendments to the National CIL Regulations mean that in situations where the development is delivering infrastructure priorities identified within the relevant Place Plan Document on-site, the ‘payment in kind’ mechanism can be used, by which the developer provides the infrastructure and the equivalent value of CIL is off-set from the total liability.
- 4.7. As less complex, and arguably more effective methods are available for ensuring that the CIL associated with a development is invested in appropriate infrastructure, it is recommended that Exceptional Circumstances Relief is withdrawn in Shropshire.

5. Background

- 5.1. Exceptional Circumstances Relief is a discretionary form of relief, which individual Authorities can choose to implement. It allows a Charging Authority to grant relief for all or part of the CIL Liability associated with a development, where the development demonstrates exceptional circumstances.
- 5.2. Exceptional circumstances are defined within Regulations 55 to 57 of the National CIL Regulations (as amended); and the Shropshire Notification of CIL Relief. Exceptional Circumstances Relief can only be granted where all of the eligibility criteria are fulfilled.
- 5.3. The National eligibility criteria are:
 - The Council has made exceptional circumstances relief available in its area;
 - The claimant owns a material interest in the relevant land;
 - A Section 106 Agreement has been entered into in respect of the planning permission which permits the chargeable development;
 - The Charging Authority considers that:
 - Requiring payment of the charge would have an unacceptable impact on the economic viability of the chargeable development; and
 - Granting relief would not constitute a notifiable state aid.

- An exceptional circumstances claim has not already been previously granted to bring the development back into viability;
- The independent person undertaking the viability assessment has suitable qualifications and has been appointed by the claimant with the agreement of the Council.

5.4. The Local eligibility criterion is:

- “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 from within the relevant Place Plan document.

5.5. Shropshire Council introduced Exceptional Circumstances Relief alongside its CIL Charging Schedule on the 1st January 2012. Since its introduction, at least 6 applications for Exceptional Circumstances Relief have been received, however only one application has been approved.

5.6. This approval was for a residential development of seven dwellings on land to the rear of the Pheasant Inn, Neenton. This scheme was deemed to comply with eligibility criteria as it was effectively a not for profit scheme, with all profits being used for the refurbishment of the Pheasant Inn as a community enterprise. The total relief offered in this scheme was some £68,000.00.

5.7. Whilst this development is recognised as a worthwhile scheme, approving the relief was an extremely complicated process for both the applicant and Shropshire Council, furthermore a number of alternative mechanisms could now be utilised to achieve the same result.

5.8. Specifically, through agreement with the relevant Town/Parish Council and Shropshire Council, the CIL income associated with the development from the scheme could have been committed to the same infrastructure priority. Alternatively, the ‘payment in kind’ mechanism could have been used to require the delivery of the on-site infrastructure priority, rather than requiring the payment of the CIL liability.

5.9. The other applications which were unsuccessful in their application for Exceptional Circumstances Relief failed to demonstrate compliance with some or all of the national and local eligibility criteria, but involved a significant administrative burden during the appraisal of the application.

5.10. Consequently it is considered that as the relief has only been used in limited situations and alternative mechanisms are now available, the relief is no longer necessary in Shropshire.

6. Additional Information

6.1. Where a Charging Authority which no longer wishes relief for exceptional circumstances to be available in its area must:

- Issue a statement giving notice to that effect and stating the last day on which it will accept claims for relief for exceptional circumstances;
- Publish the statement on its website;
- Make the document available for inspection:

- At its principal office, and
- At the places at which the document was made available for inspection when the relief was introduced, or, if the charging authority considers that any such places are no longer appropriate, such other places within its area as it considers appropriate; and
- Send a copy of the statement to the Collecting Authority (if it is not the Charging Authority).

6.2. The last day on which Exceptional Circumstances Relief can be claimed, specified within the withdrawal notice, must be no earlier than the end of the period of 14 days beginning with the day on which the statement is published on the Councils website. Shropshire Council is required to determine any application for Exceptional Circumstances Relief received on or before the last day of this notification period.

6.3. Similar procedures can be undertaken to re-introduce Exceptional Circumstances Relief, if the mechanism was again considered necessary in the future.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)
Report to Cabinet 19th October 2011: Community Infrastructure Levy (CIL) Charging Schedule
Report to Council 24th November 2011: Community Infrastructure Levy Charging Schedule Report
Key Decision: Yes
Included within Forward Plan: Yes
If a Key Decision and not included in the Forward Plan have the General Exception or Special Urgency Procedures been complied with: Yes/No
Name and Portfolio of Executive Member responsible for this area of responsibility:
Mal Price, Portfolio Holder Planning Housing and Commissioning (Central)
Local Member:
Applies across Shropshire.
Appendices:
<ul style="list-style-type: none"> ● 1 - The current Shropshire Council Notification of CIL Relief. ● 2 - The proposed draft Shropshire Council Notification of CIL Relief. ● 3 - The proposed draft Notification of Withdrawal of Relief.

Declaration of Interest

- I have no interest to declare in respect of this report

Signed Date
NAME:
PORTFOLIO HOLDER FOR:

- I have to declare an interest in respect of this report

Signed Date
NAME:
PORTFOLIO HOLDER FOR:

(Note: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter.)

For the reasons set out in the report, I agree the recommendation(s) in the report entitled

Signed
Portfolio Holder for
Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and pro-forma is returned to Democratic Services for processing.

Additional comment :
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Note: If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, Head of Legal and Democratic Services, Chief Executive and the Head of Finance, Governance and Assurance (S151 Officer) and, if there are staffing implications the Head of Human Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Portfolio Holder: Your decision will now be published and communicated to all Members of Council. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication.