

Community Infrastructure Levy (CIL): Draft Exceptional Circumstances Relief Policy

PLEASE NOTE: The Council are considering introducing an Exceptional Circumstances Relief policy. This draft policy is provided for comment as part of the Draft Charging Schedule consultation. Any approved version will be placed on the Council's website following adoption of the CIL by the Council.

This Policy document gives notice that City of Bradford Metropolitan District Council has determined to make relief for exceptional circumstances available in the Bradford District with effect from (insert date) ,in accordance with Regulations 55 to 58 of the Community Infrastructure Levy Regulations 2010 (as amended).

This document sets the policy criteria for exceptional circumstances.

- Use of an exceptional circumstances policy enables the Council to avoid making individual 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 S106 conflict. The Regulations state that the Council may grant full or partial 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. However, there is no statutory definition of what constitutes the economic viability of a development. Each case will be considered individually by the Council, which retains the discretion to make judgements about the viability of the scheme in economic terms and whether the exceptional circumstances policy applies.
- The Council expects that this policy will be rarely used because the Bradford District CIL rates have been set to already take into account viability issues, development costs, and full policy requirements across the District. This includes that it is reasonable to assume that any S106 signed by an applicant reflects viability of the scheme, including consideration of the CIL rates applicable at the time.
- Before granting exceptional circumstances relief for an individual scheme, the Council also has to be satisfied that the relief would not constitute notifiable State Aid. The State Aid requirements do allow small amounts of public funding (i.e. exceptional circumstances relief) to a single recipient, called the de minimis block exemption. The de minimis threshold is set at 200,000 euros over a rolling three fiscal year period (gross before tax or any other charge). The threshold applies cumulatively to all public assistance received by the organisation from all sources across the UK. Therefore the threshold does not just apply to each individual development. Recipients are responsible for keeping records of any de minimis aid they receive over any rolling three fiscal year period.
- The CIL Regulations specify the requirements that must be met in making the exceptional circumstances assessment: Reg 55(3) A charging authority may grant relief for exceptional circumstances if –

(a) It has made relief for exceptional circumstances available in its area; (b) A planning obligation under S106 of TCPA 1990 has been entered into in respect of the planning permission which permits the chargeable development; and (c) The charging authority- (i) Considers 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, and (ii) Is satisfied that to grant relief would not constitute a State aid which is required to be notified to and approved by the European Commission.

- In addition, City of Bradford Metropolitan District 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 demonstration of wider regeneration benefits and/or the need for the applicant to show that a particular site has to be brought forwards imminently for wider benefits.
- The person claiming relief must be an owner of a material interest in the relevant land. A claim for relief must be submitted in writing on the appropriate form and be received and approved by the Council before commencement of the chargeable development. It must be accompanied by:
 - a) An assessment carried out by an independent person 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 interests in the relevant land (if any).

For the purposes of point a) an independent person is a person who is appointed by the claimant with the agreement of the Council and who has appropriate qualifications and experience. It is expected that the claimant will be responsible for any remuneration required by this independent person.

- A chargeable development ceases to be eligible for relief for exceptional circumstances if, before it commences, there is a disqualifying event as laid out below:
 - a) Charitable or social housing relief is granted,
 - b) The site (or part of the site) is sold, or,
 - c) The development does not commence within 12 months.
- It should be noted that the CIL Regulations give the Council the ability to withdraw this policy at any time with two weeks notice. This could occur, for example, if it is considered that the policy is being misused, including if too many applicants apply for relief without proper exceptional circumstances applying.