

**Decision Report – Planning and Transport
Policy Sub-Committee**

Decision Date – 25/01/2024

Key Decision – yes

Confidential Information – no



Community Infrastructure Levy (CIL) relief policies

Executive Member(s): Councillor Ros Wyke, Lead Member for Economic Development, Planning and Assets

Local Member(s): N/A

Lead Officer: Alison Blom-Cooper, Head of Planning/Chief Planning Officer

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Summary / Background

1. The report provides a summary of the current position in respect of the Community Infrastructure Levy (CIL) across Somerset Council and seeks to provide consistency of approach in terms of any discretionary relief by setting out single common policy wording. It also sets out proposed criteria to be used when assessing applications for discretionary CIL relief in order again to provide a consistent approach. It seeks to delegate approval for applications for discretionary CIL relief of up to £500,000 to the Head of Planning/Chief Planning Officer in consultation with the Lead Member, applications above this threshold to be approved by the Planning and Transport Executive Sub-Committee. Finally, the report sets out the current priorities for any CIL spend.
2. CIL takes the form of a charge per square metre of net additional floor space (new build or extensions). The money raised through CIL is used to help deliver prioritised infrastructure that is needed to support the growth proposals set out in the relevant development plans of the charging Authorities. It is for individual Authorities to determine the rates of CIL and the types of development it is charged against.
3. Currently CIL is charged across three parts of Somerset, the former Sedgemoor District (SDC), South Somerset District (SSDC), and Taunton Deane Borough (TDBC) areas. CIL was not charged across the former West Somerset Council area, hence it only applies to part of the former Somerset West and Taunton area. There is no CIL provision in the former Mendip District area. The individual rates

and types of development it applies to vary across the three areas based upon specific local viability evidence that was subject to an independent examination (see appendix 1 CIL Summary).

4. Whilst the rates and types of development can only be changed through a full review of CIL, there is an opportunity to ensure consistency across the various charging areas in respect of any discretionary relief that might be offered and how applications for such relief might be consistently considered. For example, Exceptional Circumstances Relief operates in the former SDC and TDBC area, but not in the former SSDC area. Social Housing Relief only operates within the former TDBC area. The purpose of the report is therefore to provide appropriate mechanisms for the determination of these and any future CIL relief applications. It is important to note that any application for CIL relief will be considered as being an exception and the suggested criteria for assessing any such applications emphasise that the benefits must be at least of similar value to the value of the CIL relief. Reduction to the assumed CIL income has implications for the identified spending priorities set out in the Infrastructure Funding Statements as it reduces available funding although in many cases the infrastructure required to make development acceptable will have been secured via s.106 agreement directly. It also will reduce the value of any meaningful proportion that is passed to Parish and Town Councils to assist with funding local infrastructure priorities.
5. Finally, individual charging areas set out the priorities for any spend of CIL linked to the infrastructure requirements identified in adopted local plans or other development plan documents. The report provides a summary of current and emerging priorities.

Recommendations

6. That the Planning and Transport Policy Sub-Committee:
 - a. approves the introduction of discretionary Social Housing Relief (SHR) for former SDC and SSDC areas and criteria for assessing discretionary SHR (Appendix 2).
 - b. approves an Exceptional Circumstances Relief (ECR) policy applicable across all three charging areas as set out in Appendix 3, including criteria for assessing applications for relief.

c. authorises the Head of Planning/Chief Planning Officer to give formal notice that the above reliefs are available in the former SDC, SSSC and TDBC areas from 25th January 2024 and the Council will begin accepting claims for such relief pursuant to the notification requirements of Regulations 49B and 56 of the Community Infrastructure Levy Regulations 2010.

d. agrees that applications for CIL relief to the value of £500,000 and above shall be determined by the Planning and Transport Policy Sub-Committee.

e. agrees that applications for CIL relief below the value of £500,000 shall be delegated to the Head of Planning/Chief Planning Officer in consultation with the lead Member for Economic Development, Planning and Assets.

f. notes the current CIL infrastructure spending priorities and will consider priorities and requests for spend on specific schemes at a future meeting.

Reasons for recommendations

7. As referred to above, there are currently inconsistencies across the CIL charging areas in respect of the approaches to discretionary CIL relief. Whilst the CIL charging areas, rates, and types of development included can only be changed through a full review including examination, there is an opportunity to introduce consistency in respect of discretionary CIL relief including introducing a single consistent policy and the broad criteria to be used when assessing any such applications.

Other options considered.

8. Consideration was made as to whether the approval of ECR and other CIL relief was delegated to officers. The legal advice was that it did not explicitly fall within the Chief Planning Officer's delegation in respect of CIL and that existing financial delegation focused on expenditure. However, the previous District Council's had delegated decisions on CIL relief to their Chief Planning Officer (or equivalent). Given the lack of clear delegated powers to the Chief Planning Officer and the explicit role of the Planning and Transport Policy Sub-Committee to '*to oversee matters on behalf of the Council arising from the Planning Act 2008 and subsequent legislation in connection with the Community Infrastructure Levy...*' it is appropriate that the Sub-Committee consider the above issues and also if so minded, provide the appropriate delegations to the Chief Planning Officer in consultation with the Lead Member for Economic Development, Planning and Assets.

Links to Council Plan and Medium-Term Financial Plan

9. CIL is an important source of funding for infrastructure necessary to mitigate the impact of new development. Funding is also secured through s.106 agreements. The report seeks to provide some flexibilities in respect of relief from some or all CIL liability where this will enable development that delivers infrastructure or other priorities secured through alternative means to come forward. Support that enables greater provision of affordable housing directly contributes to the Council's priority for a fairer, ambitious Somerset. Providing exceptional circumstances relief where this is demonstrated to be necessary for development to proceed, also supports projected housing delivery that adds to the future Council Tax base and wider regeneration.

10. The granting of CIL relief under the agreed circumstances, will reduce the total amount of funding available to deliver the identified priorities. This though is balanced against the wider benefits of the development as a whole including whether contributions have been secured through a s.106 agreement instead, or whether the CIL relief will enable additional affordable housing to be delivered by way of public grant.

Financial and Risk Implications

11. The approval of any CIL relief will reduce the projected CIL income. However, schemes that are unviable will not proceed meaning that there would be a greater shortfall of CIL, implications for future housing delivery and Council Tax growth assumptions, and less affordable housing for those on the Council's housing waiting list. ECR can only granted where there is a s.106 agreement in place and no other relief has been granted. In most cases the provisions of the s.106 agreement is of equal or greater value to that of the CIL relief.

Please enter risk description					
Reduced CIL receipts available for spend on identified infrastructure priorities.					
Likelihood	5	Impact	3	Risk Score	15
Applications for CIL relief will only be approved where there is demonstrable benefit that outweighs the reduction in CIL. ECR applications will only be considered where there is a s.106 agreement in place that secures infrastructure or other investment that is at least equal to the value of any CIL relief and the Council is satisfied that paying the full levy would have an unacceptable impact on the viability of the development.					

Legal Implications

12. The functions of the new Planning and Transport Policy Executive Sub-Committee include:

- To oversee matters on behalf of the Council arising from the Planning Act 2008 and subsequent legislation in connection with the Community Infrastructure Levy (CIL), including the approval of draft stages of the CIL Charging Schedule for consultation and to recommend the approval of the CIL Charging Schedule to Full Council.
- To agree infrastructure priorities and approve Community Infrastructure Levy and s106 spending priorities to support the development of the area and infrastructure funding bids

Whilst the wording 'to oversee matters on behalf of the Council arising from the Planning Act 2008 and subsequent legislation in connection with the Community Infrastructure Levy...' does not explicitly refer to relief or exemptions the role of the Executive Sub-Committee is not limited to matters of expenditure only. It is intended that the Sub-Committee deal with CIL matters that are not required to be dealt with by Full Council.

13. The Officer Scheme of Delegation does not refer directly to decisions on CIL ECR, the Chief Planning Officer having delegation to:

- *Make decisions on all matters relating to Community Infrastructure Levy expenditure in accordance with priorities set by the Planning Policy Sub Committee and enforcements*
- *Determining applications for S.106 agreement expenditure in accordance with priorities determined by the Planning Policy Sub-Committee*

14. The Community Infrastructure Levy Regulations make a number of provisions for charging authorities to give relief from the levy. Some types of relief are compulsory, whereas others can be offered at the charging authority's discretion. Examples of the latter include discretionary chart reliable relief, social housing relief and exceptional circumstances relief.

15. The Regulations set out a number of mandatory criteria if the Council chooses to offer discretionary relief. These are explained in more detail below. In addition to these mandatory criteria, the Council may apply further criteria, provided these

have been published in policies setting out what is required to qualify for each relief.

16. The report proposes several changes to CIL relief in order to ensure consistency across all charging areas within Somerset. It does not propose any changes to the CIL charging schedule itself in terms of rates or geographical areas, and as such does not require approval from Full Council. The Sub-Committee as detailed above also have the appropriate authority to determine applications for CIL relief including ECR. The report seeks to delegate decisions for relief below £500K to the Chief Planning Officer in consultation with the Lead Member consistent with financial delegation thresholds for non-key decisions.
17. All decisions for ECR will need to be consistent with UK Subsidy Control and this will need to be set out clearly on a case by case basis.

HR Implications

18. There are no HR implications.

Other Implications:

Equalities Implications

19. There are no direct equalities impacts arising from the recommendation to include CIL relief in a consistent manner across the relevant charging areas. Individual applications for CIL relief will need to consider whether the reduction on CIL would have an impact on protected groups or whether enabling development to proceed will have positive benefits.

Community Safety Implications

20. There are no direct community safety implications from the report. As this relates to CIL relief, any such implications would be considered on a case-by-case basis when an application for relief is submitted.

Climate Change and Sustainability Implications

21. As the recommendations primarily relate to CIL relief, any such implications would be considered on a case-by-case basis when an application for relief is submitted. The suggested criteria for considering applications for ECR include whether it would support the delivery of sites allocated or supported by the

adopted local plan, and therefore the overall sustainable spatial strategy of the plan. Climate change and sustainability implications will also have been considered as part of the development management planning process.

22. Current CIL spending priorities do directly support the Climate change strategy identifying spend on sustainable transport and active travel for example. Flood mitigation measures, a key element of climate change adaptation, are specifically identified in two of the current infrastructure lists and for the former SDC area, a minimum of 20% of CIL receipts are ring fenced for the Bridgwater Tidal Barrier.

Health and Safety Implications

23. As the recommendations primarily relate to CIL relief, any such implications would be considered on a case-by-case basis when an application for relief is submitted. Health and safety issues will also have been considered as part of the development management process.

Health and Wellbeing Implications

24. As the recommendations primarily relate to CIL relief, any such implications would be considered on a case-by-case basis when an application for relief is submitted. Health and safety issues will also have been considered as part of the development management process. The current infrastructure lists include potential CIL expenditure that supports active travel, public open space and sport and recreation provision, all of which support health and wellbeing.

Social Value

25. Discretionary affordable housing relief will potentially enable additional affordable housing to be delivered. CIL funding priorities include projects and priorities that specifically provide for increased social value. However, social value will be specifically considered through the individual applications for CIL relief.

Scrutiny comments / recommendations:

26. The proposed decision has not been considered by a Scrutiny Committee.

Background

Discretionary Social Housing Relief

27. Mandatory CIL social housing relief is available to most social rent, affordable rent, and intermediate rent dwellings, provided by a local authority or private registered provider, and shared ownership dwellings secured through a planning obligation.
28. Charging authorities also have the option to include additional discretionary social housing relief to affordable housing that is secured over and above the agreed planning obligation, known as additionality. This could apply for example to schemes where Homes England funding is secured to enable 'market housing units' to be acquired by the Registered Provider and converted to affordable housing. If the scheme is 100% affordable housing the attributable grant rate can cover both the S106 Planning Obligation AH and 'Additionality' homes therefore bringing in a larger amount of public subsidy.
29. There are restrictions on the loan to value ratio where grant can be applied and without Social Housing Relief it will be potentially unviable to convert market units to affordable housing. Homes England audit the use of grant funding with valuations required to ensure the Registered Providers meet the requirements of the Capital Funding guide and do not use public sector monies to inflate values.
30. Currently discretionary Social Housing Relief is only offered within the former Taunton Deane charging area and therefore extending this across all the charging areas will both provide consistency and also potentially secure additional public funding and delivery of affordable housing where this is consistent with existing policy and priorities. It should be noted that such relief does reduce the total CIL receipts available to provide infrastructure, but this is balanced by advantages of bringing in larger public funding and therefore improved delivery of affordable housing.
31. Appendix 2 sets out discretionary Social Housing Relief Policy and a draft template for consideration of discretionary Social Housing Relief on additional affordable housing. The following broad principles would be used when considering specific requests,
 - There is an evidenced Local Affordable Housing need
 - The affordable housing is being delivered through an approved Council Affordable Housing Delivery Partner
 - In the case of 100% Affordable Housing Schemes local community support of the development delivering increased affordable homes is clearly evidenced.

33. Regulation 49A of the CIL Regulations sets out the notification requirements for SHR that include issuing a statement giving notice that this is available. This will be relevant to the former SDC and SSDC area that currently does not have such relief. The former TDBC area currently has SHR and therefore has already complied with these requirements. However, for clarity the updated policy will be notified across all charging areas as set out under the regulations.

Exceptional Circumstances Relief (ECR)

34. There is a need to establish the criteria for assessing applications for exceptional circumstance relief and currently there are three such applications requiring a decision.
35. Additionally for consistency it is proposed to extend ECR to the former SSDC area and to introduce an updated policy that would apply across all three charging areas. The proposed policy is based upon the current policies within the former SDC and TDBC and reflects the requirements of the CIL Regulations. Appendix 3 sets out the proposed policy wording.
36. Any application for ECR can only be granted where a s106 exists in relation to the planning permission permitting the development and the Council considers that paying the full levy would have an unacceptable impact on the development's viability. To ensure that any relief is based on an objective analysis, an independent viability assessment will be required. To qualify for this relief there needs to be an existing S.106 agreement in place and the development must not have benefited from any other form of CIL relief or exemption. Applications for ECR will generally be determined against the following broad principles.
- The site should normally be included within the Council's 5 Year Housing Land Supply, or allocated in an adopted local plan, or identified in other adopted plans and strategies such as development briefs, regeneration strategies and vision documents – this ensures that key sites necessary to deliver the Council's strategy and priorities; and
 - The planning benefits of the proposal such as delivery of infrastructure priorities, support for identified regeneration schemes, restoration of heritage assets where there is public benefit (including those on the Buildings at Risk Register), delivery of community/public assets or benefit, provision of affordable housing, etc are considered equal or greater benefit than the value of any ECR granted; and

- The s.106 agreement has a direct financial impact on development viability as evidenced by the viability report.
 - Sites should not be artificially sub divided so that early phases are unviable and benefit from ECR whilst later stages generate higher returns.
 - Exceptional circumstances will normally exclude matters that should reasonably have been considered or anticipated at the planning stage such as for example ground conditions, phosphate neutrality, or Biodiversity Net Gain.
 - If a Planning Committee or an Inspector on appeal has already considered viability supported by an independent viability assessment including any assumed ECR, relief will be granted unless there are relevant changes in circumstances since the time of the Committee decision.
 - All ECR must be compatible with UK subsidy Control legislation.
 - Applications will be determined with 3 months or an otherwise agreed timescale following confirmation of receipt.
39. Consideration of ECR is based upon independently assessed viability evidence and the application of the broad principles above. It is suggested that ECR requests of a value below £500,000 should be delegated to the Head of Planning/Chief Planning Officer in consultation with the Lead Member for Economic Development, Planning & Assets for decision, consistent with the Council's current financial scheme of delegation. Applications of £500,000 and above would be a key decision and therefore the Planning and Transport Policy Sub-Committee would make any decision on these.
40. Regulation 56 of the CIL Regulations sets out the notification requirements for ECR that include issuing a statement giving notice that this is available. This will be relevant to the former SSDC area that currently does not have such relief. Both the former SDC and TDBC areas currently have ECR and therefore have already complied with these requirements. However, for clarity the updated policy will be notified across all charging areas as set out under the regulations.

Current CIL spending Priorities

41. CIL spending priorities were previously set out under the Regulation 123 List, but this requirement has now been deleted and effectively replaced by Regulation 121A(1)(a) that requires the infrastructure funding statement to include a statement of the infrastructure projects or types of infrastructure which the charging authority intends will be, or may be, wholly or partly funded by CIL. This is known as the ‘infrastructure list’. With the amendments to the CIL Regulations the Council will now also have more opportunity to use CIL to address funding shortfalls and ‘top-up’ projects that have not secured all the required funding for their delivery. This can now include combining CIL money with financial contributions secured through other funding mechanisms, including Section 106 legal agreements.
36. The tables below summarise the priorities listed in the current infrastructure lists and further details can be found within the individual IFS at ([Infrastructure Funding Statements \(somerset.gov.uk\)](https://www.somerset.gov.uk/infrastructure-funding-statements)). These are provided for information but will be subject to further discussion at a future meeting to ensure that they reflect both local plan requirements and Council priorities. This will also be in the context of a clear funding deficit and a need therefore to make choices in respect to the various competing calls on CIL funding. Funds will only be allocated to projects once these are received and any decisions should they be considered regarding forward funding secured against projected CIL funds would be subject to Executive approval within the context of the overall financial position of the authority.

Former SDC Charging Area:

Infrastructure Topic	Funding scheme/area	Planned Delivery
Flood Risk Management	Bridgwater Tidal Barrier * Burnham-on-Sea and Highbridge Tidal Flood Defence	2024 - 2027 Throughout plan period
Transport and public realm	Environmental improvements to walking, cycling and public transport infrastructure and public realm across the District	Throughout plan period
Education	Does not include infrastructure required to support the delivery of the following sites allocated in the Local Plan; B2 Land at West Bridgwater, B3 Land at East	Throughout plan period

	Bridgwater, and BH1 Land South of Brue Farm	
Off-site outdoor sport and recreation	Specific sites and schemes that are identified in the play area audit and other relevant strategies	Throughout plan period
Off-site green infrastructure	Meads Eco Park	Throughout plan period

* A minimum of 20% of CIL receipts are ring fenced for the Bridgwater Tidal Barrier as part of the agreed partnership funding contribution.

Former SWAT (TDBC) charging area

Infrastructure Topic	Planned Delivery
Cycle & Pedestrian Improvements	2023-2025
Contribution towards the new primary school at Orchard Grove, Comeytrowe	2022-2026 onwards
Taunton Town Centre Regeneration	2022-2026 onwards
Surface Water & Flood Risk Mitigation	2023-2026 onwards
Community Development	
Wellington Station access road (forward/loan funding)**	2024-2025

** Subject to a separate report and therefore to be confirmed.

Former SSSC Charging Area

Infrastructure Topic	Funding scheme/area	Planned Delivery
Strategic Fund	Public realm works, Yeovil refresh	2023-2024

Appendices


- **Appendix 1 Community Infrastructure Summary**
- **Appendix 2 Criteria for assessing discretionary Social Housing Relief**
- **Appendix 3 Exceptional Circumstances Relief (ECR) policy**

Assurance checklist (if appropriate)

	Officer Name	Date Completed
Legal & Governance Implications	David Clark	11/01/2024
Communications	Peter Elliott	11/01/2024
Finance & Procurement	Nicola Hix	15/01/2024
Workforce	Alyn Jones	N/A
Asset Management	Oliver Woodhams	N/A
Executive Director / Senior Manager	Mickey Green	11/01/2024
Strategy & Performance	Alyn Jones	N/A
Executive Lead Member	Cllr Ros Wyke	5/01/2024
Consulted:	Councillor Name	
Local Division Members	N/A	
Opposition Spokesperson	Cllr Mark Healey	11/01/2024
Scrutiny Chair	Cllr Dimery	11/01/2024

Somerset Equality Impact Assessment

Before completing this EIA please ensure you have read the EIA guidance notes – available from your Equality Officer or www.somerset.gov.uk/impactassessment

Organisation prepared for (mark as appropriate)	 Somerset Council				
Version		Date Completed	10/01/2024		
Description of what is being impact assessed					
Introduction of CIL relief					
Evidence					
What data/information have you used to assess how this policy/service might impact on protected groups? Sources such as the Office of National Statistics , Somerset Intelligence Partnership , Somerset's Joint Strategic Needs Analysis (JSNA) , Staff and/or area profiles ,, should be detailed here					
Local Plan: Equalities Impact Assessment					

Who have you consulted with to assess possible impact on protected groups and what have they told you? If you have not consulted other people, please explain why?

As there are no direct impacts from the report no further consultation has taken place. Specific impacts are assessed on individual application for CIL relief.

Analysis of impact on protected groups

The Public Sector Equality Duty requires us to eliminate discrimination, advance equality of opportunity and foster good relations with protected groups. Consider how this policy/service will achieve these aims. In the table below, using the evidence outlined above and your own understanding, detail what considerations and potential impacts against each of the three aims of the Public Sector Equality Duty. Based on this information, make an assessment of the likely outcome, before you have implemented any mitigation.

Protected group	Summary of impact	Negative outcome	Neutral outcome	Positive outcome
Age	<ul style="list-style-type: none"> 	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Disability	<ul style="list-style-type: none"> 	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Gender reassignment	<ul style="list-style-type: none">•	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marriage and civil partnership	<ul style="list-style-type: none">•	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pregnancy and maternity	<ul style="list-style-type: none">•	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Race and ethnicity	<ul style="list-style-type: none">•	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Religion or belief	<ul style="list-style-type: none">•	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sex	<ul style="list-style-type: none">•	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Sexual orientation	•	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Armed Forces (including serving personnel, families and veterans)	•	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other, e.g. carers, low income, rurality/isolation, etc.	•	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Negative outcomes action plan

Where you have ascertained that there will potentially be negative outcomes, you are required to mitigate the impact of these. Please detail below the actions that you intend to take.

Action taken/to be taken	Date	Person responsible	How will it be monitored?	Action complete
	Select date			<input type="checkbox"/>
	Select date			<input type="checkbox"/>
	Select date			<input type="checkbox"/>
	Select date			<input type="checkbox"/>
	Select date			<input type="checkbox"/>

	Select date			<input type="checkbox"/>
	Select date			<input type="checkbox"/>
	Select date			<input type="checkbox"/>

If negative impacts remain, please provide an explanation below.

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Completed by:	Nick Tait
Date	10/01/2024
Signed off by:	
Date	
Equality Lead sign off name:	
Equality Lead sign off date:	
To be reviewed by: (officer name)	
Review date:	

