

## **APPENDIX 3 Exceptional Circumstances Relief Policy**

*In accordance with regulation 56 of the Community Infrastructure Levy Regulations 2010 (as amended), Somerset Council gives notice that it is offering discretionary Exceptional Circumstances Relief in its area.*

*Somerset Council will be offering this relief from 25<sup>th</sup> April 2024.*

*Anyone wishing to claim this discretionary Exceptional Circumstances Relief must follow the procedure set out in Regulation 57 of The Community Infrastructure Levy Regulations 2010 (as amended).*

### **Who is eligible for discretionary exceptional circumstances relief?**

To qualify for relief under Regulation 55 the claimant must be an owner of a material interest in the land.

### **How to apply for Exceptional Circumstances Relief**

Exceptional Circumstances Relief (ECR) is subject to the landowner of the application site submitting an ECR Claim to the Council in accordance with Regulation 57 of the CIL Regulations (2010), as amended.

The ECR Claim must be submitted, and an approval in writing by the Council received before any works commence on site. An ECR Claim will lapse where development commences before the Council has notified the claimant of our decision.

To be eligible to make an ECR Claim, a planning obligation under S106 of the Town & Country Planning Act (1990) (as amended) must have been entered into in respect of the planning permission which permits the development.

The ECR Claim must be submitted on the "Form 11: Exceptional Circumstances Relief Claim Form" which is available on the Planning Portal:

[https://ecab.planningportal.co.uk/uploads/1app/forms/form\\_11\\_exceptional\\_circumstances\\_relief\\_claim.pdf](https://ecab.planningportal.co.uk/uploads/1app/forms/form_11_exceptional_circumstances_relief_claim.pdf)

All relevant parts of Form 11 must be completed in full, including the Declaration. The Form must be accompanied by:

- An assessment of the economic viability of the development carried out by an independent person appointed by the claimant with the agreement of Somerset Council. If the viability assessment has been undertaken by a person not jointly agreed with Somerset Council, this will need to be independently reviewed with any additional costs met by the claimant.
- An explanation of why, in the opinion of the claimant, the levying of the full CIL liability would have an unacceptable impact on the economic viability of the development.
- An apportionment assessment where there is more than one owner of the development land;

- Proof that the relief, if granted, would comply with the requirements of the Subsidy Control Act 2022; and
- A declaration that all owners of the relevant land have been provided with a copy of the completed claim form and advised that copies of the accompanying documents are available on request.

### **Decisions on ECR Claims**

The Council will provide a decision on the Claim as soon as practicable but within 3 months unless otherwise agreed. We strongly advise that an ECR Claim is submitted as soon as possible to ensure that your project is not delayed.

The Council is only able to grant ECR where all the following criteria apply:

- 1) There appears to the Council to be exceptional circumstances to justify ECR
- 2) The Council considers it to be expedient to grant ECR
- 3) The Council considers that levying the full CIL liability would have an unacceptable impact on the viability of the development
- 4) The grant of ECR is consistent with the provisions of the Subsidy Control Act 2022

When assessing whether it is expedient to grant ECR applications will generally be assessed against the following criteria:

- 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 have already considered viability supported by an independent viability assessment including any assumed ECR, relief

will be granted unless there are relevant changes in circumstance since the time of the Committee decision

### **Disqualifying Events**

A development will cease to be eligible for ECR if any of the following Disqualifying Events occur before development commences:

- 1) A claim for any other kind of CIL relief or exemption for the same development is granted
- 2) Before development commences, an owner of all or part of the application site makes a material disposal (meaning transfer or legal estate or grant of a lease for more than 7 years)
- 3) The development does not commence within 12 months of the grant of an ECR Claim

If a Disqualifying Event occurs, the landowner must notify the Council within 14 days beginning on the day the Disqualifying Event occurs. Failure to notify the Council of a Disqualifying Event may result in a surcharge being levied of 20% of the CIL liability or £2,500 (whichever is the lower amount). The landowner must also send a copy of the notification to any other landowners within the application site.

Any queries regarding ECR claims or any of the content of this guidance note should be directed to the S106/CIL Monitoring Officer by calling 0300 123 2224 or emailing [planningobligations@somerset.gov.uk](mailto:planningobligations@somerset.gov.uk) .