

## CABINET MEMBER DELEGATED DECISION: 29 OCTOBER 2021

**Report title:** Update of CIL Policy Statements on Discretionary Relief

**Wards:** All

**Portfolio:** Deputy Leader of the Council (Planning, Investment and New Homes): Councillor Matthew Bennett

**Report Authorised by:** Eleanor Purser and Sara Waller: Strategic Directors for Sustainable Growth and Opportunity

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### Report summary

The report seeks Cabinet member approval of amendments to current policy statements on discretionary relief in respect of the Community Infrastructure Levy (CIL).

### Finance summary

There are no financial implications associated with the recommendations of this report.

### Recommendations

1. To approve amendments to the policy statement on CIL Discretionary Relief for Exceptional Circumstances to keep this in line with current legislation by removing all references to EU state aid which no longer applies in the UK.
2. To approve amendments to the policy statement on CIL Discretionary Charitable Relief to keep this in line with current legislation by removing all references to EU state aid which no longer applies in the UK.

## **1. CONTEXT**

- 1.1 When Lambeth first adopted CIL in 2014, it also issued a number of policy statements in which certain types of discretionary relief from CIL were made available in the borough.
- 1.2 One of the policy statements offered Discretionary Relief for Exceptional Circumstances where it can be shown that the payment of Lambeth CIL “would have an unacceptable impact on the economic viability of the chargeable development.”
- 1.3 Another policy statement offered Discretionary Charitable Relief to charitable institutions that own a material interest in a chargeable development and the whole or greater part of the chargeable development will be used as an investment where the profits will be applied for charitable purposes (whether for the claimant’s charitable institution or the claimant’s institution and other charitable institutions).
- 1.4 In both policy statements, discretionary relief was subject to a requirement that granting relief would not constitute state aid which would need to be approved by the European Commission. This requirement no longer applies as the UK is no longer subject to EU state aid rules.
- 1.5 On 31 January 2020, the United Kingdom (UK) formally left the European Union (EU) and the transition period in which the UK remained a member of the single market and customs union ended on 31 December 2020. From 1 January 2021, the UK was no longer subject to EU law and the rulings of the European Court of Justice.
- 1.6 The State Aid (Revocations and Amendments) (EU Exit) Regulations 2020 took effect from 31 December 2020, including several amendments to the CIL Regulations 2010 in which all references to EU state aid requirements were removed. In particular, this affected Regulation 55 on Discretionary Relief for Exceptional Circumstances and Regulations 44, 45 and 46 on Discretionary Charitable Relief.
- 1.7 The two policy statements offering Discretionary Relief for Exceptional Circumstances and Discretionary Charitable Relief are published on the Council’s website. Both need to be amended in order to remove all references to EU state aid rules that no longer apply to the UK.

## **2. PROPOSAL AND REASONS**

- 2.1 The proposal is to bring the two policy statements offering Discretionary Relief for Exceptional Circumstances and Discretionary Charitable Relief in line with current legislation by removing all references to EU state aid. If the Council does not make any amendment, the policy statements will remain as before and will continue to refer to Regulations that have been deleted and a requirement to comply with EU state aid law which is no longer in effect in the UK.
- 2.2 The proposed amendments to both policy statements are explained in appendices attached to this report. Text to be removed is shown as a strikethrough; inserted text is indicated as both red and underlined.
- 2.3 Appendix A explains the amendments to the policy statement on Discretionary Relief for Exceptional Circumstances. A clean copy of the amended policy statement on Discretionary Relief for Exceptional Circumstances is provided in Appendix B.

- 2.4 Appendix C explains the amendments to the policy statement on Discretionary Charitable Relief. A clean copy of the amended policy statement Discretionary Charitable Relief is provided in Appendix D.
- 2.5 Ever since Lambeth adopted its first CIL Charging Schedule in 2014 and issued these policy statements on Discretionary Relief for Exceptional Circumstances and Discretionary Charitable Relief, the Council has not actually received any application for CIL reliefs of either type of discretionary relief. The requirement to comply with EU state aid rules was an important consideration for a developer in order to apply for discretionary relief. The proposed amendments to both policy statements makes clear that this requirement has been removed. The Council is still required to comply with World Trade Organisation (WTO) rules on state aid.

### **3. FINANCE**

- 3.1 The proposed amendments to the policy statements are technical in nature and are not expected to lead to any changes in the amount of CIL the Council collects.
- 3.2 The costs of preparing this report have been met within existing revenue budgets.

### **4. LEGAL AND DEMOCRACY**

- 4.1 The legislative requirements are accurately set out in the body of this report.
- 4.2 This proposed key decision was entered in the Forward Plan on 20 September 2021 and the necessary 28 clear days' notice has been given. In addition, the Council's Constitution requires the report to be published on the website for five clear days before the proposed decision is approved by the Cabinet Member. Any representations received during this period must be considered by the decision-maker before the decision is taken. A further period of five clear days – the call-in period – must then elapse before the decision is enacted. If the decision is called-in during this period, it cannot be enacted until the call-in has been considered and resolved.

### **5. CONSULTATION AND CO-PRODUCTION**

- 5.1 There is no requirement for external or internal consultation for this report.

### **6. RISK MANAGEMENT**

- 6.1 The proposed action intends to introduce minor amendments existing policy statements to keep them in line with up-to-date legislation. There are no specific risk management considerations arising directly from the recommendations in this report.

### **7. EQUALITIES IMPACT ASSESSMENT**

- 7.1 The Equalities Impact Assessment for this decision is included at Appendix E. In summary, it concludes that the proposed amendments to the two CIL policy statements offering Discretionary

Relief for Exceptional Circumstances and Discretionary Charitable Relief will have no direct negative impacts on groups with protected characteristics in Lambeth.

- 7.2 However, the proposed amendments can have direct positive impacts on groups with protected characteristics in Lambeth. The requirement to comply with EU state aid rules was an important consideration for a developer in order to apply for discretionary relief. The proposed amendments to both policy statements makes clear that this requirement has been removed. This will be a positive benefit for a developer or any development that caters to groups with protected characteristics in Lambeth. The provision of discretionary relief from CIL may contribute to the delivery of such development where the liability for CIL might have an unacceptable impact on the economic viability of that development or where the profits from that development will be applied to charitable purposes.

## **8. COMMUNITY SAFETY**

- 8.1 There are no direct community safety implications arising from the recommendations in this report.
- 8.2 CIL may in due course be spent on projects that contribute towards community safety.

## **9. ORGANISATIONAL IMPLICATIONS**

### **Environmental**

- 9.1 There are no direct environmental implications arising from the recommendations in this report. However, in due course, CIL may be spent on projects that deliver environmental benefits.

### **Health**

- 9.2 There are no direct health implications arising from the recommendations in this report. However, in due course, CIL may be spent on health infrastructure.

### **Corporate Parenting**

- 9.3 Not applicable.

### **Staffing and accommodation**

- 9.4 None.

### **Responsible Procurement**

- 9.5 Not directly applicable to the recommendations in this report. Procurement decisions on CIL funded projects are subject to the applicable processes.

### *Good Quality Jobs with Fair Pay and Decent Working Conditions*

- 9.6 Not directly applicable to the recommendations in this report. CIL may in due course be spent on projects relating to employment support.

### *Quality Apprenticeships, targeted Employment for Lambeth residents and Lambeth Priority Group*

- 9.7 Not directly applicable to the recommendations in this report. CIL may in due course be spent on projects relating to the delivery of apprenticeships and other forms of employment support.

### *Reduce Emissions: Lambeth Council has a commitment to being Zero Carbon by 2030*

- 9.8 Not directly applicable to the recommendations in this report. CIL may in due course be spent on projects related to reducing carbon emissions.

*Single Use Plastics*

9.9 Not applicable.

*Positive Health and Wellbeing*

9.10 Not applicable.

*Other Offers (Innovation)*

9.11 Not applicable.

## **10. TIMETABLE FOR IMPLEMENTATION**

10.1 The table below details the stages and anticipated timescales for implementing the recommendations:

<b>Activity</b>	<b>Proposed Date</b>
Cabinet member decision	1 November 2021
Publication of amended policy statements	1 December 2021

## AUDIT TRAIL

Consultation				
Name and Position/Title	Lambeth Directorate	Date Sent	Date Received	Comments in paragraph:
Councillor Matthew Bennett	Deputy Leader (Planning, Investment and New Homes)	08.09.2021	20.09.2021	
Eleanor Purser and Sara Waller, Strategic Directors	Sustainable Growth and Opportunity	06.09.2021	08.09.2021	
Matthew Gaynor, Assistant Director of Finance (Capital Planning & Major Projects)	Finance and Property	17.08.2021	17.08.2021	3.1 - 3.2
Peter Flockhart, Senior Planning Lawyer	Legal and Governance	17.08.2021	24.08.2021	4.1
Nazyer Choudhury, Democratic Services	Legal and Governance	26.08.2021	20.09.2021	
Nabeel Khan, Director of Economy, Culture and Skills	Sustainable Growth and Opportunity	24.08.2021	24.08.2021	
Rob Bristow, Director of Planning, Transport and Sustainability	Sustainable Growth and Opportunity	24.08.2021	25.08.2021	
Catherine Neal, Head of Operations and Innovation	Sustainable Growth and Opportunity	24.08.2021	24.08.2021	
Catherine Carpenter, Head of Policy and Place-shaping	Sustainable Growth and Opportunity	24.08.2021	25.08.2021	

## REPORT HISTORY

<b>Original discussion with Cabinet Member</b>	20.09.2021
<b>Report deadline</b>	15.09.2021
<b>Date final report sent</b>	08.09.2021
<b>Part II Exempt from Disclosure/confidential accompanying report?</b>	No
<b>Key decision report</b>	Yes
<b>Date first appeared on forward plan</b>	20.09.2021
<b>Key decision reasons</b>	3. Meets community impact test.
<b>Background information</b>	<a href="#">Planning Act 2008</a> <a href="#">Community Infrastructure Levy (CIL) Regulations 2010 (as amended)</a>
<b>Appendices</b>	Appendix A – <i>Proposed Amendments to Policy Statement on Discretionary Relief for Exceptional Circumstances</i> Appendix B – <i>Amended Policy Statement on Discretionary Relief for Exceptional Circumstances (clean copy)</i> Appendix C – <i>Proposed Amendments to Policy Statement on Discretionary Charitable Relief</i> Appendix D – <i>Amended Policy Statement on Discretionary Charitable Relief (clean copy)</i> Appendix E – <i>Equalities Impact Assessment</i>

**APPROVAL BY CABINET MEMBER OR OFFICER IN ACCORDANCE WITH SCHEME OF DELEGATION**

**I confirm I have consulted Finance, Legal, and Democratic Services, and taken account of their advice and comments in completing the report for approval:**

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Post:** Benny Clutario  
CIL/S106 Manager

**I confirm I have consulted the relevant Cabinet Members, including the Leader of the Council (if required), and approve the above recommendations:**

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Post:** Cllr Matthew Bennett  
Deputy Leader of the Council (Planning, Investment and New Homes)

Appendix A  
**Proposed Amendments to Policy Statement on  
Discretionary Relief for Exceptional Circumstances**



**LONDON BOROUGH OF LAMBETH**

**COMMUNITY INFRASTRUCTURE LEVY**

**STATEMENT OF AVAILABILITY OF DISCRETIONARY RELIEF FOR  
EXCEPTIONAL CIRCUMSTANCES**

In accordance with Regulation 56 of the Community Infrastructure Levy Regulations 2010, the Council hereby gives notice that discretionary relief for exceptional circumstances is available in the London Borough of Lambeth.

~~The Council will accept claims for discretionary relief for exceptional circumstances from 1 October 2014.~~ This policy statement has been in effect since 1 October 2014 and the Council will continue to accept claims for discretionary relief for exceptional circumstances.

Discretionary relief for exceptional circumstances must be claimed for and approved prior to the commencement of the chargeable development by completing the CIL Relief Form (form 2 11). In order to qualify for the relief the following must all apply:

- a Section 106 agreement has been entered into in respect of the planning permission which permits the chargeable development; and
- Lambeth considers that: requiring payment of the Community Infrastructure Levy charged by Lambeth would have an unacceptable impact on the economic viability of the chargeable development.
- ~~— requiring payment of the Community Infrastructure Levy charged by Lambeth would have an unacceptable impact on the economic viability of the chargeable development, and~~
- ~~— granting relief would not constitute notifiable state aid.~~

A claim for discretionary relief for exceptional circumstances must include (amongst other documents) an assessment of the economic viability of the chargeable development carried out by an independent person, and an explanation of why the applicant for the relief considers that it would have an unacceptable impact on the economic viability of that development.

~~Intending applicants~~ Applicants who intend to apply for the relief need to make contact with the Council **before** submitting the application. ~~To~~ and comply with the procedure in Regulation 57.

Subject to the requirements of the Community Infrastructure Levy Regulations 2010, the Council will decide the amount of any relief to be granted in individual cases.

For further information about making a claim for discretionary relief for exceptional circumstances please see Regulations 55 and 57 of the Community Infrastructure Levy Regulations 2010.

Appendix B  
**Amended Policy Statement on Discretionary Relief  
for Exceptional Circumstances (clean copy)**



**LONDON BOROUGH OF LAMBETH**

**COMMUNITY INFRASTRUCTURE LEVY**

**STATEMENT OF AVAILABILITY OF DISCRETIONARY RELIEF FOR  
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In accordance with Regulation 56 of the Community Infrastructure Levy Regulations 2010, the Council hereby gives notice that discretionary relief for exceptional circumstances is available in the London Borough of Lambeth.

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Discretionary relief for exceptional circumstances must be claimed for and approved prior to the commencement of the chargeable development by completing the CIL Relief Form (form 11). In order to qualify for the relief the following must all apply:

- a Section 106 agreement has been entered into in respect of the planning permission which permits the chargeable development; and
- Lambeth considers that requiring payment of the Community Infrastructure Levy charged by Lambeth would have an unacceptable impact on the economic viability of the chargeable development.

A claim for discretionary relief for exceptional circumstances must include (amongst other documents) an assessment of the economic viability of the chargeable development carried out by an independent person, and an explanation of why the applicant for the relief considers that it would have an unacceptable impact on the economic viability of that development.

Applicants who intend to apply for the relief need to make contact with the Council **before** submitting the application and comply with the procedure in Regulation 57.

Subject to the requirements of the Community Infrastructure Levy Regulations 2010, the Council will decide the amount of any relief to be granted in individual cases.

For further information about making a claim for discretionary relief for exceptional circumstances please see Regulations 55 and 57 of the Community Infrastructure Levy Regulations 2010.

Appendix C  
**Proposed Amendments to Policy Statement  
on Discretionary Charitable Relief**



**LONDON BOROUGH OF LAMBETH**

**COMMUNITY INFRASTRUCTURE LEVY**

**STATEMENT OF AVAILABILITY OF DISCRETIONARY CHARITABLE RELIEF  
UNDER REGULATIONS 44 AND 45**

In accordance with Regulation 46 of the Community Infrastructure Levy (CIL) Regulations 2010, the Council hereby gives notice that discretionary charitable relief is available in the London Borough of Lambeth under Regulations 44 and 45.

~~The Council continues to accept claims for discretionary charitable relief for investment activities under Regulation 44 from 1 October 2014 and will accept claims for other discretionary charitable relief under Regulation 45 from 1 December 2014.~~ This policy statement has been in effect since 1 October 2014 and the Council will continue to accept claims for discretionary charitable relief under Regulation 44.

Discretionary charitable relief under Regulation 44 and/or Regulation 45 must be claimed for and approved prior to the commencement of the chargeable development by completing the CIL Relief Form (form 210).

In order to qualify for relief under Regulation 44 the following must apply:

- the claimant owns a material interest in the relevant land and is a charitable institution; and
- the whole or greater part of the chargeable development will be used as an investment where the profits will be applied for charitable purposes (whether for the claimant's charitable institution or the claimant's institution and other charitable institutions).

~~In order to qualify for relief under Regulation 45 the following must apply:~~

- ~~• the claimant owns a material interest in the relevant land and is a charitable institution;~~
- ~~• the chargeable development will be used wholly or mainly for charitable purposes (whether for the claimant's charitable institution or the claimant's institution and other charitable institutions); and~~
- ~~• the claimant would have been eligible for exemption under Regulation 43 (exemption for charities) but for the fact that exemption under that regulation would have amounted to state aid.~~

~~Relief will be available under Regulations 44 or 45 only if the Council is satisfied that the granting of the relief would not amount to state aid that would need to be notified to and approved by the European Commission.~~

There may be instances where the development ceases to be eligible for relief under Regulation 44 and/or Regulation 45.

Subject to the requirements of the Community Infrastructure Levy Regulations 2010, the Council will consider validly made claims for relief under Regulation 44 and/or Regulation 45 according to the individual circumstances of each case and the merits of the claim made.

The Council will decide the amount of any relief to be granted. If the Council decides to introduce further criteria in relation to relief under either of these this Regulations, these criteria will be published by way of revision to this policy statement.

For further information on these reliefs and how to apply for them, please see Regulations 45, 47 and 48 of the CIL Regulations 2010.

Notes:

~~1. With effect from the date of this notice, this combined statement relating to the availability of reliefs under both Regulations 44 and 45 replaces the previous statement given by the Council in relation to the availability of relief as from 1 October 2014 under Regulation 44 only.~~

~~2. This statement only applies to the collection of the Lambeth CIL, and does not apply to the Mayor of London's CIL.~~

Appendix D  
**Amended Policy Statement on Discretionary Charitable Relief  
(clean copy)**



**LONDON BOROUGH OF LAMBETH**

**COMMUNITY INFRASTRUCTURE LEVY**

**STATEMENT OF AVAILABILITY OF DISCRETIONARY CHARITABLE RELIEF  
UNDER REGULATION 44**

In accordance with Regulation 46 of the Community Infrastructure Levy (CIL) Regulations 2010, the Council hereby gives notice that discretionary charitable relief is available in the London Borough of Lambeth under Regulation 44.

This policy statement has been in effect since 1 October 2014 and the Council will continue to accept claims for discretionary charitable relief under Regulation 44.

Discretionary charitable relief under Regulation 44 must be claimed for and approved prior to the commencement of the chargeable development by completing the CIL Relief Form (form 10).

In order to qualify for relief under Regulation 44 the following must apply:

- the claimant owns a material interest in the relevant land and is a charitable institution; and
- the whole or greater part of the chargeable development will be used as an investment where the profits will be applied for charitable purposes (whether for the claimant's charitable institution or the claimant's institution and other charitable institutions).

There may be instances where the development ceases to be eligible for relief under Regulation 44.

Subject to the requirements of the Community Infrastructure Levy Regulations 2010, the Council will consider validly made claims for relief under Regulation 44 according to the individual circumstances of each case and the merits of the claim made.

The Council will decide the amount of any relief to be granted. If the Council decides to introduce further criteria in relation to relief under this Regulation, these criteria will be published by way of revision to this policy statement.

For further information on these reliefs and how to apply for them, please see Regulations 47 and 48 of the CIL Regulations 2010.

*Note:*

*This statement only applies to the collection of Lambeth CIL, and does not apply to the Mayor of London's CIL.*