

To: Cabinet
Date: 13 March 2024
Report of: Head of Planning & Regulatory Services
Title of Report: BMW Mini Plant - Discretionary Exceptional Circumstances Relief for CIL

Summary and recommendations	
Purpose of report:	To approve the recommendations to award Discretionary Exceptional Circumstances Relief (DECR) for the Community Infrastructure Levy (CIL) charge on the BMW Mini Plant for a total sum of £832,421.
Key decision:	No
Cabinet Member:	Councillor Louise Upton, Cabinet Member for Planning and Healthier Communities
Corporate Priority:	Enable an inclusive economy Support thriving communities Pursue a zero carbon Oxford
Policy Framework:	CIL is a standard tariff on development in Oxford City and is a primary mechanism for funding infrastructure from developer contributions. Under regulations 55 and 56 of the CIL regulations 2010 (as amended), Oxford City Council has implemented a Discretionary Exceptional Circumstances Relief Policy, where CIL charges can be removed where sufficient evidence from independent and qualified professionals identifies that the economic viability of a development is at risk.
Recommendation(s): That Cabinet resolves to:	
1. Approve the recommendations to award Discretionary Exceptional Circumstances Relief for CIL on the BMW Mini Plant	

2. **Authorise** the Head of Planning & Regulatory Services to make any necessary minor corrections not materially affecting the report and to send the recommended outcome in writing to the claimant, as required by regulation 57(7) of the CIL regulations (as amended).

Background Papers and Appendices	
Appendix 1	Oxford City Council Discretionary Exceptional Circumstances Relief Policy (DECR)
Appendix 2	Risk Assessment
Appendix 3	Exceptional Circumstances Relief Form (Form 11)
Appendix 4	Financial Viability Assessment for Discretionary Exceptional CIL Relief – Prepared by DS2
Appendix 5	Economic Statement – Prepared by Volterra
Appendix 6	Supporting Information – Prepared by Norton Rose Fulbright
Appendix 7	Legal Advice – Prepared by KPMG

Introduction and background - The BMW Mini Plant Site

1. Substantial upgrades to the existing BMW Cowley plant have been proposed under planning application 23/02166/FUL, representing a significant investment by the multinational car manufacturer into the home of the Mini brand.
2. The upgrades would include major new additions, upgrades, and minor demolitions and associated works to enable the plant to prepare for the sole production of the new electric Mini models, and thus helping to secure the future of manufacturing at the plant and its place within the Oxfordshire and regional economy.
3. This development has also been supported by significant funding (£75,000,000) through the UK central government due to the significance of the plant to the UK economy and directly supports the UK government agenda to support economic development as well as the drive to net zero carbon emissions by enabling the production of fully electric vehicles and reducing reliance on fossil fuels.
4. The works would increase the floor space by 29,002m² in the case of the proposed extensions, 1,248m² from the additional canopies and docks, and a new trailer park area of 17,085m².

5. The CIL liability on this site is: £832,421 and the purpose of this report is to make recommendations on whether there is reasonable evidence and rationale to accept the developer's claim for DECR from this liability, submitted on the 13th of December 2023.

The CIL Discretionary Exceptional Circumstances Relief Policy

6. The DECR Policy Procedure was introduced by Oxford City Council in 2019 (in accordance with CIL regulations 55 - 57). The DECR policy was introduced to consider relief of the CIL tariff on a discretionary case-by-case basis where claimants can demonstrate that CIL would unacceptably affect the economic viability of a development.
7. A claim for relief cannot be approved prior to planning permission being granted and an application for relief cannot be made after development has commenced.
8. The regulations state that the decision to grant discretionary relief should be made "as soon as practicable".
9. Until this claim for relief on the BMW Mini plant site, the Council has not yet had any applications for this relief.
10. Any claims made in relation to this policy are subject to a Cabinet decision.
11. For clarity on the requirements of granting discretionary relief via this policy, the specific responsibilities of claimants of this relief and the Council are listed below:
12. **Claimant's Responsibilities** -The onus is on the claimant to demonstrate they qualify for relief and appropriate evidence must be submitted:
13. A planning obligation must be entered into for the planning permission before applying for the relief and the relief application must be received prior to commencement of the chargeable development;
14. The application must be accompanied by an assessment of the economic viability of the chargeable development carried out by an independent person (a suitably qualified and experienced person appointed by the claimant with the agreement of the Council);
15. The application must also include an explanation of why, in the opinion of the claimant, payment of the chargeable amount would have an unacceptable impact on the economic viability of that development;

16. The claimant will be responsible for meeting the costs incurred by the independent person and the claimant required to reimburse any costs incurred by the Council in considering DECR.
17. If claim for relief is successful, development must commence within 12 months of the relief being granted.
18. **The Council's Responsibilities** -The Council can award DECR provided it considers the case by the claimant and evidence provided by the independent viability assessment reasonable. In making that decision it should consider the following:
 19. Whether requiring the payment of the CIL due would have an unacceptable impact on the economic viability of the development;
 20. The total amount of CIL relief to award under exceptional circumstances if eligible;
 21. Whether the CIL relief would amount to a 'subsidy' under the Subsidy Control Act 2022 (this replaces 'state aid' in the regulations). If it is considered a subsidy under the Act, the Council must act in accordance with the requirements and duties under the Act unless the amount of the relief is de minimis (The de minimus threshold is £315,000).

The Case for CIL Relief and Financial Viability Assessment

22. The responsibilities of the Claimant (BMW Group UK) to make a DECR claim were fulfilled: A planning obligation for the planning permission was entered into before applying for the relief before commencement accompanied by an independent Financial Viability Assessment (FVA) on the site, which was conducted by consultants DS2 with approval from the Council. An explanation of why the CIL charge would have an unacceptable impact on the viability of the development was also included and the claimant agreed to reimburse any costs incurred by the Council in considering DECR.
23. The FVA was prepared on an independent and objective basis by consultants at DS2, see Appendix 4. Evidence from DS2 was produced in accordance with planning policy and best practice guidance, including the Royal Institution of Chartered Surveyors (RICS) Guidance Note, 'Assessing viability in planning under the national planning policy framework 2019 for England' (1st Edition) which became effective from 1st March 2021.
24. The FVA assessed the viability on a residual method of valuation to determine the Residual Land Value (RLV, the total Gross Development Value minus development costs) which is then, in turn, measured against an appropriate Benchmark Land

Value (BLV, the minimum value at which landowner has received a competitive return, based on local development data). If the BLV is in excess of the value of the RLV, the scheme is deemed to be in a viability deficit and a CIL contribution is considered unviable, making the case for exceptional CIL relief.

25. The FVA study illustrates that on a present-day basis, the Proposed Development derives a RLV of -£26,049,267 which, when measured against the BLV of £39,742,495, generates a deficit of -£65,791,762. Therefore, the Proposed Development is providing in excess of the maximum viable level of CIL.
26. Further context has been provided by the Applicant through an Economic Statement (Appendix 5). This report confirms the accuracy of the independent FVA and the importance of the plant expansion to the local and national economy, as well as the role it will play in reaching net zero goals through the production of electric vehicles.

Application of the DECR to the Subsidy Control Act 2022

27. The Regulations are clear that when relief is being considered that due consideration must be made to the Subsidy Control Act 2022, and if engaged must meet its tests.
28. It is both the Council's and the Applicant's opinion that threshold for subsidy is met and is above the *de minimus* level, and therefore the Council must satisfy itself that such subsidy is consistent with the principles of subsidy control.
29. There are seven control subsidy principles in Schedule 1 of the Act that must be considered. Further, Schedule 2 of the Act sets out a further nine principles to be considered when giving a subsidy in relation to energy and the environment. It is not considered that this element is engaged, although they are considered in the legal section of this report.
30. The Applicant has prepared two reports (P&C Appendices 6 and 7) that consider this matter, and the Council has sought further KC advice. In brief, the Applicant deals with the Schedule 1 principles thus (extract taken from Appendix 6, see for further detail);
 - (i) **Common Interest.** *The policy objectives of the ECR are to mitigate local economic disruption, which represents an equity rationale and therefore a common interest.*
 - (ii) **Proportionate and necessary.** *The grant of ECR would represent less than 0.1% of the total project cost, a minor portion of the overall expenditure.*

(iii) Designed to change economic behaviour of beneficiary. *The grant of ECR would contribute to the bridging of the gap between the required return as per BMW's investment policy and the currently calculated return. The grant of ECR would therefore influence the project's financial viability, and potentially impact the investment decision.*

(iv) Costs that would be funded anyway. *In the absence of ECR it is possible that BMW's internal rate of return (IRR) threshold for the investment to proceed would not be reached, and so the associated costs would not be incurred.*

(v) Least distortive means of achieving policy objective. *BMW has verbally confirmed that a loan is not an option, that its ultimate holding company does not undertake external loan financing for capex related projects and that it would not positively influence the IRR calculation.*

(vi) Competition and investment within the UK. *If the electrified MINI is produced at alternative premises outside the UK, any pricing impact appears likely to be highly immaterial, as the grant of CIL Relief represents a very small portion of market revenue, and production costs are not materially different.*

(vii) Beneficial effects to outweigh negative effects. *Given that the evidence gathered indicates that any potential negative impacts on competition or investment are likely to be extremely immaterial, the beneficial effects of the grant of CIL Relief would appear to be likely to outweigh the negative effects.*

31. The conclusion of the legal advice is that the subsidy control principles have been met.
32. As the value of the subsidy is less than £1m the matter is not automatically referred to the Competition and Mergers Authority (CMA) although the Council may choose to refer the matter voluntarily. This is not proposed. The CMA have recently considered the over-arching enabling grant from central government (to the value of £75m) and concluded that it met the necessary principles. Although this is a separate subsidy our conclusions, and those of our legal advice, mirror the CMA decision, and self-referral is therefore not considered necessary.
33. Following the recent CMA report on the wider grant, officers have spoken with DBT representatives, who have confirmed that the eRGF bid is continuing to proceed along their standard processes.
34. Finally, should the Council choose to award this relief, an entry will need to be made by officers in the Subsidy Database.

Oxford City Council's Position and Recommendations

35. In consideration of awarding the discretionary relief of the CIL liability of £832,421, the Council must weigh up the value of CIL funds in contributing towards the significant (£824m) infrastructure funding gap of Oxford, against the viability case provided by the claimant.
36. The Council must also consider the broader specific significance of the development and how applying a CIL liability in this instance would offset the unique £75m investment by the Government into the Oxfordshire economy and the manufacturing of electric vehicles in the UK.
37. The Council has considered the outputs of the FVA study and concluded that based on the overall economic viability of the site, the forecast substantial deficit of £65.8 million is a reasonable basis to consider use of the DECR policy on the BMW Mini Plant vehicle site. In this case, it is considered that the application of the CIL liability would have an undesirable impact on the economic viability of the development by further increasing the overall deficit of the site.
38. In addition to this evidence, also considering the broader positive impacts of the development on the local and regional economy; helping to secure future manufacturing at the BMW plant site; and the positive environmental impacts the production of electric vehicles would have in meeting zero-carbon ambitions - it is recommended that the Council awards discretionary circumstances relief in this instance.

Carbon and Environmental Considerations

39. Development of the BMW electric vehicle plant is a part of the Government's broader national ambitions and investments to transition from the production of Internal Combustion Engines (ICE) to electric vehicles. The zero-emission vehicle (ZEV) mandate requires 80% of new cars and 70% of new vans sold in Great Britain to be zero emission by 2030, increasing to 100% by 2035. The Council seeks to support this development in meeting both national and Oxfordshire-wide ambitions to reduce carbon emissions by phasing out the production of ICE vehicles at the BMW Mini Plant.

Financial implications

40. The CIL liability of the site to be considered for exemption is £832,421, which would otherwise be (in absence of the claim for relief) spent on local infrastructure. It is however, expected that the site will contribute positively towards the local and regional economy by leading growth in the electrification of the UK automotive industry and create additional jobs as well as help to secure the future of manufacturing at the BMW Mini Plant.

Legal issues

41. The Council has sought external legal advice regarding whether the granting of relief in this case would amount to a subsidy under the terms of the Subsidy Control Act 2022 and, if so, whether the Council may reasonably and lawfully conclude that the subsidy control principles as set out in the Act are met such that the application for relief may be granted. This issue is also covered in Appendix 7 which is a report by KPGM commissioned by the Claimant and summarised in Appendix 6 which is a summary report by Norton Rose. The external advice the Council has received agrees with the legal advice in the KPGM report and that it is open to the Council to lawfully accept the conclusions in that report, including in respect of the subsidy control principles.

42. The granting of exceptional circumstances relief (“DECR”) from the liability to pay CIL pursuant to BMW’s application has to be considered against the provisions set out in the Subsidy Control Act 2022 (“the Act”) now that the concept of state aid no longer, in any respect which is material to the application, applies in the UK.

The first issue to determine is whether the relief constitutes a subsidy for the purposes of the Act. It is considered that the DECR would constitute a subsidy for the purposes of the Act as it is given, directly or indirectly, from public resources by a public authority; it confers an economic advantage on one or more enterprises (namely BMW); it is specific, that is, it is such that it benefits one or more enterprises over one or more other enterprises with respect to the production of goods or the provision of services; and has, or is capable of having, an effect on competition or investment within the UK. As such the Act is engaged.

43. The Act contains a number of prohibitions (which are detailed in Appendix 7), which, if applicable, would make it unlawful to grant DECR, however, it is considered that none of the prohibitions apply in this case.

44. The Act specifies when a subsidy must be reported to the Competitions and Markets Authority (“CMA”) when a subsidy is regarded as being a subsidy “of particular interest”. It is considered that the DECR in this case is not such a subsidy as it is less than £1 million.

45. A public authority can make a voluntary referral to the CMA in other cases if the subsidy is a subsidy “of interest” and this applies where the total amount of related subsidies in the current year and 2 preceding years do not exceed £5 million. It is considered that the DECR would be a subsidy “of interest” because the ECR together with the Government grant of £75 million would exceed the threshold. However, referral to the CMA in such cases is voluntary. Officers do not consider that it is necessary in this case to refer the DECR to the CMA.

46. In order to be lawful, the ECR must comply with the remainder of the overall subsidy control framework and must be consistent with the 7 subsidy control principles set out in the Act and which are detailed in Appendix 7. This is a matter for the Council to determine.

47. It is considered that the subsidy control principles are met for the following reasons:-

(i) **Common Interest.** The policy objectives of the DECR are to mitigate local economic disruption including generating new jobs and avoiding the potential loss of a range of job (including high skilled jobs) due to factory closure should production be reduced or cease at the Oxford plant. This represents an equity rationale and therefore a common interest.

(ii) **Proportionate and necessary.** The grant of DECR would represent less than 0.1% of

the total project cost and a minor proportion of the overall expenditure on the project. Equally, it represents a very small sum in comparison with the investment in the project by the UK Government. The level of subsidy sought by BMW in the form of DECR is not considered to represent a material risk of market distortion. The package of subsidies sought by BMW of which the DECR is a (small) part is necessary to contribute to the internal rate of return BMW requires to proceed.

(iii) **Designed to change economic behaviour of beneficiary.** The grant of DECR would contribute to the bridging of the gap between the required return as per BMW's investment policy and the currently calculated return. The grant of DECR would therefore influence the project's financial viability, and this influences the investment decision.

(iv) **Costs that would be funded anyway.** In the absence of DECR BMW's internal rate of return threshold for the investment to proceed would not be reached so as to allow the project to proceed. Other than through the investment package (of which the ECR is a part), there is no other identified source of funding to allow the project to proceed.

(v) **Least distortive means of achieving policy objective.** BMW has verbally confirmed that a loan for CIL is not an option, that its ultimate holding company does not undertake external loan financing for capex related projects and that it would not positively influence the IRR calculation. The subsidy is therefore appropriate as a means to contribute to this important project and the objectives (including job creation and security of retention it would achieve). No other less distortive means have been identified and the subsidy through DECR is considered unlikely to cause material trade distortions.

(vi) **Competition and investment within the UK.** The grant of DECR is not considered likely to affect competition within the UK or investment (other than by BMW in the form of its investment in the project). If the electrified MINI is produced at alternative premises outside the UK, any pricing impact appears likely to be highly immaterial, as the grant of CIL Relief represents a very small portion of market revenue, and production costs are not materially different.

(vii) **Beneficial effects to outweigh negative effects.** Given that the evidence gathered indicates that any potential negative impacts on competition or investment are likely to be minimal or not to arise at all, the beneficial effects of the grant of CIL Relief would appear to be likely to outweigh the negative effects.

Officers consider that the subsidy control principles are met in respect of the DECR relief sought and that the grant of relief would be consistent with those principles.

Additional considerations need to be considered if the subsidy proposed to be given is in relation to “energy and environment”. The term “energy and environment” is not defined in the Act and there is no relevant case law. However, given the objective of the project it is possible that the subsidy would be found to engage the energy and environment principles set out. Officers have considered those principles as set out in the Act and, to the extent that each is engaged, they are considered to be met, for the same reasons as are set out in section 5.5 of the KPMG Report, which officers (and the Council’s legal advisers) consider to be sound.

For completeness, CIL Relief, if granted, is not considered to have a “genuine and direct link” with Northern Ireland. As such, the relevant provisions of the Windsor Framework, which retains certain elements of EU law in respect of trade between the Great Britain and Northern Ireland are not considered to be engaged.

48. To conclude, the external legal advice the Council has received on this matter agrees with the detailed advice in Appendix 7 and, as such, it is considered that the granting of DECR in this case would comply with the Subsidy Control Act 2022 and would be lawful.

Level of risk

49. A risk assessment has been undertaken and the risk register is attached (Appendix 3).

Equalities impact

50. There are no equalities impacts arising from this report.

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