Strategy and Resources Committee
10 November 2026

EXCEPTIONAL CIL-RELATED EX GRATIA PAYMENT POLICY

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Wards affected:	(All Wards);
Urgent Decision?	No
If yes, reason urgent decision required:	n/a
Appendices (attached):	Appendix 1 - MHCLG Letter dated 25Th June 2026 Appendix 2 – Draft Exceptional Ex Gratia Payments Policy

Summary

An existing case and request for an ex-gratia payment has prompted consideration of whether the Council should adopt a general framework for exceptional Community Infrastructure Levy (CIL) related ex gratia requests.

Recommendation (s)

The Committee is asked to:

(1) Note the contents of the Governments letter dated 25th June 2026 at appendix 1.

(2) Adopt the Exceptional Ex-gratia payments policy at appendix 2.

(3) Nominate and authorise the S151 officer to determine any request for a CIL Ex-gratia payment, in accordance with the Policy as adopted.

1 Reason for Recommendation

1.1 The Government's clarification of 25 June 2026 confirms that, where justified, collecting authorities may make ex gratia compensation payments from general funds in exceptional CIL cases where payment has already been made. The proposed policy gives the Council a consistent, transparent and auditable framework for considering such requests while protecting the integrity of the statutory CIL regime and the Council's General Fund.

1.2 The policy also provides safeguards against creating an automatic entitlement, treating lawful CIL as refundable, allowing double recovery, or making payments where deliberate or reckless conduct, commercial gain, insufficient evidence or the absence of significant hardship applies.

2 Background

Community Infrastructure Levy

2.1 Community Infrastructure Levy is a statutory charge on qualifying development. Exemptions for qualifying householder and self-build development depend upon the applicable statutory requirements and procedures being met. Where CIL is lawfully due, the Council cannot use a local policy to waive the liability or treat it as though it had not arisen.

2.2 CIL has been chargeable in Epsom and Ewell since 29 April 2014 and the income received has contributed towards the delivery of infrastructure in the borough. Since 2024, all CIL spending decisions have been made in accordance with the CIL Spending Protocol, the most recent version of which was approved by the Licencing and Planning Policy Committee in March 2025.

Concerns about householder development exemptions

2.3 There has been a national campaign in relation to self-builders and those extending their homes who had been left owing the money under CIL. This is because homeowners are usually meant to be exempt, but the application of the CIL Regulations have led to some householders being charged.

2.4 It is important to note that the CIL Regulations must be followed by CIL Charging Authorities and there is no discretion to waive charges. There are however opportunities at specific stages of the CIL process to challenge CIL liabilities.

Government clarification

2.5 On 25 June 2026, the Government wrote to CIL Charging Authorities about household developer exemptions. The letter recognised that some householders had incurred significant CIL charges following procedural errors or retrospective planning permission affecting development that had previously benefited from an exemption or was otherwise not liable. The letter states that collecting authorities may, where justified, make ex gratia compensation payments from their general funds in exceptional cases after payment has been made. Such payments are outside the CIL regime and are not a waiver or refund of CIL funds themselves.

2.6 The letter is explicit that such a payment:

a) is not a waiver or refund of CIL;

b) is made outside the statutory CIL regime;

c) comes from the authority's general funds; and

d) may be appropriate where the householder would have qualified for an exemption, but an administrative error prevented a valid claim and significant hardship resulted.

2.7 It is important to note that the letter makes it clear that there are no changes being made to the CIL Regulations and therefore authorities must continue to follow the regulations.

2.8 As set out in the letter any payments made will not come out of the CIL funds held by the Council, but they would be sourced from general funds.

2.9 It is important to note that there is no requirement for Charging Authorities to introduce a process for making ex gratia compensation payments from their general funds, it is at the discretion of each Charging Authority.

Local Case requesting review

2.10 The Council has had correspondence with a local resident who was subject to a CIL charge on their property because of specific circumstances leading to a retrospective planning permission being required to be submitted. The local resident felt that they had exceptional circumstances which warranted the Council's discretion when it came to applying the CIL charge.

2.11 However, The CIL Regulations were correctly followed in this case (retrospective permissions are not eligible for CIL relief) and the homeowner had already settled the CIL charge in full.

2.12 Following the publication of the government clarification letter referred to above, the homeowner has contacted the Council requesting that it consider an ex-gratia payment from council reserves.

Purpose and operation of the proposed policy

2.13 The proposed policy applies only to individual householder developers undertaking development primarily for their own residential occupation. It is time limited and will cease on 31 March 2027. It does not apply to unpaid CIL or create a right to payment.

2.14 An applicant must satisfy all gateway criteria before an application proceeds to substantive assessment by the S151 officer. These cover the applicant and original exemption, lawful payment, causation, exceptional circumstances, conduct, comparability of the completed development, significant hardship or injustice, alternative remedies, proportionality and the public interest.

2.15 The policy permits no payment, a limited payment, a substantial payment or, in the most exceptional circumstances, a payment equivalent to the CIL paid. Any award may be reduced for contributory responsibility, financial advantage or sums recovered from another party, and may not exceed the CIL actually paid.

3 Risk Assessment

Legal or other duties

3.1 Equality Impact Assessment

3.1.1 There are no equality issues for this report.

3.2 Crime & Disorder

3.2.1 There are no crime and disorder implications of this report.

3.3 Safeguarding

3.3.1 There are no safeguarding implications of this report.

3.4 Dependencies

3.4.1 There are no dependencies of this report.

3.5 Other

3.5.1 There are no other risks of this report.

4 Financial Implications

4.1 The Section 151 Officer should confirm that individual payments are affordable, lawful and consistent with the Council’s financial position and statutory duties before commitment.

4.2 **Section 24 considerations:** The proposed policy does not of itself trigger Section 24.

4.3 **Section 151 Officer's comments**: The proposed policy could give rise to future ex gratia payments where exceptional circumstances are demonstrated. As such payments are discretionary and cannot be quantified with certainty, there is a potential financial risk to the Council if the number or value of claims exceeds expectations. There is currently no dedicated budget for payments under this policy. Any award must therefore be funded from identified resources and remain affordable within the Council's overall financial framework.

4.4 Any payments should be subject to robust eligibility criteria, clear evidential requirements, and an appropriate approval process. Decisions should be made within an agreed financial framework and be funded from existing approved budgets or identified reserves, with no ongoing commitment created unless specifically approved by Members.

4.5 The policy may also create expectations for future compensation requests. It is therefore essential that decisions are fully documented and supported by a clear rationale demonstrating the exceptional nature of each case.

4.6 Subject to these controls, the financial risks arising from the adoption of the policy are considered to be manageable.

5 Legal Implications

5.1 CIL that is lawfully payable cannot be waived or refunded through this policy. Any award would instead be a separate discretionary compensation payment from the General Fund. The policy must identify and rely upon an appropriate legal power for expenditure, comply with public-law principles and be applied consistently on the evidence and may be considered in extraordinary situations. Decisions must be based on objective assessment and aligned with principals of fairness and rationality.

5.2 The Government letter of 25 June 2026 provides the relevant policy context but does not remove the need for the Council to establish its legal power, comply with governance requirements or assess each case independently. The policy as drafted therefore requires evidence on the balance of probabilities, written reasons, consideration of third-party remedies and safeguards against double recovery.

5.3 **Legal Officer's comments**: None other than as set out in the above report.

6 Policies, Plans & Partnerships

6.1 **Council's Key Priorities**: The following Key Priorities are engaged:

- Effective Council: transparent, consistent and accountable decision-making and responsible stewardship of public funds.

6.2 **Service Plans**: The matter is not included within the current Service Delivery Plan.

6.3 **Climate & Environmental Impact of recommendations**: Not applicable.

6.4 **Sustainability Policy & Community Safety Implications**: Not applicable.

6.5 **Partnerships**: Not applicable.

6.6 **Local Government Reorganisation Implications**: Not applicable as the Policy will run to 31st March 2027 only.

7 Background papers

7.1 The documents referred to in compiling this report are as follows: None