

WAVERLEY BOROUGH COUNCIL

VALUE FOR MONEY AND CUSTOMER SERVICE **OVERVIEW AND SCRUTINY COMMITTEE**

25 JUNE 2018

Title:

COMMUNITY INFRASTRUCTURE LEVY – GOVERNANCE ARRANGEMENTS

**[Portfolio Holders: Cllrs Ged Hall, Chris Storey]
[Wards Affected: All]**

Summary and purpose:

The purpose of this report is to set out proposals for the process by which income derived from the Community Infrastructure Levy (CIL) is distributed, including broad criteria to guide the prioritisation of spending. These arrangements seek to ensure that CIL and remaining Planning Infrastructure Contributions (PIC) are used effectively and for the benefit of the community and to meet infrastructure needs arising from new development in the Borough.

The Overview and Scrutiny Committee is invited to provide feedback to Officers on the proposals and the broad principles for evaluating bids for CIL funding, and to enable Officers to develop more detailed proposals for the CIL governance framework which will be brought forward in the Autumn 2018.

Members are requested to focus on paragraphs 29 and 30 and consider whether the suggested approach is the most appropriate for Waverley. Members are not being asked to consider the CIL charging schedule as that has been approved by Council and will be subject to examination on 17/18 July.

How this report relates to the Council's Corporate Priorities:

The implementation of CIL will support the Council's corporate priorities relating to community wellbeing, environment and value for money.

Equality and Diversity Implications:

There are no direct equality and diversity implications arising from this report but the eventual criteria and allocation process will be subject to an Equality Impact Assessment.

Financial Implications:

CIL will make an important contribution towards the funding of infrastructure to support new development. Waverley will receive a contribution towards administrative costs, and Parishes will receive a contribution to use within their parish. The CIL contribution submitted for examination is significantly more than the previous PIC contribution, and

based on target annual housing numbers is expected to generate a significant annual income to support infrastructure development.

Legal Implications:

The Council must ensure that it continues to comply with the CIL Regulations once it has adopted and implemented its Charging Schedule. This will require appropriate governance arrangements to be in place and the implementation of a robust monitoring and reporting system. Legal services are satisfied that the proposals set out in this report comply with the CIL Regulations and shall continue to provide assistance to the relevant officers before and after the Charging Schedule has been adopted and implemented.

Background

- 1 The Community Infrastructure Levy (CIL) is a charging system that enables contributions to be collected from planning development towards infrastructure projects. Unlike bespoke planning obligations, there are no restrictions on where or on what infrastructure projects CIL funds can be spent, provided projects are on the Council's "Regulation 123 list", which lists the types of project that may be funded by CIL. There is no statutory requirement for local authorities to adopt CIL; however, a council may normally only move forward with adopting and implementing its CIL Charging Schedule once it has adopted (or is close to adopting) its Local Plan.
2. At its meeting on 24 April 2018, the Council agreed to submit its Draft Charging Schedule (DCS) for Examination and this has now been done. The Examination hearings are likely to take place during the summer (possibly July 2018) and subject to the report of the Examiner, Waverley expects to adopt the CIL Charging Schedule in the Autumn, with the charge expected to come into effect before the end of 2018.

Previous Arrangements

3. Prior to the introduction of CIL, planning obligations were secured through S106 Agreements to obtain developers contributions towards infrastructure including public open space, transport schemes and education facilities. Funds collected towards transport and education were allocated to Surrey County Council (SCC) as the highway and education authority. Amounts collected towards public open space are being used by Waverley to fund capital projects identified by the Parks and Countryside Team and Recycling.
4. CIL Regulations that came into force in 2015 have limited the opportunity for the Council to pool developer contributions towards infrastructure using conventional section 106 agreements. The balance of planning infrastructure contributions is now circa £10,000k, although new contributions are still received in relation to planning permissions granted under the previous arrangements but only now being implemented. It is proposed that the disbursement of remaining PIC monies should be included in the proposed arrangements for spending CIL monies.

What can CIL funds be spent on

5. It is important to recognise that CIL contributions are intended to fill funding gaps and are not expected to provide the full costs associated with delivering and maintaining infrastructure. The Council must use the CIL funds for "the provision, improvement,

replacement, operation or maintenance of infrastructure to support the development of its area". Whilst CIL should not be used to pay for what might be considered "historical deficits" of infrastructure provision, the regulations do allow for improvements to increase the capacity of existing infrastructure.

6. "Infrastructure" includes roads and other transport facilities, flood defences, schools and other educational facilities, medical facilities, sporting and recreational facilities, and open spaces. CIL can also be used to fund provision of Suitable Alternative Natural Greenspace, provided to avoid the effects of development on the Thames Basin Heaths SPA.
7. 15% of CIL receipts are passed directly to those parish and town councils where the development has taken place, capped at £100 per existing dwelling. Parish Councils that have adopted a neighbourhood plan will receive 25% of the CIL revenues arising from the development that takes place in their area. There is no annual limit to this amount. For this to apply, the neighbourhood plan must have been made (Section 61E of the Town and Country Planning Act 1990) before a relevant planning permission first permits development.
8. The neighbourhood portion of CIL is not subject to the same spending restrictions and limitations as are applied to the Council, and can be applied to "anything else that is concerned with addressing the demands that development places on an area".

Regulation 123 List

9. The purpose of the Regulation 123 List is to set out those types of infrastructure for which the Council will not seek a section 106 planning obligation or require a section 278 highway agreement. These agreements can still be used to make a development acceptable in planning terms but their use is scaled back by the introduction of the CIL. Although the Regulation 123 List may indicate the types of infrastructure that may be partly or wholly funded through CIL the list is not exclusive; it is required in order to avoid a developer being "double charged".
10. The inclusion of projects in the Regulation 123 List does not signify a commitment by the Council to fund all the projects listed, or the entirety of any one project through CIL. Nor does the list imply any order of preference for spending. It does, however provide a starting point for considering which projects CIL funds should be directed towards. The Regulation 123 List can be reviewed on a regular basis without reviewing the Charging Schedule, subject to appropriate consultation, provided the changes do not have a very significant impact on the viability evidence that supported the Charging Schedule.

Infrastructure Delivery Plan

11. The Infrastructure Delivery Plan (IDP) is part of the evidence base supporting the Local Plan. Within this, the Infrastructure Delivery Schedule sets out a list of infrastructure projects, including health, education, social and community, water supply, waste water, waste management, telecommunications, flood alleviation, green infrastructure and transport. This can provide a starting point for considering all the potential calls on the CIL funds but it should be noted that it represents an overall list of the infrastructure needs and costs identified by all the service providers and utility companies, regardless of other potential funding sources.

12. It should also be noted that the Infrastructure Delivery Schedule represents the understanding of requirements at the time it is prepared and will require regular updating with additional or alternative requirements as time passes and development progresses.

Relationship between CIL, S106 and S278

13. Infrastructure can be provided by developers in several ways: through the CIL, S106 agreements or highway agreements. The combined total costs of these (including any planning conditions) should not threaten the viability of the development. With CIL in place the use of S106 agreements and highway agreements is limited, as noted under the section on the Regulation 123 List above.
14. Individual S106 agreements need to specify the projects and purposes any financial contributions will be directed towards. This is because the CIL regulations require planning obligations to be directly related to the development and prevent more than five contributions for the same infrastructure project or type of infrastructure being pooled (since April 2010), providing it is not on the Regulation 123 list.
15. Highway agreements are used to pay for the cost of highway works that are required as a result of the development, but cannot be required for works that are intended to be funded through the CIL, i.e. items that are on the Regulation 123 List. Revisions to the Regulation 123 List therefore needs to be carefully worded so that it does not inadvertently rule out the use of S278 agreements where there would be merit in retaining the ability for developers to contribute towards specific local highway works. Revisions to the Regulation 123 List concerning highway works should therefore be discussed and agreed with Surrey County Council in advance.

Existing S106 Funds

16. The CIL funds will be in addition to S106 funds held by the Borough Council and by Surrey County Council (for education and transport) secured prior to the introduction of CIL. Further S106 contributions will be due for some time to come from developments that were permitted prior to the introduction of CIL where development has yet to start. It may therefore take a number of years before all the historic pooled S106 contributions secured prior to the introduction of CIL have been collected and spent.

Administrative Expenses

17. The amount of officer time associated with administering the CIL will require additional staff resources. Up to 5% of the total CIL receipts can be used towards the administrative costs incurred in establishing and running the charging scheme. These administrative functions include preparing evidence on viability to support a review of the charging schedule, examination of the charging schedule, establishing and running the billing and payment systems, monitoring and reporting, including information technology systems, enforcing the levy, and legal costs associated with payment in kind.
18. Without this additional support it will not be possible to maximise the amount of levy due. The regulations specify the stages in the collection process which involves the issuing of a complex series of notices. Other tasks include chasing non-payment. The

monitoring of receipts and expected payments will be essential to knowing the amount that can be allocated in the coming year.

19. With the increase in the amount of development that will be liable for the CIL, the Council has already agreed to utilise up to 5% of the CIL receipts for administrative and monitoring expenses in accordance with the regulations, and a Planning Officer is being recruited to monitor and manage CIL receipts, with a bespoke CIL software package. These costs should be recovered when sufficient CIL receipts are available.

Allocating CIL Funding to Infrastructure Projects

20. There are options for the Council regarding how the remainder, excluding the 5% administration costs and the 15-25% neighbourhood portion, will be spent. Whilst it may be expected that a significant proportion of available CIL funds will be allocated to a shortlist of high priority projects, the split between strategic schemes that may benefit a wider area of the borough and projects that are very local facilities to be used by a smaller group of residents may vary from year.
21. Discretion remains with the Council regarding when and how much, if any, CIL funds are passed to other providers of infrastructure such as SCC. Based on advice from the District Councils' Network and County Councils Network and a study of practice adopted by councils elsewhere in the country, the Protocol proposed sets out steps based on the submission of a completed bid for funding. The bid should set out robust evidence of the cost and practicality of delivering the scheme or project, including an exploration of alternative sources of funding.
22. Once allocated, if passed directly to other major infrastructure providers, commitment should be sought in the form of an indemnity agreement to ensure that funds are spent in accordance with the terms of the Regulation 123 list. Alternatively, funds could be retained by the Council until works are carried out and then reimbursement made on the presentation of works invoices.

CIL and Planning Obligations Funding Allocation Protocol

23. It is anticipated that the implementation of will occur 3 months after the CIL Charging Schedule is adopted. . The Borough Council will be responsible for making the final decisions on the allocation of funding raised through the CIL. While it is likely to be some time before significant CIL funds are built up, councillors, service and infrastructure providers should agree in advance how the funds could be used to benefit the borough and support the infrastructure for new developments.

The CIL and Planning Obligations Funding Decision Protocol - Options

24. As part of the consideration of the governance of how Waverley allocates its CIL receipts, the approach of those Surrey districts that have adopted CIL has been reviewed. Eight of the eleven districts have adopted CIL, and a range of different governance structures and approaches have been implemented:

Elmbridge	Annual strategic bids to officers who make recommendations to the borough's Spending Board (7 Members) who make recommendations to the Cabinet.
Epsom & Ewell	Schemes considered by three levels of officer/member groups

	before recommendations to the borough Strategy & Resources Committee, with final determination by Full Council.
Reigate & Banstead	Officer Strategic Infrastructure Group maintains a rolling 5-year Strategic Infrastructure Programme which prioritises projects for allocation of CIL in accordance with criteria and business cases submitted by infrastructure providers. Recommendations are determined by the Executive.
Spelthorne	Spelthorne Joint Committee* determine bids put forward by a joint borough/SCC officer/Member CIL Task Group against a framework of criteria. Joint Committee decision is final subject to scrutiny role each authority.
Surrey Heath	A CIL Governance Panel (Leader, PFH for Finance, Chief Executive, and Section 151 Officer) makes recommendations on prioritisation of projects and allocation of CIL to the Executive for determination.
Tandridge	Strategic bids rolling programme; officer recommendations to the Local Plan Working Group and then Planning Policy Committee for decision.
Woking	Annual round of CIL bid recommendations from Member/Officer Infrastructure Working Group to the Woking Joint Committee*, following extensive consultation with local Members and stakeholders. Joint Committee decision is final subject to scrutiny role each authority.
Mole Valley	Governance arrangements still being developed

*Joint Committees in Spelthorne and Woking have replaced the SCC Local Committee for these districts. The Joint Committee comprises an equal number of borough and county members with equal voting rights, and terms of reference agreed by the county council and the borough council that meet local priorities. The Joint Committee may make decisions on local services and budgets delegated to it by either Surrey County Council or the borough council.

Funding Decision Protocol – Key Principles

25. Before developing the detailed governance framework it is helpful to agree the key principles that it needs to satisfy. The following list sets out suggested principles including some options:
- The process will tie in with an annual reporting and review of CIL and the Regulation 123 list.
 - Funds to be targeted so that they address identified infrastructure priorities as outlined in the Regulation 123 list, and address the impacts of development.
 - Decision-making will be made by the Council but will be informed by liaison with service and infrastructure providers and the views of stakeholders and the community through consultation and engagement towards a consensus for funding priorities.
 - Decision making and the process leading to it to be transparent.
 - The allocation process, including the consultation stage, to be based on estimated CIL income, together with any unallocated funds from the previous financial year.
 - Opportunities for joint funding of schemes, including with Parish Councils, will be considered where these reflect shared priorities and attract additional sources of income including the parish share of CIL.

- Monitoring and reporting of CIL income and expenditure to be supported by development of appropriate key performance indicators.
- Investment of funds to be timely in relation to when they are received.

Timetable options

26. Given the importance of providing infrastructure to support new development, governance arrangements should not allow large balances of unallocated CIL to accrue, and account turnover may be a key performance indicator to be monitored.
27. The various governance models in place in Surrey boroughs show some of the options available e.g. an annual bidding round aligned with the annual budget process; rolling programme of strategic bids; rolling 5-year capital programme. Officers suggest that timely investment is best achieved with a quarterly bidding and decision-making cycle. This spreads the work load across the year, and enables bids to be submitted as projects are identified, or as co-funding opportunities emerge.

Decision-making options

28. The other Surrey boroughs have different decision-making models, including full Council, the Executive/Cabinet, and SCC Joint Committee. Options for Waverley to consider are funding decisions to be taken by:
- Full Council
 - The Executive up to a defined limit, and then referred to Council
 - The Executive under delegated authority
 - A designated CIL Board established for this purpose with full delegated authority

Evaluation of bids

29. Prioritisation of CIL funds to projects should aim to ensure that additional infrastructure capacity is delivered at around the same time as new development in an area. Three categories of priority are proposed:

	Category	Description
1.	Critical	<p>Infrastructure that must happen to enable growth ie is required to unlock any future works, and without it development cannot proceed. These infrastructure items are considered to be critical and are usually linked to triggers controlling the commencement of development activity eg transport to access the site, major utilities infrastructure.</p> <p>These are projects which are usually identified as required mitigation in Sustainability Appraisal, Habitats Regulation Assessment, EIA, or Traffic Impact Assessment.</p>
2.	Essential	<p>Infrastructure that is essential and considered necessary to support and/or to mitigate impact arising from the development. The timing and phasing of these infrastructure projects is less critical and their provision is usually linked to triggers related to the occupation of development sites.</p>

3.	Desirable	Infrastructure that is required to support wider strategic objectives, often aligned to place making, and to build sustainable communities but would not necessarily prevent development from occurring. This type of infrastructure is more influenced by whether a person chooses to use this facility or service eg community facilities, libraries, and sports facilities. The timing of this infrastructure is not critical over the plan period and is usually linked to triggers controlling the completion of development sites.
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See the Prioritisation Process flow-chart, attached.

Proposed governance approach

30. Waverley has considered the different governance models and suggests the following approach:

- Bids for funding are invited on a quarterly basis (deadlines 30 June, 30 September, 31 December, 31 March), to be received in a prescribed format and including any co-funding identified or potentially available if CIL funding is awarded.
- Bids may be submitted by Waverley Services, Surrey County Council, Town and Parish Councils, and other Infrastructure Providers. The application process and pack will be available on the website, and there will be regular communications to potential bidders.
- Bids are reviewed and evaluated by Officers and ranked in accordance with evaluation criteria (to be agreed).
- All bids are considered by a CIL Governance Board (Leader, PFH for Finance, Chief Executive, and Strategic Directors). Panel makes recommendations on prioritisation of projects and allocation of CIL to the Executive for determination. Reasons for recommendations to fund or not fund any bid to be made explicit.
- Recommendations are decided by the Executive, with clear reasons.
- Community Overview and Scrutiny Committee can review effectiveness of process after its first year in operation.

Conclusion

31. CIL will make an important contribution towards the funding of infrastructure to support new development in Waverley. The transparent and timely allocation of funds to specific projects, and the prompt delivery of these projects within an agreed timeframe, will be an important factor in enabling communities to mitigate the impacts of development in their area, and to secure benefits from local development.

Recommendation for Overview and Scrutiny Committee

The Overview and Scrutiny Committee is invited to provide feedback to Officers on the proposals and the broad criteria for evaluating bids for CIL funding, and to ask Officers to develop more detailed proposals for the CIL governance framework and criteria which will be brought forward in the Autumn 2018.

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

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