

# Community Infrastructure Levy (CIL) Strategic Allocation Funds Assessment



Cabinet Member for Economic Development, Leisure & Local Plan

Date: 20<sup>th</sup> January 2022

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Key Decision? YES

Local Ward Members All wards affected

## Overview & Scrutiny Committee

### 1. Executive Summary

- 1.1 At the 8<sup>th</sup> June 2021 Cabinet meeting, members approved a report which set out a revised criteria and scoring regime to assess bids for the allocation of Community Infrastructure Levy (CIL) funding to meet strategic infrastructure requirements.
- 1.2 Amendments to the governance arrangements relating to the allocation of Strategic CIL funds were also recommended and supported by members at the same June Cabinet meeting and confirmed by Full Council at its meeting on the 12<sup>th</sup> October 2021.
- 1.3 The decision of cabinet affirmed by Full Council included the following elements:  
*“... consideration of the future preparation and revision of CIL policies, procedures and proposals including approval of spending discretionary CIL allocations for strategic infrastructure projects is made the responsibility of the Strategic Infrastructure Group (SIG) in conjunction with the Cabinet member for Economic Development and Local Plan, Parks & Leisure.*  
  
*That the operation of the SIG is scrutinised by the new Overview & Scrutiny committee and/or any such Task Group established for this purpose”*
- 1.4 A bidding round of applications to use CIL was closed on the 1<sup>st</sup> October 2021 and has been significantly over subscribed. The CIL strategic pot has accrued monies of approximately £1.6 million whilst the bids received totalled approximately £7.9 million.
- 1.5 In light of this oversubscription, views are being sought from Overview & Scrutiny on whether the current guidance / criteria for SIG’s decision-making should be amended as set out in the report.
- 1.6 Views are also sought on the advice to recommend Community Infrastructure Levy (CIL) funds for Strategic Infrastructure to:
  - Fradley & Streethay PC - New Community Centre - £600,000
  - Lichfield & Hatherton Canal to receive £260,000, subject to the land transfer between SCC and the trust being confirmed and the regularising of existing project works elsewhere on the canal route having regard to planning regulations.
  - That the remaining accrued monies are retained and that a future bidding round is expedited during the first half of 2022.

## 2. Recommendations

2.1 To seek comments of Overview & Scrutiny on:

- a) The proposed amendments to the current guidance (Appendix 1) so as to preclude bids where there are regulatory / financial / legal concerns, in the interests of due diligence in awarding monies.
- b) Whether any specific criteria unfairly disadvantages / provides advantage to a project, particularly:
  - i) The approach towards retrospective bids
  - ii) Inclusion in a neighbourhood plan or settlement policy given there isn't district wide neighbourhood plan coverage or the need for local plan policies to be duplicated in neighbourhood plans / policies
  - iii) The approach towards deliverability (shovel readiness) in the interests of allowing those projects that can come forward without delay to come forward, whilst recognising that some projects may need funding commitment in order to access other funding opportunities in order to come forward.
- c) The proposed projects recommended to be allocated the Community Infrastructure Levy (CIL) funds for Strategic Infrastructure:
  - Fradley & Streethay PC - New Community Centre - £600,000
  - Lichfield & Hatherton Canal to receive £260,000, subject to the land transfer between Staffordshire County Council and the trust being confirmed and the regularising of existing project works elsewhere on the canal route having regard to planning regulations being confirmed.
- d) The retention of the remaining accrued monies for a future bidding round which is expedited during the first half of 2022.

## 3. Background

3.1 In June 2021, members of the Council's Cabinet approved a report which set out a revised criteria and scoring regime to assess bids for Community Infrastructure Levy (CIL) funding to meet strategic infrastructure requirements. The revisions took account of issues identified following the first round of bidding in 2018. The amendments sought to ensure that any monies spent in this bidding round are focussed on truly strategic projects. The new criteria and scoring methodology focusses on prioritising bids that are consistent with the policies and objectives set out in the Local Plan and its supporting evidence base in the Infrastructure Delivery Plan (IDP) and Infrastructure Funding Statement (IFS) as well as the Council's Corporate Strategic Plan.

3.2 Amendments to the governance arrangements relating to the allocation of Strategic CIL funds were also recommended and supported by members at the same June Cabinet meeting and confirmed by Full Council on the 12<sup>th</sup> October 2021.

3.3 The CIL Strategic pot has available funding of £1.6 million. The bidding process for applications for the CIL funding opened on 1<sup>st</sup> August 2021 and closed on 1<sup>st</sup> October 2021. A total of 9 bids were received, summarised in Table 1 below.

Table 1

Infrastructure Provider	Project	Funding amount requested
Lichfield District Council Operational Services	New Lichfield Leisure Centre	£1,000,000
Lichfield District Council Major Development Projects Team	Pedestrian Priority City Centre Streets.	£110,000

Lichfield District Council Major Development Projects Team	Improvements to Public Realm and Wayfinding within Lichfield City Centre.	£233,104.50
Lichfield District Council Major Development Projects Team	Lichfield City Centre Car Parking enhancements	£280,000
Staffordshire County Council Education *	King Edwards School Expansion – completed project	£1,873,736.69
Staffordshire County Council Education*	Netherstowe School Expansion – project has commenced.	£3,115,986.54
Lichfield & Hatherton Canal Restoration Trust	Restore the canal linking Deanslade Park to Falkland road – Fosseyway canal walk	£260,000
Fradley & Streethay PC	New Community Centre	£600,000
Swim House, Lichfield	Funding towards 3 swimming pools	£450,345
<b>Total</b>		<b>£7,923,172.73</b>

*\*With regard to the two SCC Education projects, it is understood that the applicant wished to identify the full extent of the CIL monies they would be seeking in respect of the two projects, and so if supported the applicant under the process in place would require future spending rounds to contribute towards the cost of these projects and would therefore be making future application submissions.*

#### Project Assessment / Prioritisation

3.4 As the above table above demonstrates, the total value of applications received is over £7.9million, so there are insufficient funds to fund all of the bids submitted. A review of the guidance and criteria was undertaken to check whether the guidance including scoring criteria were fit for purpose and/or needed to be amended. The review identified the need to re-consider the guidance / scoring criteria to:

- tighten the guidance on the regulatory / financial / legal elements in the interests of due diligence in awarding monies
- clarify the approach towards retrospective bids
- clarify whether bids should be part of a neighbourhood plan or settlement policy given there isn't district wide neighbourhood plan coverage or the need for duplication in plans / policies
- include a focus on deliverability (shovel readiness) whilst recognising that some projects may also need funding commitment in order to access other funding opportunities.

#### Regulatory / financial / legal considerations

3.5 The updated bid guidance document (July 2021) at Appendix 1 was provided to those expressing interests in bidding. It sets out that before bid assessment takes place, the following should be checked for bids to be eligible.

- The Expression of Interest Form has been completed satisfactorily
- The organisation has the legal right to carry out the proposed project
- The project is clearly defined as infrastructure as per the CIL Regulations
- The project conforms with the District Council's Infrastructure Funding Statement

3.6 The scoring criteria form also contains a risks section that considers:

- Physical and environmental impacts e.g. flood risk, contamination biodiversity, noise etc.
- Approvals of necessary consents e.g. planning permissions
- Ownership, acquisition or compulsory purchase order issues
- Partnership and governance issues
- Dependency on other projects going ahead

3.7 However, the guidance document does not explicitly set out whether projects should be precluded where they are being applied for from organisations that are:

- In breach of regulatory requirements and or cannot meet financial requirements on other projects elsewhere including where the bid project is dependent on the other projects going ahead.
- Are not able to substantiate claims in the Expression of Interest application
- Do not have appropriate governance in place
- Are using funding to address commercial risk rather than being necessary for project delivery.

3.8 Without such clarity and checks in place, there is a risk that whilst the 'risks / constraints' category scoring may be suppressed by concerns, some bids may still score well overall and therefore be awarded monies to projects ultimately with unacceptable financial /reputational risks for the council as the awarding body.

3.9 Accordingly, views are sought on whether the guidance should be tightened to prevent the awarding of monies to projects that cannot show they meet a fit and proper test to proceed as referenced above.

#### Retrospective bids

3.10 In respect of the schools' proposals put forward by Staffordshire County Council, it is noted these projects are either complete or underway. The CIL Regulations (59-60) do allow (subject to certain conditions) for costs incurred in the delivery of infrastructure to be reimbursed. The decision to allow this approach (or not) lies with Lichfield District Council as the CIL Charging Authority. Such an approach is, however, unusual, particularly as the need for funding has effectively been overridden by the fact that development has taken place or is taking place.

3.11 Retrospective projects will inevitably score well in part due to their ability to show delivery and reduced risk by confirming other funding sources are in place also creating an uneven playing field for bid assessment.

3.12 The views of Overview & Scrutiny are sought as to whether retrospective bids should be excluded as advised in this report, or if there are any exceptional circumstances that exist for retrospective funding.

#### Inclusion in a neighbourhood plan or settlement policy

3.13 It has been identified that scoring in relation to the Neighbourhood Plans and Settlement policies criteria could result in an uneven playing field for some bids. This is because not every bid may be based in an area with a neighbourhood plan. Furthermore, it is recognised that there could be the potential for uneven scoring against this criteria if a project was not referenced in a neighbourhood plan simply because the decision had been taken when the neighbourhood plan was prepared that to do so would duplicate policies / proposals in the Local Plan / Allocations Development Plan document.

3.14 The views of Overview & Scrutiny are sought as to whether the above criteria should therefore be omitted in the interests of fairness in the bid assessment process.

#### The approach towards deliverability (shovel readiness)

3.15 The work to date by SIG and the Cabinet Member for Economic Development Leisure & Local Plan has considered whether only projects that are 'shovel ready' should be allocated funds; or whether some monies should be allocated towards projects which score well, but need the CIL funding to secure other funding to allow the project to proceed.

3.16 Ultimately, a balance needs to be struck between ensuring that the community can benefit from those strategic projects that are ready to commence, whilst recognising it may be prudent to retain some monies and allocate them for a specific project or projects that may not be immediately ready. This is because it can be that a commitment is required by other potential funding sources that monies are available from the Strategic CIL pot in order to lever in other monies. Such an approach requires appropriate planning and certainty for such projects to be successful in maximising the potential for match funding.

- 3.17 The scoring criteria currently give regard to whether the project is deliverable within the next 3 to 5 years, but this is only one consideration in the overall scoring process. Views are sought on whether the balance towards deliverability in the scoring approach is appropriate, whether the delivery period of 3 to 5 years is appropriate as a basis for allocating funds and at which point it is decided that if progress cannot be made, and monies are returned to the strategic pot for reallocation.

### Bid Assessment

- 3.18 Appendix 2 sets out the scoring and ranking of bids by SIG based on the allocation guidance as drafted in July 2021. The assessment was undertaken without the criteria that had reference to neighbourhood plans / settlement policy for the reasons set out earlier in this report.
- 3.19 Since the submission of the bids, however, circumstances have changed. Taking account of these changes and the considerations outlined in the first part of this report, the narrative below sets out bid recommendations having regard to the proposed changes.
- 3.20 The Leisure project will now require revision as it was unable to secure some of the match funding sought from other sources and therefore is not currently readily deliverable. In relation to the three bids from the Major Projects team, it is understood further work is now being undertaken in relation to establish whether CIL funding is indeed required. Accordingly funding of these projects is not considered necessary.
- 3.21 In relation to the bid by Swimhouse Leisure Ltd, clarification from the applicant in the interests of due diligence has indicated that they are a Community Investment Company (CIC), but are awaiting confirmation from the regulator of charitable status. Once the applicant is able to confirm its status, it would be appropriate as part of any due diligence process for officers to then undertake appropriate regulatory / financial checks before consideration is given to the allocation of any funds. Finally, it is understood that some of the match funding is not fully secured and may be dependent to a degree on agreement from other sources once funding from this Strategic Infrastructure Community Infrastructure Levy Pot has been confirmed.
- 3.22 In relation to the bid by Fradley & Streethay Parish Council for a community hall, checks indicate that the Fradley & Streethay Parish Council has S106 funding of £250,000 available to match fund the bid request and the proposals would be consistent with the adopted Lichfield Local Plan and the Council's corporate strategic objectives. Accordingly, it is considered the project can be 'shovel ready' and is consistent with the scoring criteria objectives. As part of the award further detail will need to be provided in terms of ongoing maintenance and management of the building once completed.
- 3.23 Finally, in relation to the Lichfield & Hatherton Restoration Canal Trust project bid, it is recognised that the delivery of the reopening of the Canal restoration is identified in the adopted and emerging Local Plan and would fit with the corporate plan strategic aims and objectives. However, following due diligence checks, any award would need to be subject to the Trust regularising existing project works elsewhere on the canal route having regard to planning regulations. It is noted that the Canal Trust match funding is predominantly provided in kind by volunteer hours rather financial contributions. It is, however, understood that the trust has received funding in the past and have been able to deliver project work with such an approach, which therefore can be taken into consideration having regard to any concerns at such an approach. Finally, it is understood that part of the project will require the transfer of land currently in the County Council's ownership. Due diligence checks indicate that the County Council has agreed the principle of transfer, however, the formal legal process is still ongoing. It is understood the legal process is anticipated to be completed soon, whilst members of the Canal Trust are in communication with the Council in respect of seeking to regularise the other canal projects started having regard to planning regulations. Accordingly, significant delay to address these points is

not anticipated, but it is officers' advice that any award to the Canal Trust is subject to these conditions being met. The views of Overview & Scrutiny are sought as to such an approach.

Concluding Comments

3.24 As referenced earlier in this report, £1.6 million has now been accrued in the Strategic Infrastructure Levy pot. Having undertaken assessment of the bids submitted including having regard to up to date information and having undertaken due diligence checks, it is considered that the following projects can be supported:

- Fradley & Streethay PC - New Community Centre - £600,000 to be match funded with £250,000 from Section 106 Agreement.
- Lichfield & Hatherton Canal receive £260,000, subject to the land transfer between SCC and the trust being confirmed and the regularising of existing project works elsewhere on the canal route having regard to planning regulations.

3.25 It is proposed that the remaining monies are retained and that a future bidding round is expedited during 2022. This additional time may provide opportunity for some of the projects referenced above to resubmit revised proposals to address any concerns / issues identified. The applicants will receive formal confirmation following the decision making of cabinet. However, members' views are sought on the recommendation and whether members wish to consider bringing forward any of the other schemes outlined.

Alternative Options	<ol style="list-style-type: none"> <li>1. To retain and continue to accrue monies to create a larger pot that can be used for delivery of some of the projects that currently have not fully secured match funding and or have to undertake steps to be financially and regulatory compliant. This would result in funds that are available at the present time being held back that could allow communities to benefit from monies received either from Community Infrastructure Levy or Section 106 Agreements for the community and may be time sensitive in respect of being spent.</li> <li>2. To distribute the funds to the Staffordshire County Council Education projects. This would set an unusual approach of funding projects which are either already complete or partially complete rather than on projects where the funding is required to deliver projects not yet commenced and would provide an unlevel playing field for other bids.</li> </ol>
Consultation	The report has been prepared having regard to the views of the Strategic Infrastructure Group (SIG) officers in conjunction with the Cabinet member for Economic Development, Leisure and Local Plan. The scoring criteria and governance arrangements have previously been subject to Cabinet consideration on the 8 <sup>th</sup> June 2021 and Full Council on 12 <sup>th</sup> October 2021.
Financial Implications	The Fradley & Streethay PC bid will require £250,000 currently held via Section 106 agreement by the Local Authority – The cost of the centre has been estimated at £850,000 being funded by CIL of £600,000 and Section 106 of £250,000
Approved by Section 151 Officer	Yes
Legal Implications	The criteria and guidance for the allocation of funds has regard to the Community Infrastructure Legislation regulations as amended 2019.

Approved by Monitoring Officer	Yes
Contribution to the Delivery of the Strategic Plan	<ol style="list-style-type: none"> <li>1. Supports the priority of 'Enabling People' through provision of facilities so they can live healthy and active lives.</li> <li>2. Supports the priority of 'Shaping Place' through delivery of projects consistent with the adopted &amp; emerging Local Plans and supporting IDP &amp; IFS</li> <li>3. Supports the priority of 'Developing Prosperity' through, enhancing the district and providing certainty for investment.</li> <li>4. Supports the priority of being a 'Good Council' by accountability, transparency and responsiveness by allocating funds for bids received and which are readily deliverable.</li> </ol>
Equality, Diversity and Human Rights Implications	<ol style="list-style-type: none"> <li>1. The bid guidance has been assessed against the Council's equalities objectives and ability to comply with national legislation.</li> </ol>
Crime & Safety Issues	<ol style="list-style-type: none"> <li>1. NA</li> </ol>
Environmental Impact	<ol style="list-style-type: none"> <li>1. The bid guidance has been considered having regard the Council's Strategic Objectives and the adopted and emerging Local Plan policies which have been informed by the Council' Strategic objectives including for the Environment. Any projects subsequently awarded monies will be required to conform to up to date Building Control regulations and conditions attached to any planning consent required.</li> </ol>
GDPR / Privacy Impact Assessment	A Privacy Impact Assessment indicates commercial sensitivity is contained within some of the bids, whilst due diligence checks will potentially use confidential information known to the Council. This information will is exempt from publishing in the public domain.

	Risk Description & Risk Owner	Original Score (RYG)	How We Manage It	Current Score (RYG)
A	The decisions of Cabinet are challenged by the bid applicants	Likelihood – Yellow Impact - yellow Risk - yellow	Through the assessment and governance processes in place reviewing the bid criteria and formal notification to bidders of the decisions made with reasons	Likelihood – Green Impact – yellow Risk - Green
B	The monies allocated do not deliver the projects submitted / projects are delayed	Likelihood – Yellow Impact -yellow Risk - yellow	Review of the guidance and assessment criteria and applying of due diligence checks ensure the funds are allocated to schemes in which risk has been mitigated against	Likelihood – Green Impact – yellow Risk - Green
C	The cost of delivering the projects increases due to inflation or changes in specification	Likelihood – Yellow Impact -yellow Risk - yellow	Contingency arrangements will be required by the applicants to be identified in the terms & conditions of the grant agreement	Likelihood – Green Impact – yellow Risk - Green
D	The projects have an adverse impact on the Climate Change pledge approved by Council	Likelihood – Yellow Impact -yellow	Proposals will need planning permission and will need to be considered having regard to policies in the adopted Local Plan, up to date building regulations and terms of	Likelihood – Green Impact –

		Risk - yellow	conditions of the grant agreement contract	yellow Risk - Green
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	<b>Background documents</b> Cabinet report 8 <sup>th</sup> June 2021 Report to Full Council 12 <sup>th</sup> October 2021
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	<b>Relevant web links</b> <a href="#">Cabinet report 8<sup>th</sup> June 2021</a> <a href="#">Report to Full Council 12<sup>th</sup> October 2021</a>
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