

Governance of Planning Obligations – Strategic Infrastructure Group and allocation of Community Infrastructure Levy



Lichfield
District Council

Cabinet Member for Housing and Local Plan

Date: 5 March 2024
Agenda Item: 3
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Key Decision? YES
Local Ward All members

Cabinet

Members

1. Executive Summary

- 1.1 The purpose of this report is to inform Cabinet of the issues with the current governance for allocating and monitoring S106 and Community Infrastructure Levy (CIL). In response to these issues the report proposes changes to governance arrangements, including revisions to the membership of the Strategic Infrastructure Group (SIG) and the process for allocating CIL. The report also provides a broad overview as to how we secure infrastructure across the district and the various types including financial obligations.

2. Recommendations

- 2.1 It is recommended that Cabinet approve:
- The revised membership of SIG in Table 1.
 - The creation an annual 'Infrastructure List' within the Infrastructure Funding Statement (IFS) which would set out a shortlist of strategic projects and/or types of projects that would be eligible for applications for CIL funding that year.
 - The revised CIL governance and administration procedures (**Appendix A**), and the allocation and spend of CIL additional guidance (**Appendix B**) documents to reflect the proposed changes.

3. Background

Planning obligations and provision of infrastructure

- 3.1 Through the Local Plan the council is required to set out how the district will grow in the future, which includes setting out where new development, for example new housing or new employment opportunities will be located to meet the growing needs of the district. A key part of that is ensuring that there is appropriate infrastructure, which is required to support the growth identified within the Plan. There are several ways in which infrastructure is secured:
- Physical infrastructure – some developments will be of a scale where they will need to provide it as part of the development. For example, appropriate access, a new school, affordable homes, or community facilities such as open space, play areas, community halls. Such infrastructure will be secured through a Section 106 (S106) agreement and will directly relate to that development.

- Financial obligations – some developments will need to make financial contributions towards specific infrastructure. For example, a scheme may be required to provide a financial contribution towards improving/increasing the size of a school. As with physical infrastructure these contributions will be secured through a S106 agreement and in most instances will be directly related to the development.
- Community Infrastructure Levy (CIL) – CIL is a financial charge per square metre of new development that is collected by the District Council. Monies received through CIL can then be combined to fund strategic infrastructure across the district. A proportion of CIL¹ is also passed over to the Parish Council where the development has taken place for the Parish spend on infrastructure in their area.

- 3.2 The council has an [Infrastructure Delivery Plan](#) (IDP) which identifies the infrastructure which is needed alongside the development within the adopted local plan. The IDP is a key piece of evidence and is prepared with engagement from those bodies responsible for the delivery of infrastructure, for example health providers - NHS integrated Care Board (ICB), the police, and the county council. The delivery of infrastructure (both physical and financial) is monitored and reported upon each year through a [Infrastructure Funding Statement](#) (IFS). The IFS details the infrastructure and financial obligations which have been secured, received, and spent each year.
- 3.3 With regards to physical infrastructure, broadly this is delivered to ensure a development is acceptable in planning terms and that any harm caused by the development is mitigated. As such the physical infrastructure provided will be within or close to the site to which it relates. What this means in practice is that where more development is proposed, then a greater level of infrastructure is likely to be required and provided. For example, in the current adopted Local Plan 35% of housing growth has been located within or around Lichfield City compared to 12% at Fradley and 9% at Burntwood and 22% across our other rural villages and areas². As such most of the major physical infrastructure provision has taken place at those locations which have accommodated most of the growth.
- 3.4 As noted above the council receives money from planning obligations in two ways; through Section 106 Agreements (S106) and the collection of CIL. We adopted our [Community Infrastructure Levy Charging Schedule](#) in April 2016 and began charging in July of the same year. The CIL regulations require the council, as a 'Charging Authority' to prepare and publish the CIL charging schedule, determine CIL spend and report on the amount of CIL collected, spent, and retained each year through its [Infrastructure Funding Statement](#) (IFS). The IFS also details the physical infrastructure which has been provided through planning obligations, for example affordable homes, new schools, play facilities etc.
- 3.5 Following the withdrawal of the Local Plan 2040 from examination we are now starting to progress a new Local Plan for the district. As this plan advances and we begin to understand where growth will be located, the IDP will be updated to identify the infrastructure needs associated with the new plan. This will be a key part of the plans evidence and ensure that infrastructure planning is a key component of the new plan. As noted above, this does require engagement from those bodies responsible for providing infrastructure in the plan-making process to ensure their needs are identified.

Prioritisation and allocation of CIL monies

- 3.6 At present the allocation of CIL monies is undertaken through an open bidding process where organisations are invited to submit applications for funding. Applications are assessed by a CIL bid assessor group, which is a sub-group of SIG against criteria set out in the allocating and spending [CIL: additional guidance document](#). The recommendations of the group are then considered by SIG before being presented to O&S and then to Cabinet for approval.
- 3.7 Money collected through CIL is unlikely to ever be enough to fund all the strategic infrastructure that is needed or desired within the district. Previous bidding rounds of CIL funding have been very oversubscribed with many more organisations applying for funds than is available. It is also very time-

¹ This is 25% where a parish council has an adopted neighbourhood plan and 10% if not.

² The remaining 22% of residential growth is located to the north of Tamworth and the east of Rugeley.

consuming and administratively heavy for officers and the organisations themselves. At the recent Overview & Scrutiny committee it was suggested that a greater proportion of CIL monies be passed onto Parish Councils. However, such an approach would be more than the proportion currently provided which is in accordance with the CIL regulations and would ultimately mean less money would be available for the District Council to allocate to strategic projects. The open bidding process also provides very little clarity over the types of infrastructure that will be funded in the future, which is not conducive for strategic planning purposes and given the open nature of the current process has also resulted in bids being made for projects which are not strategic in nature.

3.8 A review of best practice from a range of CIL collecting authorities has been undertaken and identified the following four potential options for the prioritisation and allocation of CIL monies in the future.

1. Open Bidding Process - currently used by LDC to operate a competitive building process for CIL whereby organisations are invited to make bids on a regular or semi-regular basis.
2. Pass a percentage of CIL to each infrastructure provider – CIL income could be allocated on a percentage split basis to relevant infrastructure providers, for example the District Council, the County Council, and the NHS. CIL funds would then be passed to those providers to spend the money on its own priorities within the district.
3. Fund one project at a time – the council could decide on a series of specific projects within its IFS in priority order. Monies could then be allocated to the top priority project until a project is fully funded, and funds would then be allocated to the second priority project and so on.
4. Hybrid approach – In consultation with infrastructure providers and SIG, a shortlist of projects would be placed on an 'Infrastructure List' within the IFS. Infrastructure providers would then be invited to bid on an annual basis for funding to deliver against projects identified on the list.

3.9 Option 4 is our favoured approach as it provides clarity for the council and infrastructure providers on the types of infrastructure that we will fund each year. It is also the most common approach used by other CIL charging authorities and is also recommended by PAS as it enables authorities to set out several specific projects or the types of projects to be funded. To do this we will need to prepare an annual strategic infrastructure list that will be considered by SIG and Overview and Scrutiny Committee prior to approval by Cabinet as part of the IFS each year.³ The annual Infrastructure List will be prepared having regard to evidence of the infrastructure needs from engagement with infrastructure providers (for example the ICB, Staffordshire County Council) identified within evidence such as [IDP](#)⁴. A new bidding round could then be opened in accordance with the list each year. It was suggested at Overview & Scrutiny committee that flexibility be included within this option to enable organisations to bid for monies for smaller projects. However, such an approach could mean less money being available for spending on strategic projects that will be on the Infrastructure List. Additionally, a significant proportion of the CIL monies received are passed to Parish Council's each year, which in 2022/23 was approximately £180,000. Organisations with smaller, less strategic projects that many have submitted bids under the current system would need to be advised to explore other opportunities for funding, including neighbourhood CIL opportunities from parish councils.

Governance of planning obligations

3.10 The [CIL Governance and Administration Procedures](#) were initially adopted in July 2016 and were amended in July 2021. Neither the [CIL regulations](#) or the [National Planning Practice Guidance](#) stipulate how an authority should govern its CIL monies, except for the requirement that monies be allocated to projects which go to “the provision, improvement, replacement, operation or maintenance of infrastructure to support the development of its area” (CIL Regulation 59). As such there is flexibility for charging authorities in term of how CIL monies are used, and the governance structures used to

³ The IFS needs to be published annually by December.

⁴ The Infrastructure Delivery Plan is an evidence document prepared alongside the council's local plan; this lists the infrastructure that will be required to deliver the growth identified within the local plan.

achieve this. The Planning Advisory Service (PAS) developed a [Developer Contributions Guidance Handbook](#), which provides guidance for best practice for allocating CIL and S106 funding and our current approach of having an officer led SIG broadly follows this best practice.

- 3.11 There are some issues with the existing governance arrangements that need to be addressed. Firstly, due to changes within the staffing structure the full SIG has not been able to meet since June 2022; we therefore need to review the structure of the group and its terms of reference to ensure it is fit for the future. It is proposed that the new SIG meets tri-annually with additional meetings being called with 14 days' notice where required. The group would report on planning obligations received by the council, make recommendations as to the allocations of CIL monies, monitor all s106 and CIL allocations to ensure that projects are progressing in accordance with grant agreements, and monitor neighbourhood CIL monies and it's spend. Although final jobs titles need to be confirmed following completion of a restructure in the development management team, the proposed new membership of SIG is in table 1 below. Please note that if these officers cannot attend a meeting it will be a designated representative from their team.

Table 1: Proposed new SIG membership - officer group

| JOB TITLE | GROUP ROLE |
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| Policy and Strategy Manager | Chair |
| Team Leader - Place and Prosperity | Vice Chair |
| Principal/Senior Policy & Strategy Officers (Place and Prosperity team) | Policy team officer(s) - responsible for the preparation of the local plan, IFS and IDP. |
| Policy & Strategy Support Officer | CIL reporting and SIG administration |
| Planning Manager (Development Management) and/or Principal Officer | Officers representing development management service, including the preparation of s106 agreements. |
| Regulation & Enforcement Manager | Officer representing the regulation and enforcement team |
| S106 Officer (proposed new post) | Officer responsible for s106 agreements and project monitoring |
| Operations Manager | Officer representing Parks and Operations team that are allocated s106 monies |
| Finance Manager/Officer | Officer representing finance to ensure that financial reporting is accurate |

- 3.12 Secondly, the current process provides limited opportunity to receive a steer from Members before SIG recommendations are considered by Cabinet. One approach which was discussed at Overview & Scrutiny Committee was to establish a member panel to review CIL bids. Overview & Scrutiny Committee were supportive of this approach and recommended that any such group, if established, should comprise five members including the Cabinet member.
- 3.13 Following discussions at the Overview & Scrutiny Committee meeting, there has been further reflection on the most effective mechanism for scrutiny of how CIL monies are awarded. The proposal to establish an 'Infrastructure List' in the IFS (detailed at paragraphs 3.8 and 3.9 of this report) annually which will be brought to Overview and Scrutiny Committee, provides the Committee with the opportunity to give feedback on the proposed infrastructure priorities, prior to Cabinet agreement. These priorities will then form the criteria for subsequent CIL bids for that year. SIG will score CIL bids against the criteria and make recommendations to Cabinet as to how the available CIL monies are allocated. The proposed governance structure along with a summary of each stage is set out in **Appendix C**. SIG will monitor and report upon projects funded by planning obligations (both CIL and

S106) through the proposed governance structure and will inform relevant ward members upon progress of such projects as appropriate.

- 3.14 Subject to Cabinet’s approval of the proposed changes to the council’s governance and allocations process, the CIL Governance and Administration Procedures and CIL Additional Guidance document will be revised to be consistent with the new approach. Revised versions of these documents, consistent with the proposed new approach, have been drafted and are appended at **Appendix A** and **Appendix B** respectively. Should the new approach be implemented then it will be monitored and reviewed annually and reviewed where appropriate.

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| Alternative options | <ol style="list-style-type: none"> 1. To not amend the SIG membership as proposed and maintain current procedures. SIG will not be able to operate effectively under the current structure due to the departure of several key members of staff including the SIG Chair who was the former Head of Economic Growth. This would mean the council cannot comply with its own adopted procedures. As such, a new approach would need to be established to ensure the council undertakes its duties in respect of planning obligations. 2. Establish an alternative approach to the governance and administration of CIL monies to that proposed, including the other options outlined at paragraph 3.7. The council can adopt any approach it sees fit, however the one proposed has regard to best practice from other authorities. 3. Change the structure of SIG but not change the current process of open bidding. This may result in a larger number of projects bidding for CIL monies and risks CIL being awarded to projects that do not support the Local Plan but score highly using the current criteria. |
| Consultation | <ol style="list-style-type: none"> 1. The report has been prepared following consultation with Leadership Team on 6th December 2023, 10th January 2024 and 14th February 2024. 2. Overview & Scrutiny Committee, were consulted on the proposals at its meeting on 30th January 2024. |
| Financial implications | <ol style="list-style-type: none"> 1. On 29th November 2023, there was £432,595 of CIL monies available for allocation. Forecast total income is £586,407 by 31st March 2024 and £815,175 by 30th April 2024. It is proposed to open the next bidding round for CIL in the summer once the IFS, that will include the first Infrastructure List has been approved by Cabinet. 2. On 22nd November 2023, there are £2,220,023 of S106 funds committed towards future projects, which need to meet the specified requirements defined within the S106 agreement for each site. £1,316,812 S106 funds are allocated to specific projects: £441,247 is allocated for the purposes of longer-term maintenance of open space (commuted sums) and £575,865 is retained for the purposes of ecological mitigation. |
| Approved by Section 151 Officer | Yes |
| Legal implications | This report relates to changes required to adopted governance procedures for CIL. New governance procedures will be considered and need to be approved by Cabinet. |
| Approved by Monitoring Officer | Yes |
| Contribution to the delivery of the strategic plan | <p>The proposed changes will meet several aims and objectives of the District Council’s Strategic Plan (2020 – 2024), these being:</p> <ul style="list-style-type: none"> • Supports the priority of ‘Enabling People’ through supporting local communities through the provision of strategic infrastructure. |

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| | <ul style="list-style-type: none"> • Supports the priority of ‘Shaping Place’ by providing a transparent and more scrutiny driven approach for working with stakeholders and infrastructure providers and enables CIL receipts to be allocated to strategic infrastructure within the district to enhance the quality of place. • Supports the priority of ‘Developing Prosperity’ through the allocation of developer contributions towards strategic infrastructure projects, encouraging economic growth, enhancing the district, and providing certainty for investment. • Supports the priority of being a ‘Good Council’ by accountability, transparency, and responsiveness. The reconvening of SIG and proposed new governance approach, including the use of an Infrastructure List, ensure that there is greater scrutiny of CIL decision making. Additionally, the proposed amendments to the CIL governance and CIL allocation guidance will ensure that the allocations process is fit for purpose and aligns better to the priorities set out within the IFS and adopted Local Plan. |
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| Equality, diversity and human rights implications | Any future allocation of CIL or s106 will be assessed for its equality implications. |
| EIA logged by Equalities Officer | Equalities Officer confirmed not required. |

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| Crime & safety Issues | There are no crime and safety issues. |
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| Data assessment | The social progress index will be a useful tool as part of the decision-making process in determining where to direct CIL and S106 funding, to ensure that it is addressing the needs of our communities and mitigates the demands arising from new development |
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| Environmental impact (including climate change and biodiversity) | There will be no direct environmental or climate change implications because of the above proposed amendments. |
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| GDPR / Privacy impact assessment | <ol style="list-style-type: none"> 1. A privacy impact assessment has not been undertaken. 2. There are no data protection implications arising from the recommendation of this report. |
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| | Risk description & risk owner | Original score (RYG) | How we manage it | New score (RYG) |
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| A | Without the appropriate spending of CIL, the District council will not be undertaking its statutory duty as a charging authority to spend funds that assist in mitigating the impact of development, which benefits local communities and supports the provision of local infrastructure. | Likelihood: Green Impact: Yellow Risk: Yellow | The recommended course of action seeks to reconvene SIG in early 2024 as well as set a strategic infrastructure list as part of the annual IFS. This will provide clarity as to the types of projects which will be funded by CIL and ensure that funds will be effectively monitored, and future funds are allocated appropriately. | Likelihood: Green Impact: Yellow Risk: Green |

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| B | Not amending the CIL governance and CIL allocation criteria could result in less strategic projects scoring highly against current CIL bidding criteria, even if they do meet a recognised infrastructure need within the district. | Likelihood: Red Impact: Yellow Risk: Yellow | The report seeks to amend the CIL governance and CIL bidding criteria to ensure that the scoring is fit for purpose and ensures that CIL helps to deliver strategic infrastructure to support planned growth. | Likelihood: Green Impact: Yellow Risk: Green |
| C | Lack of member steer in respect of the types of projects to which CIL funds will likely be allocated. | Likelihood: Yellow Impact: Yellow Risk: Yellow | The proposed approach provides an early steer to the infrastructure list which will be included within the IFS which will set the infrastructure priorities prior to these being presented to cabinet. Any scoring of bids will then be undertaken by officers informed by the Infrastructure List which has been presented to members and agreed by Cabinet. | Likelihood: Green Impact: Yellow Risk: Green |
| D | Monies received through planning obligations (both CIL and S106) not being spent expediently and/or reaching clawback periods. | Likelihood: Yellow Impact: Red Risk: Red | The establishment of a new SIG with associated procedures, alongside changes to the monitoring of S106s, will ensure greater oversight of planning obligations received and allocated and a forum whereby monies can be allocated expediently, and projects monitored to ensure compliance with grant agreements. This will also ensure where monies are not being spent are identified earlier and enable the reallocation of monies. | Likelihood: Green Impact: Red Risk: Yellow |

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| Background documents | Improving the governance of developer contributions Lichfield District Council Community Infrastructure Levy Charging Schedule Infrastructure Funding Statement Infrastructure Delivery Plan |
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| Relevant web links | Cabinet Report 8 June 2021 Report to Full Council 12 October 2021 Report to Overview & Scrutiny 20 January 2022 Community Infrastructure Levy Allocations 2022 Cabinet Report Report to Overview & Scrutiny 31 January 2024 |
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