

**THURSDAY, 25 MARCH 2021**

**REPORT OF THE PORTFOLIO HOLDER FOR REGULATORY & COMMUNITY SAFETY**

**CIL Spending**

**Exempt Information**

None.

**Purpose**

The purpose of this report is to inform the committee on the recommendations that will be put before Cabinet on 08 April in relation to the spending of Community Infrastructure Levy income.

**Recommendations**

It is recommended that:

1. 5% of CIL income up to 30 July 2021 be retained by the Council and applied to administrative expenses associated with CIL;
2. 5% of CIL income per year from 01 August 2021 onwards be retained by the Council and applied to administrative expenses associated with CIL;
3. The Council retain the strategic element and allocate the funds to one or more infrastructure projects in the Borough;
4. Regeneration projects within Tamworth be set as the priority for spending the strategic element of CIL;

**Executive Summary**

The Council adopted the Community Infrastructure Levy at the Council meeting held on 17 July 2018 and it came into effect on 01 August 2018. Up to 31 January 2021 approximately £233,500 has been collected but there is currently no mechanism in place for spending the money. At the Council meeting in July 2018 it was resolved that a report covering the governance arrangements for CIL spending would be submitted to Cabinet. This report therefore seeks Cabinet approval for part of the proposed mechanism for spending the different elements of CIL in accordance with the relevant regulations and guidance.

The report recommends that the Council retain the maximum 5% of CIL receipts to cover the costs associated with the administration of CIL for the first three years and for each subsequent year that CIL is in effect. It is further recommended that regeneration projects within Tamworth be set as the priority on which the 80% strategic proportion of CIL will be spent. It should be noted that the remaining 15% for neighbourhood spending was approved by Cabinet on 18 February 2021.

**Options Considered**

Alternative options were considered for each element as follows.

Admin 5%

The Council could choose not to retain any of the CIL income or retain a lower proportion than 5% with the remaining income being spent on the strategic priorities. The benefit of this would be that additional money would be available to spend on strategic priorities, however there are a number of costs associated with adopting and ongoing administration of CIL. For example, the cost of the public examination required prior to adoption was approximately £17,500, and the cost of the initial setup of the exacom administration software was also £17,500 with an annual maintenance cost of £6,000 per year.

The costs of administering CIL are therefore not insignificant and would likely exceed 5% of CIL income on an annual basis. It is therefore considered that, while the provision exists in the regulations for the Council to recover some of those costs, retaining the full 5% would be the most appropriate option.

### Strategic 80%

An alternative option for the 80% strategic portion of CIL would be to allow outside organisations, such as Staffordshire County Council or the NHS, to bid for funding towards their own infrastructure projects. As part of an open bidding process organisations could apply for funds and bids could be assessed for strategic fit with Council priorities.

This option could reduce the risk of project delivery on the Council and funding could potentially be split and directed at several priority projects in the borough. With this option, however, it was felt that the Council would not have enough control over project delivery, contributing to a number of smaller projects may dilute the strategic effect that this portion is trying to achieve and it could be difficult to keep track of spending for the purposes of the Infrastructure Funding Statement which the Council is required to publish annually.

On balance this option was considered to be less preferable than the Council retaining the funds and determining what projects to contribute towards.

### **Resource Implications**

The Council is able to retain 5% of the total CIL income from the first three years of adoption (01 August 2018 to 30 September 2021) to be applied to administrative expenses incurred before CIL was adopted and during that three year period. From year four (01 August 2021 to 30 September 2022) onwards, the Council may retain 5% of the CIL collected during that year to be applied to administrative expenses incurred during that year only.

CIL income received to 31 January 2021 amounts to £233,583.24. Retaining the full 5% of CIL income would equate to £11,679.21 of income for the Council to reimburse costs already incurred in connection with CIL. There are no additional resource implications associated with this element of CIL income.

There are no anticipated resource implications associated with the strategic element of CIL beyond the officer time required to administer the process.

### **Legal/Risk Implications Background**

The relevant legal basis for the collecting and spending of CIL is the Planning Act 2008 (the act) and the Community Infrastructure Levy Regulations 2010 (as amended) (the regulations).

The regulations allow a charging authority (in this case the Council) to apply CIL to administrative expenses incurred by it in connection with CIL. The regulations state:

*(a) in years one to three, the total amount of CIL that may be applied to administrative expenses incurred during those three years, and any expenses incurred before the charging schedule was published, shall not exceed five per cent of CIL collected over the period of years one to three;*

*(b) in year four, and each subsequent year, the total amount of CIL that may be applied to administrative expenses incurred during that year shall not exceed five per cent of CIL collected in that year.*

The proposed approach of applying 5% of CIL received towards the cost of the examination in public and the setting up of the administration software would therefore be in accordance with the regulations, as would applying 5% of CIL received in any subsequent year to the ongoing cost of administration, including the annual maintenance cost of the software. This approach would therefore not expose the Council to any significant risk.

As regards the strategic element, the regulations state that a charging authority must apply CIL to funding the provision, improvement, replacement, operation or maintenance of infrastructure to support the development of its area and the act sets out the types of infrastructure to which this element of CIL can be applied. These are:

- (a) roads and other transport facilities,*
- (b) flood defences,*
- (c) schools and other educational facilities,*
- (d) medical facilities,*
- (e) sporting and recreational facilities,*
- (f) open spaces*

At this point, no specific projects have been identified on which to spend the strategic element of CIL. Any project within the proposed broad strategic priority of regeneration would need to fit within one of the categories listed above in order to comply with the regulations.

### **Equalities Implications**

None.

### **Sustainability Implications**

The proposals set out relate to the delivery of infrastructure to support the sustainable development of Tamworth in line with the objectives of the Local Plan. There are no additional sustainability implications as a result of the proposals set out in this report.

### **Background Information**

In 2019 the CIL regulations were amended to include a requirement for councils to produce an annual Infrastructure Funding Statement in order to give communities a better understanding of how developer contributions have been used to deliver infrastructure in their area. The statement should include details of the money received through s106 and CIL during the previous financial year and information on what projects that money has been allocated to and/or spent on. The statement should also set out the infrastructure projects or types of infrastructure that the authority intends to fund wholly or partly through CIL.

Before the 2019 amendments to the CIL regulations the starting point for any strategic spending priorities would be the 'Regulation 123 list'. This list was intended to set out the projects that would be funded in whole or in part by CIL and additional contributions could not be collected towards items on the list through s106 obligations.

The list was adopted in 2018 along with CIL and was distilled down from infrastructure projects in the Local Plan (please see appendix 1 attached). The total estimated cost of those projects far exceeds what we can realistically expect to receive from CIL, and there was never a process put in place for prioritising those projects.

The 2019 amendments to the CIL regulations removed the restrictions on pooling contributions from s106 and CIL and therefore removed the requirement for a 'Regulation 123 list'. CIL money can now be pooled with other planning obligations, including those received through s106 agreements.

It is up to the council to decide what strategic infrastructure project(s) to spend the 80% of CIL receipts on and this now has to be published annually as part of the Infrastructure Funding Statement. Application of the strategic infrastructure element is however restricted to the following types of infrastructure:

- (a) roads and other transport facilities,*
- (b) flood defences,*
- (c) schools and other educational facilities,*
- (d) medical facilities,*
- (e) sporting and recreational facilities,*
- (f) open spaces*

The regulations also place on charging authorities a duty to pass a proportion of CIL income to local councils, being parish or town councils. Where there are no such councils, as is the case for Tamworth, the regulations state that the charging authority may use (or cause to be used) the CIL which would otherwise have been passed to a local council to support the development of the relevant area by funding:

- (a) the provision, improvement, replacement, operation or maintenance of infrastructure; or*
- (b) anything else that is concerned with addressing the demands that development places on an area.*

'Relevant area' is defined in the regulations as *that part of the charging authority's area that is not with the area of a local council* which, in the case of Tamworth, is the whole of the borough.

National Planning Practice Guidance states "*if there is no parish or town council, the charging authority will retain the levy receipts but should engage with the communities where development has taken place and agree with them how best to spend the neighbourhood funding.*" Charging authorities should use existing community consultation and engagement processes (e.g. using networks that ward

councillors use). Crucially this consultation should be at the neighbourhood level. It should be proportionate to the level of levy receipts and the scale of the proposed development to which the neighbourhood funding relates.

As a result of there being no local councils in Tamworth, the Council must determine where and what the money is spent on along with the appropriate mechanism for distributing the money and other governance arrangements.

At the Cabinet meeting of 18 February 2021 it was resolved that £35,000 (forming the 15% community element at the time of the meeting) would be released to form a budget in 2021/22 for Cabinet to allocate on a neighbourhood project basis. There are therefore no recommendations relating to the community element included in this report. However, it should be noted that any spending of the community element should be in accordance with the requirements set out above and must be recorded in the annual Infrastructure Funding Statement.

The priorities for CIL spending can be amended at any time to reflect the changing infrastructure priorities of the Borough Council. A review will be undertaken on an annual basis to keep the priorities up to date when reporting on them in the Infrastructure Funding Statement. In addition the neighbourhood portion of CIL spend from April 2022 will require further consideration.

#### **Report Author**

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#### **List of Background Papers**

Report of the Portfolio Holder for Heritage and Growth – Community Infrastructure Levy – Council meeting - 17 July 2018

Minute of the meeting of Cabinet – 18 February 2021

#### **Appendices**

Appendix A - Tamworth Borough Council Regulation 123 List.