

COMMUNITY INFRASTRUCTURE LEVY (CIL) SPENDING BOARD - REVIEW OF GOVERNANCE

Cabinet 11 November 2021

Report of: Chief Officer - Planning and Regulatory Services

Status: For Decision

Also considered by:

- Development & Conservation Advisory Committee - 19 October 2021

Key Decision: No

Executive Summary: This report follows on from the Community Infrastructure Levy (CIL) Governance Report that was discussed at the Development and Conservation Advisory Committee in July 2020. As you are aware, when Sevenoaks District Council set up the initial Governance arrangements for CIL, it was expected that the Governance of CIL would be reviewed at least once a year. This has happened now for many years and this report provides this yearly review.

The report looks at what has been implemented since the last CIL Governance Review, it also considers the recommendations made recently by an independent review and any further changes that are required to the process of spending CIL. The Chairman and Vice Chairman of the Spending Board have been a part of this review.

This report supports the Key Aim of: ensuring that Sevenoaks District remains a great place to live, work and visit and that development is supported by the relevant infrastructure.

Portfolio Holder: Cllr. Julia Thornton

Contact Officer(s): Claire Pamberi, Ext. 7221 and Carlyn Kan Ext. 7264

Recommendation to Development & Conservation Advisory Committee

That the recommendations to Cabinet are supported.

Recommendation to Cabinet: That

- a) The recommendation laid out in paragraph 23 is agreed.
- b) The recommendation laid out in paragraph 31 is agreed.
- c) amendments to Appendix X1 of the Constitution, as set out in Appendices A, B, C, D and E be agreed; and

d) that the information in the report be noted.

Reason for recommendation: To ensure that the Council is able to make decisions on how the CIL process is governed in an open, transparent, appropriate, fair manner and to ensure consistency

Introduction and Background

- 1 Sevenoaks District Council has been charging the Community Infrastructure Levy (CIL) since August 2014. From this date, until August 2021, the Council has collected just over £11.2 million of CIL contributions, with just over £3.3 million passed to relevant town and parish councils to help fund local infrastructure improvements. This has meant that there has been just over £7 million available to spend on local and strategic infrastructure projects, through the CIL Spending Board, with just under £6.5 million of this amount already committed to specific projects.
- 2 As part of the current CIL Governance arrangements, that were originally set up by Sevenoaks District Council (SDC), it was agreed that the structure and process governing the CIL Spending Board and the process of allocating CIL money would be reviewed on an annual basis. This is to ensure that the Council's processes and procedures remain relevant, transparent and fit for purpose. This report is therefore part of this process.
- 3 This report will consider the following:
 - Changes in CIL Legislation
 - Changes put in place since the last review
 - The CIL Pilot project and independent review
 - Amendments to the Spending of CIL
 - Suggested changes to the current process
- 4 This report will address each one in turn:

Changes in Legislation

- 5 There have been no changes to the CIL Legislation since the Governance Review last year.
- 6 It still appears to be the intention of the Government to change the planning system in regard to CIL and Section 106s, to create a new infrastructure levy. However no further details have been provided to Local Authorities as to how they want to take this forward.

- 7 At the last review, Members were made aware of the new CIL Regulations which came into force on 1st September 2019.
- The regulations make a number of important changes to the operation of CIL and also section 106 planning obligations. These included new reporting requirements through Infrastructure Funding Statements.
- 8 Sevenoaks District Council produced its first Infrastructure Funding Statement in December last year. This lays out the income and spending for CIL and 106 over the past financial year and also provides a report on the infrastructure projects or types of infrastructure that the authority intends to fund wholly or partly by the levy. The priorities include some transport, health and local community projects. It also includes any projects that help the Council reach its net zero ambitions.
- 9 The only other change is that due to Covid, the Govt introduced legislation that allowed small and medium sized developers to be able defer their CIL payments or agree payments in installments. A deferral request can only be made for payments that were due during the material period. (22nd July 2020 - 31st July 2021) and this has therefore recently come to an end. We only had one request to defer a CIL payment during this time.

Changes put in place since the last review

- 10 Since the last Government review we have implemented the following:

A Clearer guidelines and timescales for monitoring CIL projects.

We now regularly monitor all bids and projects that have been awarded CIL money. We ask for quarterly updates and have amended our legal agreements to ensure that this is agreed in advance of the money being awarded. We also contact organisations at 2 months and at 4 months after the decision is made to award CIL, to ensure that Legal Agreements are completed within 6 months. We also monitor the money that has been sent to Parish and Town Councils to ensure that it is spent correctly and spent within 5 years.

B We have formalised how to consider changes to CIL Bids that have been awarded funding.

We have had a number of organisations that have requested changes to their bid and we will only allow it if the following occurs:

- where the project (and the community benefits provided) is at least substantially similar to that approved; and
- where the risk to the CIL monies does not materially increase

We have refused amendments that do not meet this criteria.

- C We now provide quarterly updates to the CIL Chair and Vice chair informing them of the CIL awarded, CIL income, training carried out and any other relevant information.
 - D We now have a standard template letters in place, to ensure that bids which are not successful are provided with clear reasons why. We also provide information to indicate the best way forward for them.
 - E We have now set up our internal systems so that there is a formal process if organisations or the Parish and Town Councils wish to review our decision.
 - F We have also produced Guidance Notes for Parish and Town Councils and for any Organisations that wish to submit bids to the CIL Spending Board.
 - G We have also carried out training for Members, Members of the CIL Spending Board and also Parish and Town Councils.
- 11 We are also intending to carry out some further training for members and Parish and Town Councils by the end of the year to keep them informed.

The CIL pilot project and independent review

- 12 Towards the end of last year (2020) we were invited to take part in a Pilot project for PAS (Planning Advisory Service). The aim was for PAS to carry out an independent assessment of our CIL Governance, with the aim of providing guidance to other Local Authorities.
- 13 We carried out the self-assessment with the assistance of the consultants who considered the following:
- Leadership and Resources
 - Governance and Processes
 - Policy and Evidence
 - Tools and Systems
 - Project Delivery
- 14 For each section we were given a maturity level:

A - Ad-Hoc

B - Organised but inconsistent

C - Managed and Integrated

15 The results of our assessment were as follows:

- Leadership and Resources

Here SDC was determined to be at Level 3 Managed and Integrated. This was because there was a clear understanding across the Council of how these developer contributions were spent. The process had the support of the leadership of the Council. Our governance was also considered to be well managed and resourced and we had a review process in place, which allows continual learning.

- Governance and Processes

Here SDC was also determined to be at Level 3 again. This is because good governance exists with good understanding and transparency across the Council. The process to allocate funds included clear criteria for assessment and Guidance. Member involvement was also considered to be in a managed and structured way.

- Policy and Evidence

Here SDC was rated as a Level 2 authority - Organised but inconsistent. Whilst it was recognised that there was a clear and consistent corporate vision for growth and that our policies and guidance are in place. We performed weaker under this section as we do not predict our CIL income and have no established methodology in place to do this. We could also align our strategic priorities to the Local Plan and other strategic priorities in a more structured way.

- Tools and Systems

Here SDC was determined to be a Level 3. This is because we have clear templates and processes in place. They are transparent so that the relevant services across the Council can use and understand it. The knowledge of CIL is spread throughout the team so it is not just reliant on one service. Legal and Regulatory checks are undertaken systematically and support is readily available.

- Project Delivery

Here SDC was determined to be a level 3 as we have a clear and dedicated approach towards delivery projects. Monitoring and reporting on the projects are done in a consistent way across the Council.

- 16 The proposed Action Plan resulting from the assessment included the following:
- We could benefit from a structured Engagement Plan to set out formally how we engage with stakeholders inside and outside of the Council.
 - We may benefit from establishing a more formal agreement as to how we work with some group i.e. KCC and other statutory providers. This could potentially form part of our Duty to co-operate evidence.
 - Training and periodic briefings with Councilors. (Note - we already do this)
 - We may wish to consider implementing an officer working group that report to the CIL Spending Board to monitor and assess project proposals.
 - We may wish to consider changing the focus of our Infrastructure Delivery Plan (IDP) to a delivery document and not just an evidence document. They also suggest setting up an officers working group and also to include senior management in our decision-making.
 - We could consider undertaking some projections for our CIL income, you can calculate this through CIL liability and Demand Notice.
 - We could introduce a more strategic and integrated consideration of funding across the Council including strategic projects for CIL, Capital programme etc.
- 17 It is also important to note that our interactive map, our CIL Spending Board Terms of reference and also our guidance on CIL bids were all used as case studies in PAS Guidance as examples as good practice.

Conclusion (Pilot Project)

- 18 Whilst the results of the assessment are good overall as we are seen as being a well managed and integrated authority, it is important for us to consider if there are any ways to improve.
- 19 One of the main suggestions is to look at predicting our CIL income. As officers, our recommendation in the past has been that we do not predict our CIL income as there is no guarantee and it is difficult to predict. This has been because not all permissions that have been served a Liability Notice will be implemented and also as we have no control over when

development commences. Predicting CIL could cause us problems or unnecessarily raise hopes. If we allocate funds based on our prediction and less CIL actually comes in, it could also lead to disappointment and projects may miss out. As currently nothing relies on our CIL income and the meeting of the CIL Spending Board is flexible and is based on how much CIL actually comes in, it is suggested that there is no need to predict our CIL income and that we set up a CIL Spending Board only when we have sufficient CIL income to do so.

- 20 It has also been suggested that we adopt a structured engagement plan to set our formally how we engage with stakeholders. Whilst this could be positive as we could formally set out ways in which we interact and when, it could also be beneficial to leave this flexible so we can interact and agree outcomes as and when needed.
- 21 I do not consider that there is a need to set up an officer's working group as the CIL Spending Board is set up to distribute CIL funds and the DCAC and Cabinet oversee the Governance of this. It is considered that this is appropriate and a working group is not required.
- 22 In regard to the focus of our IDP, it will be possible to make this more of a delivery document, to look to update this regularly and also to ensure that it links into our IFS. It is important to have a clear structure to this process to ensure that all parties are included and to ensure that this links to our more strategic aims. As we are looking at the IDP and IFS again, in relation to a revised Local Plan, this is the perfect time to consider how this can be done more effectively. As a team are looking at this, it is considered that we can look at a better and more efficient way of dealing with this but no details have been decided yet. It is requested that this aspect be allocated to officers to consider a way forward.
- 23 It is requested that Members confirm that this is the right approach as laid out in paragraphs 18-22.

Amendments to the Spending of CIL

- 24 It is clear, through the independent assessment (Pilot) that the CIL Governance process is mature and well managed, and therefore there is not much that needs to change. However over the years it is noted that there is a considerable amount of time between each CIL Spending Boards, which has increased due to Covid. This means that some much needed infrastructure projects miss out on funding due to the time limitations of these projects.
- 25 Some of our infrastructure providers have also voiced concerns that important projects have missed out due to our long timescales. In addition

to this, there are net zero projects, who have been working in collaboration with this Council who have missed out on funding.

- 26 Officers consider that it is important to make members aware of this issue and to initiate a discussion as to whether there is a way to make the spending of a small percentage of the CIL money more flexible.
- 27 As it currently stands up to 5% of the CIL income is spent on Administration of CIL, 25% is given to Parish and Town Councils, with the remaining 70% allocated through the CIL Spending Board.
- 28 As the percentage for admin and Parish and Town Council's have already been agreed, it is suggested by officers that out of the 70% allocated to the CIL Spending Board to spend, that a percentage is set aside for officers to spend outside of the CIL Spending Board process.
- 29 It is still appropriate for the majority of the spending to be allocated through the CIL Spending Board. It is suggested that 15% of the CIL Spending Board money is allocated to officers to spend on projects outside of the CIL Spending Board process and that funding can only be allocated in the following circumstances:
- The project is for infrastructure
 - The request is submitted in writing
 - The project is for one of the priorities laid out in the Council's IFS.
 - A clear need is shown for this project and it provides a clear community benefit.
 - It is part of an existing strategy or plan.
 - That the project has sought to maximise funding from other resources.
 - That the Leader of the Council or Portfolio holder agree to the spend.
- 30 It is considered that this will enable Sevenoaks District Council to contribute to much needed infrastructure projects that otherwise would go without the benefit of CIL monies or may never be implemented. There is no time limit on when this money can be spent and provided the projects will meet the criteria above it will be at officers discretion. It is only a small percentage of the CIL funds and would enable SDC to be more flexible with the allocation of CIL and be able to help projects that are in line with our priorities.

31 It is requested that members agree to the changes to CIL Spending as laid out in paragraphs 28 - 30 of this report. Officers are also happy to consider other options put forward.

Suggested changes to the current process

32 Whilst the existing system runs well, there are a couple of issues with the CIL Governance which need to be clarified. These issues were identified through the last CIL Spending Board process and are as follows:

- Clarification in the format of the CIL Spending Board Meeting
- Change in assessment criteria and pro forma to reflect net zero ambitions
- Change in assessment criteria and pro forma to reflect projects that have already benefited from CIL exemptions.
- The role of Cabinet in the CIL Spending Board decisions.

33 I will address each one in turn:

Clarification in the format of the CIL Spending Board Meeting

34 Members of the Board indicated at the last meeting that they were not clear of as to when they were allowed to ask questions of the speakers. At some meetings we have allowed questions at the end of each speaker at others questions have been asked after they have all spoken. In addition, it was also considered helpful to remind members of the Board that they can only ask questions that relate to the project itself and whether it is suitable to receive CIL.

35 Paragraph 5.9 states that:

“Members of the Spending Board will then have an opportunity to ask questions of clarification of the Speakers present”.

36 It is suggested that this amended to read:

“Members of the Spending Board will then have an opportunity to ask questions of clarification of the Speakers present, after all the speakers have spoken on that item. Members shall only ask questions that relate to the project and how it relates to the granting of CIL monies”.

Change in assessment criteria and proforma to reflect net zero ambitions

37 As you are aware the leader of the Council brought a report to full Council on 19th November 2019. The report set out a clear ambition for the Council to achieve net zero greenhouse gas emissions by 2030. The Cabinet working

group which was set up to oversee and lead on this ambition agreed, amongst others, that the Council would be a “community leader” and encourage low carbon measures across the District through education, best practice, incentives, policy and opportunities.

- 38 It is therefore suggested following on from this Council’s clear ambition and the desire to be community leaders that over the next year, any infrastructure projects which clearly support our ambition to achieve net zero greenhouse emissions should be considered as a priority to receive CIL funding. This is already reflected in our Infrastructure statement and should therefore be reflected in the assessment of the bids. Projects will be looked upon more favourably if they help to achieve these ambitions. The pro-forma also needs to be amend to reflect this.
- 39 Please see Appendix A and B which shows the suggested changes, which include adding a section in the pro forma for the organisation submitting the bid to indicate how the project helps to achieve our net zero ambitions. An amendment is also proposed to the assessment criteria to ensure that bids that help achieve our ambitions will be scored more highly. It is requested that these amendments agree to the amendments laid out in the appendices.

Change in assessment criteria and pro-forma to assess projects that may already have had CIL relief

- 40 One concern that has been raised to officers is how we assess bids for projects that have already received a CIL exemption.
- 41 This means that when projects are granted planning permission some are exempt from paying CIL. They have to apply for this exemption but it does mean that their project has already benefited by not paying CIL. There are exemptions for the following:
- minor development exemption - less than 100 sq metres.
 - Self build exemption
 - exemption s for residential annexes or extensions
 - Charitable relief - charitable institution
 - social housing relief
 - exceptional circumstances relief
- 42 If a project falls within any of these exemptions and they do not have to pay CIL, if they are then asking for CIL towards their project it is suggested that they could be seen to benefit twice.

- 43 It is not suggested that these projects should not benefit from CIL or should be prevented from applying, but just that members are aware and that this issue is taken into consideration when assessing the bid. It is therefore suggested that the pro-forma and criteria for assessing bids are amended to ensure that the Board is aware of these issues before a decision is made to award money.
- 44 Please see Appendix C and D, which shows the suggested changes, which include adding a section for the organisation submitting the bid to indicate whether their project has had a CIL exemption and also an amendment to the assessment criteria to ensure that bids that have already had an exemption will be assessed in light of this. A small-scale change is also suggested to remove reference to out of date legislation. It is therefore requested that members agree to the amendments laid out in the appendices.

Clarification as to what happens if the Cabinet disagree with the CIL Spending Board's decision.

- 45 It was brought to officers attention that whilst it is clear that the Council's Cabinet are expected to ratify decisions made by the CIL Spending Board, the process is not clear for what happens if the cabinet chooses not to ratify any of the projects. This could result in projects going between the two bodies with no decision made.
- 46 It is suggested that a project can only go back to the Spending Board once before the Cabinet then have the right to refuse CIL money being granted to that bid. If a bid is refused it is still open for anyone to re-apply to the Board and provide additional information.
- 47 See appendix E for details, which suggest changes to the Council's Constitution to ensure that a decision by Cabinet will only be reviewed once.

Conclusion

- 48 It is clear from looking at the Governance of CIL over the last year, that there are good and clear structures in place, to enable the monitoring and spending of CIL to happen effectively. This has been recognised in the independent review. The changes that are suggested, are small scale and help to clarify matters and also ensure that the process supports the Council's priorities.
- 49 It is hoped that the committee can agree to these recommendations.

Other Options Considered and/or Rejected

- 50 Members could decide not to agree the proposed changes to the current governance arrangements. However, the proposed changes seek to build on the existing arrangements to make the process more consistent, flexible, manageable and robust to ensure that future funding allocated by the CIL Spending Board is appropriately spent and monitored.
- 51 In addition, any further identified weaknesses in the system can be addressed through the annual review process.

Key Implications

Financial

There are no financial implications regarding this report.

Legal Implications and Risk Assessment Statement

There are no legal implications regarding this report.

Equality Assessment

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

Conclusions

This report sets out some suggested changes to the CIL Governance following feedback received from Officers and the Chairman and Vice Chairman of the CIL Spending Board and it is therefore asked that Members grant the Chief Planning Officer and Legal Team delegated authority to implement these changes.

Appendices

Appendix A - Request to amend the CIL bid pro-forma as laid out in the Councils constitution in regard to Net Zero

Appendix B - Request to add additional criteria to the criteria used to assess CIL bids laid out in Appendix X1 of the Council's constitution.

Appendix C - Request to amend the CIL bid pro forma as laid out in the Councils constitution in regard to CIL exemptions

Appendix D - Request to add additional criteria to the criteria used to assess CIL bids laid out in Appendix X1 of the Council's constitution in regard to CIL exemptions.

Appendix E - Request to add Paragraph 1.2 to Appendix X1 of the Council's constitution.

Background Papers

[Governance of the Community Infrastructure Levy \(CIL\) \(Planning Advisory Committee - 16 May 2017\)](#)

[Governance of the Community Infrastructure Levy \(CIL\) \(Cabinet - 15 June 2017\)](#)

[Referral from Cabinet - Further Advice to PAC re Governance of the Community Infrastructure Levy \(22 June 2017\)](#)

[Planning Advisory Committee response to referral - Community Infrastructure Levy \(Cabinet - 13 July 2017\)](#)

[Planning Advisory Committee - 12 March 2019](#)

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