

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

Committee - Development & Conservation Advisory Committee - 5 July 2022

Report of: Chief Planning Officer

Status: For recommendation to Cabinet

Also considered by:

- Cabinet - 7th July 2022

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 September 2021. When the initial Governance arrangements were set up for CIL, it was expected that the Governance of CIL would be reviewed at least once a year. This report provides this yearly review.

The report looks at what has been implemented since the last CIL Governance Review, it also lays out the proposed changes introduced through the new Levelling up and Regeneration Bill and how this will affect Sevenoaks District Council. This report also considers changing our approach to CIL Spending, in order to work better with our key infrastructure providers. 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.

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Recommendation to Development and Conservation Advisory Committee:

That the recommendations to Cabinet are supported.

Recommendation to Cabinet: That

- a) Paragraphs 5 - 10 are noted.
- b) Changes recommended in paragraphs 19 are agreed.

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 As you are aware, Sevenoaks District Council has been charging the Community Infrastructure Levy (CIL) since August 2014. From this date, until May 30th 2022, the Council has collected just over £12.5 million of CIL contributions, with just under £4 million passed to relevant town and parish councils to help fund local infrastructure improvements and assist them in their role. This has meant that there has been just over £6.5 allocated to local and strategic infrastructure projects, through the CIL Spending Board, with 4.5 million of this amount is already spent. We now have just over £1.4 million available for the next CIL Spending Board.
- 2 As part of the current CIL Governance arrangements, it has been agreed the governance of the CIL Spending Board and also 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 Legislation
 - Changes put in place since the last review
 - Amendments to the Spending of CIL
- 4 It will therefore address each topic in turn, below:

Changes in Legislation

- 5 As you may be aware the Government (Govt) have introduced a major change to CIL through their Levelling up and Regeneration Bill introduced in May 2022. The Government's main objective of the Bill is to reverse geographical disparities between different parts of the United Kingdom by spreading opportunities more equally. The main priorities for doing this are:
 - I. Providing a legal basis for setting and reporting against levelling up missions.
 - II. Devolving powers to all areas in England that want them.

III. Empowering local leaders to regenerate towns and cities and restore local pride.

IV. Improving the planning process. This will include:

- delivering high quality design and beautiful places and protecting our heritage
- enabling the right infrastructure to come forward where it is needed
- enhancing local democracy and engagement
- fostering better environmental outcomes
- allowing neighbourhoods to shape their surroundings.

6 In regards to the Community Infrastructure Levy specifically, I thought that it would be helpful to summarise some of the specific proposals introduced in the Bill:

- The Bill seeks to replace the current system of securing developer contributions (section 106 Agreements and CIL) with a new Infrastructure Levy. This will be a non negotiable and locally set.
- The government wants to make sure that more of the money accrued by landowners and developers goes towards funding the local infrastructure e.g. affordable housing, schools, GP surgeries, and roads - that new development creates the need for.
- The Levy will be charged on the value of property when it is sold and applied above a minimum threshold.
- To strengthen infrastructure delivery further, the Bill will require local authorities to prepare infrastructure delivery strategies.
- The Bill will also enable local authorities to require the assistance of infrastructure providers and other bodies in devising these strategies, and their development plans.
- The Govt intend to bring forward legislation to enable the piloting of Community Land Auctions.

7 Alongside the Bill, the Govt have indicated that much of the detail of different elements of the new Infrastructure Levy will need to be set in regulations, following a consultation.

8 Specifically, the Govt intend to:

- Introduce a new 'right to require' to remove the role of negotiation in determining levels of onsite affordable housing. This rebalances the inequality between developers and local authorities by allowing local

authorities to determine the portion of the levy they receive as onsite affordable homes.

- Require developers to deliver infrastructure integral to the operation and physical design of a site - such as an internal play area or flood risk mitigation. Planning conditions and narrowly targeted section 106 agreements will be used to make sure this type of infrastructure is delivered.
 - There is a retained role for section 106 agreements to support delivery of the largest sites. In these instances, infrastructure will be able to be provided in-kind and negotiated, but with the guarantee that the value of what is agreed will be no less than will be paid through the Levy.
 - They aim to retain the neighbourhood share and administrative portion as currently occurs under the Community Infrastructure Levy.
 - Introduce the Levy through a ‘test and learn’ approach. This means it will be rolled out nationally over several years, allowing for careful monitoring and evaluation, in order to design the most effective system possible.
 - Sites permitted before the introduction of the new Levy will continue to be subject to their CIL and section 106 requirements.
- 9 The Government have also indicated that technical consultations will take place on the detail of the new infrastructure levy.

Changes put in place since the last review

- 10 Since the last Government review, we have implemented the following:
- Since November 2021, money has been set aside for officers to spend outside of the CIL Spending Board process. However, we have not currently allocated any of these funds as no projects have been submitted or have met the criteria.
 - CIL Governance has been changed to clarify the format of the CIL Spending Board and how the Board’s decisions are ratified.
 - The assessment criteria for assessing bids to ensure that the Council’s priorities in regard to Net Zero have now been included.

Amendments to the Spending of CIL

- 11 It is clear that we have a robust Governance system in place, that is well managed and is understood through all levels of the Council. It is however necessary to consider how we can continue improve our CIL Governance and our spending to ensure that CIL is spent where it is needed the most and supports our infrastructure providers and most importantly our communities.
- 12 As you are aware, we already lay our priorities for the spending of CIL and for Section 106 monies through the Infrastructure Funding Statement. Whilst this is a good way to highlight the priorities for our spending, some of our key infrastructure providers have informed us that this is not sufficient to provide enough security for them to ensure that some of their specific and necessary infrastructure projects will be funded through CIL.
- 13 It has become clear that the need and requirements for CIL monies has changed. The need to fund specific infrastructure projects to support specific developments has increased as infrastructure providers are now realising the impact of CIL and funding on their schemes. This is also due to viability issues as developers have to provide for a number of requirements through the Local Plan and also pay the full amount of CIL for their developments. There is no discretion in this. Currently, as it is laid out in legislation and also the CIL charging schedule, it is expected that the CIL monies should be used to pay towards the infrastructure projects required by the growth proposed. If we ask developers to pay for infrastructure through a Section 106 agreement and also require them to pay the full CIL amount, we are expecting developers to pay twice, which is not reasonable. So we need to re-consider our approach to this issue.
- 14 An example of this would be if an infrastructure provider requires a major piece of infrastructure on site. The need for this is generated by the development itself and they have provided sufficient evidence to show this. If we cannot provide more assurance that CIL money will fund this piece of infrastructure, the infrastructure provider will request that it is covered by a Section 106 agreement to secure the funding. If this occurs, the developers will then look at the viability of the scheme and this may mean that the quality of the design, landscaping or materials used in the scheme are reduced or most likely that the amount of affordable housing is reduced or not provided at all. In other cases this has also meant that the much needed infrastructure has not been provided on the site and we have had difficulty in securing the infrastructure appropriately elsewhere to support the development. This does not seem an acceptable solution and means that our communities are missing out on much needed infrastructure.
- 15 Currently, as described above, there is currently £1.4 million available for the CIL Spending Board to spend. Whilst we aware this will not currently cover all of the infrastructure which is likely to be required, for all our sites, it must be noted that some of our larger developments have not yet come forward and therefore the CIL has not yet been paid for these. If some

of our larger sites where to commence, this would lead to a large amount of CIL being paid that would be able to fund the infrastructure required on these sites. There is therefore clearly a need to look at how we approach this.

- 16 Looking at what we have done already, through the Infrastructure Funding Statement last year, we did amend the priorities for CIL Spending and removed community projects as over 69% of all our CIL allocated to and through the CIL Board was spent on these. Whilst a number of these projects enabled replacement village halls and an improved environment with better recreational facilities, they failed to provide essential infrastructure to support specific growth in our District. So this approach needs to follow through to our spending.
- 17 Whilst it is understood that there is also a concern that Parish Council's may miss out due to funding being prioritised elsewhere, it is important to note that they have already receive at least 25% of the total CIL income for their area. In line with legislation, if there is no neighbourhood plan in place they should only be receiving 15%. In addition, we have already awarded £1.6 million pounds through the CIL Spending Board towards their projects, which means that they have also received an additional 25% of the total of CIL monies awarded. So even if we change the priorities for CIL spending it is unlikely that they would be negatively impacted. We are keen however to ensure that we still support their projects and the infrastructure required to support their work, so it is recommended that some money is still set aside for them to be able to continue to do this.
- 18 It is clear, at the current time, that we need to provide some security to developers and our key infrastructure providers, that some of our CIL income will be set aside to support specific projects that are required to support specific development and growth in our District. It would also give more security to key infrastructure providers that their necessary projects will be funded and ensures that as a District we direct our spending to ensure our growth is appropriately supported and that the right infrastructure is provided in the right place, at the right time. It also ensures that other benefits to a scheme such as landscaping affordable housing and materials could still be provided as well as infrastructure through CIL.
- 19 The following changes are therefore proposed to the Governance of CIL:
 - We will be providing guidance to developers to indicate that some infrastructure can be provided through Sec 106 but this will be subject to need, evidence and viability and will be determined on a case by case basis. This will be better defined through the Section 106 Supplementary Planning Document and the Infrastructure Delivery Plan, which will accompany the new Local Plan. This will be more of a long term aim.
 - We will continue to ensure that Parish and Town Councils are able to improve/replace their infrastructure to support them in serving their

communities. It is therefore recommended that 40% of the full CIL income will go to Parish and Town Councils. This includes 25% already granted and an additional 15% through the CIL Spending Board.

- 15% of the money available to the CIL Spending Board will still be set aside for officers to spend as laid out in the last CIL governance report.
- It is proposed that the remainder of the money available to the CIL Spending Board will be prioritised (ring fenced) to be spent on infrastructure projects that are proposed by our key infrastructure providers. I consider this could include:
 - Clinical commissioning groups (NHS)
 - Kent County Council
 - Highways England
 - Emergency Services
 - Environment Agency
 - Utility Companies
 - Sevenoaks District Council
- The need for these projects will have to be evidenced to show that the infrastructure is essential to support and enable a specific development/s in the District. They would need to provide clear costs. Every organisation will be required to sign up to a legal agreement to ensure that the money is spent on the project they have bid for and where they say.
- We will also streamline the application process for key infrastructure providers. Making the forms more simple and changing the criteria as these organisations cannot always seek to work in partnership or are able to maximise funding. We would still ask them to provide evidence as to how their project supports specific developments and how much the project would cost. The aim is to make it easier for them to have access to CIL for much needed infrastructure projects. Please see Appendix A and B as an example of how we would do this.
- We will also be looking to hold training sessions for Members in July for Members of the Board to update them.

Other options Considered and/or rejected

- 20 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 robust to ensure that future funding allocated by the CIL Spending Board is appropriately spent and monitored, whilst working with our key providers.
- 21 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.

Net Zero Implications

The decisions recommended through this paper have a remote or low relevance to the council's ambition to be Net Zero by 2030. There is no perceived impact regarding either an increase or decrease in carbon emissions in the district, or supporting the resilience of the natural environment

Conclusions

The CIL Spending Board provides the Council's oversight of allocating CIL funding to local and strategic infrastructure projects across Sevenoaks District. The current CIL governance arrangements were agreed by Members of the Development and Conservation Advisory Committee in Sept 2021 and are reviewed annually to ensure that they are still fit for purpose. This report sets out some suggested changes to the CIL Governance following feedback received from infrastructure providers, officers and the Chairman and Vice Chairman of the CIL Spending Board. It is therefore asked that Members grant the Chief Planning Officer and Legal Team delegated authority to implement these changes.

Appendices

Appendix A - Shows suggested amended criteria to assess the bids by

Appendix B - Shows suggested amendments to the pro forma

Background Papers

[Governance of the Community Infrastructure Levy \(CIL\) \(Planning Advisory Committee - Sept 21\)](#)

[Governance of the Community Infrastructure Levy \(CIL\) \(Cabinet - Oct 2021\)](#)

[Council's Constitution - Appendix X1.](#)

Richard Morris

Deputy Chief Executive and Chief Officer - Planning and Regulatory Services