

**Committee Name and Date of Committee Meeting**

Cabinet – 20 September 2021

**Report Title**

Community Infrastructure Levy spending protocol

**Is this a Key Decision and has it been included on the Forward Plan?**

Yes

**Strategic Director Approving Submission of the Report**

Paul Woodcock, Strategic Director of Regeneration and Environment

**Report Author(s)**

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**Ward(s) Affected**

All wards

**Report Summary**

The Community Infrastructure Levy (CIL) is a charge that councils can apply to new developments to raise funds for local infrastructure. Rotherham's CIL Charging Schedule was adopted by the Council on 7 December 2016 and came into force on 3 July 2017.

The majority of the CIL income held by the Council is for infrastructure to support growth promoted by the Local Plan. Approval is sought for a protocol to allocate CIL income to priority infrastructure schemes at a strategic level across the borough.

A neighbourhood portion of CIL income from development in parished areas is passed to parish and town councils by default. However, the Council has discretion over spend of the neighbourhood portion arising from non-parished areas. Approval is sought for a ward-based approach to the allocation and spend of this neighbourhood portion in non-parished areas.

**Recommendations**

1. That Cabinet approves the protocol for prioritising and approving the spend of Strategic CIL funds.
2. That Cabinet approves the ward-based approach to the spend of Local CIL arising from development in non-parished areas.

## **List of Appendices Included**

- Appendix 1 Local CIL Councillors' Guidance 2021-22
- Appendix 2 Carbon Impact Assessment
- Appendix 3 Equality Part A – Screening

## **Background Papers**

National Planning Policy Framework

<https://www.gov.uk/guidance/national-planning-policy-framework>

Planning Practice Guidance – Community Infrastructure Levy

<https://www.gov.uk/guidance/community-infrastructure-levy>

Community Infrastructure Levy Regulations 2010

<https://www.legislation.gov.uk/uksi/2010/948/contents/made>

Rotherham Local Plan 2013 – 2028

<https://www.rotherham.gov.uk/planning-development/guide-local-plan/1>

Rotherham CIL Charging Schedule

<https://www.rotherham.gov.uk/downloads/file/385/rotherham-community-infrastructure-levy-charging-schedule>

Rotherham CIL Instalments Policy

<https://www.rotherham.gov.uk/downloads/file/386/rotherham-community-infrastructure-levy-instalments-policy>

Infrastructure Funding Statement 2019/20

<https://www.rotherham.gov.uk/downloads/file/2174/infrastructure-funding-statement-2019-20>

Infrastructure Delivery Study Update 2020

<https://www.rotherham.gov.uk/downloads/file/2396/rotherham-2020-infrastructure-delivery-study-march-2021>

**Consideration by any other Council Committee, Scrutiny or Advisory Panel**

No

**Council Approval Required**

No

**Exempt from the Press and Public**

No

## Community Infrastructure Levy – spending protocol

### 1. Background

1.1 The Community Infrastructure Levy (CIL) is a charge that councils can apply to new development to raise funds for local infrastructure, such as extra school places, road improvements, public transport improvements and better green spaces. Rotherham's CIL Charging Schedule was adopted by the Council on 7 December 2016 and came into force on 3 July 2017.

1.2 CIL is mandatory for certain types of development and is charged on a £ per square metre basis for new development floorspace. Most new development which creates net additional floor space of 100 square metres or more, or creates a new dwelling, is potentially liable for the levy. There are certain exemptions from the charge, such as social housing, self-build housing, development for charities and residential extensions.

1.3 The Community Infrastructure Levy Regulations 2010 (as amended) set out how CIL charges and their collection should be applied, administered and enforced. The Rotherham CIL Charging Schedule sets out the specific types of development that are liable to the charge in the borough and the applicable rates. These vary for residential development in different areas of the borough reflecting the viability of development in different market areas. The Council's CIL Charging Schedule and accompanying CIL Instalments Policy are in line with the regulations.

#### 1.4 Infrastructure Funding Statement

In 2019, the Government updated the CIL Regulations. These changes:

- Removed Regulation 123 lists (the list of infrastructure that may receive CIL funding).
- Required councils to publish a new Infrastructure Funding Statement.
- Lifted the restriction on pooling S106 agreements.
- Allowed councils to use S106 and CIL to fund the same infrastructure.

1.5 Reflecting the new regulations, the Council withdrew its Regulation 123 list and subsequently published its first Infrastructure Funding Statement in December 2020, as required by the amended regulations.

1.6 Rotherham's CIL was prepared in tandem with the Local Plan Core Strategy. The strategy was informed by an Infrastructure Delivery Study, summarising what infrastructure is required to support the new homes and businesses in growth areas set out in the Local Plan.

1.7 The Infrastructure Delivery Study has recently been updated to support the Core Strategy review currently in progress. The study will also inform future Infrastructure Funding Statements and help identify priorities for CIL spend.

## 1.8 CIL income

As well as setting out what items or types of infrastructure the Council intends to fund using CIL, the Infrastructure Funding Statement also provides an account of CIL and S106 income, spend and monies held for the previous financial year.

1.9 CIL becomes payable when development commences – not when planning permission is granted. Builders usually have three years to implement a planning permission before it lapses, which causes a “time lag” between the grant of permission for CIL-liable development and income being received by the Council. The Council has also adopted an instalments policy for CIL payments, to ease developer concerns about viability and cash flow. This adds a further delay to the receipt of CIL income.

1.10 This time lag resulted in minimal CIL income being received in the early years of the charge, but income has now increased significantly. This has been helped by several large Local Plan housing sites starting on site in 2019 and 2020 and their CIL payments being received.

## 1.11 Spending CIL

The total CIL income received by the Council is divided into three “pots”, as set out in the CIL Regulations:

- Strategic CIL (80%)
  - for infrastructure set out in the Infrastructure Funding Statement
- Local CIL (15%)
  - passed to parishes to spend on local infrastructure priorities
- Admin (up to 5%)
  - retained by the Council to cover the cost of applying the charge

1.12 Strategic CIL income should be spent on infrastructure required to support growth from the Local Plan, in line with the requirements of the CIL Regulations. The Council’s Infrastructure Funding Statement sets out the types of infrastructure for CIL spend to achieve this aim. Specific schemes and strategic priorities for spending CIL income will be outlined in future Statements, informed by the updated Infrastructure Delivery Study.

1.13 Town and parish councils are due a “neighbourhood portion” of the CIL income raised from new development within their parish boundary, otherwise known as Local CIL. The default is payment of 15% of CIL income raised within the relevant area. This increases to 25% for parishes with an adopted Neighbourhood Plan.

1.14 The Dinnington Neighbourhood Plan was successful at local referendum on 6 May 2021 and was adopted by the Council on 26 May 2021. Accordingly, the Council passes 25% of CIL income raised in Dinnington St John’s Parish to

the Town Council. All other parishes currently receive 15%.

- 1.15 Town and parish councils can spend CIL income on infrastructure in their parish. The CIL Regulations give more leeway to how parishes spend CIL income than applies to the Borough Council.
- 1.16 CIL income is passed on to town and parish councils twice a year in line with the CIL Regulations, with payment dates of 28 October and 28 April for the preceding six months. Town and parish councils are required to publish an annual account of the Local CIL they have received, how it has been spent and what funds remain unspent.
- 1.17 The Council retains up to 5% of CIL income to cover the costs of administering the charge, such as software systems, staffing and enforcement.

## **2. Key Issues**

- 2.1 At the time of writing, the Council has collected around £2.9m in CIL income. Along with the publication of the updated Infrastructure Delivery Study in June 2021, this makes it timely to formalise how the Council prioritises and approves the spend of CIL income.
- 2.2 Officers from the Planning Service, Finance and Legal Services monitor S106 money and more recently, CIL income. This group is being extended to form a CIL officer group to include representatives from other relevant services, such as Transportation, Education and Greenspaces. The membership of the group and frequency of meetings will be determined as appropriate. This group will act as a forum to consider and advise on which infrastructure should be prioritised for CIL spend to support new development flowing from the implementation of the Local Plan.
- 2.3 The Planning Service monitors the take up of Local Plan development sites and will feed that information into the process. Officers can then consider the amount of growth, and where it is taking place, and compare that to the updated Infrastructure Delivery Study to consider which infrastructure should be prioritised for spend.
- 2.4 This approach represents a strategic overview of the growth across the borough, rather than CIL funds being allocated to a specific development site. This is an important distinction when compared to the S106 regime, which is also used to secure funding from developers but is explicitly linked to the planning permission for a development. S106 monies must be spent in accordance with a legal agreement to mitigate the local effects of that development.
- 2.5 There may also be a case for prioritising spend on a scheme if it would help the Council to secure match funding for example from Central Government or Sheffield City Region. For example, there may be a window for bids for transport projects that would secure much larger sums than CIL alone, but which may require CIL in order for the scheme to be brought forward.

## 2.6 Strategic CIL proposals

It is proposed to follow an annual process to consider potential schemes to receive funding from the Strategic CIL pot. Member oversight and approval will be critical to this process. This would broadly consist of:

- The CIL officer group considers current development trends against the requirements in the updated Infrastructure Delivery Study.
- Schemes are assessed and prioritised against relevant criteria to determine the infrastructure that will most support new growth areas and help bring forward development sites to implement the Local Plan.
- A list of priority schemes is drawn up (or potentially the conclusion that funds should be carried forward that year).
- A final list of schemes is presented to Cabinet, seeking approval for the Strategic CIL funds to be spent as recommended.

## 2.7 Local CIL for non-parished areas proposals

As set out above, CIL income arising from development in parished areas (the Local CIL) is passed to town and parish councils twice a year, at 15% or 25% depending on neighbourhood plan status. However, in non-parished areas, the CIL Regulations provide that:

The Council may use the Local CIL to support development of the “relevant area” by funding the provision, improvement, replacement, operation or maintenance of infrastructure or anything else that is concerned with addressing demands that development places on an area.

## 2.8 Government planning practice guidance goes on to advise that:

“The law does not prescribe a specific process for agreeing how the neighbourhood portion should be spent” but advises that “Charging authorities should use existing community consultation and engagement processes” and that consultation “should be proportionate to the level of levy receipts and the scale of the proposed development to which the neighbourhood funding relates”.

## 2.9 At the time of writing, the 15% of Local CIL income the Council has collected from development in non-parished areas amounts to around £120,000. It is proposed that this non-parished Local CIL should be devolved to the ward in which the chargeable development takes place and administered by the Neighbourhoods Team within ACEX. Ward councillors (as local community representatives) will consider what the Local CIL should be spent on based on their current ward priorities, the demands that the development has placed on the area and the outcome of any additional community consultation and engagement.

2.10 The proposed process will include:

- Annually publishing the amount of the Local CIL available within each ward.
- Ward councillors invite the local community and Council services to identify, submit and comment on ideas for appropriate projects that could be funded, in line with ward priorities and addressing the demands that the development has placed on the area.
- Project ideas are assessed by councillors who will also take into account the amounts of money involved, potential match funding, potential for pooling resources with neighbouring wards, timescales, who could deliver the project and whether it can be realistically achieved.

The appropriate level of consultation on these projects and ideas will take place but will be proportionate to the level of Local CIL available.

2.11 Ward councillors may decide not to allocate any of the Local CIL in a given year, allowing it to “carry over” and build up until a reasonable amount is accumulated.

2.12 The Head of Neighbourhoods has produced a more detailed guidance note for ward councillors and officers, setting out how decisions on spending the non-parished Local CIL will be made and the process to be followed. This is attached at Appendix 1.

### **3. Options considered and recommended proposal**

#### **3.1 Option 1: Allocate and spend CIL income on infrastructure to support growth**

Strategic CIL is allocated to schemes and spend approved following the process outlined above. This would accord with the CIL Regulations by using CIL funds to support growth and would allow member oversight of the prioritisation of schemes and approval of spend. The Council is required to publish an Infrastructure Funding Study each year, which provides transparency on CIL income, spending on schemes and funds remaining.

3.2 Local CIL income from development in non-parished areas is allocated and spent in line with the process outlined above. This would enable ward member input to the allocation and spend of Local CIL funds and allow transparency by including proportionate public consultation. Details of how Local CIL income from non-parished areas had been spent would also be included in an Annual Ward Budget Report, providing transparency.

#### **3.3 Option 2: Merge CIL income into the capital budget and allocate Local CIL pro-rata**

Strategic CIL is merged into the Council’s capital budget. This would potentially sever the link between spending decisions and an assessment of the infrastructure needs flowing from growth in the Local Plan. As such, it

would risk not being in accordance with the CIL Regulations and lack transparency in reporting on spend.

- 3.4 Local CIL from development in non-parished areas is pooled and allocated to each non-parished ward on a pro-rata basis based on population. This would not reflect the local pressure from development and would lack transparency without ward member-led public consultation on spend proposals.
- 3.5 **Option 1 is the recommended option**, to allocate and spend Strategic and non-parished Local CIL income in line with the process set out in this report.

#### **4. Consultation on proposal**

- 4.1 Officers have worked closely with the Head of Neighbourhoods in drafting the proposals for spend of CIL income in non-parished areas. These have been drawn up in consultation with the Deputy Leader and Cabinet Member for Neighbourhood Working and the Assistant Chief Executive.
- 4.2 Local communities in non-parished areas will be consulted on proposals for Local CIL spend in relevant wards.

#### **5. Timetable and Accountability for Implementing this Decision**

- 5.1 Subject to approval by Cabinet, officers will implement the process outlined above to assess and prioritise infrastructure schemes for spend of Strategic CIL. A report seeking approval to spend Strategic CIL income on priority schemes will be brought to Cabinet in due course.
- 5.2 Subject to approval by Cabinet, officers will work with the Head of Neighbourhoods to implement the process for spend of Local CIL in non-parished areas.

#### **6. Financial and Procurement Advice and Implications (to be written by the relevant Head of Finance and the Head of Procurement on behalf of s151 Officer)**

- 6.1 As indicated in Section 2.1, at the time of writing this report, the Council has collected around £2.9m of CIL income. This money will be used to support the funding of infrastructure projects to support growth, in line with the CIL Regulations. Under the Regulations, a percentage of CIL income is passed to parished areas. The recommendation in this report is that a percentage of this CIL income is passed to non-parished areas.

In addition, the Council retains up to 5% of CIL income to cover the revenue costs of administering the charge, such as software systems, staffing and enforcement.

- 6.2 The proposed approach is in accordance with the Council's Procurement arrangements. Any chargeable goods or services required by the Council must be procured in accordance with the Public Contracts Regulations 2015 (as amended) and the Council's own Financial and Procurement Procedure



Rules (FPPRs). Where a competitive procedure is to be undertaken advice must be sought from the Corporate Procurement Team.

## **7. Legal Advice and Implications (to be written by Legal Officer on behalf of Assistant Director Legal Services)**

7.1 Legal implications, the recommendations and contents of this report are fully in compliance with the requirements of the Community Infrastructure Regulations 2010 as amended.

## **8. Human Resources Advice and Implications**

8.1 There are no direct human resource implications arising from this report.

## **9. Implications for Children and Young People and Vulnerable Adults**

9.1 There are no direct implications for children and young people and vulnerable adults arising from this report. The allocation and spend of CIL funds may eventually benefit this group if the spend is directed to educational provision, either for the general school population or for special needs facilities. Similarly, CIL spend on facilities may benefit vulnerable adults.

## **10. Equalities and Human Rights Advice and Implications**

10.1 An equalities screening assessment has been carried out and is attached at Appendix 3.

10.2 The equalities screening assessment for this report concludes that equalities analysis is not required given the overarching nature of the protocol to allocated Strategic CIL, whilst recognising that equalities assessment will be included in the criteria to assess and prioritise individual schemes.

10.3 Appendix 3 Local CIL Councillors' Guidance 2021-22 has been amended at section 2 to refer to the public sector equality duty on parish and town councils in the exercise of their functions. Section 6 of the guidance has been amended to include an equalities screening or assessment as one of the criteria for ward members to consider when assessing projects for Local CIL spend.

## **11. Implications for CO<sub>2</sub> Emissions and Climate Change**

11.1 Climate change poses a significant threat to environments, individuals, communities, and economies on local, national, and international scales. In recognition of this the Council has aimed to be net carbon neutral as an organisation by 2030, and for Rotherham as a whole to achieve the same position by 2040.

11.2 A carbon impact assessment has been carried out and is attached at Appendix 2.

11.3 The assessment concludes that the CIL spending protocol is designed to

prioritise and allocate CIL funds to infrastructure schemes to support growth promoted by the Local Plan. The Local Plan itself was subject to sustainability appraisal as part of its drafting, so its implementation inherently promotes sustainable development. Reducing emissions and the potential for carbon capture can be included in the criteria used to assess and prioritise schemes for CIL funding.

## 12. Implications for Partners

12.1 Partners and stakeholders have been consulted and engaged in the update of the Infrastructure Delivery Study. This work has captured the plans, programmes and costings from providers and input this into the study's list of infrastructure required to support growth. The Council will continue to engage with providers and stakeholders in allocating and spending CIL income and future updates to the study.

## 13. Risks and Mitigation

13.1 The Council is required to spend CIL income in line with the CIL Regulations. There is a risk that without appropriate protocols in place, decisions on CIL spend may not accord with the regulations. This could put the Council at risk of external audit and could harm public perceptions of the Council's probity. The processes set out in the report are designed to mitigate these risks. Legal advice will be sought as appropriate to ensure the Council meets its legislative obligations in the allocation and spending of CIL income.

## 14. Accountable Officers

Simon Moss, Assistant Director – Planning, Regeneration and Transport

Approvals obtained on behalf of Statutory Officers: -

	<b>Named Officer</b>	<b>Date</b>
Chief Executive	Sharon Kemp	03/09/21
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	26/08/21
Head of Legal Services (Monitoring Officer)	Stuart Fletcher	20/08/21

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