

# **Information/Discussion Paper**

## **Overview and Scrutiny Committee – 08 March 2021**

### **Community Infrastructure Levy (CIL) Governance Arrangements**

This note contains the information to keep Members informed of matters relating to the work of the Committee, but where no decisions from Members are needed

#### **1. Why has this come to scrutiny?**

- 1.1** To provide Members with information on the legislative requirements for the Governance and Reporting of CIL spending.
- 1.2** To provide an opportunity for Members to consider and discuss the options available regarding the Governance of CIL spending.
- 1.3** To provide Members with the opportunity to steer officer work, on establishing Governance arrangements for spending CIL, that will result in an acceptable recommendation for future Member decision.

#### **2. Summary of the Issue**

- 2.1** Whilst the Community Infrastructure Regulations 2010 (as amended) establish a framework for the distribution and spending of CIL and clearly assign responsibility to the Borough Council, which it calls the ‘Charging Authority’ and Parish Council’s, referring to them as ‘Local Councils’, there are options available to Members regarding how this responsibility may be met.
- 2.2** In any financial year when a Parish receive, hold or spend CIL monies they are required to produce a funding statement which must be published on their website and submitted to the Borough Council. The Borough Council also now have to publish and submit to Government an annual ‘Infrastructure Funding Statement’ covering details of both CIL and S106 income and expenditure.

#### **3. Summary of evidence/information**

- 3.1** CIL Income is divided by regulation into three ‘pots’:
  - ADMINISTRATION FUND - Regulation 61 allows up to 5% of income received in any financial year to be used towards the administrative costs of running the Charging and Collection function of the Charging Authority. NB the JCS Authorities each made the decision when adopting their CIL Charging Schedules in October 2018 to pool their administration fund to contribute to shared resources/service and meet as much of the set-up costs (evidence, examination and legal/technical support) as permitted and possible.
  - NEIGHBOURHOOD FUND - Regulation 59A states that where there is a Parish

Council who cover the area, in which the chargeable development is taking place, then 15% of the CIL received must be paid to them (subject to a cap of, when the required index is applied, just over £100 per existing dwelling in the Parish), rising to 25% (uncapped) if they have a ‘made’ Neighbourhood Plan. NB

However where there is no Parish in the area that the development takes place then Regulation 59F states that the Borough Council, as Charging Authority, will hold 15% (uncapped), rising to 25% in areas where a Neighbourhood Area and Forum have been designated and a Neighbourhood Plan has been ‘made’, to be spent in consultation with the community in the unparished areas and with the Neighbourhood Forum in their designated area respectively. NB The Regulation 59F Neighbourhood Fund currently stands at £9,702.77

- INFRASTRUCTURE FUND – Regulation 59 states that the remaining 70% to 80+% is held by the Borough Council as Charging Authority.

**3.2** The distinction between the ‘Neighbourhood Fund’ and the ‘Infrastructure Fund’ is an important one as the regulations set out what each fund may be spent on:

- Regulation 59 (1) states 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.**”; whereas
- Regulation 59 C (b) adds that, “**A Local Council** must use CIL receipts passed to it in accordance with regulation 59A or 59B **to support the development of the local council’s area, or any part of that 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.**

**3.3** Regulation 59A imposes a ‘**Duty to Pass CIL to Local Councils**’ and Regulation 59D states that this must be on set dates twice a year, or by arrangement to an alternative timetable. Whilst responsibility is passed to the Parish Council for spending decisions the regulations do provide the Charging Authority with powers to monitor and police that spending. For example, Regulation 59E **requires the neighbourhood funding to be spent within 5 years and in accordance with the rules in Regulation 59C**, or the Charging Authority may serve a notice to require repayment.

### **Neighbourhood Fund Governance**

- Regulation 59F states that, “The charging authority may use the CIL to which this regulation applies, or cause it to be used, to support the development of the relevant area by funding” those same wider range of things that Local Councils can spend their neighbourhood funding on (59C(b) a and b). However the regulations are not prescriptive on how this should be done only that the Charging Authority, “should engage with the communities where development has taken place and agree with them how best to spend the neighbourhood funding” (CIL Guidance Paragraph 146 Reference ID: 25-146-20190901).
- Regulation 59F neighbourhood funding therefore requires governance arrangements to be put in place to, “set out clearly and transparently their approach to engaging with neighbourhoods using their regular communication tools for example, website,

newsletters, etc. The use of neighbourhood funds should therefore match priorities expressed by local communities, including priorities set out formally in neighbourhood plans" (CIL Guidance Paragraph 146).

### **Examples of approaches adopted by other authorities.**

- 3.6** Some authorities who have an existing ward grant/funding model have used this as a starting point for the allocation of Neighbourhood CIL funding to avoid having to create structures and processes from scratch.
- 3.7** Identifying and Prioritising Projects:
  - The Council identify projects across their area and then consult upon them in order to prioritise their delivery.
  - The Council delegate the neighbourhood portion to ward-level, with some providing ward members with budgets for projects within their wards.
  - The Council invite bids from across their area (Gloucester City Council have opted for this approach) and evaluate them according to an agreed criteria. London Borough of Camden, require members to support or accept and propose projects to, in that case the Cabinet Member or, a funding committee or panel.
- 3.8** Where it is to be spent?
  - Regulations allow the Council to spend the Neighbourhood funding anywhere within their administrative area that does not have a Parish Council or designated Neighbourhood Area with a 'made' Neighbourhood Plan.
  - In other areas the Council are required to take account of the views of the communities in which the income was generated. In order to do this some, such as the London Borough of Brent, have chosen to create CIL 'neighbourhoods' (5 covering 21 wards) that benefit directly from development taking place in that area, with spending informed by more local priorities.
- 3.9** Delivering the projects:
  - Directly by community groups;
  - Via Council service areas on behalf of local communities; or
  - a mixture of these approaches.
- 3.10** Plymouth City Council have an interesting approach which requires crowd funding to match CIL spending on each project to enhance the impact of the CIL spending. Such an initiative could be incorporated with any of the above options
- 3.11** One of the first considerations must be the requirements of the Council's Constitution on the sign-off of spending.
- 3.12** By the end of the financial year (31.03.2021) the Council will hold £20,378.83 Reg. 59F Neighbourhood Funding and will have passed on £11,783.81 Reg. 59A Neighbourhood Funding to Parish Councils.

## Infrastructure Fund Governance

- 3.13** CIL Guidance states, at paragraph 144 (Reference ID: 25-144-20190901), that the regulations give, “local areas the opportunity to choose what infrastructure they need to deliver their relevant plan (the Development Plan and the London Plan in London)”. For the Borough Council this means the delivery of the Joint Core Strategy 2011 to 2031 (adopted December 2017) and The Cheltenham Plan 2011 to 2031 (adopted July 2020).
- 3.14** There are fundamentally two choices for the governance of the Infrastructure Fund but whichever option is adopted, what it will be spent on will be guided by joint work on Infrastructure Requirements to deliver the JCS and the District level plans (The Cheltenham Plan):
- 1) To formally make funding decisions individually at Cabinet; or
  - 2) to enter into an agreement to do this jointly, potentially delegating authority to the Leader and a Cabinet Member, sitting on a board or joint committee, to participate in decision making in that forum.

**3.14.1** Individual – Retain individual decision making authority on spending potentially with greater influence when promoting projects to deliver development serving Cheltenham’s needs, when co-operating/negotiating with JCS partners and the County Council.

**3.14.2** Joint - Decision Making would be more streamlined, with decisions not having to return to three Councils for approval. Focus would be on the delivery of the JCS, irrespective of which administrative area a project sits. Discussions are still being held on how this approach can work.

### **4. Next Steps - possible next steps for the committee to consider e.g. potential witnesses, further report, site visit etc.**

- 4.1** Officers to develop recommendation on Governance arrangements for the Regulation 59F Neighbourhood Fund with a view to establishing a mechanism for delivery for spending from April 2022.
- 4.2** Officers to work with JCS partners to develop proposals for the Governance of the main Regulation 59 Infrastructure Fund with a view to establishing an efficient mechanism for delivery for spending from April 2022.

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<b>Background Papers</b>	n/a
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