

# Cheltenham Borough Council

**Council – 11 December 2023**

**Cheltenham, Gloucester and Tewkesbury: Community**

**Infrastructure Levy Joint Committee**

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**Accountable member:**

Cllr Hay, Leader

**Accountable officer:**

Tracey Birkinshaw, Director Communities & Economic Development

**Ward(s) affected:**

All

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**Significant Decision:** Yes

**Executive summary:**

Further to reports to Cabinet (5<sup>th</sup> April 2022) and Council (20<sup>th</sup> June 2022) this report seeks:

- Approval for the establishment of a Joint Committee to facilitate governance of the allocation of Community Infrastructure Levy receipts received by Cheltenham, Gloucester and Tewkesbury as set out in appended Terms of Reference (see section 4 which explains the move from preparing a Memorandum of Understanding as previously agreed),
- Agreement of pooling arrangements by the three Joint Committee partner councils, managed through Community Infrastructure Levy Joint Committee Terms of Reference, and
- Review the interim Infrastructure List and feed any comments to Cabinet ahead of agreement through the Infrastructure Funding Statement at its meeting on 19<sup>th</sup> December 2023.
- Agree engagement with wider infrastructure providers (see paragraph 5.3)

**Recommendations:**

1. **To agree the establishment of a Community Infrastructure Levy Joint Committee under s101(5) and s102 Local Government Act 1972 and under Part 1A Chapter 2 Section 9EB of**

the Local Government Act 2000 and pursuant to the Local Authorities (Arrangement for the Discharge of Functions) (England) Regulations 2012.

2. To agree the Community Infrastructure Levy Joint Committee Terms of Reference, as appended to this report (Appendix 2).
  3. To agree the pooling of strategic Community Infrastructure Levy monies by the three partner Councils of Cheltenham, Gloucester and Tewkesbury with governance as set out in the Community Infrastructure Levy Joint Committee Terms of Reference.
  4. To approve and review the Infrastructure List for those items relating to the administrative area of Cheltenham Borough, and for this list to be combined with the lists of Gloucester, Tewkesbury and Gloucestershire County Council to form the basis of the work of the Community Infrastructure Levy Joint Committee.
  5. To enter into engagement with wider infrastructure providers (e.g. NHS, emergency services, Environment Agency etc.) outside the local authorities to identify any wider infrastructure priorities to be considered by the Community Infrastructure Levy Joint Committee.
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## 1. Implications

### 1.1 Financial, Property and Asset implications

There are no direct financial, property or asset implications of the recommendations in this report however the Council will indirectly benefit from the strategic element of the CIL which can be used to enhance the town, improve infrastructure and support economic growth in line with the Corporate Plan.

**Signed off by:** Director Finance & Assets [gemma.bell@cheltenham.gov.uk](mailto:gemma.bell@cheltenham.gov.uk)

### 1.2 Legal implications

The “strategic” element of CIL receipts (being otherwise than up to 5% for administration and the neighbourhood portion) must be spent on infrastructure. Charging authorities can choose to pool a proportion of their Community Infrastructure Levy (CIL) receipts to fund infrastructure including for out of their own area spending. Each of the charging authorities included in the pooling arrangements should be content that funding for infrastructure outside the authority’s area will support development of its own area.

Under national Planning Policy Guidance charging authorities are encouraged to consider publishing a memorandum of understanding detailing the administration, principles, and governance that will be implemented for any pooled fund, covering, but not limited to :

- a proposed governance structure and decision-making process for agreeing how the pooled fund is implemented and spent;
- the proportion or amount of levy each charging authority will contribute;
- the procedure for collecting the pooled levy;
- the strategic infrastructure projects the pooled fund will be spent on;
- a system for returning pooled funds to an authority in the event that it is necessary to do so;
- a proposed review mechanism for the memorandum.

It is further recommended that the memorandum of understanding is a publicly accessible document, which clearly explains how the pooled levy will be administered and spent. A memorandum of understanding is not being proposed, but the Joint Committee's terms of reference will set out how the pooled levy will be administered and spent.

The Authority has a variety of legislative powers relating to its governance arrangements, including the general power of competence set out in Section 1 of the Localism Act 2011. Section 101 of the Local Government Act 1972 and the Local Authorities (Arrangement for the Discharge of Functions) (England) Regulations 2012 enable two or more local authorities to discharge any of their functions (other than those which are the responsibility of an authority's executive under section 13 of the Local Government Act 2000) by a joint committee.

Contact officer: One Legal, [legal.services@onelegal.org.uk](mailto:legal.services@onelegal.org.uk)

### **1.3 Environmental and climate change implications**

None directly from this report, however CIL infrastructure projects that may be in the future funded, may have implications. To ensure environmental impacts of projects can be considered, in decision making by the CIL Joint Committee, the Cheltenham Climate team will be consulted with when developing the application process.

**Signed off by:** Climate Emergency Officer, [maizy.mccann@cheltenham.gov.uk](mailto:maizy.mccann@cheltenham.gov.uk)

### **1.4 Corporate Plan Priorities**

This report contributes to the following Corporate Plan Priorities:

- Ensuring residents, communities and businesses benefit from Cheltenham's future growth and prosperity
- Being a more modern, efficient and financially sustainable council

### **1.5 Equality, Diversity and Inclusion Implications**

None directly from this report, however CIL infrastructure projects that may be, in the future funded, may have implications.

**Signed off by:** *Head of communities, wellbeing & partnerships* [richard.gibson@cheltenham.gov.uk](mailto:richard.gibson@cheltenham.gov.uk)

### **1.6 Performance management – monitoring and review**

Should the recommendations of this report be approved then the monitoring and review would be undertaken by the Joint Committee and reported back to Cabinet.

Engagement will continue to be valuable locally and in the preparation for Joint Committee we will use the Planning & Liaison Member Working Group to gain feedback on proposals.

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## **2 Background**

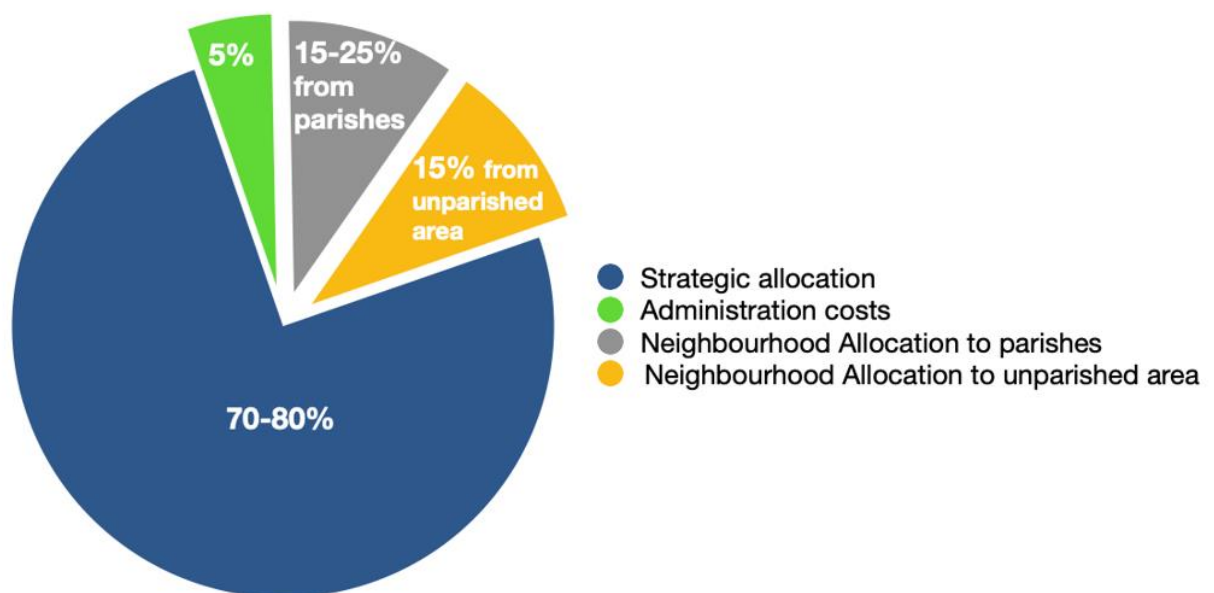
2.1 The Community Infrastructure Levy (CIL) is a charge which can be levied by local authorities on new development in their area. It is an important tool for local authorities to use to help them deliver the infrastructure needed to support development in their area. In England, authorities which can charge

the levy are the local planning authority for the area. CIL is governed by the CIL Regulations 2010 (as amended).

2.2 Cheltenham Borough Council approved the introduction of CIL on 15<sup>th</sup> October 2018 with commencement of charging on planning applications granted permission on or after 1st January 2019.

2.3 CIL is paid to the Council by developers after their planning permissions commence, in line with the Council's adopted Instalments Policy. CIL is a significant means outside wider government funding by which the Council is able to collect and pool developer contributions to deliver infrastructure improvements.

2.4 To remind members, the breakdown of CIL is aligned with CIL regulations is shown in the diagram below.



2.5 Cheltenham has been having ongoing scrutiny of CIL and testing the approach to future governance, as demonstrated through various reporting, including:

- December 2021, Cabinet received a report on the annual Infrastructure Funding Statement (IFS). As part of this report, the need to put in place CIL governance was highlighted.
- April 2022, Cabinet received a report that set out a governance approach to CIL and set out proposed governance arrangements, this report was then passed to Council.
- June 2022, Council received the report and endorsement of a proposed governance approach by Cabinet.
- December 2022, Cabinet received a report on Infrastructure Funding Statement, this highlighted the preparation of a Memorandum of Understanding as a next step for the allocation of the CIL Strategic 'Infrastructure Fund' to be brought forward. This is dealt with in section 4 of this report.

2.6 Since the publication of the reports above, further work has taken place with our partners Gloucester, Tewkesbury and Gloucestershire County Council. This has included agreement to the preparation of

Cheltenham, Gloucester & Tewkesbury Strategic and Local Plan as agreed through our [Local Development Scheme](#), approved July 2023, together with progressing our CIL governance proposals to a Joint Committee. The latter being the basis of this report.

### 3 Why a Joint Committee?

3.1 Members will note that this report amends the governance proposal from that of a CIL Board, as recommended in reporting to Cabinet and Council in 2022, to that of a Joint Committee. The Joint Committee has the benefit of introducing a more coherent and less complex approach to making decisions on bids for CIL money and provides a robust framework for collaboration and collective decision making.

3.2 The change has arisen responding to a number of key factors, including:

1. The concern of the time and administration that would be needed to service a CIL Board and then recall decisions back to each individual council for final approval, building in delay and uncertainty for infrastructure providers.
2. More efficient to engage on a collective basis with infrastructure providers and adds transparency into future CIL allocation and the setting of priorities through the operation of a Joint Committee.
3. Commitment given by Gloucester and Tewkesbury to define a Terms of Reference that took on board the spirit of the decisions previously made by Cheltenham Borough Council and built in the safeguards that included:
  - full consensus vote
  - review triggers
  - link back to infrastructure commitments contained with the Infrastructure Funding Statements published by the councils, this includes the Infrastructure List (including any interim assessments) and the Infrastructure Delivery Plan (being updated to support the emerging Cheltenham, Gloucester and Tewkesbury Strategic and Local Plan)
  - decisions made by the Committee will be subject to the decisions being reported back through relevant Cabinet/Executive Committee of each of the member Councils
  - Gloucestershire County Council entitled to attend meetings of the Committee to input on matters relevant to the functions and activities of the Committee but shall have no voting rights nor be involved in scrutiny
  - Pooling and its review.
4. Positive and constructive engagement with Gloucestershire County Council on the preparation of the draft Terms of Reference.

3.3 Gloucestershire County Council is not a CIL charging council; however, county councils are responsible for the delivery of key strategic infrastructure. As set out in [national Planning Practice Guidance](#) (nPPG), charging authorities must consult and should collaborate with them in setting the levy and should work closely with them in setting priorities for how the levy will be spent in 2-tier areas.

3.4 The nPPG goes on to advise that “*Charging authorities should think strategically in their use of the levy to ensure that key infrastructure priorities are delivered to facilitate growth and the economic benefit of the wider area. This may, for example, include working with neighbouring authorities...*”.

3.5 This report and the Joint Committee proposal relates **only** to the strategic element of CIL,

responsibility for the neighbourhood element of CIL sits wholly with Cheltenham Borough Council and sits outside the proposals of the recommendations of this report. Cheltenham Borough Council has an agreed Terms of Reference in place for the non-parished areas neighbourhood allocation of CIL through the work of the [Community Infrastructure Levy Neighbourhood Panel](#) and made its first allocations summer 2023.

3.6 An officer working group is being established to support the work of the Joint Committee, a Terms of Reference for this working group is being prepared and will be agreed by the Joint Committee once established.

## 4 Pooling of CIL

4.1 The previous reports to Cabinet and Council highlighted the pooling of CIL and the need for:

1. A decision on pooling, and
2. the appropriate governance put in place.

This was in line with National guidance, the nPPG sets out that *“Charging authorities can choose to pool a proportion of their Community Infrastructure Levy... Where local authorities are working jointly to prepare development plans for their areas, pooling of levy receipts may be a useful mechanism for funding strategic infrastructure projects that have cross-boundary benefits. Each of the charging authorities included in the pooling arrangements should be content that funding for infrastructure outside the authority’s area will support development of its own area”*.

4.2 The nPPG encourages charging authorities, where pooling is agreed to publish a memorandum of understanding detailing the administration, principles, and governance that will be implemented for the pooled fund. This was highlighted in the reports to Cabinet and Council in 2022. However, since that time the proposal to put in place a Joint Committee has been progressed across the partner councils and the pooling element has been incorporated into the Terms of Reference now presented.

4.3 Whilst a Memorandum of Understanding was an appropriate mechanism in the context of the governance proposals set out in 2022, considering the changes now proposed to move to a proposal of a Joint Committee, such an approach would not provide a robust position.

4.4 A Memorandum of Understanding is helpful in setting out an agreed position, however it is not legally binding on any party and has no enforceability outside goodwill of the parties concerned. Utilising a Terms of Reference adds more weight as the responsibilities of the Joint Committee are enforceable by the partner councils. The Terms of Reference appended to this report propose 100% pooling of the strategic CIL. The key justifications for the level of pooling are that;

- Taking into account, S106 obligations, CIL to date together with wider funding either secured or identified there is and will remain a significant funding gap to meet the infrastructure demands of the adopted Gloucester, Cheltenham & Tewkesbury Joint Core Strategy.
- Without commitment to pooling, all councils will face ongoing challenges to fund large infrastructure projects, and it will take a longer period of time to deliver on priorities for investment.
- By committing to pooling, within the parameters of the Joint Committee Terms of Reference, it sends a positive message to the broad range of infrastructure providers that the SLP councils are committed to enabling infrastructure priorities across the SLP area.
- By building in trigger point reviews regarding pooling, this provides all partner councils with

the ability to renegotiate the level of pooling in the future.

- If Cheltenham were to retain a percentage of the strategic CIL receipts, in parallel to the Joint Committee it would have to put in separate governance procedures which, given the level of CIL currently it may be a challenge to allocate due to the high values of strategic infrastructure and not be efficient in respect of time and resources.

4.5 From time to time there may arise from one or more councils an exceptional case to reprioritise infrastructure, bringing forward a new infrastructure request. The draft Terms of Reference recognises this and makes provision for this flexibility.

4.6 Whilst we have had CIL in place for some time, it has taken a long period for the CIL pot to build up. At the time of writing the strategic CIL pot stood at £11,897,553.28. Whilst this may look like a significant sum of funding available, the reality is that it provides just a small fraction of the funding needed to deliver the infrastructure demands for our area. The CIL funding available, as collected by each council is broken down as follows:

CIL Authority	Regulation 59i Strategic 'Infrastructure Fund'	
	Date	Amount
Cheltenham Borough Council	25/10/2023	£2,564,105.08
Tewkesbury Borough Council	25/10/2023	£8,058,663.30
Gloucester City Council	25/10/2023	£1,274,784.90
	<b>25/10/2023</b>	<b>£11,897,553.28</b>

## 5 Infrastructure List

5.1 An Infrastructure List has to be included within the Infrastructure Funding Statement, reported at least annually to Cabinet. Through our previous reporting we have highlighted that the agreed Infrastructure list is not representative of current priorities. As such the SLP councils alongside Gloucestershire County Council have prepared an updated Infrastructure List. This recognises that a full reassessment of the Infrastructure Delivery Plan (upon which the agreed Infrastructure List was based) is required and this will take place alongside the preparation of the SLP, but we cannot wait until that is completed to better reflect current priorities.

5.2 Appended to this report is the draft Infrastructure List for Cheltenham, Gloucester, Tewkesbury and Gloucestershire County Council. Gloucester and Tewkesbury councils are reporting on their priorities for the infrastructure list through their reporting procedures. Once agreed across the 3 councils, this will form the Infrastructure List for the Community Infrastructure Levy Joint Committee.

The recommendation of this report is to approve and review those items relevant to the administrative area of Cheltenham.

5.3 The councils are very aware that infrastructure identified by the local authorities may not identify all priorities. With this in mind a wider targeted exercise is being undertaken with key stakeholders such as NHS, emergency services, utilities, Environment Agency, Sport England etc. Should additional items be identified for our area which are considered priorities ahead of the full review of the IDP to support the SLP an update to the Infrastructure List will be presented to Cabinet.

## **6 Reasons for recommendations**

7 To ensure transparency and member engagement in decision-making.

## **8 Alternative options considered**

8.1 Alternatives have been considered as noted in the earlier reports to Cabinet and Council.

## **9 Consultation and feedback**

- Ongoing engagement with partner councils through the SLP Joint Advisory Group
- Engagement with Cabinet lead portfolio holders
- Ongoing consultation with One Legal

## **10 Key risks**

10.1 See Appendix 1.

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### **Report author:**

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### **Appendices:**

- i. Risk Assessment
- ii. Community Infrastructure Joint Committee Terms of Reference
- iii. DRAFT Infrastructure List

### **Background information:**

[Cabinet 5th April 2022 Community Infrastructure Levy Governance & Section 106 engagement](#)

[Council 20th June 2022 Community Infrastructure Levy Governance & Section 106 engagement](#)

[Cabinet 20<sup>th</sup> December 2022 Infrastructure Funding Statement](#)



## Appendix 1: Risk Assessment

Risk ref	Risk description	Risk owner	Impact score (1-5)	Likelihood score (1-5)	Initial raw risk score (1 - 25)	Risk response	Controls / Mitigating actions	Control / Action owner	Deadline for controls/ actions
CIL	Not having a clear CIL prioritisation of infrastructure projects may risk receipts not being targeted towards the most critical infrastructure needed to deliver development and fulfil our requirements in the delivery of the JCS and Cheltenham Plan.	Director Communities & Economic Development	5	2	10	Reduce	To approve and review Infrastructure List	CIL Manager	11 December Council
CIL	Not having clear and transparent governance in place around the	Director Communities & Economic	5	2	10	Reduce	Agreement of Joint Committee	Relevant heads of service, Cheltenham,	11 December Council

Risk ref	Risk description	Risk owner	Impact score (1-5)	Likelihood score (1-5)	Initial raw risk score (1 - 25)	Risk response	Controls / Mitigating actions	Control / Action owner	Deadline for controls/ actions
	prioritisation and spend of CIL will risk funding not being spent on agreed infrastructure priorities	Development						Gloucester & Tewkesbury	