

PART A

Report to: Cabinet
Date of meeting: 18 January 2016
Report of: Head of Regeneration and Development
Title: Community Infrastructure Levy Governance

1.0 **SUMMARY**

- 1.1 Following the Council decision in November 2014 to implement the Watford CIL from April 2015, a requirement of the CIL regulations is to establish a CIL Governance structure to oversee the collection, auditing and spending of CIL monies.
- 1.2 This report proposes a governance structure overseen by Cabinet which will be the principal means by which CIL monies will be spent on the infrastructure necessary to support new development.
- 1.3 The protocol outlines the relationship of the Local Plan and other strategies to the Infrastructure Delivery Plan and the CIL Infrastructure Regulation 123 List. A mechanism is identified to prioritise CIL spending on eligible infrastructure which includes engagement with stakeholders and the local community. This also extends to updates of the Regulation 123 List.
- 1.4 Whilst these protocols will ensure that CIL is managed in an open way and in accordance with the CIL regulations, the Council has already committed £5.85 million of CIL and other developer contributions to the Metropolitan Line Extension which will leave only very limited funding for other infrastructure based on current income projections.
- 1.5 The report discusses a need to retain 5% of CIL income (as permitted under the CIL regulations) to contribute to the administration costs of CIL and the Exacom software.
- 1.6 There is also a discussion on the neighbourhood meaningful proportion and how this could be implemented in Watford.

2.0 **RECOMMENDATIONS**

- 2.1 That the CIL governance framework set out in this report be taken forward and form the basis upon which the Council will manage the spending of CIL receipts.
- 2.2 That Cabinet has overarching responsibility for the annual reporting of CIL and the allocation of CIL monies.

Contact Officer:

For further information on this report please contact: Ian Dunsford, Planning Policy Section Head
telephone extension: 8280 email: ian.dunsford@watford.gov.uk

Report approved by: Jane Custance, Head of Regeneration and Development.

3.0 DETAILED PROPOSAL

3.1 BACKGROUND

Watford Borough Council introduced a Community Infrastructure Levy (CIL) on 1 April 2015. This followed adoption by Full Council in November 2014.

- 3.2 CIL is the main way in which the Council now collects contributions from developers for infrastructure provision to support development planned in the Council's Local Plan. It largely replaces the use of Section 106 planning obligations with the exception of some site specific matters, affordable housing provision and for securing infrastructure associated with the redevelopment of Watford Junction, Heath Campus and Western Gateway Special Policy Areas identified in the Local Plan.
- 3.3 To date, more than £30,000 of CIL has been collected in the Borough. This relatively low figure is due to the fact that CIL is only paid once development commences. However the value of the liability notices issued is currently exceeding expectations but this does not mean that all the schemes they represent will be built. It will take a few years before the Council starts to receive more significant sums of money from the levy. Based on the amount of development allocated in the Council's Local Plan it is expected that the Council will receive approximately £200,000 annually in future years.
- 3.4 Watford Borough Council has the responsibility for prioritising the spend of the CIL which it retains. The overarching rule is that CIL must be spent on infrastructure to support the overall development of the area. This means supporting the development planned in the Council's Local Plan. Infrastructure includes things such as transport improvements, roads, pedestrian and cycle routes, sports and community facilities, libraries, schools and flood defences. CIL can be spent on both capital projects and revenue projects such as the maintenance of infrastructure. CIL **cannot** be spent on addressing current deficits in infrastructure provision unless those deficits are made worse by new development in the area. In these circumstances, the level of CIL spend would need to be limited to covering the pressure placed on this infrastructure by new development alone.
- 3.5 It is very unlikely that CIL will generate enough funds to completely cover the cost of new infrastructure needed to fully support planned development. There will be competing demands on this funding. With this in mind, it is important to ensure there are robust, accountable and democratic structures in place to ensure the spending of CIL funds are prioritised in the right way.
- 3.6 The approach for how decisions should be made on the prioritisation and spend of CIL

funds is set out from Section 3.8 below. This report requests approval of this approach.

- 3.7 There are a number of other decisions which the Council needs to make with respect to the use of CIL funds. These include the amount of CIL which should be retained for administrative purposes and how the 'Neighbourhood Funding' element of CIL should be applied.

3.8 **CIL SPENDING AND GOVERNANCE PROTOCOL**

- 3.9 The majority of CIL funds will be held by the Council for spending on infrastructure to support the development planned in the Council's Local Plan. It is proposed that the allocation of this money to different infrastructure projects will be made through an annual programming process which will ultimately be agreed by Cabinet, similar to the way s.106 Planning Obligations are currently reported. This would need to take account of the Council's £5.85 million commitment to use CIL funding and other developer contributions to support the delivery of the Metropolitan Line Extension through to 2031.

- 3.10 This annual programming process will be supported by the Infrastructure Delivery Plan which will be prepared and updated annually in consultation with infrastructure service providers to provide evidence on the infrastructure needed to support development in the Local Plan.

- 3.11 Many of the infrastructure projects needed to support the plan have already been identified in the Infrastructure Delivery Plan (IDP) which accompanied the Local Plan Part 1. The IDP is a living document which requires periodic updates to reflect the delivery of infrastructure and the identification of new projects.

- 3.12 For each infrastructure project identified, the Infrastructure Plan will provide information on:

- timing of delivery
- cost of delivery
- funding from other sources
- the size of the funding gap

- 3.13 The Infrastructure Delivery Plan may also identify and prioritise strategic infrastructure priorities which a proportion of CIL funds received each year may be reserved for.

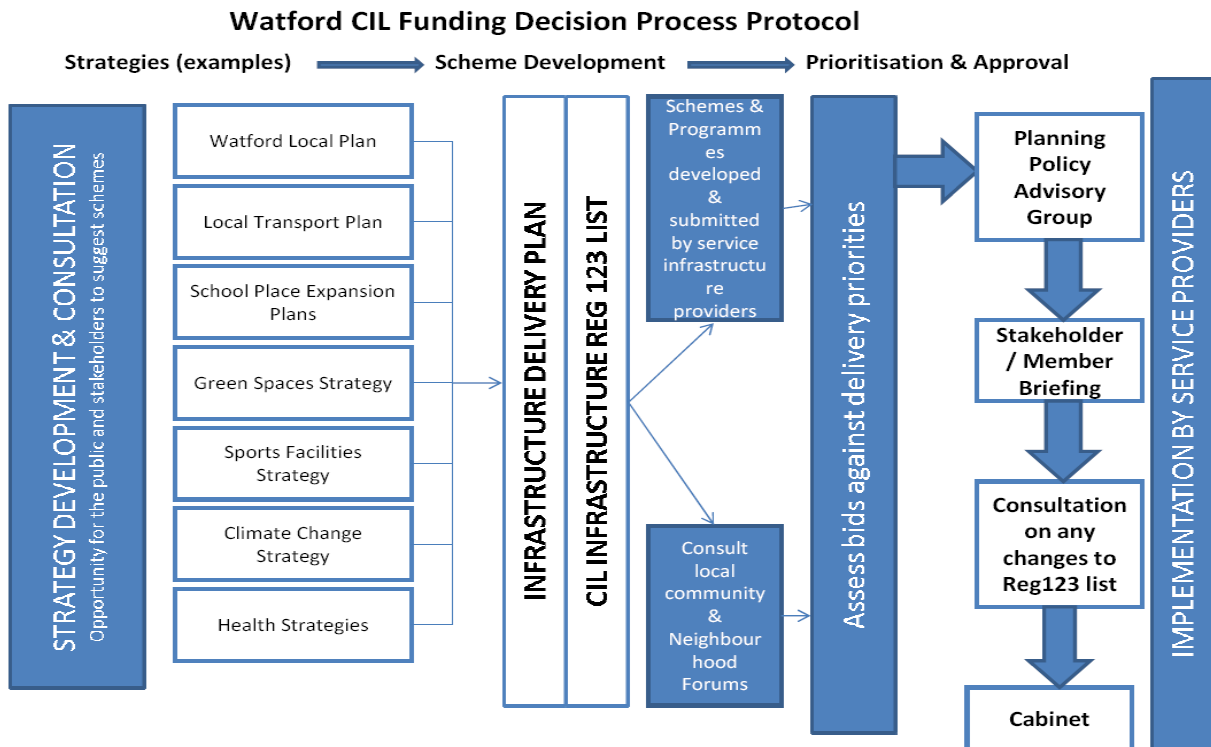
- 3.14 The Council will also publish a Statement of CIL Accounts by the end of April. The statement will detail the amount of CIL funds in the bank as of 1st April together with a forecast of CIL funds to be received over the following three years. The forecast will be based on:

- Committed CIL funds. These are funds which will arise from the payment of instalments from development already commenced. Once development has commenced there is a legal duty to pay CIL in accordance with the instalment policy.
- Potential CIL funds. These are funds that the Council may receive within

the four year period from liable development that has been permitted but has not yet commenced. There is less certainty that these funds will actually arise because if development never commences on a site, no CIL will be paid.

- 3.15 Following the publication of the CIL accounts, the Council will consult with infrastructure providers to understand any infrastructure needs arising from development commenced in the previous year. This will allow the Infrastructure Delivery Plan to be updated annually.
- 3.16 Once the evidence has been collated, officers will prepare a series of recommendations for the release of CIL funds for the financial year. These recommendations together with an updated Infrastructure Plan will be reported to the Planning Policy Advisory Group. The meeting will make recommendations to Cabinet on what CIL should be spent on within the financial year. Recommendations on what CIL may be spent on in future years may also be made.
- 3.17 The recommendations will be set out in a draft Annual CIL Spending Plan which will be signed off by the Council's Cabinet. Cabinet will also approve the annually updated Infrastructure Plan.
- 3.18 There may be occasions where the release of additional CIL funds are required for urgent or unforeseen infrastructure requirements after the annual spending plan has been agreed by Cabinet. In these cases a report will be taken to Cabinet for approval for the release of further funds.
- 3.19 It is proposed that the annual CIL programming process will begin in the financial year 2016/17 to allow enough time for CIL funds to sufficiently build up.
- 3.20 The Watford CIL Decision Process Protocol diagram below shows how this will work in practice.

3.21



3.22 SPENDING CIL ON ELIGIBLE INFRASTRUCTURE

The Infrastructure Delivery Plan sets out infrastructure projects that are eligible for CIL funding. Only projects that support the growth outlined in the Council's Local Plan will be included in the Infrastructure Plan.

3.23 In order for a project to receive CIL funding in any given year it should be:

- included on the Council's Regulation 123 list (see below)
- identified in the latest Infrastructure Delivery Plan
- deliverable within the financial year (i.e. work can start on the project in the financial year)
- broadly in line with the phasing of infrastructure delivery outlined in the Infrastructure Plan unless there are good reasons for earlier/later delivery.

3.24 Projects may be favoured where they lever in other funds that wouldn't otherwise be available, particularly where those funds may not be available in future years. Projects will also be prioritised where it can be satisfactorily demonstrated that the particular infrastructure would otherwise not be delivered (for example, there are no other possible sources of funding or other funding sources are insufficient). Projects which have wider benefits, for example those that aid in delivering other strategies alongside the Local Plan, will also be prioritised. However in view of the Council's recent £5.85m commitment of CIL and other developer contributions to the Metropolitan Line Extension in July 2015, available funding for other projects will be extremely limited for the foreseeable future.

3.25 THE CIL REGULATION 123 LIST AND FUTURE USE OF SECTION 106 PLANNING OBLIGATIONS

- 3.26 The CIL Regulations seek to ensure that developers are not double charged for a piece or type of infrastructure through both CIL and Section 106 Planning Obligations.
- 3.27 The Regulation 123 list sets out the types of infrastructure that the Council may fund through CIL. The regulations dictate that any infrastructure identified on the Regulation 123 list cannot then be provided through the use of Section 106 Planning Obligations.
- 3.28 The Watford Regulation 123 list which was adopted by Council in November 2014 covers most types of infrastructure. This means that Section 106 planning obligations will be used less often.
- 3.29 Circumstances where the Council will still use Section 106 Planning Obligations include securing affordable housing provision and development in Watford Junction, the Heath Campus and part of the Western Gateway Strategic Policy Areas where on site infrastructure will be required. Monies secured from Section 106 agreements will be kept separate from the CIL pot as they are specific to addressing the impacts of these developments.
- 3.30 The Regulation 123 list can be amended at any time as priorities/circumstances change. It would be possible to reduce the list to just a few items including the Metropolitan Line Extension, similar to the approach Portsmouth has followed with regard to flood prevention. However any changes will need to be consulted upon and the final approval must be made by Council.
- 3.31 Section 106 Planning Obligation funds already collected or secured prior to the introduction of CIL will be kept separate and will continue to be applied to infrastructure in accordance with the specific agreement to which they relate.

3.32 RETENTION OF CIL TO COVER ADMINISTRATIVE COSTS

- 3.33 The administration of CIL involves a reasonable amount of staff resource. Officer time is required to calculate and collect the levy and enforce payment where it is not paid on time and to negotiate challenges to the charge. Officer time will also be required on making recommendations as to the spending of CIL and releasing funds and monitoring the spend of CIL. In addition, introducing a CIL involved costs including the employment of specialist consultants and procurement of the EXACOM service to assist with the administration of CIL.
- 3.34 The CIL Regulations allow councils to retain up to 5% of total CIL receipts in a given year to cover the costs of administration and the costs of introducing a CIL. Under the Section 106 regime monitoring fees were originally charged to help cover the costs of administering the agreement. Although this was subsequently ruled unlawful in respect of another Council and these charges were dropped. (Oxfordshire County Council v SoS for CLG [2015] EWHC 186). Based on Watford's known costs and the experience of other charging authorities in Hertfordshire and London, it is proposed that the Council retains the maximum of 5% of CIL receipts to help cover administration costs. This would result in approximately £10,000 being retained to help cover costs each year.

3.35 **NEIGHBOURHOOD FUNDING**

3.36 The CIL Regulations require the Council to pass a 'meaningful proportion' of the CIL receipts received in a particular area to that area. This is known as 'Neighbourhood Funding'. The meaningful proportion is defined as 15% in areas where there is no Neighbourhood Plan or 25% in areas with a Neighbourhood Plan. Watford currently has no neighbourhood plans. There is no definition of neighbourhood in the CIL guidance. Potentially it could be based on a ward basis, but given the size of Watford, it would probably be sufficient to treat the whole borough as a single neighbourhood for the sake of CIL allocations.

3.37 The CIL guidance requires the Council to engage with the communities where the development has taken place and agree with them how to spend the neighbourhood proportion of CIL. Some authorities have undertaken consultations through an on line survey. Given the scale of funds that may be available, this may be the most suitable approach to take for Watford.

4.0 **IMPLICATIONS**

4.1 **Financial**

4.2 The Shared Director of Finance comments that setting up and administering the systems described above will cost staff time and resources. However, as described in Section 3.32, 5% of CIL receipts will be retained each year to help cover these costs.

The Council has also identified CIL as one of the funding streams for the Metropolitan Line Extension.

4.3 **Legal Issues** (Monitoring Officer)

4.4 The Head of Democracy and Governance comments that the legislation governing the administration and governance of a Community Infrastructure Levy (CIL) is contained within the Planning Act (2008) and the Community Infrastructure Levy Regulations (2010 and as amended). The associated Statutory CIL Guidance (contained within the Planning Practice Guidance) is also important in guiding this process.

4.5 Governance arrangements that are consistent with the CIL regulations must be agreed. If they are not then the Council runs the risk of challenges from developers over the use of CIL to the Ombudsmen being upheld.

4.6 The CIL regime and associated guidance relating to governance is still at an early stage of development. Governance arrangements will need to be kept under review.

4.7 **Equalities**

4.8 Not applicable as the Community Infrastructure Levy is already being implemented and no further policies are being proposed.

4.9 **Potential Risks**

4.10	Potential Risk	Likelihood	Impact	Overall score
	1. Without appropriate governance structure, there is a risk of legal challenge from the ombudsman or developers.	3	4	12
	2. Lack of resources could adversely affect collection and allocation of CIL monies.	3	4	12
	3. Lack of/ or late input from infrastructure providers could slow delivery of the necessary infrastructure to support new development.	2	3	6
	4. Changes in CIL legislation. These are considered to be very likely in 2016.	3	2-4	6-12
<i>Those risks scoring 9 or above are considered significant and will need specific attention in project management. They will also be added to the service's Risk Register.</i>				

4.11 **Staffing**

4.12 Services from Planning and Finance will be required to support the smooth running of the local CIL. A recent bespoke Planning Officer Society report has recommended the appointment of a CIL/S106 officer to oversee the collection and management of CIL.

4.13 **Accommodation**

4.14 No accommodation implications.

4.15 **Community Safety**

4.16 No specific issues

4.8 **Sustainability**

4.9 The CIL is designed to support the delivery of the necessary infrastructure to realise Local Plan policies. All policies in Local Plan Part 1 have been subject to a sustainability appraisal and future Local Plan part 2 policies will also be subjected to appraisal and consulted upon before the plan is submitted for examination.

Appendices

None

Background Papers

[Council Report on Community Infrastructure Levy Adoption 19 November 2014](#)

[Cabinet Report 13 July 2015 Update on Croxley Rail Link](#)

File Reference

None