

PART A

Report to: Cabinet
Date of meeting: 2 December 2019
Report of: Interim Group Head of Place Shaping
Title: Developer Contributions Governance

1.0 SUMMARY

- 1.1 This report sets out details of the new Community Infrastructure Legislation enacted in September 2019 and makes recommendations on how Watford should respond to those legal changes. The report proposes overarching priorities for Strategic and Neighbourhood CIL spending and also refreshes the Council's governance around CIL based on the experience that Watford has gained since becoming a CIL charging authority since 2015.
- 1.2 While smaller projects that are prioritised can be funded through the Neighbourhood CIL pot, it is recommended that Strategic CIL resources not be allocated immediately but built up in order to fund major infrastructure to support development in the Borough.

2.0 RECOMMENDATIONS

Cabinet are asked to:

- a) Remove the Regulation 123 list to reflect changes in the Community Infrastructure Levy legislation which means it is no longer applicable from September 2019.
- b) Agree updated governance methodology for Strategic CIL and the Neighbourhood CIL portion as set out in this report to manage the spending of CIL receipts.
- c) Agree the priorities for Strategic and Neighbourhood CIL spending as set out in this report.
- d) Note that Strategic CIL resources will not be allocated at this point but will be built up in order to provide a fund for major infrastructure to support development in the future.
- e) Agree to delegate powers to approve the Infrastructure Funding Statement (as required by the new legislation to replace the s62 report on developer contributions spend) for publication to the Group Head of Place Shaping.
- f) Agree new charges for the monitoring and administration of section 106 agreements.

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Report approved by:

Helen Fisher, Interim Group Head of Place Shaping

3.0 DETAILED PROPOSAL

3.1 BACKGROUND

3.2 Watford became a Community Infrastructure Charging Authority on 1 April 2015. CIL is the main way in which the council now collects contributions from developers for infrastructure provision to support development in the Local Plan.

3.3 Since then the Council has collected c£3m from the Community Infrastructure Levy (CIL). Of this 80% is in the Strategic Infrastructure pot, 15% in the Neighbourhood Pot and the remaining 5% set aside for admin and Exacom software costs to support the CIL in line with the CIL legislation. A CIL and S106 update report has been prepared separately and can be seen as an appendix to this report.

3.4 Watford Borough Council has the responsibility for spending the CIL on infrastructure needed to support the development of the area, it is primarily a tool to support capital infrastructure. The Council has the opportunity to choose what infrastructure is prioritised in order to deliver the Local Plan. The levy cannot be used to fund affordable housing.

3.5 CIL does not generate enough funds to cover the whole cost of infrastructure needed to support planned development, as such there are competing demands on the collected money. With this in mind there needs to be robust, transparent and accountable governance in place to prioritise spend. The existing CIL governance structure was approved by Cabinet on 18 January 2016.

3.6 The Neighbourhood Funding element of CIL was designed to help communities accommodate the impact of new development. The intention is for the community to be involved in deciding how and where this proportion of money is spent. There is no definition of 'neighbourhood' in the CIL guidance. Given the small size of the Watford it is considered acceptable to treat the whole borough as a single neighbourhood for the sake of neighbourhood CIL allocations. This approach was agreed at Cabinet January 2016 and enables the entire neighbourhood CIL portion to fund larger projects.

3.7 LEGISLATION

3.8 The updated CIL regulations came into force 1 September 2019. The key amendments to the regulations relate to:

- A requirement for councils to publish 'infrastructure funding statements'. These statements replace existing Regulation 123 lists and should include details of how much money has been raised through developer contributions and how it has been spent, also replacing the annual section 62 report previously taken to Cabinet. The Infrastructure Funding Statement will also include a section on how CIL receipts will be spent in the future. The new infrastructure funding statement must be published on our website annually from December 2020. This is a good opportunity to promote what is being delivered in Watford encourage effective engagement with

infrastructure providers and communities. It should also help to address FOI requests by showing transparent spending and prioritisation.

- Charging authorities should apply an index of inflation to keep the levy responsive to market conditions. This figure will be published annually by the Royal Institution of Chartered Surveyors commencing in 2020.
- Local authorities will be allowed to charge a fee through section 106 to contribute toward the cost of monitoring and reporting on developer contributions. Monitoring fees can be used to monitor and report on any type of planning obligation, for the lifetime of that obligation.
- The pooling restriction for S106 agreements has been lifted. However the Government have made it clear that the intention is not to return to a tariff style system, CIL should be used to secure contributions to address the cumulative impact of development in an area.

3.9 For information the previous Regulation 123 list identified all types of infrastructure that may be funded in whole or in part by CIL:

- Highways & Transport improvements
- School Places (primary and secondary schools, excluding those associated with SPA2 Watford Junction, SPA3 Health Campus and at SPA6 Western Gateway).
- Youth facilities
- Childcare
- Nursery spaces
- Children's play facilities
- Adult care services
- Health centres
- Provision of new community facilities and improvements to existing facilities
- Libraries
- Sports facilities as identified in the WBC Sports Facilities Strategy and Playing Pitches Strategy
- Flood defences
- Green infrastructure
- Open Space provision, excluding onsite provision of local open space
- Minerals and waste
- Waste management.

3.10 CIL SPENDING

3.11 The Planning Act says that authorities can only spend CIL on providing infrastructure to support the development of their areas. "Infrastructure" is defined in legislation as including; flood defence, open space, recreation and sport, roads and transport facilities, education and health facilities. This is confirmed (para 59 CIL legislation, as amended 2019) 'A charging authority must apply CIL to funding the provision, improvement, replacement, operation or maintenance of infrastructure to support the development of its area.' The levy can be used to increase the capacity of existing infrastructure or to repair failing existing infrastructure, if that is necessary to support development.

- 3.12 The majority of CIL funds will be held in the Strategic CIL pot, by the Council, for spending on infrastructure to support the development in Watford's Local Plan. Existing commitments and forecasts can be seen in the CIL and S106 spend appendix to this report.
- 3.13 In addition Growth Bids have been made for funding projects from the Watford Cultural Strategy through the Community Infrastructure Levy. Particular projects identified include:
- Heritage Strategy, part of the Cultural delivery plan and will provide the framework for the future Museum service
 - Public Art Strategy/framework – part of the Cultural delivery Plan and will support the regeneration development schemes
 - Heritage Digital Trail – part of the Cultural delivery plan
- 3.14 Once further detail is available on the projects identified from the Watford Cultural Strategy they will be added to the IDP. At this stage it is not considered that the projects will fit the criteria for funding from the Strategic CIL monies. However, these projects may be suitable for funding from the neighbourhood proportion of CIL which allows more flexibility provided that the requirement to 'support the development of the area' is met. The wider definition means that the neighbourhood portion can be spent on things other than infrastructure (as defined in the Community Infrastructure Levy regulations) provided it is concerned with addressing the demands that development places on the area.
- 3.15 National planning policy guidance states: "Communities without a parish or town council can still benefit from the neighbourhood portion. If there is no parish or town council, the charging authority will retain the levy receipts but should engage with the communities where development has taken place and agree with them how best to spend the neighbourhood funding. Charging authorities should 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."
- 3.16 A governance methodology for Strategic CIL is proposed in the section below to ensure that the money collected through the Community Infrastructure Levy is spent in the most appropriate way to support development identified in the Watford Local Plan. The Neighbourhood CIL governance methodology is also proposed to identify and engage on projects suitable for funding from the neighbourhood pot. Where appropriate the council will work to align funding priorities through Strategic and Neighbourhood CIL.
- 3.17 THE INFRASTRUCTURE DELIVERY PLAN AND STRATEGIC CIL
- 3.18 CIL is designed to help support new development as set out in Watford's Local Plan. Different types of infrastructure projects will be needed to support planned housing and employment development and so information on these projects is gathered to ensure deliverability of the plan and to prioritise infrastructure delivery. This information is collated in the Infrastructure Delivery Plan (IDP). It should be noted that some projects that appear in

the Infrastructure Delivery Plan are not suitable for CIL funding, for example they may be addressing an existing infrastructure deficit or already have funding from another source and many are not deliverable in the short term.

- 3.19 The IDP is prepared in partnership with infrastructure providers, councillors, internal and external stakeholders who have been given the opportunity to suggest schemes and provide regular updates on projects. The IDP is updated regularly by the Planning Policy team with approval delegated to the Group Head of Place Shaping in consultation with the Portfolio Holder, it forms part of the evidence base to the Local Plan.
- 3.20 PROCESS
- 3.21 CIL spending and the new requirements for Infrastructure Funding Statements are something that should fit in with existing processes. Projects are to be identified from the IDP and spending Strategic CIL money needs to be considered as investment through the Capital Programme within the council. Clear priorities, as set out in this report are to be agreed for funding.
- 3.22 It is proposed that the allocation of CIL money to projects will be made through an annual programming process. This will support the new requirement to produce an Infrastructure Funding Statement detailing spend and commitments for spend on priority infrastructure projects annually.
- 3.23 The council will consult to understand any infrastructure needs arising from development in the forthcoming year and add these to the Infrastructure Delivery Plan. These projects may be at a pre-feasibility stage but as much information regarding costs, timescales and deliverable outcomes as possible should be provided on the pro forma. Information should be fed into updates of the IDP as it becomes available through feasibility and PID work. Where projects span two or more years clear milestones and phasing costs must be identified.
- 3.24 Projects from the IDP will be prioritised and where appropriate fed into the Council's Capital Programme and/or the Strategic and Neighbourhood CIL process as outlined below. The shortlisting process will be led by the Group Head of Place Shaping in consultation with the Group Head of Corporate Strategy and Communications, the Planning Portfolio Holder and Head of Finance.
- 3.25 Projects may be favoured for funding where they leverage in other funds, 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 not otherwise be delivered (i.e. 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.
- 3.26 In order to ensure all projects are fed through this process officers will review submitted PIDs every September and feed information into updates of the IDP.

3.27 CIL expenditure aims at mitigating the infrastructure impacts of an individual development, as well as the overall cumulative effect of development. CIL spending does not have to be directly related to the development through which it was raised and can be used to support infrastructure expenditure in general across the borough and beyond the boundary where appropriate and identified in advance. However, suitable projects in areas that have experienced significant development will be prioritised for CIL spend.

3.28 STRATEGIC CIL

3.29 The council will work with key infrastructure providers and partners, including Hertfordshire County Council, to deliver new infrastructure that will meet the needs of Watford and support growth in the South West Hertfordshire area. Council priorities are the cultural strategy, roads and transport and education. This is reflected in the draft Local Plan policy on Infrastructure Provision.

Policy V9.5 Infrastructure Provision

Planning permission, except for householders, will be granted where it is demonstrated that there is, or will be, sufficient infrastructure capacity to support and meet all the requirements arising from the proposed development. Infrastructure provision will reflect the Infrastructure Delivery Plan and its successor documents.

Priority projects include:

- Education facilities;
- On site green infrastructure and connectivity to the wider network;
- Sustainable transport using the safeguarded Metropolitan Line Extension route and projects set out in the Local Transport Plan and related strategies;
- Future-proofed communications infrastructure, in particular broadband;
- Wayfinding and public arts projects as identified in Watford Borough Council Cultural Strategy.

The Council will work with key infrastructure providers and partners to deliver new infrastructure that will meet the needs of Watford and support growth in the South West Hertfordshire area.

3.30 Projects that bid for Strategic CIL money will be assessed against the following priorities:

STRATEGIC CIL PRIORITIES

- Sustainable transport using the safeguarded Metropolitan Line Extension route and projects set out in the Local Transport Plan and related strategies.
- Green infrastructure and connectivity to the wider network.
- Sustainability and Climate Change initiatives

3.31 In order for the council to help deliver larger, costlier infrastructure schemes, and given the relatively small scale of CIL receipts received by the Council, it is necessary to let CIL receipts accumulate. Some infrastructure schemes are estimated to cost several million pounds. Allowing CIL receipts to accumulate in this way will mean there is a larger funding pot to draw from when these important infrastructure schemes are ready to implement.

3.32 The Council also want to balance the delivery of large schemes with smaller schemes that will benefit residents and visitors in the short-term. It is considered that a £200,000 CIL funded minor schemes budget is appropriate. This would be delegated to the Group Head of Place Shaping and subject to the normal budget processes within the Council.

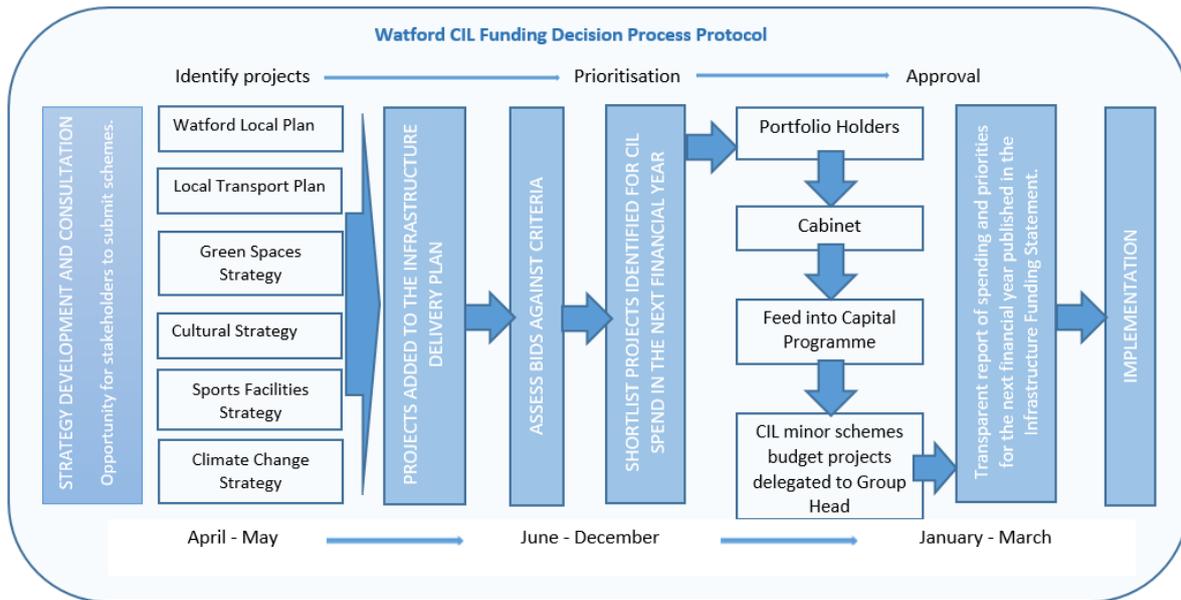
3.33 Projects will be identified from the Infrastructure Delivery Plan clearly demonstrating how they are supporting growth identified within Watford's Local Plan. They will then be shortlisted and fed into the capital programme. Capital programme projects for the next financial year are taken to the February Cabinet. Projects will be shortlisted by applying the following criteria:

- Are CIL monies needed to deliver the project?
- Does the project meet a local need or demand that has arisen from new development?
- Does the infrastructure help meet at least one of the council's priorities?
- When can the infrastructure be delivered (does it have the necessary approvals in place)?
- Are clear project costs and funding known?
- Is the project identified within a relevant local strategy?

3.34 The first criterion ensures that all infrastructure projects from the IDP that do not require CIL money are removed at the outset. The second is essential as CIL money can only be spent on projects that meet this.

3.35 Once the evidence has been collated, officers will prepare a series of recommendations for the release of CIL funds for the following financial year. These recommendations will be reported to Strategic Leadership Team, Portfolio Holders and Cabinet. Recommendations will then be made to Cabinet on what CIL should be spent on within the next financial year. Recommendations for CIL spend in future years may also be made. Once agreed commitments will be reflected in the next Infrastructure Funding Statement as well as the quarterly CIL and Section 106 spend report.

3.36 The Watford CIL Decision Process Protocol diagram below shows how this will work.



3.37 NEIGHBOURHOOD CIL

3.38 In non-Parished areas the 15% Neighbourhood Allocation must be held separately by the council. In line with the CIL Regulations the levy can be spent to ‘support the development of the local council’s area’ by funding:

The provision, improvement, replacement, operation, maintenance of infrastructure; or anything else that is concerned with addressing the demands that development places on an area.

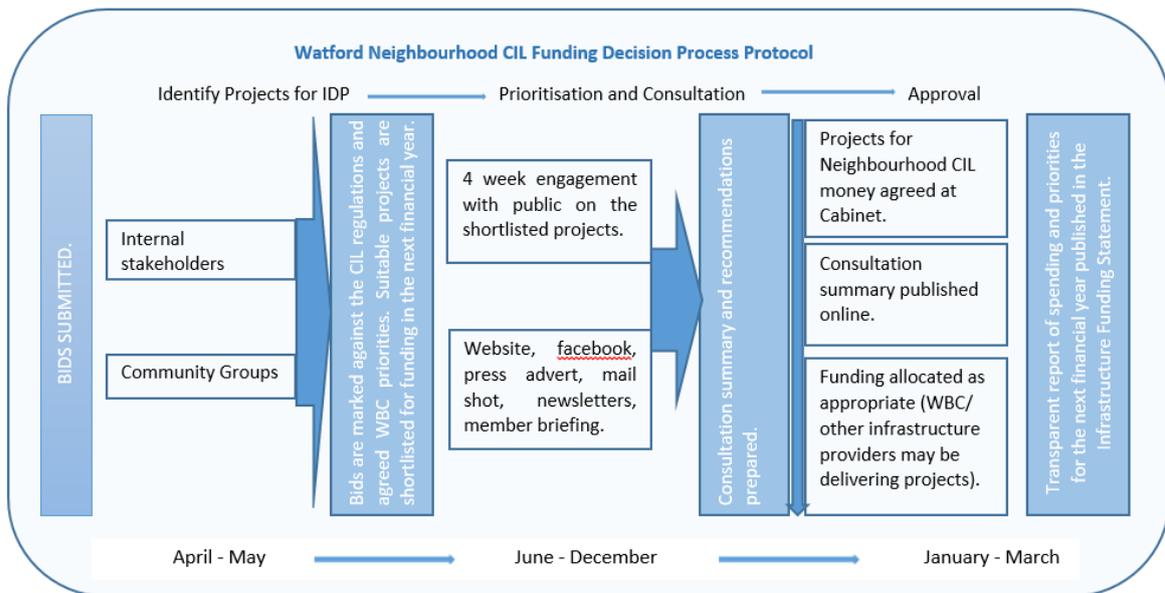
3.39 The following priorities have been identified for Neighbourhood CIL spending. Projects will be assessed against these priorities in order to be shortlisted. Projects in areas that have experienced development will be prioritised for Neighbourhood CIL spend. The Neighbourhood CIL is likely to fund small scale projects.

- NEIGHBOURHOOD CIL PRIORITIES**
- Town and local centres
 - Transport and roads
 - Community spaces and cultural facilities
 - Parks and green spaces
 - Sustainability and Climate Change initiatives

3.40 The neighbourhood portion of CIL requires community engagement before spending. A draft protocol is suggested below. The council will consult to identify projects, these should be submitted on the pro forma as outlined above. All submissions will be marked against the criteria and suitable projects will be added to the IDP. Shortlisting against the

Neighbourhood CIL priorities will then identify projects for Neighbourhood CIL funding for the next financial year. This shortlist of projects will be subject to public engagement, responses will be presented to Cabinet to decide on funding allocations. It is anticipated that the annual process will result in spending being allocated at the end of each financial year for the following year. Then the process of accepting bids will begin again

3.41 The Watford Neighbourhood CIL Decision Process Protocol diagram below shows how this will work.



3.42 USE OF SECTION 106 PLANNING OBLIGATIONS

3.43 The adoption of the Community Infrastructure Levy has meant that section 106 Planning Obligations are used less often, however, they remain essential in delivering onsite infrastructure including projects set out in the IDP and affordable housing as set out in Local Plan policy. Monies secured from section 106 agreements are kept separate from the CIL money as they are specific to each development.

3.44 Section 106 planning obligations will continue to be used for infrastructure such as on-site open space, allotments, play areas, playing pitches, sustainable transport, recycle bins and securing affordable housing.

3.45 Monitoring will ensure compliance with the statutory regulations as well as demonstrating transparency and financial accountability.

3.46 SECTION 106 MONITORING AND ADMINISTRATION

3.47 The 2019 CIL regulation allow Local Authorities to charge a fee through section 106 to contribute toward the cost of monitoring and reporting on developer contributions. The regulations state that this fee should be 'fair' and 'reasonable'.

- 3.48 To collect data for the Infrastructure Funding Statement, it is recommended that local authorities monitor data on planning obligations in line with the government's data format. This data should include details of the development and site and any trigger points or deadlines for contributions. Local authorities should also record when developer contributions are received and when contributions have been spent or transferred to other parties. Authorities must also report on monitoring fees in their infrastructure funding statements.
- 3.49 The council currently charge a set fee of £350 per section 106 agreement. It is not considered that this is 'fair' as clearly a more complicated agreement with many different obligations requires significantly more administration than a straightforward agreement with one or two items.
- 3.50 It is recommended that the Council approves with immediate effect the inclusion of additional monitoring charges within S106 agreements in accordance with the regulations. Regulation 10 of the Community Infrastructure Levy (Amendment) (England) (No.2) Regulation 2019 brings in legislative powers to allow a sum to be paid under S106 for monitoring the delivery of planning obligations.
- 3.51 The amendment to the legislation by this new regulation states that any fee for S106 monitoring is lawful provided that:
- (a) *The sum to be paid fairly and reasonably relates in scale and kind to the development;*
and
 (b) *The sum to be paid to the authority does not exceed the authority's estimate of its cost of monitoring the development over the life time of the planning obligation which relates to that development*
- 3.52 A cascade system would ensure that the less onerous, small to medium developments with fewer obligations would not be unfairly penalised. While larger and often more complex developments would pay more in recognition of the work involved.

Basic agreements	£350
Agreements with a multiple obligations but a single trigger	£1000
Complex agreements with multiple obligations and multiple triggers	£3000

- 3.53 The charges reflect officer time involved in general correspondence, billing, ensuring compliance, and the coordination of collection & spend. All agreements will require some of these elements even if they are simple financial agreement paid on commencement. The higher charges reflect the more complex nature of some agreements, in particular the need to monitor progress on site and provisions for viability re-assessments.
- 3.54 The proposed S106 monitoring charges have been benchmarked against surrounding authorities and are broadly comparable.

Three Rivers District Council	<ul style="list-style-type: none"> • £1000 per agreement • Complex agreements £1000 per obligation
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Hertsmere Borough Council	<ul style="list-style-type: none"> • £100 per residential unit permitted (up to 10 units) • £50 for each additional unit up to 100 • On schemes of over 100 units fees will be negotiated on a case by case basis
Aylesbury District Council	<ul style="list-style-type: none"> • Pre commencement condition £400 or £600 • Payments prior to completion or multiple triggers £600 • Major developments (greater than 500 units) sum negotiated on a case by case basis
Chiltern District Council	<ul style="list-style-type: none"> • £1100 per agreement
Welwyn and Hatfield Borough Council	<ul style="list-style-type: none"> • 5% of total value capped at £5000

3.55 NEXT STEPS

3.56 Once adopted the governance will be published online.

3.57 The Infrastructure Delivery Plan will be updated to identify infrastructure projects needed to support the growth identified in the Local Plan. This will be published alongside the next Local Plan consultation in Spring 2020.

3.58 A draft Infrastructure Funding Statement for 2019/20 financial year will be completed by Autumn 2020. This will be approved by the Interim Group Head of Place Shaping and align with the existing budget process.

4.0 BACKGROUND PAPERS

CIL Governance Cabinet Report 18.01.2016

CIL Projections 2019-22

MHCLG Community Infrastructure Levy [guidance](#)

Community Infrastructure Levy [Regulations](#) 2010 (as amended)

Watford Borough Council [Draft Local Plan](#)

Watford Borough Council [Infrastructure Delivery Plan](#)

5.0 APPENDICIES

Project Pro-forma

S106 and CIL spend report