

CABINET

17 October 2023

Title: Process and Governance of Allocation and Spend of Developer Contributions	
Report of the Cabinet Member for Regeneration and Economic Development	
Open Report	For Decision
Wards Affected: All	Key Decision: Yes
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Accountable Strategic Leadership Director: James Coulstock, Strategic Director Inclusive Growth (Interim)	
Summary The amount of money and works in kind being collected from / delivered by developers is increasing as developments are approved and begin on site as part of the Council's growth agenda to deliver more homes and employment. The processes for negotiation, monitoring, collection and spend of Community Infrastructure Levy (CIL) and Section 106 funding lie between Be First and LBBD officers led by Inclusive Growth. Different procedures govern the allocation of CIL and s106, yet they should both be used to deliver the same outcomes of providing infrastructure to support growth. This report proposes new streamlined governance and working procedures to bring a strategic overview to infrastructure required, and to use finance from developer contributions in conjunction with other finance, such as the capital programme, and grants, to deliver the infrastructure needed throughout the borough to support our growth agenda.	
Recommendation(s) The Cabinet is recommended to agree the proposed governance and workflows for the allocation and spend of CIL and s106 developer contribution funding, as set out in section 2 of the report.	
Reason(s) To assist the Council in achieving its corporate priorities in relation to "Inclusive Growth" and "A New Kind of Council".	

1. Introduction and Background

- 1.1 The two types of developer contribution in planning legislation at the moment are s106 and CIL. S106 obligations and are negotiated through the course of a planning permission. In the legal agreement that the planning permission is subject to,

contributions are negotiated, or works in kind agreed, for specific purposes. This is underpinned with guidance in the Planning Obligations Supplementary Planning Documents (SPDs). This document has evolved alongside the Local Plan. Whilst not yet adopted, it has been through substantial rounds of consultation, and is in use with developers, to give structure to the infrastructure that we seek specific to planning applications. The amount and frequency of financial contribution has increased steadily as the SPD has gained weight.

- 1.2 S106 obligations are payable at different trigger points through a development, and thus rigorous monitoring is required of the legal agreements, and stage of construction of developments, to ensure that money is collected in a timely fashion. In July 2020, a process of governance was adopted by Assets and Capital Board, whereby when s106 money was received in to LBBB, a report was submitted to ACB recommending that that money be allocated to the project identified in the legal agreement, and then the money would be journaled to the service area, who would implement the project and spend the money, within this audit trail.
- 1.3 CIL is a financial contribution based on the floorspace and payable on commencement of development. At its meeting on 21 October 2014, the Cabinet endorsed the Borough's Community Infrastructure Levy (CIL) Charging Schedule, and charging came into force on 3 April 2015. A process was put in place to decide what infrastructure strategic CIL is spent on, with SCIL being allocated annually, following a bidding process.
- 1.4 For the strategic CIL it was recommended that a list of infrastructure projects necessary to deliver the objectives of the Borough Manifesto and the growth set out in the emerging Local Plan was developed in consultation with stakeholders, prioritised by the Local Plan Steering Group and then presented for approved by Cabinet. The projects agreed by Cabinet would be incorporated into the annual Capital Programme budget setting cycle.
- 1.5 Two cycles of allocation have been carried out, one in 2018 and one in 2019. Over 3 years later, not all projects have been delivered yet, and the council has had to offer substantial resource to some to ensure delivery.
- 1.6 There is currently just under £7million strategic CIL that has been collected to be spent on infrastructure. 15% of all CIL collected is allocated for Neighbourhood CIL. Annual applications are sought from residents and community groups to spend up to £10,000 on local community projects throughout the borough. The process for allocating money is considered to be successful, run by the Policy and Participation team using panels of residents to make assessments on where the money should be spent. This process is considered to be robust and successful, both in the support of community-based projects in the borough, but also the process of involving and empowering residents to make the decisions on projects for their communities. No changes are proposed for the NCIL allocation process.

2. Proposal and Issues

- 2.1 As both CIL and s106 are brought into the Council to strategically support growth and provide infrastructure, bringing the two funding streams together under one scheme of governance and process is the most effective way of working strategically to provide infrastructure to support development.

- 2.2 The Local Plan has progressed since the original CIL allocation process was adopted by Cabinet in 2017. It has gone through both Regulation 18 and Regulation 19 consultations and has been submitted to the Planning Inspectorate. It is hoped that the Examination in Public for the Local Plan will take place in the autumn, with adoption taking place in Spring 2024. The Infrastructure Delivery Plan will also be examined by the Inspectors, so that they can be satisfied that LBBB is planning for infrastructure to support the growth and the transformation areas that we are proposing. Monitoring of the pipeline and implementation of developments through planning permissions and commencement on-site is giving us more information on where development will take place, and when, so that we can be more informed when planning infrastructure.
- 2.3 The role of Assets and Capital Board is to oversee and monitor the spend of the Council's capital budgets, and to oversee the development of the Council's strategies relating to its assets. Currently s106 contributions are recommended for allocation through the Board as and when they are paid / projects are ready for funding, and the progress of the SCIL projects is monitored through ACB. The Strategic Director of Inclusive Growth uses delegated authority to agree the spend as highlighted in the s106 agreement.
- 2.4 Rather than seeking annual bids for SCIL, it is proposed that the process of identifying proposed growth, and the timetable of implementation, is regularly brought to ACB, and from this base information decisions made about developing infrastructure to support the growth, using CIL and s106 to support funding and provision of infrastructure in kind. Officers from different services in the Council would still bid for SCIL, but the process for doing this would be more frequent, and the judgement would be based on data received and the growth proposed.
- 2.5 To this end, it is proposed to create a sub-group of ACB to meet monthly, reporting to the main ACB quarterly. The quarterly cycle of ACB sub-group will be:
- Cycle 1 – External stakeholders. Meet with external stakeholders, such as the NHS, emergency services, Transport for London, to discuss strategic infrastructure needs, and potential funding.
 - Cycle 2 – Internal stakeholders. Meet with LBBB services to go through their infrastructure needs, timing of these, see what funding is available.
 - Cycle 3 - Finance. Go through income received and projected from CIL and s106, assess what projects identified by stakeholders need income, what the timing is. Propose allocations of s106 and SCIL to be reported to main ACB, how they link to capital projects, discuss figures of project pipelines, commencements and completions.
- 2.6 The sub-group would report quarterly to the main ACB. The monitoring of developments statistics would be presented, along with infrastructure needed to support the growth in the pipeline. S106 would be allocated to the projects identified in the s106 (as agreed at Planning Committee when the resolution to grant planning permission was made by members). Proposals to allocate SCIL would be assessed and brought to a Members' Sub-Group, consisting of the Cabinet Member for Regeneration & Economic Development, the Cabinet Member for Finance, Growth & Core Services and the Chair and Deputy Chair of the Planning Committee, and then onto Cabinet every six months for formal allocation.

2.7 The quarterly cycle proposed for these meetings is attached at Appendix 1.

3. Options Appraisal

3.1 There are effectively two options:

3.2 Option 1: Do nothing and continue with annual allocation of SCIL, with all decision making by Cabinet

3.2.1 Annual allocations of SCIL are quite inflexible and may miss opportunities to seek match funding for grants. In addition, the existing process relied on the now defunct Local Plan Steering Group to make decisions. Now that the Local Plan has substantially progressed to the stage where the examination in public is to be heard (in November 2023) and the Local Plan should progress to adoption in 2024, the decisions about where growth is proposed have effectively been made, and it is clear in the Plan where they are. The Infrastructure Delivery Plan is being updated, and officers and infrastructure providers are now able to plan more strategically with the growth that is underway in the borough.

3.2.2 The do-nothing option is not recommended. The policy situation for development in the borough has changed substantially since that was introduced in 2017. It is inflexible, and not strategic. A more structured approach is proposed to enable funding for projects to be planned with strategic partners on a more regular basis.

3.3 Option 2: Adopt the proposed process for allocation every 6 months, with a cycle of sub-groups to Assets and Capital Board making recommendations to Cabinet for SCIL spend over £200,000

3.3.1 This option increases the frequency of allocation, so it can be a more flexible process to respond to changing circumstance. It aligns the allocation process with the capital projects programme and would strategically work with providers to deliver infrastructure required to support growth. It also gives infrastructure providers more certainty ongoing of funding avenues for projects, if there is more regular interaction and planning.

3.3.2 Option 2 is the preferred option. It will involve changes to the allocation process of both SCIL and s106, but it will be more strategic and more responsive, bringing together the data on developments in the pipeline and under construction, and allowing a greater range of funding options to be sought to facilitate infrastructure delivery. If CIL funding can be allocated more frequently it will allow funders to seek match funding from elsewhere on a more structured and timely basis.

3.3.3 The new process will bring together officers from service areas, who will be able to plan projects aligned to the projected growth and discuss funding options. It will also involve infrastructure providers such as NHS and TfL to align projects and funding. These will be discussed with senior officers and relevant members before being presented to Cabinet for allocation.

4. Consultation

- 4.1 The proposals in this report were endorsed by Assets and Capital Board on 11 May 2023.
- 4.2 The proposals in this report were discussed with Councillor Geddes as Regeneration Portfolio Holder, and Councillors Saleem and Shaw as Chair and Vice Chair of Planning Committee.
- 4.3 The proposals have been discussed and agreed with relevant service areas and Be First.

5. Financial Implications

Implications completed by: Alison Gebbett, Capital Accountant

- 5.1 The proposed arrangements for governance of s106 and CIL will help to ensure that funds are allocated in a transparent and timely manner in accordance with need and in line with strategic priorities and are recorded and monitored effectively.
- 5.2 As the amount of developer contributions increases and other available resources are under significant pressures, it is paramount that the Council is able to effectively manage these financial resources (and non-financial where there are works in kind). The proposed process for the sub-group of Assets and Capital Board will help bring together all relevant parties to ensure that there is effective communication.

6. Legal Implications

Implications completed by: Dr Paul Feild, Principal Governance & Standards Lawyer

- 6.1 Development of land or change of use inevitably has an effect on the community. A balance has to be struck between allowing land use and mitigating negative effects of development. The historical basis for ensuring developments did not have a cost on the community was by the granting of planning permission subject to an agreement which might involve payment or works, that is to say that a development would not be agreed without a contribution from the Developer. This is referred to as S.106 Town and Country Planning Act Agreements or 'S.106 Agreements' for short. The problem with that approach was that nationally it could be seen as arbitrary in nature and, as it were, putting a price on the grant. As the developers' circumstances and the viability of the scheme varied, so did the contribution. In reality it meant that some developments were charged different amounts under S.106 agreements or not at all.
- 6.2 To address concerns about the S.106 payments, the Planning Act 2008 introduced the Community Infrastructure Levy. The application is set out in the Community Infrastructure Levy Regulations 2010 (as amended). Unlike the S106 arrangements, most new developments will be liable to pay the levy. It is set locally. The CIL regime is designed to be transparent and while it will still reflect local planning considerations the charges will be open for all to see.

- 6.3 There are a broad range of measures that can be taken to ensure recovery of payment. Furthermore, late payments will incur a surcharge. Prosecution can follow if the commitment to pay is breached as effectively it will be as if a condition has not been met which means that resort can be made to stop notices and if necessary, an injunction.
- 6.4 Over a period of time the CIL payments accumulate and in terms the funds need to be allocated according to the Council's policy on CIL allocation.

7. Other Implications

- 7.1 **Risk Management** – The proposals are to outline a clear and transparent process for allocation of funds for infrastructure to develop growth. Transparent monitoring of s106 ensures timely spend to reduce the risk of having to return money to developers if unspent.
- 7.2 **Corporate Policy, Customer and Equality Impact** – This proposal aligns with and supports the overall vision and priorities for the Council set out in the Corporate Plan. Combining the data of growth with the policy of the Local Plan to allocate money to provide infrastructure is in accordance with Corporate Plan priorities Residents benefit from Inclusive Growth, Residents proposer from good education, skills development and secure employment and Residents live in, and play their part in creating, safer, greener and cleaner neighbourhoods. A balanced and strategic allocation of SCIL and s106, in consideration with actual and projected growth is a fair procedure to deliver outcomes for all, regardless of their backgrounds. By facilitating infrastructure delivery to support growth, it will ensure that services are provided for the use of all.
- 7.3 **Health Issues** – The proposed procedure should have an improvement on health issues as it will formalise working with health providers in the borough, sharing information on growth and infrastructure and working together to provide health facilities to support the growth in the borough.
- 7.4 **Property / Asset Issues** – The proposals will have a positive impact on the Council's property and assets portfolio. The spend of s106 and SCIL will be more closely aligned to the Councils Capital programme and asset portfolio.

Public Background Papers Used in the Preparation of the Report: None

List of appendices:

- **Appendix 1:** The Cycle of Governance of Allocation of Developer Contributions