

## CABINET

12 December 2017

<b>Title:</b> Allocation of Community Infrastructure Levy Spend	
<b>Report of the Cabinet Members for Finance, Growth and Investment and for Economic and Social Development</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> All	<b>Key Decision:</b> Yes
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<b>Accountable Director:</b> Fiona Taylor, Director of Law and Governance	
<b>Summary</b> <p>At its meeting on 21 October 2014, the Cabinet endorsed the Borough's Community Infrastructure Levy (CIL) Charging Schedule (Minute 40 refers). The Charging Schedule subsequently came into force on 3 April 2015.</p> <p>A process now needs to be put in place to decide what infrastructure CIL is spent on. At least 15% of the funding collected must be spent on priorities agreed with the local community at the neighbourhood level. Where a neighbourhood plan is in place this rises to 25%.</p> <p>For the strategic CIL it is 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 is 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.</p> <p>With regard to the Neighbourhood CIL it is recommended that the entire Borough is defined as the neighbourhood and a process put in place to allocate spend to local areas in consultation with local communities. The process should strike a balance between ensuring a significant proportion of Neighbourhood CIL is spent in those areas where the impact of growth is greatest but also that other parts of the Borough are not left behind and benefit from the proceeds of growth.</p>	
<b>Recommendation(s)</b> <p>The Cabinet is recommended to:</p> <p>(i) Agree the process for determining Strategic CIL spend as set out in paragraph 2.4 of the report;</p>	

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| (ii)  | Agree that the entire Borough be defined as the neighbourhood for the purposes of allocating the Neighbourhood CIL; and |
| (iii) | Agree the process for determining Neighbourhood CIL spend as set out in paragraph 2.10 of the report.                   |

### **Reasons**

To assist the Council in achieving its corporate priorities in relation to “Encouraging civic pride”, “Enabling social responsibility” and “Growing the borough”.

## **1. Introduction and Background**

- 1.1 At its meeting on 21 October 2014, the Cabinet endorsed the Community Infrastructure Levy Charging Schedule. It subsequently came into force on 3 April 2015 and, to date, £2,135,683 has been collected.
- 1.2 CIL can be used to fund a wide range of infrastructure, including transport, flood defences, schools, hospitals and social care facilities; not only the initial capital cost but also operational and maintenance costs. This definition allows the levy to be used for a broad range of facilities such as play areas, parks and green spaces, cultural and sports facilities and education including academies and free schools, children’s centres and nursery provision, district heating schemes and police stations and other community safety facilities.
- 1.3 The levy must be spent on infrastructure needed to support the development of the area, and is intended to focus on the provision of new infrastructure. It should not be used to remedy pre-existing deficiencies in infrastructure provision unless those deficiencies will be made more severe by new development. The levy can be used to increase the capacity of existing infrastructure or to repair existing infrastructure, if that is necessary to support development.
- 1.4 Processes now need to be put in place to manage the prioritisation of infrastructure to be funded by CIL and the distribution of funds. In addition, up to 5% of total levy receipts can be spent on administrative expenses and at least 15% of the funding collected must be spent on priorities in consultation with the local community.
- 1.5 To ensure that the levy is open and transparent, the council is required to publish a report on their website by 31 December each year, for the previous financial year. This must include:
  - the total receipts for the year
  - the total expenditure for the year
  - a summary of expenditure for each item
  - the amount retained at the end of the year

## **2. Proposal and Issues**

### **Prioritisation and Allocation of Funds - Strategic CIL**

- 2.1 The CIL Regulations 2010 require collecting authorities to publish a Regulation 123 list which sets out a list of those projects or types of infrastructure that it intends to fund, or may fund, through the levy. The list is attached as Appendix 1.
- 2.2 Now that the Council's CIL is in force, mechanisms must be put into place to deal with the distribution of funding and how infrastructure on the Regulation 123 list is prioritised.
- 2.3 To prioritise CIL spending it is suggested that a list of Infrastructure Projects which are necessary to support the objectives in the Borough Manifesto, the emerging Local Plan and the Infrastructure Plan which supports this is established under the headings in the Regulation 123 list. To help compile this list, a project appraisal form will be developed. Any infrastructure provider wishing to make a case for using CIL for their project would be required to complete a project appraisal form. This form would provide a consistent basis for scoring projects. The form would be clear that only projects that could not be funded entirely from other sources, that help address the impact of new development and fell under one of the categories in the Regulation 123 list could be put forward. The project appraisal form would provide the basis for assessing and ranking projects on the basis of:
- Their impact on delivering Borough Manifesto targets and Local Plan Vision and Objectives;
  - The amount of match funding that the CIL funding unlocks;
  - The compound impact of the project in unlocking further growth;
  - The robustness of the delivery strategy including how will the project be delivered and the timetable for delivery with regard to the growth impacts the project is meant to be addressing;
  - The revenue impacts and what if any CIL is needed for maintenance and/or operational costs;
  - Impact on cohesion and equalities including groups with protected characteristics.
- 2.4 Be First will review the project appraisals and develop a long list of potential CIL projects ranked by score. This long list would then be put forward to the Local Plan Steering Group (LPSG) to consider the projects that should be funded by the CIL collected in that year. The list proposed by the LPSG would then be submitted to Cabinet for approval. This would be an annual process to coincide with the annual capital projects budget setting cycle. The report would include a review of the impacts of previously agreed schemes to help inform the prioritisation of future CIL projects.
- 2.5 There is no time limit on spend for strategic CIL.

### **Prioritisation and Allocation of Funds - Neighbourhood CIL**

- 2.6 The CIL Regulations 2010 (as amended) require local authorities to allocate a proportion of levy receipts to be spent on priorities that should be agreed with the local community in areas where development is taking place. In Barking and

Dagenham, 15% must be spent in this way. This could rise to 25% in areas where a Neighbourhood Plan is adopted. The annual amount of neighbourhood CIL (NCIL) is subject to a cap of £100 per dwelling on the Council Tax Register.

2.7 The CIL Regulations allow neighbourhood funding to be spent on a wider range of projects than the general levy, including:

- (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 (that is development generally, not specific development), for example, affordable housing.

It can also be spent to support the development of the area by funding projects part funded by the Council's strategic CIL fund (e.g. school places).

2.8 The Government does not prescribe a specific process for agreeing how the neighbourhood portion should be spent but suggests that charging authorities should use existing community consultation and engagement processes. The consultation should be proportionate to the level of levy receipts and the scale of the proposed development to which the funding relates. The independent Growth Commission report highlighted that 'no one should be left behind in the pursuit of growth' and this is also the theme running through the Borough Manifesto. Neighbourhood CIL is an opportunity to ensure the benefits of growth are felt across the borough.

2.9 It is recommended that the entire borough is defined as the neighbourhood and a process put in place to allocate spend to local areas in consultation with local communities. The process would strike a balance between ensuring a significant proportion of neighbourhood CIL is spent in those areas where the impact of growth is greatest but also that other parts of the borough have the opportunity to access this funding. The process would also need to address the impact on cohesion and equalities including groups with protected characteristics.

2.10 It is proposed that, as for the Strategic CIL, the process of allocating Neighbourhood CIL will involve a review by the LPSG before being submitted to Cabinet for approval, as part of the annual capital projects budget setting cycle.

### **3. Options Appraisal**

#### **3.1 General CIL**

3.1.1 Two other options were considered:

- Option 1: Allocate all funding to education projects. New development creates a demand for many types of infrastructure, e.g. transport, health, community facilities, and the demands for these would not be met if all funding was directed to one type of infrastructure.
- Option 2: Divide funding equally between all types of infrastructure on the regulation 123 list. The demands and costs of providing different types of infrastructure vary widely and priority needs would not be effectively addressed.

## 3.2 Neighbourhood CIL

### 3.2.1 Two other options were considered:

- Option 1: The option is open to the Council to increase the proportion of CIL allocated to the neighbourhood to 25% irrespective of whether there is a Neighbourhood Plan in place. Some boroughs have done this. However, this is not recommended. Barking and Dagenham's CIL receipts will be less than many boroughs due to the comparatively low CIL charges which in turn are due to the viability of development in the borough. Officers consider it is best to maximise the amount of CIL that is available to spend on vital education, transport, open space, and community infrastructure. Moreover, the extra freedoms for neighbourhood CIL only apply to the first 15% unless there is a Neighbourhood Plan, therefore raising this to 25% would complicate the process for agreeing how the neighbourhood CIL was spent.
- Option 2: ward by ward: Each ward could be defined as a separate neighbourhood and the CIL generated in that ward ringfenced to the ward it was generated in. The vast majority of the borough's growth is focused in Abbey, Gascoigne, Thames, River, Eastbrook and Whalebone Wards. This option would deny the Council the ability to spread the proceeds and benefits of growth more evenly across the borough.

## 4. Consultation

- 4.1 Consultation has taken place with Transport for London's CIL Collection Group to establish what governance procedures have been put in place in other London Boroughs.
- 4.2 Strategic CIL – Consultation will be undertaken on an annual basis with all service and infrastructure providers to develop a list of projects which support the delivery of the targets in the Borough Manifesto and the Vision and Objectives of the Local Plan.
- 4.3 The cost of the prioritisation process, communications and administering CIL is likely to be met by the 5% CIL administrative charge.
- 4.4 This report was circulated widely within the Council. Comments were received from Legal and Finance, Policy and Participation and Education.

## 5. Financial Issues

Implications completed by: Phil Horner, Principal Accountant

- 5.1 As stated earlier in the report, the amount of CIL income the Council has received since 3 April 2015 has totalled £2,135,683. It is not possible, however, to estimate the amount of CIL revenue the Authority's will generate in future financial years as this will depend on the amount, sizes, types and proposed uses of the approved developments within the Borough.

- 5.2 Revenue received for any particular development will be allocated between the Strategic CIL, Neighbourhood CIL (at least 15%) and administrative expenses. The Council can allocate 5% of the total revenue received to cover the administrative expenses involved in the whole CIL process.
- 5.3 As stated above, CIL payments that are received will be held by the Authority until such time as appropriate approval is given for them to be spent in accordance with the agreed Strategic and Neighbourhood priorities. In the majority of cases it is anticipated that CIL revenue will be used to support the Council's Capital Programme, either as a contribution towards the funding of specific schemes or to fund initiatives in their entirety.
- 5.4 The Authority will be required to publish a report on its website by 31 December each year detailing its CIL income and expenditure for the previous financial year in accordance with the conditions described in paragraph 1.5. In order to facilitate this, appropriate accounting arrangements have been put in place.

## **6. Legal Implications**

Implications completed by: Dr Paul Feild, Senior Governance Lawyer

- 6.1 The legislation governing the development, adoption and administration of a Community Infrastructure Levy (CIL) is contained within the Planning Act (2008) and the Community Infrastructure Levy Regulations 2010 (as amended). The associated Government National Planning Policy Guidance is also important in guiding this process. There are other areas of law which should be considered when assessing certain developments for CIL liability and determining the appropriate sum due. These include matters relating to social housing, procurement, charitable institutions and 'state aid'. Further legislative reforms to the CIL regulations are expected shortly as part of a wider review of CIL by government.
- 6.2 The Community Infrastructure Levy (the levy) is a tool for local authorities in England and Wales to help deliver infrastructure to support the development of the area. The levy is charged on new development. Normally, this requires planning permission from the local planning authority. Levy rates are expressed as pounds per square metre. These figures are applied to the gross internal floorspace of the net additional development liable for the levy.
- 6.3 Local Planning authorities must be able to show and explain how their proposed levy rate (or rates) will contribute towards the implementation of their relevant plan and support development across their area.
- 6.4 As set out in the National Planning Policy Framework in England, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened.
- 6.5 The charges are set out in a charging schedule sets out the levy rates for the authority's area. The Schedule is produced on an evidence based process and subject to consultation and verification by an external examiner and then approved by the full Council (the Assembly). There is an obligation to keep the CIL under

review and ensure that the revenue is used to the best effect for which this report is part of the ongoing process.

6.6 Under the Equalities Act 2010 the Council has a “public sector equality duty” (PSED). This means that in taking decisions and carrying out its functions it must have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the 2010 Act; to advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it; and to foster good relations between persons who share a relevant protected characteristic and those who do not share it. The Council is also required to have due regard to the need to take steps to take account of disabled persons’ disabilities even where that involves more favourable treatment; to promote more positive attitudes toward disabled persons; and to encourage participation by disabled persons in public life. The implication is that the consultation proposed must be structured and the results be analysed within the PSED context, and in due course the recommendations be made with due regard of the duty.

## 7. Other Issues

### 7.1 Risk Management –

Risk	Probability	Impact	Priority	Action
That the Council will not have identified the funding and delivery mechanisms for the effective delivery of critical infrastructure required to support and enable the delivery of residential development. The Council has an obligation under the CIL Regulations to apply the levy revenue received to funding the provision, improvement, replacement, operation or maintenance of infrastructure to support development of the borough	Medium	Medium	High	That the recommendations of this report are approved, allowing the governance structure to be implemented and guidance produced to assist decision makers and infrastructure providers. This will allow CIL revenue to be directed to deliverable and critical infrastructure to support the delivery of the Local Plan.

7.2 **Staffing Issues** - The proposals will not necessitate the need for additional staff. The Council has been collecting the Mayor of London’s CIL from 1 April 2012 and its own CIL from 3 April 2015. The Council can cover its administration costs from CIL.

- 7.3 **Corporate Policy and Customer Impact** - The Community Infrastructure Levy is an important source of funding to provide the infrastructure necessary to support the growth identified in the Council's emerging Local Plan (2015-2030) and Growth Strategy (2013-2023) which themselves are focused on the Council's priority of Growing the Borough.
- 7.4 **Safeguarding Children** - Education facilities, community facilities and sports, leisure parks and open spaces are included on the Regulation 123 list and therefore may be funded via CIL if agreed through the process set out in this report.
- 7.5 **Health Issues** - Health Facilities are included on the Regulation 123 list and therefore may be funded via CIL if agreed through the process set out in this report.
- 7.6 **Crime and Disorder Issues** - Section 17 of the Crime and Disorder Act 1998 requires local authorities to consider the crime and disorder implications of any proposals. Community safety projects are included on the Regulation 123 list and therefore may be funded via CIL if agreed through the process set out in this report.
- 7.7 **Property / Asset Issues** - The Council, as a landowner and developer, will be liable to pay CIL on qualifying developments.

#### **Public Background Papers Used in the Preparation of the Report:**

- Cabinet 14 February 2012: Community Infrastructure Levy (Minute 114)  
(<https://modgov.lbbd.gov.uk/Internet/ieListDocuments.aspx?CId=180&MId=5666&Ver=4>)
- Cabinet 22 January 2013: Community Infrastructure Levy Draft Charging Schedule (Minute 84)  
(<https://modgov.lbbd.gov.uk/Internet/ieListDocuments.aspx?CId=180&MId=6399&Ver=4>)
- Cabinet 21 October 2014: Adoption of Community Infrastructure Levy Charging Schedule (Minute 40)  
(<https://modgov.lbbd.gov.uk/Internet/ieListDocuments.aspx?CId=180&MId=7530&Ver=4>)

#### **List of appendices:**

- Appendix 1: Regulation 123 list