

Report of: Executive Member for Housing and Development

Executive	Date: 29 September 2016	Ward(s): All
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SUBJECT: Prioritising and Allocating Community Infrastructure Levy (CIL) Income
1. Synopsis

- 1.1 Islington adopted its Community Infrastructure Levy (CIL) in September 2014 and has now begun receiving substantial CIL income as liable developments begin to be built. The purpose of this report is to formally establish a process for prioritising and allocating CIL income. The adoption of CIL provides the Council with an opportunity to take a more strategic approach to funding strategic infrastructure projects (particularly those that support development and address the impact of growth).
- 1.2 The Council requires significant capital investment over and above the existing approved 2016/17 to 2018/19 capital programme, particularly in relation to our statutory responsibilities around the provision of education facilities. There is unlikely to be new capital funding available to the Council over the medium term other than developer contributions, and CIL funding is a more flexible funding source for this purpose than Section 106 funding.
- 1.3 The total amount of CIL funding available for allocation in the period up to March 2019 is estimated to be between £14 and £20 million depending upon the level of development that takes place. Details of the proposed CIL allocation process are set out in Appendix One. It has been proposed that 50% of CIL would be available for investment in strategic CIL infrastructure priorities, with the remainder being allocated based on the recommendations of Ward Councillors. This would mean that about £7 to £10 million of CIL income would be available for allocation to strategic investment priorities in the period up to March 2019.
- 1.4 Because developer contributions are one of the only available sources of funding for infrastructure improvements and not all parts of the borough benefit from these funds, mechanisms have been considered whereby all wards are guaranteed a minimum amount of CIL. Proposals for this mechanism are set out in Appendix Two, with a minimum of £30,000 being recommended. However, for 2016/17 each ward currently holds more than £30,000 of unallocated CIL or Section 106 funds for allocation to their highest local priorities, so there is no need to invoke any re-distribution mechanism this year.

- 1.5 The Executive is also asked to approve the revised CIL Regulation 123 Infrastructure List (Appendix Three of this report) following recent public consultation on that list. Projects should ideally be included within the CIL Regulation 123 Infrastructure List if they are to be allocated strategic CIL funding, though not all projects within the list will necessarily receive CIL funding. Conversely though, being included on this list makes a project ineligible for future Section 106 funding. This list has been revised to optimise future securing and spending of CIL and Section 106 funds, and specifically to allow the proposed Section 106 carbon offsetting allocations set out in Appendix Four to be formally agreed by Executive.
- 1.6 Where developers fail to meet the Council's robust planning policies on reducing carbon emissions resulting from a new development, the Council collects carbon offsetting payments. At this point in time the Council is holding carbon offsetting payments totalling £2.7 million. This money can be spent anywhere in the borough as long as it is used to reduce carbon emissions. To ensure that the most effective use of this money is made, it is recommended that the Affordable Energy Board makes initial recommendations regarding the allocation of this money to specific projects, with the final allocations being made by the Executive or Director of Environment and Regeneration in accordance with the Constitution. Allocations totalling just over £2 million of the available carbon offsetting contributions towards three projects are set out in Appendix Four of this report.

2. Recommendations

- 2.1 To approve the proposed CIL allocation process as outlined in Appendix One of this report.
- 2.2 To approve the proposed re-distribution mechanism for ensuring that each ward has a minimum level of CIL funds to allocate each year, as illustrated in Appendix Two of this report.
- 2.3 To approve that strategic CIL funding will be integrated with the capital medium term financial strategy and budget setting process and formally allocated by Executive at the end of each financial year (as part of the Financial Outturn report) to projects on the CIL Regulation 123 Infrastructure List (Appendix Three).
- 2.4 To adopt the revised CIL Regulation 123 Infrastructure List following the public consultation that was carried out between 26 May and 23 June 2016. The final revised List is set out in Appendix Three of this report.
- 2.5 To approve the proposed method for the allocation of carbon offsetting contributions set out in Sections 3.26 to 3.29, and the proposed allocations set out in Appendix Four of this report.

3. Background

Prioritising strategic CIL investment

- 3.1 The adoption of CIL provides the Council with an opportunity to take a more strategic approach to funding strategic infrastructure projects (particularly those that support development and address the impact of growth).
- 3.2 In the period since CIL was adopted, the Council has issued Islington CIL demand notices totalling over £6.7 million. Outstanding charges must be paid within sixty days of the notice being issued, and to date just over £5.5 million has been received.
- 3.3 Annual CIL income will depend on the level of 'CIL chargeable floorspace' implemented each year. Table One below shows the *actual* CIL funds received in 2015/16, and also indicates the range of developer funding levels that *may* be achieved in 2017/18 and 2018/19, although these figures should be treated with extreme caution. It should be noted that a further £1.2 million is due to be paid within the next 60 days, and based on the current value of CIL Liability Notices issued, we estimate a total of £20 million of CIL funds by the end of 2017/18.

Table One: Total potential income from CIL up to March 2018 (all CIL)

Received for allocation and expenditure in the following financial year	2015/16 £m (Actual funds received)	2016/17 £m	2017/18 £m	Totals £m
CIL income	3.2	4 to 7 (2.3 received so far)	7 to 10	14 to 20

3.4 Any consideration of developer contributions like CIL and Section 106 funds must be heavily caveated with a warning that the level of funding that may be secured is entirely dependent upon whether or not planned and consented development takes place. In addition, Government planning reform is likely to make it increasingly difficult for local planning authorities to secure developer contributions over the next five years. Following a CIL Review set up by the Government in November 2016, it is possible that the CIL regime may be altered to involve a national CIL rate and increased levels of negotiation. This would have a major impact on the funds received by the Council through CIL. Any projections of CIL and Section 106 income set out in this report should therefore be treated with extreme caution.

CIL Allocation Process

3.5 Appendix One sets out proposals for the CIL allocation process. The Council's Constitution specifies that allocations of Section 106 and CIL funds must be formally agreed by Executive, or under delegation by the Corporate Director of Environment and Regeneration (in consultation with the Corporate Director of Finance and Resources). However, the finer detail of how Section and CIL allocation decisions are reached is not prescribed by the Constitution.

3.6 Following discussion with Members, it has been proposed that 50% of CIL income will be allocated by Ward Councillors with the remainder being treated as strategic CIL. The level of CIL to be allocated at a local level is very high in comparison with other boroughs. Most boroughs are applying the 15% requirement set out in statutory guidance, although Camden is applying 25% so that Ward Councillors are on a par with Neighbourhood Forums. In brief, it is proposed that:

- 15% of CIL will be allocated by Ward Councillors to 'the provision, improvement, replacement, operation or maintenance of infrastructure' and/or 'anything else that is concerned with addressing the demands that development places on an area'. Provision is made for this broader use of 15% of CIL in the CIL Regulation 2010 (as amended).
- 35% of CIL will be allocated by Ward Councillors to 'the provision, improvement, replacement, operation or maintenance of infrastructure'. It can therefore be spent on anything that is included on the strategic infrastructure list within that ward, or within a neighbouring ward if appropriate.
- 50% of CIL will be allocated by the Council to strategic priorities as part of the annual budget setting process.

3.7 Based on this allocation process and the total potential CIL income estimated above, Table Two below sets out the *actual* strategic CIL funds received in 2015/16, and also indicates the range of strategic CIL funds that may be available for allocation in 2016/17 and 2017/18. It should be noted that a further £634k of strategic CIL is due to be received in the next 60 days, and based on the current value of CIL Liability Notices issued, we estimate a total of £10 million of strategic CIL funds by the end of 2017/18.

Table Two: Potential income from CIL up to March 2018 (strategic CIL only)

Received for allocation and expenditure in the following financial year	2015/16 £m (Actual funds received)	2016/17 £m	2017/18 £m	Totals £m
CIL income	1.6	2 - 3.5 (1.3 received so far)	3.5 to 5	7 to 10

3.8 Executive is asked to approve the proposed CIL allocation process summarised above and discussed in more detail in Appendix One.

Strategic vs Local Developer Funding

3.9 For the next few years at least, the Council will continue to collect substantial Section 106 monies. The Council is currently holding £39 million in Section 106 contributions, £29 million of which has been allocated to projects. The Council is also holding a further £10 million that is yet to be allocated, most of which has been received recently. It is anticipated that up to a further £3 to 5 million of Section 106 monies could be paid to the Council up to March 2019, subject to the relevant developments commencing construction.

3.10 By the end of 2018/19, it is estimated that there will be new allocations of developer contributions as follows:

- ‘Strategic’ developer contributions – **£7 to 10 million** (strategic CIL income)
- ‘Local’ developer contributions – **£17 to 25 million** (£7 to 10 million CIL plus £10 to 15 million Section 106 income)

3.11 The breakdown above shows the importance of allocating Section 106 income to strategically important infrastructure projects in the local area.

The Council requires significant capital investment over and above the existing approved 2016/17 to 2018/19 capital programme, particularly in relation to our statutory responsibilities around the provision of education facilities. It is proposed that strategic CIL funding will be integrated with the capital medium term financial strategy and budget setting process and formally allocated by Executive at the end of each financial year (as part of the Financial Outturn report) to projects on the CIL Regulation 123 Infrastructure List (Appendix Three).

3.12 CIL funding is unlikely to be available to support the delivery of infrastructure investment in Council house building schemes and (following recent changes in Government policy) this funding is very unlikely to be available through the Housing Revenue Account in future. CIL funds cannot be used to directly fund the provision of affordable housing, but investment in community infrastructure as part of larger schemes reduces the need for capital receipts from the commercial housing component of these schemes. Increased income will therefore need to be secured through the construction of private or shared ownership homes, thus suppressing the level of social housing that can be delivered.

3.13 Whilst innovative funding models are being explored, a lack of infrastructure funding is particularly likely to affect the delivery of affordable housing in the Finsbury Leisure Centre and Cally Pool schemes. There is therefore an opportunity for Section 106 funds to be used to support these projects, with the wards in question (Bunhill and Caledonian) directly benefiting from this investment in terms of not only the community infrastructure improvements but also the increased number of affordable housing units being provided locally.

- 3.14 It must also be acknowledged that for the foreseeable future, under the proposed arrangements, CIL funding will not be available for investment in services such as parks, adventure playgrounds, community and youth facilities, open spaces on Council estates, public sports facilities or health facilities. If these types of improvements are going to be delivered, they will have to rely on Section 106 funds where available, or other sources of funding.

Re-distribution Mechanism

- 3.15 Appendix Two shows the amount of unallocated Section 106 money that was available as of December 2015 by ward. It also shows the amount of CIL that each ward had received in 2015/16 under the formula proposed in Appendix One. Based on the funding situation as at December 2015, Appendix Two illustrates how local CIL funds could be re-distributed from wards with larger sums of CIL income to wards without a minimum amount of developer contributions to spend during a particular financial year.
- 3.16 Wards that have received significant sums of developer contributions that can be allocated and spent during 2016/17 and onwards include: Bunhill (£1.64 million); Caledonian (£1.5 million); Clerkenwell (£1.3 million); Holloway (£2.1 million); and St Mary's (£1.5 million). As of December 2015, Canonbury and Mildmay on the other hand did not have any developer contributions to spend on local improvements, though both wards have since received some form of developer contribution. Appendix Two sets out three different potential mechanisms for re-distribution of small sums of 'local strategic' CIL (i.e. the 35% that wards will receive above the statutory 15% local CIL) to ensure that all wards receive a guaranteed minimum amount of CIL each year. The three scenarios consider minimum sums of £100,000, £50,000 and £30,000.
- 3.17 A number of issues were considered in reaching the recommendation put forward in this report. First, Section 106 funding is a relatively inflexible source of funding and in most circumstances must be spent in close proximity to the development from which it was secured. This means that although some wards are relatively 'well-off', they are generally unable to contribute funding to other wards as they only have access to very small amounts of CIL (e.g. Clerkenwell, Holloway and St Mary's Wards). Conversely, St Peter's Ward may suffer under a re-distribution formula because it has no Section 106 funding but has a relatively large amount of CIL (£700,000). Secondly, the 'local strategic' CIL that is potentially eligible for re-distribution must be spent on projects listed on the strategic infrastructure list (see below), although this still gives the recipient wards a great deal of flexibility in terms of how this money can be spent.
- 3.18 In Scenario One, all wards would be guaranteed a minimum of £100,000 per year. Mildmay and Canonbury Wards would have gained £100,000 each at a 'cost' to: (1) Bunhill (£61,000); (2) Caledonian (£99,000); and (3) St Peter's (£40,000). It is acknowledged that this degree of re-distribution is probably a step too far, but it would at least give the recipient wards a meaningful amount of money with which they would be likely to make a noticeable impact in the local area, particularly if banked over two or more years. The equalities implications of moving money from relatively poor to relatively affluent wards should also be considered and should guide how any re-distributed money is spent in the relatively affluent wards.
- 3.19 In Scenario Two, all wards would be guaranteed a minimum of £50,000 per year. Both Mildmay and Canonbury would have gained £50,000 each at a 'cost' to: (1) Bunhill (£30,000); (2) Caledonian (£50,000); and (3) St Peter's (£20,000).
- 3.20 In Scenario Three, all wards would be guaranteed a minimum of £30,000 per year. Both Mildmay and Canonbury would have gained £30,000 each at a 'cost' to: (1) Bunhill (£18,000); (2) Caledonian (£30,000); and (3) St Peter's (£12,000).
- 3.21 The recommendation of this report is that Executive approve the re-distribution mechanism set out in Scenario Three, providing each ward with a minimum of £30,000 per year of 'local strategic' CIL from other wards that have received more than £30,000 of CIL to be prioritised locally. It is further recommended that the re-distribution be re-calculated annually in November (based on levels of

unallocated Section 106 or CIL funds held in each ward) so that any re-distribution of funding is as fair as possible taking into account levels of developer contributions recently received in each ward.

Revising the CIL Regulation 123 infrastructure list

- 3.22 The Council adopted its Community Infrastructure Levy (CIL) Charging Schedule on 1 September 2014, and has now begun receiving CIL funds to be invested in infrastructure improvements within the borough. The adopted CIL Charging Schedule is accompanied by a CIL Regulation 123 infrastructure list, which sets out the types of infrastructure CIL can be spent on and enables the Council to allocate CIL money to schemes that are strategically important to the local area. CIL can only be spent on the types of project contained on this List. The CIL Regulations also prevent the Council entering into new Section 106 obligations to secure additional funds for any infrastructure on the 123 list, so it is important to ensure that the list is precisely defined and up to date.
- 3.23 The infrastructure list has been updated to ensure the Council is able to continue to allocate CIL to the highest priority schemes, without compromising future Section 106 obligations. Islington's revised CIL Regulation 123 list is included in Appendix Three. Public consultation on the revised list was carried out from 26 May to 23 June 2016. Statutory consultees, local stakeholders and residents were invited to comment during this period.
- 3.24 Consultation responses were received from eight companies / organisations, four of which supported the changes and had no specific comments. The remaining four respondents have been contacted to respond to the comments made. Of these, only one response required an actual change to the infrastructure list, which was the explicit inclusion of libraries in the list. Libraries are now mentioned as distinct from community and youth centre improvements, so that there is no doubt that CIL funds can be used to invest in libraries.
- 3.25 Executive is asked to approve and adopt the revised Regulation 123 Infrastructure List attached as Appendix Three of this report.

Carbon Offsetting

- 3.26 Islington Council was one of the first local authorities to adopt a carbon offsetting policy. This policy requires developers to meet challenging carbon reduction targets on-site. Where they are not able to meet targets for on-site carbon reduction, they are required to make carbon offsetting payments. The Council is currently holding £2.7 million in carbon offsetting payments. This money can be spent anywhere in the borough, as long as it is used to reduce carbon emissions. This is because the impacts of the carbon emissions from development in Islington are global, so any spend throughout the borough would equally help to mitigate the emission impacts of development.
- 3.27 It is therefore recommended that the use of this money is considered at a strategic level by the Affordable Energy Board (although any final allocations will be made by Executive or the Corporate Director of Environment and Regeneration or as appropriate). The specific contributions received that are to be allocated to each of the projects recommended by AEB are set out in Appendix Four.
- 3.28 The Affordable Energy Board has determined that the highest-priority carbon offsetting project is a project to insulate four of the least efficient Council-owned high-rise housing blocks in the borough to reduce carbon emissions as well as reducing heating costs for residents of the blocks. The high-rise blocks included in the project include Arlington House (£41k), Gambier House (£635k), Haliday House (£390k), and Ilex House (£509k). A total of £1,590,072 has been proposed towards these projects, providing a small contingency sum.
- 3.29 In addition, £334,876 will be allocated to provide a 'Housing and Health' Fund for two years, to pay for energy efficiency improvements for households (in all tenures) at the greatest risk of health problems related to or exacerbated by cold and damp, particularly respiratory, cardiovascular and immunodeficiency-related illnesses. And finally, £101,073 will be allocated to provide an 'Energising Small Business' fund for two years, to support small businesses wishing to invest in energy-saving, carbon emission reducing measures.

4. Implications

Financial implications:

- 4.1 The Council requires significant capital investment over and above the existing approved 2016/17 to 2018/19 capital programme, particularly in relation to our statutory responsibilities around education provision. The total value of all Section 106 contributions currently held for infrastructure investment is about £20m, and another £3 to 5 million is likely to be received by 2018/19 from agreements that have been negotiated but are yet to be triggered for payment. Over the same period, the Council is projecting to secure circa £14 to 20 million in borough CIL funding. The level and timing of CIL funding is dependent upon both planned development together with potential reforms to planning policies on developer contributions.
- 4.2 It is proposed that 50% of CIL will be earmarked for strategic infrastructure investment priorities with the remainder being directed to projects within the local ward, including 35% to items included in the Council's CIL Regulation 123 infrastructure list and 15% to Ward Improvement Plan projects and other local priorities meeting the funding criteria. This proposed split will be incorporated in the Council's budget setting process.
- 4.3 It is proposed that strategic CIL funding will be integrated with the capital medium term financial strategy and budget setting process and formally allocated by Executive at the end of each financial year (as part of the Financial Outturn report) to projects on the CIL Regulation 123 Infrastructure.

Legal Implications:

- 4.4 The Planning Act 2008 and the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) require the authority that charges CIL to apply it to supporting development by funding the provision, improvement, replacement, operation or maintenance of infrastructure. Infrastructure includes:
- a) roads and other transport facilities
 - b) schools and other educational facilities
 - c) medical facilities
 - d) sporting and recreational facilities
 - e) open spaces
- 4.5 The National Planning Practice Guidance says that the levy can be used to fund a wide range of infrastructure, including transport, flood defences, schools, hospitals, and other health and social care facilities. This definition allows the levy to be used to fund a very broad range of facilities such as play areas, parks and green spaces, cultural and sports facilities, academies and free schools, district heating schemes and police stations and other community safety facilities. This flexibility gives local areas the opportunity to choose what infrastructure they need to deliver their relevant Plan (the Local and the London Plan). Charging authorities may not use the levy to fund affordable housing.
- 4.6 Local authorities must spend the levy on infrastructure needed to support the development of their area, and they will decide what infrastructure is needed. The levy is intended to focus on the provision of new infrastructure and should not be used to remedy pre-existing deficiencies in infrastructure provision unless those deficiencies will be made more severe by new development.
- 4.7 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.
- 4.8 The CIL Regulations require that where the Council has published a Regulation 123 infrastructure list showing the infrastructure that may be funded by CIL (as Islington has), the authority may not fund that infrastructure from Section 106 contributions. Whilst CIL does not have to be spent on infrastructure referred to in the charge setting evidence, the links should be clear.
- 4.9 The purpose of Section 106 funding is to mitigate the impacts of development and to support sustainable development. A Section 106 agreement between the Council and a developer will specify the purpose of each financial contribution, each of which will help to mitigate the specific impacts of

the development in question. The Council is bound to spend these funds accordingly.

- 4.10 The CIL Regulations 2010 specify the legal test as to when a local planning authority may require a Section 106 contribution, and that is when the obligation is:
- a) necessary to make the development acceptable in planning terms;
 - b) directly related to the development; and
 - c) fairly and reasonably related in scale and kind to the development.
- 4.11 The Regulations also stipulate that as from April 2015, a Section 106 obligation cannot be required where five or more agreements that provide funding for that type of infrastructure have already been entered into since 6 April 2010.
- 4.12 The PPG provides that when charging authorities revise their Regulation 123 list, they should ensure that the changes are clearly explained and subject to appropriate local consultation. Charging authorities should not remove an item from the Regulation 123 list just so that they can fund this item through a new Section 106 agreement. Authorities may amend the Regulation 123 list without revising their charging schedule, subject to appropriate consultation. Where a change to the Regulation 123 list would have a very significant impact on the viability evidence that supported examination of the charging schedule, this should be made as part of a review of the charging schedule. However, the changes made to Islington's revised Regulation 123 list are not significant and will not affect viability of development in the borough. Officers considered that it was appropriate to consult statutory bodies, local stakeholders and residents for 4 weeks, following the same process used for the Preliminary Draft Charging Schedule consultation.

Environmental Implications:

- 4.13 Community Infrastructure Levy funds are secured in order to ensure that the necessary local infrastructure is in place to facilitate sustainable development, so CIL-funded projects will help to reduce the negative environmental impacts of development in the borough. The environmental impacts of individual projects will need to be considered by individual project managers at the point of implementation, with measures being taken to improve the environmental impacts of schemes wherever possible.

Resident Impact Assessment:

- 4.14 The Council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The Council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The Council must have due regard to the need to tackle prejudice and promote understanding.
- 4.15 A Resident Impact Assessment (RIA) of the proposed CIL allocation process has not been completed yet because the details of this proposal have not been finalised. Equally, an RIA of the proposed allocations has not yet been carried out as there are no firm proposals for making these allocations. Once the methodology has been finalised and the list of proposed allocations has been drawn up, an RIA will be prepared. It is likely that an RIA will also be needed for individual projects.

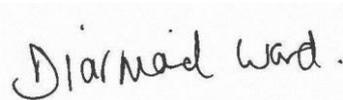
5. Reasons for the recommendations / decision:

- 5.1 At a time when the Council is facing greater than ever financial pressures it is more important than ever that the Council uses its resources in the most effective way possible. The level of CIL funding that is available is far below the levels that are required for capital investment to ensure that local infrastructure can cope with the levels of development and growth expected in Islington in the near future.

Executive is therefore asked to approve the proposed allocation methodology contained in Appendix One, and that strategic CIL funding will be integrated with the capital medium term financial strategy and budget setting process and formally allocated by Executive at the end of each financial year (as part of the Financial Outturn report) to projects on the CIL Regulation 123 Infrastructure List.

Executive is asked to consider the proposed re-distribution mechanism outlined in Appendix Two for future years, though no re-distribution is necessary for the 2016/17 financial year. Executive is also asked to adopt the revised Regulation 123 Infrastructure List following the recent public consultation. Finally, Executive is asked to consider a formal mechanism for the allocation of carbon offsetting contributions taking into account the recommendations of the Affordable Energy Board.

Signed by:



20 September 2016

Executive Member for Housing and Development

Date

Appendices

- Appendix One – Proposed CIL Allocation Process
- Appendix Two – Potential re-distribution scenarios to provide a minimum amount of CIL funds for every ward
- Appendix Three – Revised CIL Regulation 123 infrastructure list
- Appendix Four – Proposed Section 106 carbon offset allocations

Background papers:

- None

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