

Report of:	Head of Economic Prosperity
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Key Decision:	Yes
Report Track:	Cabinet: 18/03/20 Council: 22/04/20

CABINET**18 MARCH 2020****CANNOCK CHASE COMMUNITY INFRASTRUCTURE LEVY (CIL)
ALLOCATIONS PROTOCOL UPDATE****1 Purpose of Report**

- 1.1 To consider and approve amendments to the Protocol for the allocation of Community Infrastructure Levy (CIL) funds, following the issues that have come to light during the first allocations process in 2019 and recent legislative changes.

2 Recommendation(s)

- 2.1 The amended Cannock Chase Community Infrastructure Levy Allocations Protocol as shown in Appendix 1 be approved and adopted for use by the Council.
- 2.2 That authority be delegated to the Head of Economic Prosperity in consultation with the Economic Development and Planning Portfolio Leader to make minor changes to the Protocol necessitated by changes to CIL related legislation

3 Key Issues and Reasons for Recommendations

- 3.1 The Council approved the CIL Charging Schedule and CIL Infrastructure List (formerly Regulation 123 list, see Cabinet 17/10/2019 minute no. 6.1-6.15) of infrastructure projects eligible to receive funding at its meeting on 15/04/2015. At its meeting on 23 July 2015 Cabinet approved a Protocol for the allocation of CIL.
- 3.2 CIL is intended to provide a funding stream for infrastructure needed to support the housing and commercial growth policies and proposals in the adopted Local Plan. It partly replaces funding previously obtained via Section 106 Planning Obligations.

- 3.3 Considering the amount of CIL receipts retained, the Council decided to carry out its first CIL allocations process in 2019. During this process it became apparent that slight amendments were needed to the protocol to clarify the Council's position on allocation of CIL funds to projects that have already been funded/delivered.
- 3.4 In September 2019, the Government made changes to the Community Infrastructure Levy Regulations 2010 (as amended) (the CIL Regulations) regarding Regulation 123 and the use of multiple planning obligations and CIL (pooling restriction) to enable more flexible infrastructure delivery. The update to the Protocol reflects these changes.

4 Relationship to Corporate Priorities

- 4.1 This report supports the Council's Corporate Priorities as follows:
- Promoting Prosperity: CIL supports investment in infrastructure which in turn encourages investment in housing, town centres and employment opportunities.
 - Community Wellbeing: CIL supports investment in infrastructure which can help encourage healthier living opportunities and safe, more attractive environments in the District. Updating the Allocations Protocol ensures that the Council is optimising the funding available from CIL in order to provide infrastructure that will fulfil the needs of the District.

5 Report Detail

- 5.1 The Council approved the Community Infrastructure Levy (CIL) Charging Schedule and Regulation 123 list of infrastructure projects eligible to receive at its meeting on 15/04/15.
- 5.2 CIL is intended to provide a funding stream for infrastructure needed to support the policies and proposals in the adopted Local Plan. It will partly replace funding previously obtained via Planning Obligations (Section 106 agreements and Unilateral Undertaking). CIL and Section 106 agreements can now be used to fund the same piece of infrastructure, following amendments made to the CIL Regulations in September 2019.
- 5.3 The total amount of CIL receipts retained and available for expenditure at the end of the 2018/19 financial year were £1,386,522. A further £477,612 of CIL receipts were received from 1st April to 30th September 2019. The gross amount of CIL receipts to date is £1,814,337. However, it should be noted this figure is before taking into account neighbourhood funds, administrative expenses and SAC mitigation payments. Given the overall amount of funds retained it was deemed appropriate for the Council to carry out its first CIL allocations process, which commenced June 2019. These figures were reported to Cabinet 19/12/19.
- 5.4 The allocations process started by inviting bids for funds from stakeholders who had projects on the Regulation 123 list. These bids were then assessed by the

CIL Joint Member/Officer Working Group against key criteria. Details on this process and recommendations made were approved by Council 30/01/20.

- 5.5 During the first allocations process bids were received for projects that had already been delivered, meaning funding was sought to reimburse monies already spent. Although national guidance allows for funds to be reimbursed for projects delivered using CIL receipts, this is down to each charging authorities' discretion. The Cannock Chase Council CIL Joint Member/Officer Group made the decision not to accept bids for retrospective projects on the 18th October 2019 at the final assessment of CIL bids.
- 5.6 In our current protocol guidance, which is sent to potential bidders when they are invited to bid for CIL funds, we request bids relating to a three year rolling period, state that approval of any scheme will be at the risk of the bidder and that financing will not be provided in advance of funds being received. However, we acknowledged that the protocol did not explicitly state that retrospective projects would not be eligible the CIL funding, although it was implied.
- 5.7 The following sentences have been added to the allocations protocol – 'Bids for projects that have already been funded and/or delivered will be considered ineligible – stakeholders are encouraged to discuss the potential allocation of CIL funds for their project with the CIL Joint Member/Officer Group before implementing the project'.

'Bids for funds that exceed the amount of CIL funds retained by the Council will be considered ineligible.'
- 5.8 Regulation 123 of the CIL Regulations previously required the Council, as a charging authority, to provide a list which sets out items of infrastructure, related to proposed developments in the district as set out in the Local Plan which were intended to be funded either entirely or partially by CIL.
- 5.9 As of 1st September 2019, Regulation 123 was removed lifting the restriction on pooling contributions and giving the Council more flexibility. The Council is now required to produce an annual infrastructure funding statements are due to include information previously included in the Regulation 123 list and the first of which is due to be published 31st December 2020. In the meantime, the Council has renamed the 'Regulation 123 list' the 'CIL Infrastructure list' so that we have not referring to regulations that no longer exist. For this reason, the protocol has been updated to reflect this change.
- 5.10 The amended Community Infrastructure Levy Allocations Protocol is attached as Appendix 1. This document details the protocol for potential bidders; the changes made have been highlighted.
- 5.11 As CIL related legislation is subject to regular updates, it is recommended that delegated authority is given to the Head of Economic Prosperity in consultation with the Economic Development and Planning Portfolio Leader to make minor amendments, when required, to the Protocol to reflect national legislative requirements.

6 Implications

6.1 Financial

The financial implications are set out in the report.

6.2 Legal

The legal implications are set out in the report.

6.3 Human Resources

None

6.4 Section 17 (Crime Prevention)

None

6.5 Human Rights Act

None

6.6 Data Protection

None

6.7 Risk Management

Having a well documented and open procedure of identifying priorities for funding and delivery of projects as proposed minimises the risk of failure to maximise the beneficial use of CIL funding for the community as a whole.

6.8 Equality & Diversity

None

6.9 Best Value

None

7 Appendices to the Report

Appendix 1: Updated Cannock Chase CIL Allocations Protocol 2020

Previous Consideration

Updated Community Infrastructure Levy Infrastructure List (Former Regulation 123 List)	Council	06/11/2019
Cannock Chase Community Infrastructure Levy Funding Decisions Protocol	Cabinet	23/07/2015

Cannock Chase Community Infrastructure Levy Charging Schedule	Council	15/04/2015
Cannock Chase Community Infrastructure Levy (CIL) Financial Year Report	Cabinet	19/12/2019
General Funds Budget and Capital Programme 2019-20 to 2022-23	Cabinet	30/01/2020

Background Papers

Planning Act 2008

Community Infrastructure Levy Regulations 2010, 2011, 2012, 2014 & 2019

Cannock Chase Local Plan June 2014

ITEM NO. 9.

Cannock Chase CIL Allocations Protocol 2020

Introduction

- 1.1 This guidance document sets out the Council's approach to the allocation of Community Infrastructure Levy (CIL) funds for the 2020/21 process. The Council's Funding Decisions Protocol for the allocation of CIL funds was agreed July 2015 (Cabinet Report 23.07.15) and updates to this was approved [DATE] (CABINET REPORT). Key points from these reports are detailed in this guidance, with some further elaboration as to aid administration of the process.
- 1.2 Cannock Chase Council is responsible for making the final decision on the allocation of funding raised through CIL. This will be done through a bidding process that aligns and concludes with the Council's annual capital spending programme. The aim of the Funding Decisions Protocol is to ensure that decision making and the process leading to it is transparent. Through it the Council will identify and agree priorities for the allocation of CIL funds.

Key principles

- 2.1 The following key principles set out the overarching framework for the allocations process:
 - CIL funds will be allocated based on prioritising the schemes included in the CIL Infrastructure list (formerly known as Regulation123 list) to reflect the strategic objectives of the Council and its partners.
 - The allocation will attempt to maximise the impact of the CIL resources after taking into account the outcomes of the schemes; the business case and match funding.
 - The process will involve initially a three year window with bids thereafter relating to the rolling new year of the rolling programme e.g. the 2020-21 process will relate to 2021-22 to 2023-24 (should sufficient funds be available for that 3 year period).
 - In the latter case bids will not be accepted for 2021-22 and 2022-23 unless it can be demonstrated that unforeseen circumstances beyond the control of the bidder have materialised.
 - The process in future years will not commence until sufficient resources are considered to be available within the three year period to enable the objectives to be achieved.
 - To aid the process the CIL Infrastructure list will be reviewed annually alongside the infrastructure funding statement or as and when required. This will identify the potential schemes falling due in the 3-5 year period and the current shortfall requiring potential CIL allocations.
 - Approval of any scheme will be at the risk of the bidder. The Council will not incur/reimburse any CIL related scheme expenditure until sufficient resources have been received.

- Bids for projects that have already been funded and/or delivered will be considered ineligible – stakeholders are encouraged to discuss the potential allocation of CIL funds for their project with the CIL Joint Member/Officer Group before implementing the project’.
- Bids for funds that exceed the amount of CIL funds retained by the Council will be considered ineligible.

2.2 The process is tailored to the medium term three year rolling programme allocation process of the Council whereby a capital programme is approved for the next financial year and two subsequent years and reflects the resources available over that period.

2.3 The determination of resources will need to reflect the level of resources available over that three year period and when resources will be able to finance the project. Financing will not be provided in advance of CIL funds being received.

Process and Timetable

3.1 The allocations of Community Infrastructure Levy (CIL) funding to infrastructure projects consists of two distinct stages:

- Determination of resources available
- Bidding and allocation process

3.2 In terms of the determination of resources available, this is done at the end of each financial year as part of the annual update to the infrastructure funding statement i.e. identifying the level of CIL receipts and expenditure.

3.3 In terms of the budding and allocation process, in order to synchronise with the timing for the Councils annual budget setting process in February, all the consultation and decision making processes are to be completed by the end of the calendar year. The table below sets out the processes and timescales.

Date	Action
By 30 th June	Invite bids from stakeholder for inclusion in the three year CIL Infrastructure Capital Programme
By 30 th August	Deadline for bids for projects
September	Initial assessment of submissions by officers and relevant Cabinet Member
By 30 th September	Consultation to share and review aspirations/priorities with bidding parties
By 31 st October	Prepare draft programme of projects
By 30 th November	Feedback to stakeholders
By 31 st December	Prepare recommendations
February	Report to Cabinet/Council

3.4 Eligible bidders for the projects will be those organisations that have project currently included on the CIL Infrastructure list.

- 3.5 Submissions are to be made via a standard application form. Please note the deadline for submissions is **5pm on [DATE]**. All the information requested on this form should be provided in order for the Council to make informed decision.
- 3.6 Once received, an initial assessment based upon the submitted information will be undertaken by officers and the relevant Cabinet Member. During this assessment the panel will raise any queries or items that require further clarification. These will then be discussed at the consultation with bidding parties.
- 3.7 Further consultation will then be undertaken with the bidding parties in September. This will provide bidding parties with an opportunity to be given an overview of the bidding process to date and those parties will be able to offer any further clarification on their projects at this stage, as necessary.
- 3.8 Following this consultation, the Council will prepare a final draft of project allocations to take forward for Council approval. The bidding parties will be informed of the outcomes at this stage (anticipated to be by the end of November).
- 3.9 The final draft project allocations will be reported to Council as an appendix to the Council's annual budget setting process, with approval by the end of the financial year.

Criteria for determining the allocation of CIL funds

- 4.1 The levy must be spent on the provision, improvement, replacement, operation or maintenance of infrastructure needed to support the development of the area (there is more freedom regarding the use of the 15%-25% neighbourhood portion which can also be applied to *'anything else that is concerned with addressing the demands that development places on an area'*).
- 4.2 Bids should provide all the information requested on the application form. This enables the bid to be considered against key criteria.
- 4.3 Potential bidders must ensure that the project is on the **CIL Infrastructure list** and in the Infrastructure Delivery Plan.
- 4.4 Priority will be given to Capital schemes, although revenue funding via maintenance of associated assets will also be eligible.
- 4.5 The connection to relevant Local Plan (Part 1) policies will be considered together with an overall assessment of the economic, social and environmental benefits of the project. This information is to be provided in Part One of the Expression of Interest Application Form. Please note this criteria will be prioritised in the decision making process given that the primary function of CIL is to help deliver infrastructure to support the sustainable development of the District. Those bids that demonstrate strong links to a number of Local Plan (Part 1) policies and that can strongly demonstrate a range of economic, social and environmental benefits will be considered more favourably.
- 4.6 The amount of CIL requested and its relationship to other sources of funding will be considered. The bid should clearly identify the amount of funding being sought

and also any other sources of funding, including potential leverage of match funding and use of Section 106 funds. This information is to be provided in Part Two of the Expression of Interest Application Form. Those bids that are able to leverage match funding will be considered more favourably. Those bids that can demonstrate all other sources of funding have been explored will be considered more favourably.

- 4.7 Evidence of deliverability and arrangements for ongoing maintenance/management will be considered. This information is to be provided in Part Three of the Expression of Interest Application Form. Those bids that have no apparent constraints, or clearly demonstrate that all identified constraints can be readily overcome will be considered more favourably. Those bids that have no apparent risks or clearly demonstrate that all identified risks can be readily overcome will be considered more favourably. Those bids with fewer project partners or those that demonstrate that clear roles and commitments of project partners will be considered more favourably.
- 4.8 Part of the process may include 'banking' funds against individual projects over one or more years until sufficient resources have been accumulated to secure delivery in later years.
- 4.9 The allocation of CIL funds is entirely at the discretion of the Council and there is no right of appeal.

Transfer of funds and monitoring

- 5.1 When CIL funding is allocated to infrastructure providers, the CIL funding can only be used to deliver the agreed infrastructure type or project. To ensure the appropriate and timely delivery of projects, conditions will be attached to the allocation of CIL.
- 5.2 A project plan identifying the profiling of expenditure for the project should be returned by the successful applicant. The applicant should then claim the pro rata CIL allocation (as a proportion of overall funding) based upon completion stages of the project with supporting information attached. Payment will be in arrears. As the Charging Authority, the Council will retain the right to disallow any expenditure incurred that is not in accordance with the agreed allocation.
- 5.3 Successful infrastructure providers will be required to enter into a grant agreement which will confirm the detail of those conditions. The grant agreement will include a commitment to complete quarterly monitoring returns to the Council. In the event that the project is not proceeding in accordance with the agreed project plan, and a revised project plan cannot be agreed, the Council reserves to withdraw the funding allocation.