

**For publication**

**Community Infrastructure Levy (CIL) –  
Expenditure procedure and Governance (J010R)**

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Meeting: Cabinet

Date: *17<sup>th</sup> July 2018*

Cabinet portfolio: Economic Growth

Report by: Economic Growth Manager

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For publication

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**1.0 Purpose of report**

1.1 To set out the process by which collected receipts from the Community Infrastructure Levy (CIL) will be allocated to infrastructure projects.

**2.0 Recommendations**

2.1 That Cabinet resolves to approve the CIL Expenditure Strategy setting out the process by which collected receipts from the Community Infrastructure Levy (CIL) will be allocated to infrastructure projects.

2.2 That the Council's Constitution be amended to include the delegations relating to expenditure of CIL referred to in the CIL Expenditure Strategy.

2.3 To authorise the Strategic Planning Manager and Infrastructure Planning Officer, in consultation with the Leader of the Council and Executive Member for Economic Growth, to make any non-material changes to the expenditure strategy as may be required.

### 3.0 **Background**

3.1 The Community Infrastructure Levy (CIL) works as a charge that councils can place on new development in their areas. The money raised through the levy will help to fund the infrastructure that is needed to support new development and growth.

3.2 The Chesterfield Community Infrastructure Levy Charging Schedule was approved by Full Council on 14<sup>th</sup> October 2015. The Council began charging CIL on new development approved from 1st April 2016.

3.3 CIL contributions only begin to be payable upon commencement of those CIL-liable schemes. There will inevitably be a time lag in this process. CIL revenues have been received from a limited number of developments which were approved after 1<sup>st</sup> April 2016 and which have commenced on site. This has allowed an opportunity to develop a CIL Expenditure Strategy, setting out the approach which the Council will follow to identify the specific items of infrastructure upon which CIL revenue should be spent in order to support growth and development across the Borough.

3.4 According to the most recent projections, the Levy is forecast to raise between £16,830,678 and £23,460,978 over the plan period to 2033, depending on a range of assumptions and scenarios (summarised in the Table at Appendix 2). Income raised can be used to contribute to a wide range of infrastructure projects so long as they support development

growth. CIL income will build up over time but early contributions will particularly depend on the development programmes for individual CIL-liable developments. To date just over £750,000 has been received<sup>1</sup>. Throughout the development of the Chesterfield CIL scheme, it was always acknowledged that there would be a funding 'gap' i.e. a difference between the total financial cost of delivering all the infrastructure needed to support future planned growth across the Borough, and the revenues likely to be raised from CIL. CIL was never intended to act as the sole source of infrastructure revenue.

- 3.5 Planning Policy Guidance requires CIL Charging authorities to identify the total cost of infrastructure to be funded through CIL including the additional infrastructure is needed to support development, and what other sources of funding are available. The Local Plan identifies the scale and type of infrastructure needed to deliver the Borough's local development and growth needs. The Government recognises that there will be uncertainty in pinpointing other infrastructure funding sources, particularly beyond the short-term, and advises that the focus should be on providing evidence of an aggregate funding gap that demonstrates the need to put in place the levy.
- 3.6 Accordingly, the Chesterfield CIL evidence base included a CIL Infrastructure Funding Gap Review Report. The Chesterfield CIL Examiner's report concluded that "the CIL Council's approach is realistic in achieving a reasonable level of income to address an acknowledged gap in infrastructure funding, while ensuring that development remains generally viable across the Borough.
- 3.7 There is considerable flexibility around the types of infrastructure which could be provided to deliver the development plan. The Planning Act 2008 provides a wide

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<sup>1</sup> CIL Revenue received amounted to £764,133 (gross) at 31<sup>st</sup> March 2018

definition of the infrastructure which can be funded by the CIL, including:

- Roads and other transport
- Flood defences
- Schools and education facilities
- Medical facilities
- Sporting and recreational facilities
- Open spaces

The CIL Regulations exclude the use of CIL for the provision of affordable housing.

3.8 The Regulation 123 List sets out the types of infrastructure on which CIL revenue would be spent. The Chesterfield CIL Regulation 123 list (reproduced at Appendix 1) largely sets out generic items of expenditure rather than specific infrastructure items. The intention was to allow the Council the flexibility to determine expenditure as circumstances required. It does however now require the Council to develop and agree an expenditure strategy to allow decisions on how to spend CIL contributions to be taken in a way which is transparent and understandable, and which provides certainty. The acknowledged infrastructure funding gap means that the Council will need to balance competing infrastructure requirements. This is the primary purpose of this exercise.

3.9 This report sets out how collected receipts for Community Infrastructure Levy could be allocated to infrastructure projects on the published Community Infrastructure Levy Regulation 123 list to ensure that CIL is able to support the agreed growth strategy for the Borough.

#### **4.0 CIL Expenditure**

## **The relationship between the Community Infrastructure Levy and planning obligations (Section 106 Agreements)**

- 4.1 The introduction of the CIL in Chesterfield has not completely replaced the system of planning obligations. S.106 agreements continue to operate alongside CIL, but with a narrower scope. CIL funds are intended to help deliver infrastructure which is necessary to support the development of an area, rather than to make individual planning applications acceptable in planning terms. As a result, there may be some site specific mitigation requirements without which a development should not be granted planning permission. In these circumstances, Section 106 planning obligations continue to be used.
- 4.2 The purpose of the Regulation 123 List is to provide clarity on what CIL might be spent on and ensure that there is no duplication between CIL and S106 agreements in funding the same infrastructure projects. In other words it is no longer possible to request contributions through Section 106 agreements for infrastructure items which are contained within the CIL Regulation 123 list since this would amount to 'double charging'.
- 4.3 The inclusion of a project or type of infrastructure in this list does not signify a commitment from the Council to fund either in whole or in part the listed project or type of infrastructure through CIL. Nor does the order of the Regulation 123 List imply any order of preference or weighting of one project as opposed to another.
- 4.4 The Council can review the Regulation 123 list as part of its monitoring of CIL collection and expenditure. The Authority Monitoring Report will identify progress on collecting and spending CIL and indicate the need for any review of the Regulation 123 list. Any revisions to the Regulation 123 list will need to be clearly explained and subject to appropriate local consultation.

4.5 Unlike developer contributions from S.106 agreements, CIL does not have to be spent on the site or in the area from which it is collected. CIL must, however, be spent on infrastructure items that are included in Regulation 123 list.

### **Distribution of Expenditure**

4.6 The CIL Regulations set out the overall breakdown for how monies collected from the CIL are to be distributed. This is illustrated in the table below.

<b>Purpose of Funding</b>	<b>% Allocated</b>
Administration – Costs of administrating receipt and expenditure of CIL	5% of all receipts
Neighbourhood Area portion	15% of CIL collected within that area capped at £100 per dwelling. (in a designated Neighbourhood Area where there is a Neighbourhood Plan in place 25% of CIL collected within that area uncapped.)
CIL infrastructure	80% - Remaining CIL receipts collected for the financial year.

4.7 This report addresses each of these areas in 3 sections:

Section 1: Administration Expenses

Section 2: Strategic Infrastructure

Section 3: Local Infrastructure / Neighbourhood funding

### **Section 1: Administrative expenses**

- 4.8 Whilst the overwhelming majority of revenue from the levy is directed towards infrastructure provision, the CIL Regulations recognise that there are costs associated with operating CIL and allow charging authorities to use funds from the Levy to recover the costs of its administration. [Regulation 61](#), allows the Council to spend up to 5% of total levy receipts on administrative expenses. If the Council spends less than its permitted allowance on administrative expenses, it must transfer the remaining allowance for use on capital infrastructure projects.
- 4.9 Administrative expenses associated with the levy include the costs of the functions required to establish and run a levy charging scheme. These functions include levy set-up costs, such as consultation on the levy charging schedule, preparing evidence on viability or the costs of the levy examination. They also include ongoing functions like establishing and running billing and payment systems, enforcing the levy, the legal costs associated with payments in-kind and monitoring and reporting on levy activity.
- 4.10 To help charging authorities with initial set up costs, the regulations allow for a 'rolling cap' on administrative expenses (see Regulation 61). This covers the period comprising the first part year that the Council set the levy (2016) and the following three financial years taken as a whole (2017-18, 2018-19, and 2019-20). From year four onwards of the Levy's operation, the restriction works as a fixed in-year cap, meaning that the Council may spend up to 5% of receipts received in-year by the end of that year on its administrative expenses.

## **Section 2: Strategic infrastructure**

### **Key foundations of the CIL Expenditure Strategy:**

- 4.11 The purpose of CIL is to help to provide the infrastructure needed to support the development of the Borough. CIL receipts (excluding the neighbourhood element and

administration fees) will be placed into a centralised pot for the purpose of supporting the delivery of strategic and local infrastructure improvements on a Borough wide basis.

4.12 In order to avoid ad hoc or piecemeal decisions, the approach to prioritising CIL expenditure in the draft Expenditure Strategy is anchored by the Local Plan strategy. This would support coherent and transparent spending decisions which accord with the wider direction of policy and support growth on the scale and in the broad locations which the Plan sets out.

### **The Local Plan**

4.13 The adopted Core Strategy (2013) identifies the strategic and local infrastructure fundamental to achieving the Council's ambitions for shaping the Borough to 2031, and provides the strategic context for infrastructure requirements. The emerging draft Local Plan (January 2017) updates and clarifies the strategy, extending the plan period to 2033. The overall approach to future growth and development across the Borough is to concentrate new development in areas which are easily accessible to centres, and to focus on areas that need regenerating.

4.14 An Infrastructure Delivery Plan (IDP) was prepared in parallel to the Core Strategy and is being updated in parallel with the emerging draft Local Plan. The IDP identifies the essential strategic and local infrastructure which will be required at different times over the duration of the plan period to deliver the Plan strategy. It sets out what infrastructure will be needed and when, who will deliver it and how it will be funded. Their cost is estimated at significantly more than the amount expected to be raised through CIL. The IDP is a 'living document' which will continue to be updated as the infrastructure delivery programme moves forward and the future programme develops



- 4.15 The IDP has identified major infrastructure items that will be critical to unlocking these sites. In relation to the Staveley and Rother Valley Corridor Strategic Site for example, school capacity has been identified as an obstacle to the development of a new community in this strategic location and it will be therefore be necessary to address this through the provision of a new school as part of the wider regeneration proposals. Strategic transport infrastructure, particularly in the form of a new link road/regeneration route, is also required in order to improve accessibility. Work is continuing with the County Council (as education authority and highways authority), the landowners, and other key partners to identify the options for funding and delivery of critical infrastructure.
- 4.16 In view of the above, the Local Plan Strategy is considered to represent the most appropriate focus for prioritising CIL expenditure. In broad terms this would support the delivery of critical infrastructure necessary to unlock strategic sites, and support positive development in RPAs which will deliver homes and jobs.

### **Apportioning Strategic CIL Income - Governance**

- 4.17 The draft CIL Expenditure Strategy sets out a systematic and transparent process for allocating CIL resources to infrastructure projects, including a series of steps which should be taken in developing a clear and transparent methodology to identify priorities. The Council's Constitution will need to be amended to include the delegations on expenditure contained within the Expenditure Strategy.

### **Forward Funding**

- 4.18 In order to provide an adequate level of certainty to infrastructure delivery partners, it would be advantageous to put in place a long term investment framework, covering say a 5 year period, to enable delivery partners to commit to forward

funding projects with an undertaking that the CIL funds will be directed to them. It may be that some investment commitments are not taken forward. In these cases and to maintain the Investment Framework time horizon, an annual review could be undertaken to respond to any changes in circumstances, including development activity, and set priorities for future years.

## **County Functions**

4.19 Derbyshire County Council is the local education and transport authority. The County Council provides infrastructure and services that the Infrastructure Delivery Plan identifies as critical to delivering the Borough Local Plan. Work will continue alongside the County Council on apportioning CIL income to the County Council's education and transport functions, including using CIL income to secure match funding wherever opportunities arise, in a way which helps to support development growth proposed for the Borough.

## **Section 3: Local Infrastructure / Neighbourhood Funding – the Neighbourhood Portion**

4.20 The Community Infrastructure Levy Regulations (Regulation 59A) place a duty on charging authorities to allocate at least 15% (up to a cap of £100 per existing council tax dwelling) of CIL receipts to spend on priorities that should be agreed with the local community in areas where development is taking place. This is known as the neighbourhood portion.

### **A. Parished Areas**

4.21 The 2010 Regulations require charging authorities to pass the 15% of CIL receipts directly to parish councils where the chargeable development has taken place<sup>2</sup>. Parishes can

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<sup>2</sup> (This increases to 25% where there is a neighbourhood development plan in place or where permission is granted for a neighbourhood development order. That amount will not be subject to an annual limit).

contribute towards strategic projects but are ultimately autonomous in taking spending decisions.

4.22 There are 2 parishes, Staveley and Brimington, where the neighbourhood portion of CIL receipts will pass to Staveley Town Council or Brimington Parish Council if chargeable developments take place in their areas.

## **B. Non-Parished Areas**

4.23 The extent of the parishes however does not cover the majority of the urban area of Chesterfield Borough. This creates a gap in the coverage for the neighbourhood portion in the Borough where there are no parishes or town councils to oversee its expenditure. Parishes and Wards are listed in Appendix 4 and shown on map 'Chesterfield Ward Boundaries and Parished Areas' in Appendix 5.

### **Expenditure of Neighbourhood Portion in Non-Parished Areas**

4.24 Communities without a parish or town council will still benefit from the neighbourhood portion of CIL receipts. Where the chargeable development takes place in an area where there is no parish council, the charging authority retains the levy receipts but must spend the neighbourhood portion on, or to support, infrastructure in the area where the chargeable development takes place. Funds from the neighbourhood portion can be used for a wider range of spending than is the case with the strategic portion.

4.25 There is no prescribed process for agreeing how the neighbourhood portion should be spent, but guidance suggests that charging authorities should use existing community engagement processes, proportionate to the level of levy receipts and the scale of the proposed development to which the neighbourhood funding relates. The draft CIL Expenditure Strategy sets out proposals for the Council's consultation local

communities over how the neighbourhood portion of CIL receipts will be spent in non-parish areas. This can build on the experience of managing the Council's previous Community Chest programme.

### **Forecast income from the Neighbourhood Portion**

4.26 Over the plan period, current forecasts estimate that forecast income from the Neighbourhood Portion could equate to over £500,000 (including around £176,000 to Staveley Town Council, £19,000 to Brimington Parish Council, and £318,000 to non-parished wards).

### **Next steps:**

4.27 Following approval of the CIL Expenditure Strategy, a number of further steps need to be taken:

- (i) In identifying priorities for strategic expenditure, as indicated in the draft Expenditure Strategy, there will be a need to focus down on particular sites in the priority areas and strategic sites identified in the Local Plan, and the specific infrastructure items needed to deliver them. This will involve identifying the extent of potential CIL expenditure which could be made available and additional sources of funding to bridge the infrastructure gap. This will necessitate updating and further developing the Infrastructure Delivery Plan alongside the Local Plan, and working closely with delivery partners, particularly the County Council, SCR and D2N2, and other strategic infrastructure providers.
- (ii) Continue to engage with Staveley Town Council and Brimington Parish Council and for the neighbourhood element of CIL expenditure in the parished areas of the Borough, in line with CIL Regulations.

- (iii) Agree how the Neighbourhood Portion in non-parished areas will be managed

## **Timescales**

- 4.28 The fundamental purpose of CIL is to generate revenues to fund infrastructure which is necessary to support growth and development across the Borough. The Infrastructure Delivery Plan will identify the infrastructure necessary to implement the Local Plan. The CIL expenditure strategy therefore needs to support the draft Local Plan, which will set out the strategy and preferred sites to deliver the growth and development in Chesterfield to 2033.
- 4.29 Alongside consultation on a revised National Planning Policy Framework (NPPF), the government is proposing reforms to the system of developer contributions. The consultation is leaning towards requiring the publication of Infrastructure Funding Statements which would explain how the spending of any forecasted income from both CIL and section 106 planning obligations over five years would be prioritised and to monitor funds received and their use. This may result in removal of Regulation 123 lists. If this is confirmed following the current consultation, this may require an early review of the CIL Expenditure Strategy.

## **5.0 Financial considerations**

- 5.1 The financial ramifications of introducing a CIL were originally reported to Cabinet in December 2011 and in subsequent reports. Importantly, as set out in paragraph 4.8 of this report, the CIL regulations permit charging authorities to finance initial set-up and ongoing administration costs from up to 5 per cent of CIL receipts. Therefore, over time, it should be possible to recover the costs of preparing the CIL evidence base and Charging Schedule (including examination costs) and other ongoing administration or staffing costs. The introduction of a

Payment in Kind Policy now offers a mechanism to allow acceptance of full or part payment of a CIL liability by way of a physical provision of land and / or infrastructure..

## 6.0 Risk management

6.1 The potential risks of introducing a CIL Charging Schedule were considered by Members in October 2015 and are shown below. The subsequent introduction of a Payment in Kind and Exceptional Circumstances Relief Policies have been added to the original Risk assessment, together with proposed mitigating actions.

Description of the Risk	Impact	Likelihood	Mitigating Action	Impact	Likelihood
Developers not assuming liability in timely manner	L	M	Set up robust monitoring including reminders to developers	L	L
Developers not notifying LPA of commencement	M	M	Set up robust monitoring including reminders to developers	L	L
CIL funds not received within specified time period	M	M	Set up robust enforcement procedures including reminders to developers	L	L
Introduction of Exceptional Circumstances Relief Policy					
Reduction in CIL funding from granting relief for	M	M	Robust application of policy to ensure only used where	L	M

exceptional circumstances			relevant		
Introduction of Payment in Kind Policy					
Reduction in CIL funding from payments in kind	M	M	Robust application of policy to ensure only used where relevant	L	M
Development not coming forward due to difficulties making infrastructure provision on site	H	M	Adoption of Payment in Kind policy	L	L

## **7.0 Legal and human rights implications**

7.1 The preparation of CIL has been in accordance with the statutory requirements of the Planning Act 2008 and CIL regulations 2010 (as amended).

## **8.0 Consultation**

7.1 All public consultation has been in accordance with the statutory requirements of the Planning Act 2008 and CIL Regulations 2010 (as amended).

## **9.0 Environmental sustainability and bio-diversity**

9.1 Local authorities have a duty to have regard to the conservation of biodiversity in exercising their functions in accordance with the Natural Environment and Rural Communities Act which came into force on 1 October 2006.

9.2 CIL will provide funds to protect enhance and promote the Borough's existing green infrastructure assets.

## **10.0 Equalities Impact Assessment (EIA)**

10.1 A preliminary Equalities Impact Assessment (EIA) has been undertaken and no negative impacts on protected groups have been identified (Considered by Members in October 2015). On the basis of the original assessment, the Council's Policy & Equalities Team have confirmed that it is not necessary to carry out a full EIA for the proposal set out in this report.

## **11.0 Alternative options and reasons for Rejection**

11.1 Receipts from the Chesterfield CIL could be allocated on an ad hoc basis as bids are received. It is not considered that this would offer an objective or transparent solution and this would undermine the Council's objective of providing infrastructure necessary to support planned growth and development across the Borough set out in the Local Plan.

## **12.0 Recommendations**

12.1 That Cabinet resolves to approve the CIL Expenditure Strategy setting out the process by which collected receipts from the Community Infrastructure Levy (CIL) will be allocated to infrastructure projects.

12.2 That the Council's Constitution be amended to include the delegations relating to expenditure of CIL referred to in the CIL Expenditure Strategy.

12.3 To authorise the Strategic Planning Manager and Infrastructure Planning Officer, in consultation with the Leader of the Council and Executive Member for Economic Growth, to make any non-material changes to the expenditure strategy as may be required.

## **13.0 Reasons for recommendations**



- 13.1 To help facilitate sustainable development growth and Chesterfield's continued vitality through CIL investment.

**Decision information**

<b>Key decision number</b>	<b>794</b>
<b>Wards affected</b>	<b>ALL</b>

**Document information**

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<b>Appendices to the report</b>	
Appendix 1	Community Infrastructure Levy: Regulation 123 List
Appendix 2	Projected CIL Income Summary
Appendix 3	Parish Council payment periods
Appendix 4	Parish and non-parish areas
Appendix 5	Draft CIL Expenditure Strategy

## Appendix 1: Community Infrastructure Levy: Regulation 123 List

<b>REGULATION 123 INFRASTRUCTURE LIST</b>
<b>Infrastructure Type or Project</b>
<b>Strategic Green Infrastructure</b>
<ul style="list-style-type: none"> <li>• Public Open Space and/or play provision and/or improvements*</li> <li>• Sports and Playing Pitches*</li> <li>• Restoration of Chesterfield Canal</li> <li>• Access improvement to Green Wedges and Strategic Gaps</li> <li>• Biodiversity and habitat enhancement including tree planting*</li> </ul>
<b>Transport Infrastructure</b>
<ul style="list-style-type: none"> <li>• Improvements to A61 Chesterfield Inner Relief Road Junctions*</li> <li>• Chesterfield Staveley Regeneration Route</li> <li>• Hollis Lane Link Road</li> <li>• Implementation of Chesterfield Strategic Cycling Network*</li> <li>• Measures to improve walking, cycling and public transport provision within*:               <ol style="list-style-type: none"> <li>i. The A61 Corridor</li> <li>ii. The A619 Chatsworth Road</li> <li>iii. The A619 corridor through Brimington and Staveley</li> <li>iv. Access to Chesterfield Railway Station</li> <li>v. The proposed Strategic Cycle Network</li> </ol> </li> </ul>
<b>Other Infrastructure</b>
<ul style="list-style-type: none"> <li>• Strategic Flood Defences and alleviation measures*</li> </ul>
<b>Education Provision</b>
<ul style="list-style-type: none"> <li>• Provision of additional pupil capacity in existing schools and contributions to a new school or schools to address shortfalls in capacity arising from new housing growth</li> </ul>

**\*Excluding Site Specific measures arising as a result of specific development proposals, subject to statutory tests set out under Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended), which stipulates**

**the following:**

***A planning obligation may only constitute a reason for granting planning permission for the development if 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.***

## Appendix 2:

### Projected CIL Income Summary

Lower Floorspace Assumptions*				Higher Floorspace Assumptions*			
Estimated total CIL receipts £	Admin Costs (5%) £	Neighbour- hood funding (No. houses x £100)	Remaining CIL Income £	Estimated total CIL receipts £	Admin Costs (5%) £	Neighbour- hood funding (No. houses x £100)	Remaining CIL Income £
16,830,678	841,534	513,340	15,475,804	23,460,978	1,173,049	513,340	21,774,589

\*Projections based on expected CIL contributions from extant planning permissions and potential contributions from current draft Local Plan allocations using alternative scenario assumptions based on a lower average floorspace (70M<sup>2</sup> per dwelling) and a higher average floorspace (100M<sup>2</sup> per dwelling) over Local Plan period (to 2033).

## **Appendix 3:**

### **Parish Council payment periods**

The Borough Council may come to an agreement with Staveley Town Council or Brimington Parish Council on when CIL funds which are due under the neighbourhood element may be passed on. Where no agreement is in place the Borough Council must make payment in respect of CIL it receives from 1st April to 30th September in any financial year to the town/parish council by 28th October of that financial year and pay the CIL received from 1st October to 31st March in any financial year by the 28th April of the following financial year.

## **Appendix 4:**

### **Parish and non-parish areas**

#### **Parish areas**

Chesterfield has 2 parish areas which cover the following Wards:

##### **Staveley Town Council:**

Barrow Hill & New Whittington (part)

Lowgates & Woodthorpe

Middlecroft & Poolsbrook

Hollingwood & Inkersall

##### **Brimington Parish Council:**

Brimington North

Brimington South (part)

#### **Non-Parished Areas**

The non-parished areas of Chesterfield Borough cover the following Wards:

Barrow Hill & New Whittington (part)

Brimington South (part)

Brockwell,

Dunston

Hasland

Holmebrook

Linacre

Loundsley Green

Moor

Old Whittington

Rother

St Helens

St Leonards

Walton

West