



**EXECUTIVE OVERVIEW &
SCRUTINY COMMITTEE:
6 SEPTEMBER 2022**

CABINET: 13 SEPTEMBER 2022

Report of: Corporate Director of Place & Community

Relevant Portfolio Holder: Councillor Anne Fennell

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**SUBJECT: COMMUNITY INFRASTRUCTURE LEVY FUNDING PROGRAMME
2023/24**

Wards affected: Borough wide

1.0 PURPOSE OF THE REPORT

1.1 To inform Members and seek approval of a temporary suspension of part of the Community Infrastructure Levy (CIL) Funding Programme 2023/24.

2.0 RECOMMENDATIONS TO EXECUTIVE OVERVIEW & SCRUTINY COMMITTEE

2.1 That the Committee note the content of this report regarding proposed changes to the 2023/24 CIL Funding Programme and agreed comments be passed to Cabinet for their consideration.

3.0 RECOMMENDATIONS TO CABINET

3.1 That Cabinet, having regard to the content of this report and to the agreed comments of Executive Overview & Scrutiny Committee, approve the temporary suspension of part of the CIL Funding Programme 2023/24 as set out in this report:

1. That the relevant parts of the 2023/24 CIL Funding Programme detailed in this report will be suspended temporarily pending recommencement in Spring 2023 to cover two full financial years (2024/25 and 2025/26).
2. That amendment to the Governance Framework (see Appendix 1) is approved to allow the recommendation at 3.1 to take place. Thereafter the original Governance Framework Timetable will return to the original format.

- 3.2 That Members note the resource issues regarding CIL and the need for contingency planning in relation to staff.
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4.0 BACKGROUND

- 4.1 Members will be aware that the CIL process allows the Council to raise funds from developers who are undertaking new building projects in the area. The money that is collected must be used to fund the provision, enhancement or maintenance of infrastructure to support new development. CIL only applies in areas where the Council has consulted on, and approved, a charging schedule which sets out its levy rates and has published the schedule on its website.
- 4.2 The Council adopted a CIL Charging Schedule in June 2014 and approved a CIL and S106 Governance and Expenditure Framework ('the Framework') in 2015 that set out the structure for the allocation and spending of developer contributions collected through CIL and Section 106 obligations. The Framework was further updated in 2020 following legislative changes and is included at Appendix 1 to this report.
- 4.3 In summary, the Framework explains how the Council invites stakeholders to submit schemes that they want to be funded, either in whole or part, by CIL monies collected by the Council. These schemes are then considered against set criteria, shortlisted and added to an Infrastructure Delivery Schedule. A further shortlisting exercise occurs and schemes that are deliverable over the next two years are added to a draft CIL Funding Programme. A further round of public consultation takes place before the CIL Funding Programme is finalised and approved by Cabinet. Only schemes that are included on the Infrastructure Delivery Schedule can access the Council's CIL monies.

5.0 CURRENT POSITION

- 5.1 The Regulations state the money collected in any given year must be split into three parts:

Part 1	Part 2	Part 3
Admin Fee	Neighbourhood Portion	Strategic Portion
5%	15% (or 25%)	80% (or 70%)
TOTAL = 100%		

- 5.2 **Part 1 – Admin Fee**
5% of that year's collected money is retained by the Council as an administration fee. This will not be affected by the decision to temporarily suspend the update of the CIL Funding Programme as detailed in this report.
- 5.3 **Part 2 – Neighbourhood Portion**
Either 15% (capped at £100 per existing dwelling) or 25% (uncapped) is passed directly to Parish or Town Councils, depending on whether they have produced a Neighbourhood Plan in their area or not (if they have, they get 25%). The

Borough Council will transfer a proportion of the collected CIL monies to the Parish or Town Councils in October 2022. Parish and Town Councils are responsible to spend their own portions of the funds on local priorities and they are responsible for producing financial reports on this expenditure. This Part 2 of the CIL allocation is outside of the scope of the CIL Funding Programme. This will not be affected by the decision to temporarily suspend the update of the CIL Funding Programme as detailed in this report.

- 5.4 Where there is no Parish or Town Council, i.e. Ormskirk and Skelmersdale, the Council retains the neighbourhood portion and, following community consultation, spends the money on their behalf. However, due to the reasons set out below it is no longer possible to deliver this element of Part 2 funding and it will be necessary to temporarily suspend the update of the CIL Funding Programme this year. The funds that would have been available in 2023/24 will be carried forward to the next financial year and be available for use subject to eligibility.
- 5.5 **Part 3 – Strategic Portion**
The remaining 70 or 80% of that years CIL monies is retained by the Council to deliver strategic infrastructure priorities across the Borough. This is the Strategic Portion. The first step of deciding what to do with the Strategic Portion is to consult with service and infrastructure providers, Parish Councils and other stakeholders and ask them to nominate schemes for inclusion on an Infrastructure Delivery Schedule. This is effectively a wish-list of schemes that could be delivered over the next 5 years anywhere in the Borough. Council Officers shortlist the schemes on the Infrastructure Delivery Schedule for inclusion in a draft CIL Funding Programme. The CIL Funding Programme is a shorter list of specific, deliverable projects; if a scheme is not included in the final CIL Funding Programme, the Council will not spend CIL monies on it.
- 5.6 Council agreed in July 2020 that the CIL Funding Programme will focus on smaller-scale projects that require CIL funding of £100,000 or less and limit total expenditure on those projects to £200,000 each year. As a result, the majority of the Strategic Portion is saved and allocated towards larger-scale projects. It should be noted that, in practice, many of the smaller schemes submitted to the Council for consideration are not eligible for CIL funding and therefore the final list of agreed smaller schemes is usually of a limited number.
- 5.7 The funding of these larger-scale projects can continue to be agreed. The Framework states that public consultation is not considered necessary on larger, costlier schemes because such schemes will have been identified in other Council Plans and Strategies that have already undergone public consultation. Authority to allocate CIL funds on these larger, strategic schemes will be delegated to Cabinet, after first being presented to Executive Overview and Scrutiny Committee, and will not be affected by the decision to temporarily suspend the update of the CIL Funding Programme detailed in this report.
- 5.8 However, due to the reasons set out below it is no longer possible to deliver the identification of smaller-scale project element of Part 3 and it will be necessary to temporarily suspend the update of the CIL Funding Programme this year. The smaller-scale projects (maximum total of £200,000) will not be identified in the CIL Funding Programme and therefore not be eligible for CIL funding in the

2023/24 financial year. The funds that would have been available in 2023/24 will be carried forward to the next financial year and be available for use subject to eligibility.

6.0 ISSUES

- 6.1 The Framework includes an indicative timescale for updating the CIL Funding Programme every year. The process involves two rounds of public consultation, the shortlisting of schemes, and two rounds of Member approval via Executive Overview and Scrutiny Committee and Cabinet. It is a complex and lengthy process which begins in April and takes 12 months from start to end. The full 12 months is required as the programme follows a linear process where each stage is required to commence and conclude before the next stage begins and to fit in with committee cycles, where key stages are approved.
- 6.2 In accordance with the Council's own CIL Governance and Expenditure Framework, the Council was due to undertake a consultation in April and May 2022 with service and infrastructure providers, Parish Councils and Members to commence the process of updating the Council's CIL Funding Programme. However, limited resources in the Planning Service at that time, which critically included the CIL Officer role (who would normally undertake the update of the CIL Funding Programme), has resulted in a delay. It was therefore not possible to commence the governance process in April and the remaining staff were focused on ensuring the day-to-day process of the CIL role took place, as well as undertaking their normal duties. A corporate risk outlining the implications of this lack of resource was duly completed.
- 6.3 Fortunately, despite the challenges in recruitment of specialist / planning professionals, the resources in the team have now improved, with a permanent CIL Officer coming into post in mid-September. Whilst there are still vacancies in the service a further recruitment exercise is underway, and temporary agency workers are currently being used to provide support to the service.
- 6.4 Whilst the new CIL Officer is due to start and this will create capacity to bring this work back into line later in 2022/23, it is recognised that it is not practical or even possible to begin and conclude the full CIL funding programme process (as outlined in 6.1) before the end of March 2023. The completion of the work is not just related to the amount of staff resource that could be dedicated to this but is affected by the need to allow for staff training and reasonable consultation and assessment periods. It is for this reason that a temporary suspension to update the CIL Funding Programme until Spring of 2023 is proposed. To continue regardless and to attempt to complete the work within 2022/23 would leave the Council open to challenge due to the unreasonable timescales for consultation and assessment that would be necessitated.
- 6.5 The proposed temporary suspension would therefore be until Spring 2023 at which time two full financial years (2024/25 and 2025/26) will be undertaken (i.e. one full exercise, but accounting for two years' worth of projects). This approach will allow the programme to be brought back into the normal regime whilst also ensuring the process remains robust. Members should note that there have

previously been a limited number of schemes which come forward through the process and, for the past five years, these have yet to amount to the maximum available. The proposal is therefore not considered to have a significant effect, particularly when considering the benefits of the temporary suspension, which include:

- Allowing more time to train new staff (including training for contingency staff who can step in when the CIL officer is unavailable).
- Continuing to improve the day-to-day process of administering CIL whilst still funding small-scale schemes and providing funds for larger strategic projects.
- Allowing Officers more time to tackle the backlog of potential CIL enforcement cases.
- Maintaining the opportunity for relevant projects to apply for funding.

6.6 In addition, Parished communities will still have access to the Part 2 Neighbourhood Portion of CIL and other projects could access any available S106 funds held by the local authority to spend on eligible schemes. The funds that would have been available in the 2023/24 year will be carried forward to the next financial year.

7.0 SUSTAINABILITY IMPLICATIONS

7.1 The operation of CIL and the projects it can be used for has the potential to impact on economic prosperity of existing businesses, opportunities for local employment, the image of the Borough or regeneration. It also could affect local distinctiveness, the quality of the built environment or built heritage.

8.0 FINANCIAL AND RESOURCE IMPLICATIONS

8.1 The temporary suspension of the CIL funding programme this year will not impact on the collection of CIL monies and the available funding will remain in place, ready to be consulted on next year. Existing identified and approved schemes will continue to be funded.

8.2 Importantly, in any one year where the £200,000 cap on smaller-scale projects is not reached, the remaining balance will be moved into the larger-scale (£100,000+) projects fund. This will happen by default if the Council does not update the CIL Funding Programme this year.

9.0 RISK ASSESSMENT

9.1 There is some risk associated with the change to the usual programme as there may be a level of expectation that consultation will be taking place. However, as outlined above there are multiple benefits to this approach. The risks of attempting to achieve all the requirements of the CIL governance framework whilst continuing to maintain everyday CIL administration outweigh the risks of suspending a part of the programme for a limited time.

- 9.2 Risks have been substantially reduced as a result of new staff being recruited, particularly those whose sole remit is to oversee and undertake the governance and administration of CIL, and in allowing time for them to be fully trained.
- 9.3 Monies will continue to be collected and the freeing up of staff time will result in a more pro-active approach being taken. Suspending the work allows Officers to effectively plan and deliver a better service all round ensuring the money goes to the correct scheme that deliver real change in our neighbourhoods. There will be no loss of funding as this will roll over to next year's programme and committed funds will continue to be paid. Only a small number of eligible new schemes are identified each year so the temporary suspension of the consultation on these will have a limited effect.
- 9.4 Two alternative options were explored (firstly, to shorten public consultation periods and secondly to remove selected steps within the committee reporting cycle). However, neither of these two options were considered appropriate as they would still not leave enough time to undertake the necessary preparation for and assessment of consultation responses on potential schemes. Continuing the usual Governance programme at this late stage would leave the Council open to challenge as it would not involve a fair consultation process, it may run the risk of not being completed and would take focus away from essential day to day CIL administration, which is being undertaken by staff who are new to the authority.

10.0 HEALTH AND WELLBEING IMPLICATIONS

- 10.1 The proposal will mean that new community projects which would benefit from CIL funding will not be identified this year. However, the number of schemes coming forward on an annual basis is limited. The ability for the Council to continue to collect monies effectively will have greater community benefits in the long run.

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

The decision does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore no Equality Impact Assessment is required.

Appendices

1. (Update to the) Governance Framework for Community Infrastructure Levy and Section 106 Expenditure, July 2020
2. Minute of the Executive Overview & Scrutiny Committee – 6 September 2022 (Cabinet only)