



**EXECUTIVE OVERVIEW &
SCRUTINY COMMITTEE:
14 SEPTEMBER 2023**

CABINET: 26 September 2023

Report of: Corporate Director of Transformation & Resources

Relevant Portfolio Holder: Councillor Gareth Dowling

**Contact for further information: Tom McGowan (Extn. 3423)
(E-mail: tom.mcgowan@westlancs.gov.uk)**

SUBJECT: FUNDING FOR THE ORMSKIRK – BURSCOUGH LINEAR PARK

Wards affected: Ormskirk West and Burscough Town Ward(s)

1.0 PURPOSE OF THE REPORT

- 1.1 To seek authorisation to allocate and spend Section 106 (S106) and Strategic Community Infrastructure Levy (CIL) funding to deliver a phase of the Ormskirk – Burscough Linear Park.

2.0 RECOMMENDATIONS TO EXECUTIVE OVERVIEW & SCRUTINY COMMITTEE

- 2.1 That the Committee note the content of this report and agreed comments be passed to Cabinet for their consideration.

3.0 RECOMMENDATIONS TO CABINET

- 3.1 That any agreed comments from the Executive Overview & Scrutiny Committee be considered.
- 3.2 That Cabinet approve the use of £164,000 of S106 funding from planning permissions 2012/1224/OUT Abbey Lane, Burscough and 2017/0416/FUL Briars Lane, Burscough and £200,200 of Strategic CIL funding to deliver a phase of the Ormskirk – Burscough Linear Park.

4.0 BACKGROUND

- 4.1 The Council aspires to deliver a Linear Park between Ormskirk and Burscough and this is set out in the West Lancashire Borough Council Local Plan (2013) and the West Lancashire Borough Council Green Infrastructure and Cycling Strategy (2017). The route of the Ormskirk to Burscough Linear Park is an area of land which runs alongside the railway line between Ormskirk and Burscough and is partially constructed; a section of the route from Ormskirk to Burscough was completed by Taylor Wimpey in 2022.
- 4.2 This Report seeks to allocate S106 and CIL funding to facilitate the delivery of a part of the Linear Park route between the existing footway / cycleway east of the Grove Farm development in Ormskirk to Abbey Lane in Burscough. Once provided, this will provide an off-road shared cycle and footpath connection from Ormskirk to Burscough.
- 4.3 The Council collects two different types of developer contributions: S106 and CIL. The Council adopted a CIL Charging Schedule in July 2014 and has been charging CIL since 1 September 2014. CIL is non-negotiable and is a levy on floorspace created through development. Collected CIL monies must be applied to fund the provision, improvement, replacement, operation or maintenance of infrastructure to support the development of the Council's area.
- 4.4 Historically, S106 obligations have been used by the Council to secure affordable housing, transport and highways improvements and public open space improvements. Like CIL, S106 obligations must be used to deliver benefits to local communities to mitigate against the negative impacts caused by a specific development. Section 106 obligations must be used where they are: necessary to make a development acceptable in planning terms, directly related to the development; and fairly and reasonably related in scale and kind to the development.
- 4.5 When CIL was introduced by the Government in 2010, the Community Infrastructure Levy Regulations (2010) required that Councils published a list of infrastructure projects or types which it intended to fund wholly or partly through CIL – this list was known as the "Regulation 123 list". This was to ensure that developers were not 'double-charged' for developer contributions through both CIL and S106 and to provide clarity on what infrastructure projects were to be funded by what type of developer contribution. The Government had also stipulated that no more than five S106 planning obligations could be 'pooled' to deliver an infrastructure project or type. These measures were designed to encourage local authorities to move away from S106 towards adopting CIL.
- 4.6 In 2019, the Government introduced new legislation that abolished the Regulation 123 list and removed the 'pooling' restrictions of S106 obligations. The changes mean that Councils can use both CIL and S106 obligations towards the same project and Councils are no longer restricted in terms of how many obligations they can pool together to fund a single infrastructure project. Therefore, the Council is seeking to use both CIL and S106 to fund this project.

5.0 CURRENT POSITION

- 5.1 Council Officers invited new bids and updates of existing bids for CIL funding in March 2023. As set out in the September 2023 Cabinet Report "Community Infrastructure Levy (CIL) Funding Programme 2023", the Council has received 22 bids to use CIL money. One of the bids was from the Economic Development and Regeneration team at the Council for £200,200 of CIL to fund delivery of part of the Ormskirk – Burscough Linear Park.
- 5.2 The bid was made on the basis that £164,000 of S106 funding was available to be used associated with two different developments in Burscough:
- Planning permission 2012/1224/OUT – Land bounded by A59 Liverpool Road South and Abbey Lane, Burscough: £129,000 of S106 monies to be used towards the provision of sustainable transport measures or improvements in the locality in the form of a Linear Park.
 - Planning permission 2017/0416/FUL – Briars Lane, Burscough: £35,000 of S106 monies to be used towards the Ormskirk to Burscough Linear Park.

This report seeks to allocate the requested CIL and S106 monies to the project.

Funding Allocation Process

- 5.3 The Council has a robust and detailed governance process in place for the allocation and spending of CIL and S106 funding as set out in the *(Update to the) Governance Framework for Community Infrastructure Levy and Section 106 Expenditure, July 2020* ('the Framework').

Strategic Community Infrastructure Levy funding

- 5.4 When CIL funding is collected it is divided into three components: 5% of all income is retained by the Council as an administration fee; 15 or 25% is handed over to the Parish or Town Council in which the development occurred (the higher percentage is where the Parish has opted to make a Neighbourhood Plan), this is known as the Neighbourhood portion; and the remaining 80 or 70% is retained by the Borough Council to spend on infrastructure projects, this is known as the Strategic portion.
- 5.5 The Framework explains how the Council will invite stakeholders to submit projects that they want to be funded, either in whole or part, by CIL monies collected by the Council. These projects are then considered against set criteria, shortlisted by Council Officers and added to the Infrastructure Delivery Schedule (IDS).
- 5.6 The IDS is a working document which is regularly updated. The IDS identifies infrastructure projects and improvements which may be needed to support the growth and development set out within the West Lancashire Local Plan. It includes information on infrastructure schemes, projects costs and funding gaps along with timescales and delivery partners.
- 5.7 Of the projects contained within the IDS, further shortlisting takes place to identify suitable projects for inclusion on the draft CIL Funding Programme. The CIL

Funding Programme is a shorter list of specific, deliverable projects. Other than those strategic projects approved outside of the CIL Funding Programme, if a project is not included in the final CIL Funding Programme, the Council will not spend CIL monies on it.

- 5.8 The Framework explains that no more than £200,000 of Strategic CIL will be allocated in any single year to projects requesting less than £100,000 of CIL; this is to ensure that enough CIL is accumulated over the years to fund larger projects.
- 5.9 For projects seeking more than £100,000 of CIL, Officers can recommend funding decisions at any time of the year by taking a report direct to Cabinet seeking approval of the allocation of funding. This is because it is likely that CIL funding for these schemes will be in line with Council Strategies and Capital Programmes, whether that of the Borough and / or County Council. By taking projects forward outside of the annual CIL Funding Programme, the Council can be proactive and respond speedily to requests for CIL funding which allows strategic projects to commence delivery as soon as reasonably possible. This has recently occurred with the allocation of CIL funding towards the refurbishment of Burscough Racquets and Fitness Centre at a meeting of Cabinet in June 2023.
- 5.10 The Council identified the aspiration to deliver a Linear Park between Ormskirk and Burscough in the West Lancashire Borough Council Local Plan (2013) and the West Lancashire Borough Council Green Infrastructure and Cycling Strategy (2017). The project has featured on the IDS that was produced alongside the Local Plan and the proposed route of the Linear Park is illustrated on the Local Plan Policies Map and in the Green Infrastructure and Cycling Strategy. The Local Plan underwent several stages of public consultation from 2008 up to adoption in 2013 and public consultation took place on the Green Infrastructure and Cycling Strategy in 2017, demonstrating that public consultation has taken place. There is also public support for the project.
- 5.11 As set out at paragraph 4.6, the Government removed the 'pooling' restrictions and the requirements for Councils to state what infrastructure projects or types they will fund using CIL in the 'Regulation 123 list'. This was replaced by new reporting requirements in a document called the Infrastructure Funding Statement (IFS). This is a financial report of CIL and S106 monies collected and spent in the previous financial year and Councils are also required to say what types of infrastructure they will look to fund using CIL.
- 5.12 The Council's 2022 IFS states that the Council will use CIL to fund strategic transport and green infrastructure improvements. The Ormskirk – Burscough Linear Park is both a strategic transport and green infrastructure improvement as the shared cycle and footpath provides both sustainable transport improvements and biodiversity improvements through the creation of improved habitats along the former railway line corridor and has been identified as a key infrastructure project in both the Local Plan and the IDS. Therefore, it is recommended to Cabinet to allocate £200,200 of Strategic CIL monies to fund the delivery of part of the Ormskirk – Burscough Linear Park as described at paragraph 4.2.

S106 funding: Planning permission 2012/1224/OUT – Land bounded by A59 Liverpool Road South and Abbey Lane, Burscough

- 5.13 Planning permission was granted in March 2014 for housing development on land at the junction of the A59 Liverpool Road South and Abbey Lane in Burscough. The associated S106 agreement secured a financial contribution of £129,000 towards the provision of sustainable transport measures / improvements in the locality in the form of a Linear Park. This financial contribution was received by the Council in April 2020 prior to the commencement of the development.
- 5.14 There is a condition relating to the financial contribution that says that in the event that a Linear Park is not provided within 7 years from the date that the contribution is paid to the Council then the Council shall use the contribution for the provision of new and / or the enhancement of existing public open space in the locality, and if the contribution is not spent within 10 years of receipt, it is to be returned to the developer. The 7-year anniversary is in April 2027 and the 10-year anniversary is in April 2030.
- 5.15 The allocation of £129,000 towards the Ormskirk – Burscough Linear Park meets the requirements of the legal agreement. The route of the Linear Park runs adjacent to the housing site permitted under planning reference 2012/1224/OUT and therefore is in the locality of the development from which the money has come. It is therefore recommended to Cabinet that £129,000 of S106 monies from application 2012/1224/OUT is allocated to fund the delivery of part of the Ormskirk – Burscough Linear Park as described at paragraph 4.2.

S106 funding: Planning permission 2017/0416/FUL – Briars Lane, Burscough

- 5.16 Planning permission was granted in August 2017 for the demolition of existing buildings and the erection of housing at Briars Lane in Burscough (the development is now named 'Glovers Way'). The associated S106 agreement secured a financial contribution of £35,000 to be used towards the Ormskirk – Burscough Linear Park. This was paid to the Council in January 2018.
- 5.17 There is a legal covenant on the Council to use the financial contribution for the purposes set out in the legal agreement and to return the money to the developer on the tenth anniversary of the date of the receipt of the payment if the money is unspent and if requested to do so. The 10-year anniversary is in January 2028.
- 5.18 The allocation of £35,000 towards the Ormskirk – Burscough Linear Park meets the express requirements of the legal agreement. It is therefore recommended to Cabinet that £35,000 of S106 monies from application 2017/0416/FUL is allocated to fund the delivery of part of the Ormskirk – Burscough Linear Park as described at paragraph 4.2.

6.0 NEXT STEPS

- 6.1 Should Cabinet authorise the allocation of the CIL and S106 funding as described above, WLBC Officers in Economic Development and Regeneration will work with partners to deliver the scheme.

7.0 OTHER OPTIONS CONSIDERED

- 7.1 As the Council is seeking to allocate the financial contributions collected from planning permissions 2012/1224/OUT and 2017/0416/FUL for the express purpose as set out in the associated legal agreement, no alternatives have been considered for the use of the S106 funding.
- 7.2 The Council has identified that the Ormskirk – Burscough Linear Park will be delivered through a combination of developers providing part of the route on- or off-site and funded through planning obligations. The allocation and use of CIL on this project complies with the purposes intended for its collection and expenditure.

8.0 SUSTAINABILITY IMPLICATIONS

- 8.1 The promotion of walking and cycling will have positive sustainability implications for Ormskirk, Burscough and the wider Borough through reducing congestion, reducing greenhouse gas emissions and will improve air quality as people change from using cars to more active forms of travel. The scheme will encourage a more active and healthier lifestyle for those travelling between Ormskirk and Burscough and beyond. This helps contribute towards achieving the objectives of "improve the health of residents through providing attractive opportunities for recreation and sustainable travel" and "capitalise on any opportunities to provide or enhance provision for cycling, whether through planning obligations, or specific funded projects" as identified in the Council's Green Infrastructure and Cycling Strategy (2017).
- 8.2 The provision of high-quality walking and cycling routes is also identified as objectives in the Council's Climate Change Strategy and Action Plan 2020 – 2030 under Priorities 3: Transport and Travel and 7: Natural Environment. The allocation of CIL and S106 funding towards the delivery of part of the Ormskirk – Burscough Linear Park would contribute significantly towards achieving the objectives of "promote sustainable travel choices such as walking and cycling" and "prioritise the development of a high quality cycling and walking network".

9.0 FINANCIAL AND RESOURCE IMPLICATIONS

- 9.1 The proposal will be funded through a combination of Section 106 funding and CIL funding, as outlined at Section 5.

10.0 RISK ASSESSMENT

- 10.1 There is a limited risk for the scheme's delivery given it is utilising S106 monies that the Council is already in receipt of and is facilitating the delivery of part of a key project for the Council.
- 10.2 Should the S106 monies remain unallocated or unspent by April 2030 (for the £129,000 associated with planning permission 2012/1224/OUT) or January 2028 (for the £35,000 associated with planning permission 2017/0416/FUL) then there is a risk that the Council would need to return the monies to the respective developers. However, as a scheme has been identified with delivery expected in the next 12-24 months, it is considered that there is a very minimal risk of returning the monies to the developers.
- 10.3 There is a limited risk regarding the use of CIL monies. It has been a long-held aspiration of the Council to deliver a Linear Park between Ormskirk and Burscough and part of the route has been delivered by developers.

11.0 HEALTH AND WELLBEING IMPLICATIONS

- 11.1 The proposal will promote health and wellbeing by providing an opportunity to increase active travel which is proven to improve both mental and physical health. The new Linear Park route allows safe off-road routes for walking and cycling within the Borough.

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

There is a direct impact on members of the public, employees, elected members and / or stakeholders, therefore an Equality Impact Assessment is required. A formal equality impact assessment is attached as an Appendix to this report, the results of which have been taken into account in the Recommendations contained within this report.

Appendices

1. Equality Impact Assessment