



Policy & Resources : Tuesday, 24 September 2024

Council: Wednesday, 16 October 2024

Report of: Assistant Director Planning & Regulatory Services

Relevant Lead Member: Councillor Deputy Leader of the Council & Lead Member for Planning & Community Safety

**Contact for further information: Nicola Hamilton, Senior Planning Officer (CIL and S106)
(E-mail: Nicola.Hamilton@westlancs.gov.uk)**

SUBJECT: UPDATE TO THE COMMUNITY INFRASTRUCTURE LEVY (CIL) AND SECTION 106 GOVERNANCE AND EXPENDITURE FRAMEWORK

Wards affected: (All Wards);

1.0 PURPOSE OF THE REPORT

1.1 To advise Members of the preparation of a revised Community Infrastructure Levy (CIL) and Section 106 Governance and Expenditure Framework (the Framework). The new framework is to supersede that previously adopted and last revised in 2020. The revision has been necessary to ensure that the framework remains the most appropriate and effective approach for CIL and S106 expenditure.

2.0 RECOMMENDATIONS TO POLICY & RESOURCES COMMITTEE

- 2.1 That the revisions to the Community Infrastructure Levy and Section 106 Governance and Expenditure Framework, as attached at Appendix 1, be approved.
- 2.2 That the 2024 CIL Funding Programme shall commence immediately with funding made available to successful applicants in April 2025.
- 2.3 That consideration be given to the proposed changes to the Constitution as outlined in Appendix 3, with agreed comments/amendments being put forward for determination at Council.

3.0 RECOMMENDATIONS TO COUNCIL

3.1 That subject to consideration of any proposed amendments by the Policy & Resources Committee the Council's Constitution be amended to include the new delegations as set out in Appendix 3.

4.0 BACKGROUND

4.1 CIL and S106 obligations enable the Council to raise funds from new developments in the Borough. Those funds are then used by the Council to help deliver infrastructure required to support the new growth.

4.2 The Council first approved the original CIL and S106 Governance and Expenditure Framework in April 2015, which set out the structure for the allocation and spending of strategic CIL revenue and S106 developer contributions collected through an annual CIL Funding Programme.

4.3 There have been two previous revisions of the framework since its adoption. The first revision came in January 2018 in order to focus the framework on smaller-scale projects (individually requiring £100,000 of CIL funding or less) and limit expenditure of CIL on those projects through the CIL Funding Programme to £100,000 per year. This was in order save the majority of the 'strategic portion' to allocate towards larger-scale projects, individually requiring more than £100,000 of CIL funding, which were to come forward in subsequent years.

4.4 The second review was presented and adopted in June 2020, as it was necessary to amend the Governance Framework to reflect a number of amendments to the CIL Regulations including the:

- reporting of expenditure
- lifting of pooling restrictions relating to Section 106 planning obligations
- requirement to produce an Infrastructure Funding Statement (IFS)

4.5 The 2020 revision also set out specific changes to the CIL Funding Programme, including:

- Amendments to the timetabling to be able to accommodate expenditure decisions in the annual IFS in December each year;
- Clarification on the criteria for assessing projects for CIL funding;
- Clarification of the annual financial cap allocation for smaller projects within the CFP;
- Process for expenditure of non-parished neighbourhood CIL monies;
- Clarification that ecology contributions can be sought through S106;
- Clarification of varying S106 decision routes dependent on the specific wording of agreements and proposed value of the schemes.

4.6 Following Member approval, the £100,000 annual cap limit for CIL expenditure on those projects requiring £100,000 or less was also increased to £200,000.

4.7 Most recently, in September 2022, Cabinet had agreed to suspend the CIL Funding Programme in 2022 / 2023 pending recommencement in Spring 2023 to

cover two full financial years (2024 – 2026). The CIL Funding Programme recommenced in March 2023 and concluded in November 2023 with the formal allocation of some £1.1m of Strategic CIL to twelve projects. The allocation of funding over two years has given the CIL/S106 Team the opportunity to reflect on and review the existing arrangements for CIL funding to improve the process and respond to the new governance structure that was introduced by the Council in May.

5.0 CURRENT POSITION

CIL Balance and Future Projects

5.1 Since its adoption, CIL has allowed the Council to accumulate a significant amount of funding for the delivery of major infrastructure projects. In recent years, the Council and external partners have invested in a wide range of infrastructure across the Borough but there remain plans in the future to bring forward and deliver further projects. For example, in April 2022 and June 2023, Members approved the use of £4,600,000 of CIL funding towards professional fees associated with the Wellbeing and Leisure Hubs projects (the new-build centres at Ormskirk and Skelmersdale and the refurbishment at Burscough). All three projects are progressing and there is the potential to access CIL funding to deliver the capital elements of these projects. In addition to the Wellbeing and Leisure Hubs projects, Officers have become aware through stakeholder consultation that the Council and other stakeholders such as the NHS and Canal and River Trust have ambitions to now bring forward and deliver significant infrastructure projects that are already known to the Council.

5.2 The significant spending that has and is expected to take place in the short term as these projects come to fruition will significantly reduce the amount of CIL funding that the Council holds. As such, it is necessary to review the allocation of spending in the short to medium term to allow for the accumulation of revenue to fund future major Council priority projects.

5.3 CIL is not a constant income stream to the Council and is predominantly reliant on the delivery of new housing in the Borough. Most of the major housing sites identified in the current Local Plan have been granted planning permission, are delivering homes, and developers have paid most of their CIL payments. Further, CIL is not charged on development in Skelmersdale due to viability and therefore whilst there has been increased development in Skelmersdale, none of that yields CIL. The Council's CIL income is expected to reduce year-on-year until any new housing allocations come forward for development associated with the new Local Plan.

Biodiversity Net Gain

5.4 Delivering Biodiversity Net Gain (BNG) became mandatory under Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021) on 12 February 2024 and requires developers to deliver 10% BNG.

5.5 S106 obligations are now used to secure significant on-site or off-site habitat creation or enhancement over a period of 30 years. The Council is responsible for monitoring compliance with the requirements of these plans and may seek its

reasonable costs in doing so. These new regulations are therefore required to be included in any amendment to the framework.

New Corporate Priorities

- 5.6 The Council has revised its corporate priorities for 2023-2028. These were agreed in October 2023 and a monitoring and reporting framework to evidence progress was approved in March 2024. The Council then also adopted a new governance structure in May of this year. These changes require to be reflected in the framework.
- 5.7 The CIL/S106 Team have therefore taken this opportunity to take stock and realise the current position and seek to amend the framework to take the above factors into account. In doing so the Team has carried out a consultation with stakeholders, including Members and Parish/Town Councils and previous recipients of funding, in order to inform any changes required of the framework. The CIL/S106 Officers Working Group and Lancashire County Council Officers Working Group have also been consulted.

6.0 OUTCOME OF REVIEW AND CONSULTATION

- 6.1 A targeted consultation took place between 8 July and 29 July 2024 seeking the views of those who are involved with approving and bidding for CIL and S106 funding on how to improve the process by which we allocate CIL and S106 funding.
- 6.2 There is a consensus that the annual CIL funding programme process takes too long between project bid submission (April), approval of allocation of funding (November) and availability of funding (the following April). Recipients have found that projects may require alteration during that time due to rising project costs caused by the economy.
- 6.3 Project managers also report that the delay in securing an allocation of CIL/S106 funding is a hindrance in planning for future financial commitments, further that it can cause a barrier to secure additional match/alternative funding. This is also true for the Council's own projects where Capital Programme Expenditure is set in September of each year.
- 6.4 The current process is not reactive enough to take market fluctuations into account, such that the CIL/S106 Team have found it necessary to review revised/new bids to secure an uplift in the funding required to deliver projects. Not only does this affect our external stakeholders but has been shown to impact the Council's own capital projects, such that there may be potential risk of some projects not being able to be delivered.
- 6.5 There is recognition that notwithstanding the need for match-funding, in some cases, there is a need to access funding more quickly (public expectation for example). The programme should be able to react to this and be flexible enough for some sources of CIL funding to be considered at any time, this includes Neighbourhood CIL. Parishes can currently spend NCIL at any time.

6.6 The CIL/S106 Team therefore consider it appropriate to not only amend the framework to shorten the timescale of the annual CIL Funding Programme (CFP), but to also remove the reliance on the CFP for the authorisation of the allocation of funding for projects where appropriate, thus making access to funding more reactive.

7.0 CHANGES TO THE GOVERNANCE AND EXPENDITURE FRAMEWORK FOR CIL AND S106

7.1 In response and to address the current issues, Members are asked to consider the amendments to the framework, as set out in Appendix 1 of this report. The principal changes are summarised as follows:

- Changes to reflect Council's new governance structure and corporate priorities.
- Introduction of S106 Obligations for Biodiversity Net Gain
- Introduction of S106 Obligation Monitoring fees.
- Increase in threshold of S106 project funding from £10,000 or more to £50,001 or more before requirement to seek authorisation from Policy and Resource Committee. S106 project funding of £50,000 and less will be delegated to the Assistant Director of Planning and Regulatory Services in discussion with the appropriate Lead Member, and funding approvals will be reported to Members via the Member Update.
- Shortened Annual CIL Funding Programme to start every financial year in April, with project approval in September and the availability of funding by December. There was previously a requirement to consult the then Cabinet (now Policy and Resources Committee) for approval to undertake a public consultation on the list of projects that wish to access CIL or S106 funding. This is not mandatory, necessary, and the consultation responses received did not enhance the shortlisting process, and therefore this step is removed.
- Enhanced CIL funding shortlisting criteria to ensure projects will not encounter barriers or delay to delivery and are "expenditure ready".
- Lowered the cap identifying small value CIL projects funded through the CFP to £50,000 or less to bring into line with the proposed S106 thresholds and the Council's internal procurement requirement threshold.
- Where a request is made to access and pool both CIL and S106 funding and the amount of money sought is £50,001 or more, authorisation for approval will be sought from Policy and Resource Committee. Where the request for CIL and S106 funding is £50,000 or less, this decision will be delegated to the Assistant Director of Planning and Regulatory Services in discussion with the appropriate Lead Member, and funding approvals will be reported to Members via the Member Update.
- Introduction of a monetary threshold of £50,000 or less for delegated authority to the Assistant Director in discussion with the Lead Member for the allocation and expenditure of Ormskirk and Skelmersdale neighbourhood parish CIL portion. Parish Councils have flexibility on deciding when they can spend their own Neighbourhood portion of CIL but because Skelmersdale and Ormskirk are unparished they do not have this privilege. Introducing a threshold for funding approval for small-scale projects means that residents of

Skelmersdale and Ormskirk can benefit from faster decision-making on allocating spending to projects in their area.

- Introduction of standard Grant Agreement and Memorandum of Understanding templates to speed up the legal requirements of project funding following allocation.
- Clarification of consultation requirements of CIL and S106 project bids with Legal Services and CIL/S106 Officer Working Group
- Introduction of new procedures to allow for annual review of thresholds in order to be responsive to CIL and S106 income, expenditure and what is retained.

7.2 Members are asked to note that under the Constitution, Policy & Resources Committee have the authority to authorise the changes to the framework whereas Council has authority to authorise the changes to the delegations contained within the Constitution.

8.0 SUSTAINABILITY IMPLICATIONS

8.1 The management of CIL and S106 allocation and expenditure will have positive implications for sustainability by providing a valuable source of funding for projects that will help deliver the Council's priorities.

9.0 FINANCIAL AND RESOURCE IMPLICATIONS

9.1 It is anticipated that there will be no financial and/or resource implications for the Council arising from the proposed changes set out through this report. Administrative costs are covered by the 5% portion of CIL receipts and the staff resource is already in place to administrate the process.

10.0 RISK ASSESSMENT

10.1 The purpose of the Governance and Expenditure Framework for CIL and S106 is to maximise the opportunities for allocating and spending CIL and S106 funding to deliver new infrastructure. As such, there are limited risks with these recommendations which seek to take advantage of the opportunities related to CIL and S106 funding.

11.0 HEALTH AND WELLBEING IMPLICATIONS

11.1 There are no health and wellbeing implications arising from this report, as the report is not deciding how funding is spent, only on the process for making those decisions. However, CIL and S106 funding can be used on schemes to improve health and wellbeing, including walking, cycling, recreation and outdoor spaces, as long as that new / improved infrastructure is necessary because of new development.

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 has a direct impact on members of the public, employees, elected members and / or stakeholders. Therefore, the required Equality Impact Assessment is proved at Appendix 2 of this report.

Appendices

1. Community Infrastructure Levy and Section 106 Governance and Expenditure Framework and Appendices (Revised)
2. Equality Impact Assessment
3. Constitutional Amendments