

## CABINET

17<sup>th</sup> November 2020

### COMMUNITY INFRASTRUCTURE LEVY REVIEW

#### Report of the Interim Strategic Director of Places

Strategic Aim:	Sustainable Growth	
Key Decision: Yes	Forward Plan Reference: N/A Urgent report	
If not on Forward Plan:	Chief Executive Approved	4 <sup>th</sup> November 2020
	Scrutiny Chair Approved	5 <sup>th</sup> November 2020
Reason for Urgency:	To avoid delaying the reporting of a significant issue with financial impact	
Exempt Information	No	
Cabinet Member(s) Responsible:	Mr G Brown, Deputy Leader and Portfolio Holder for Finance and Planning	
Contact Officer(s):	Penny Sharp, Interim Strategic Director of Places	Tel: 01572 758160 psharp@rutland.gov.uk
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Ward Councillors	All	

#### DECISION RECOMMENDATIONS

1. That Cabinet notes the ongoing work to review the management and administration of the Community Infrastructure Levy.
2. That Cabinet approves that following detailed investigation and receipt of independent legal advice that no further action is taken regarding any potential Community Infrastructure Levy liability with respect to the 8 applications identified in Appendix 1 to this report.
3. That Cabinet agree to 'write off' £150,425.26 potential income associated with the 8 applications identified in Appendix 1.
4. That Cabinet delegates to Strategic Director – Places in consultation with the Section 151 Officer and Portfolio Holder for Resources the authority to approve a further 'write off', if necessary, of up to £31,000 to conclude outstanding historic CIL liability cases.

## **1 PURPOSE OF THE REPORT**

- 1.1 This report seeks to notify Cabinet on the current status of a review of the effective and efficient management and administration of the Community Infrastructure Levy (CIL) and to seek approval to 'write off' potential income associated with some applications.

## **2 BACKGROUND AND MAIN CONSIDERATIONS**

- 2.1 The purpose of the Community infrastructure Levy (CIL) is to raise funds from developers who are undertaking new building projects, to help pay for infrastructure as set out under the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 (as amended). CIL has replaced Section 106 planning obligations for many forms of infrastructure, although Section 106 agreements can still be used for site-specific mitigation measures and for affordable housing provision.
- 2.2 Rutland County Council adopted the Community Infrastructure Levy on 1 March 2016. The CIL Charging Schedule sets out the rates of CIL that apply to specific types of new developments in Rutland. The Council as Charging Authority collects CIL monies and determines how the money will be spent in accordance with Council priorities whilst recognising that expenditure is also likely to be required to support issues such as health services and crime/community safety. To date, Council expenditure needs to be compliant with what is known as CIL Regulation 123 list which has been approved by Council. Regulatory changes introduced in 2019 mean that the list of suitable infrastructure for funding from the Community Infrastructure Levy will need to be listed in an annual Infrastructure Funding Statement (IFS), rather than a Regulation 123 list. The first IFS will be published by the end of December. Authorisation of the IFS was delegated in July this year to the Strategic Director of Places in consultation with the Cabinet Portfolio Holder for Finance and Planning.
- 2.3 Legislation requires that a proportion of CIL funds arising from CIL liable development are passed on to Parish or Town Councils, depending on whether they have an adopted Neighbourhood Plan (15% for those without an NP capped at £100 (indexed) per council tax dwelling, 25% (uncapped) for those with one).
- 2.4 The first full-time CIL Officer left RCC in 2017, and until the last year the management and administration of CIL was undertaken by temporary interim agency support with periods when the post was not covered. This situation is now resolved with a full-time permanent member of staff in post.
- 2.5 The new CIL officer has undertaken an internal review of the CIL process initially in operation between 2016 and 2019. This uncovered issues related to software connectivity between the planning application case management system and the CIL monitoring system, as well as some procedural "gaps" which resulted in a number of potential unclaimed CIL liabilities during this period. In total 78 historic cases have been thoroughly investigated and a detailed audit, of all potentially CIL liable planning permissions back to the date of implementation (March 2016) of CIL for dwellings and annexes, has been undertaken to ensure that appropriate action has been taken with each outstanding case. Each historic case has been researched in detail and then considered by a team led by the Director of Places with specialist external legal support and the Council's Monitoring Officer. A process has been put in place to claim CIL liabilities wherever possible. The legal advice has

provided guidance on CIL liability and challenge on the likelihood of being able to claim potential CIL liabilities in each specific case.

2.6 In total, 78 cases have been investigated and actioned as follows:

- 8 have been deemed to be CIL liable and have a chargeable amount for which Liability Notices have been served totalling £ 352,891.49. In 3 of these cases development has commenced with a total liability of £139,929.74 due to be collected. The remaining 5 may still be eligible to apply for some form of CIL relief and/or may choose not to implement the planning consent.
- 13 cases were deemed to have been eligible for self-build exemption with a potential chargeable amount of £302,212.36. If occupation/rental of these properties changes within 3 years following the building regulation completion certificate issue date (claw back period) they would become eligible to pay the CIL liability.
- 5 cases were deemed eligible for self-build extension relief so no CIL monies would be collected and as there no claw back period for extensions no further action has been taken.
- The remaining cases were deemed not to have been CIL liable or resulted in a zero chargeable amount/no net increase in Gross Internal Area, except for 4 where investigations are yet to be concluded.
- In total a further 8 cases were identified as potentially CIL liable, however, it was considered no further action should be taken for the reasons set out in the paragraph below.

2.7 Of the 8 cases identified as potentially CIL liable these were investigated and it has been determined – with appropriate legal advice - that no further action can, or should be taken. The total CIL liability for these cases is £150,425.16. These cases fall into 2 categories as set out below. In such cases it is considered inappropriate (and in the case of those properties completed and/or sold to a third party it is unlawful) to seek to claim CIL.

<b>Category</b>	<b>Reason for no further action</b>	<b>Number of cases</b>
Property has been completed or sold on	Buyer would not have been aware of CIL liability.  Deemed unlawful to claim CIL.	5
CIL chargeable amount below £2,500	Applicant was unaware of CIL liability and minimal return given administrative and legal costs to pursue.	3

2.8 With respect to the cases where the property has been completed and/or sold on or where the CIL chargeable amount is below £2,500 then it is recommended that no further action is taken. Details of these cases are set out in Appendix 1 attached to this report.

- 2.9 The four further cases that are currently being investigated could result in a further financial risk of up to approximately £31,000.
- 2.10 In line with this internal review, an Improvement Plan has been introduced and is being followed to maintain the future efficient and effective management and administration of CIL. This is attached as Appendix 2 for Cabinet to consider; this will be kept under review.
- 2.11 A LGSS consultancy review of Community Infrastructure Levy (CIL) and S106 Contributions has been undertaken and the final summary of this consultancy review and suggestions for action is attached as Appendix 3 to this report. The review notes that a CIL improvement plan has been prepared by the Officers to ensure CIL Process compliance with Council Policy and CIL legislation highlighting steps required to achieve the improved efficiency of the CIL process. It concludes that significant progress against the CIL improvement plan has already been made and improvements achieved in some areas. The progress made against the CIL improvement plan also provides assurance that the shortcomings identified during this audit review have already been addressed.

### **3 CONSULTATION**

- 3.1 This has been an internal review and so there has been no requirement for consultation.

### **4 ALTERNATIVE OPTIONS**

- 4.1 The alternative options would be to continue to seek to reclaim the CIL liability for the 8 applications identified in Appendix 1. This has not been considered as an appropriate course of action as either to claim the liability is considered unlawful and likely to be challenged or that the extent of the liability would not be commensurate with the costs in pursuing this claim.

### **5 FINANCIAL IMPLICATIONS**

- 5.1 The Council would ordinarily raise a debt for the collection of CIL monies from developers. As set out above in paragraph 2.7, a total of £150,425.26 CIL debt will not be pursued for reasons explained in paragraph 4.1. In effect, this debt will be written off.
- 5.2 There is no direct impact on the Council's current financial position as the debt has not been recognised in the accounts. If Cabinet approve the 'write off' then debts will effectively be recorded and then written off. However, it does mean that the Council has lost this CIL contribution towards the cost of infrastructure projects.
- 5.3 However, if the applicants had been aware of the potential liability then there is the possibility that the development may not have gone ahead. As indicated in the report above, it is considered that no further action is taken regarding this potential liability.

### **6 LEGAL AND GOVERNANCE CONSIDERATIONS**

- 6.1 The Council adopted the Community Infrastructure Levy on 1st March 2016 pursuant to the Community Infrastructure Levy Regulations (as amended) 2010.
- 6.2 Cabinet is authorised to write off any debts as set out in para 8.51 of the Finance

Procedure Rules.

## **7 DATA PROTECTION IMPLICATIONS**

7.1 A Data Protection Impact Assessment (DPIA) has not been completed.

## **8 EQUALITY IMPACT ASSESSMENT**

8.1 There are no direct equality implications arising from this report.

## **9 COMMUNITY SAFETY IMPLICATIONS**

9.1 There are no direct community safety implications arising from this report

## **10 HEALTH AND WELLBEING IMPLICATIONS**

10.1 There are no direct health and wellbeing implications arising from this report.

## **11 CONCLUSION AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS**

11.1 A thorough investigation of the management and administration is ongoing but there is an urgent need to determine that it is not appropriate to take further action with respect to the 8 applications set out in Appendix 1 to this report. The reason for not taking further action are articulated above.

## **12 BACKGROUND PAPERS**

12.1 Rutland CIL charging scheme.

## **13 APPENDICES**

13.1 Appendix 1 – Details of applications where no further action to be undertaken regarding CIL liability

13.2 Appendix 2 – CIL improvement plan

13.3 Appendix 3 – LGSS consultancy review of Developer Contributions

**A Large Print or Braille Version of this Report is available upon request – Contact 01572 722577.**

**APPENDIX 1**

<b>Reference</b>	<b>Proposal</b>	<b>Decision Date</b>	<b>Category/Potential CIL liability</b>	<b>Value</b>
Application 1	1 new dwelling	October 2018	Property completed and/or sold	£3,457.87
Application 2	3 new dwellings	March 2018	Property completed and/or sold	£47,169.69
Application 3	Variation of condition to a 2017 planning permission (1 new dwelling)	December 2017/January 2020	Under £2,500	£242.67
Application 4	1 new dwelling	June 2019	Property completed and/or sold	£43,402.84
Application 5	1 new dwelling	October 2018	Property completed and/or sold	£25,378.30
Application 6	1 new dwelling	August 2017	Property completed and/or sold	£28,908.40
Application 7	Conversion to create 1 new dwelling	December 2017	Under £2,500	£1,164.68
Application 8	Conversion/extension to create an annex	June 2019	Under £2,500	£700.81
<b>Total</b>				<b>£150,425.26</b>