

GROWTH, INFRASTRUCTURE AND RESOURCES SCRUTINY COMMITTEE

18th November 2021

DEVELOPER CONTRIBUTIONS

Report of the Strategic Director of Places

Strategic Aim:	Sustainable Growth	
Exempt Information	No	
Cabinet Member(s) Responsible:	Mr I Razzell Cabinet Portfolio Holder for Planning	
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Ward Councillors		

DECISION RECOMMENDATIONS

That the Scrutiny Committee:

- 1.1 Notes the report; and
- 1.2 Comments on the draft Infrastructure Funding Statement set out in Appendix 1 to this report.

1 PURPOSE OF THE REPORT

- 1.1 To notify Scrutiny on the background to and current management and administration of developer contributions, including the Community Infrastructure Levy.
- 1.2 To enable the Scrutiny Committee to comment on the draft Infrastructure Funding Statement, prior to its consideration by Cabinet in December.

2 BACKGROUND AND MAIN CONSIDERATIONS

- 2.1 Community Infrastructure Levy

- 2.2 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 that is needed to support new development as set out under the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 (as amended).
- 2.3 It is a charge which can be levied by local authorities on new development in their area. It is an important tool for local authorities to use to help them deliver the infrastructure needed to support development in their area.
- 2.4 The levy only applies in areas where a local authority has consulted on, and approved, a charging schedule which sets out its levy rates and has published the schedule on its website.
- 2.5 Most new development which creates net additional floor space of 100 square metres or more, or creates a new dwelling, is potentially liable for the levy.
- 2.6 Some developments may be eligible for relief or exemption from the levy. This includes residential annexes and extensions, and houses and flats which are built by 'self-builders'. There are strict criteria that must be met, and procedures that must be followed, to obtain the relief or exemption.
- 2.7 The CIL regime in the County of Rutland was adopted by the Council on 1st March 2016. Full details of the scheme can be found on the Council's website:
<https://www.rutland.gov.uk/my-services/planning-and-building-control/planning/planning-policy/community-infrastructure-levy-cil/>
- 2.8 CIL funding by the County Council is restricted in its use and, under Regulation 59 (1) and (3) of the Community Infrastructure Levy Regulations 2010 (as amended), CIL must be applied by the Charging Authority to: fund the provision, improvement, replacement, operation or maintenance of infrastructure to support the development of its area; or support the provision, improvement, replacement, operation or maintenance of infrastructure outside its area where to do so would support the development of its area.
- 2.9 Under Regulation 59C of the Community Infrastructure Levy Regulations 2010 (as amended) the County Council must pass 15% cent of the relevant CIL receipts to the parish/town council for that area; this is limited by Regulation 59A (7) to a cap of £100 per dwelling in the area of a Local Council. Those parishes benefiting from an adopted neighbourhood plan are entitled to a 25% proportion that is currently uncapped. This is often known as the "neighbourhood portion" of CIL funding.
- 2.10 The neighbourhood portion must be spent on: the provision, improvement, replacement, operation or maintenance of infrastructure; or anything else that is concerned with addressing the demands that development places on an area.
- 2.11 The Council is able to use 5% of CIL income towards the management and administration of CIL. The remaining funding is available for the Council to use in line with paragraph 3.8 above and is often known as the "strategic portion" of CIL funding.
- 2.12 Section106 Agreements
- 2.13 Prior to the introduction of CIL, the Council sought developer contributions via

planning obligations which are legal agreements made under Section 106 of the Town and Country Planning Act 1990 (as amended by Section 12(1) of the Planning and Compensation Act 1991), normally in association with planning permissions for new development.

- 2.14 These usually relate to an aspect of development which cannot be controlled through the imposition of a planning condition or by other statutory controls. They can serve various purposes including: restricting the use of land; requiring specific operations to be carried out, in, on, under or over the land; requiring land to be used in a specific way; and requiring a sum or sums to be paid to the Local Planning Authority on a specified date or dates, or periodically.
- 2.15 Section 106 Agreements are still used in Rutland alongside CIL for some new developments where legal agreements are required for site specific mitigation matters and for the provision of affordable housing.
- 2.16 The Community Infrastructure Levy Regulations 2010 (as amended) set out the requirements that planning obligations must fulfil. Planning obligations can only be used: to make development acceptable in planning terms; where they are directly related to the development; and are fairly and reasonable related in scale and kind to the development.
- 2.17 Infrastructure Funding Statement
- 2.18 The Infrastructure Funding Statement (IFS) is an annual report required to be published on the Council's website by December 31st each year, to provide a summary of the financial and non-financial developer contributions relating to Section 106 Legal Agreements and the Community Infrastructure Levy within Rutland County Council for a given financial year. In addition this also includes information relating to highway works completed as part of new developments through Section 278 agreements (S278). The first IFS for Rutland was published in December 2020.
- 2.19 The draft IFS for 2020/21 is attached as Appendix 1 to this report. The draft is presented to Scrutiny prior to consideration and approval by Cabinet in December.
- 2.20 Whilst Cabinet have delegated this decision to the Director of Places, for this year it has been decided to seek Cabinet approval following the decision made by Council in September to withdraw the submitted Local Plan.
- 2.21 Implications of the withdrawn Local Plan – preparing an interim trajectory of development and CIL income
- 2.22 The draft IFS includes a list in its appendix of the infrastructure that was approved by Council in January 2016 by Regulation 123 as part of the RCC CIL charging schedule. It had been intended that this list of infrastructure would be reviewed as part of the process for adoption of a new local plan. However, in September 2021 Council determined to withdraw the submitted Local Plan and commence on the preparation of a new Local Plan for Rutland. An updated list of infrastructure projects will be prepared to coincide with the preparation of a new Local Plan, which is scheduled for submission in 2024 and adoption in 2025.
- 2.23 In the interim period, Officers are preparing an interim trajectory of development and CIL income. This will provide the basis for any decisions on CIL expenditure

pending the production of a new Local Plan.

- 2.24 Interim prioritisation of CIL expenditure
- 2.25 The 2020 IFS recognised that it was logical to defer any spending of CIL until the Local Plan had been adopted.
- 2.26 Given the decision made to withdraw the Local Plan, there is an imperative for the County Council to determine priorities and governance for determining the strategic element of CIL expenditure in the interim period pending the adoption of a new Local Plan. Work is currently ongoing to assess the likely CIL-liable development which will occur over the next 3 to 5 years, and the likely impact of this development on existing infrastructure.
- 2.27 A flow chart for the interim prioritisation of the strategic portion of CIL expenditure by the County Council is set out in Appendix 2. This is based on good practice from other local authorities and will enable any spending to be focused on key infrastructure needs that will support identified growth in the interim period until the adoption of a new Local Plan.
- 2.28 Initially, it is recommended that expenditure is focused on critical infrastructure that is necessary to unlock and enable development or is considered essential to mitigate the impact of development. Individual decisions on CIL expenditure are expected to require specific Cabinet approval.
- 2.29 CIL review and governance
- 2.30 The Council has taken part in the Planning Advisory Service (PAS) Stage 2 pilots for good governance for developer contributions. The outcome of this work will advise the Council on future governance for determining the strategic element of CIL expenditure. Officers have also taken account of the good practice guide produced by the Local Government Association - <https://www.local.gov.uk/pas/topics/developer-contributions/improving-governance-developer-contributions-full-guidance>
- 2.31 A draft report for Rutland arising from the PAS pilot is in the course of preparation. Likely issues that will be included in the report are expected to be: to consider whether the Council have the resources (within a suitable structure) to deliver the management and administration of CIL, infrastructure planning and infrastructure project management; to consider the form of governance at a senior level that is considered vital to ensure a coordinated approach is taken towards understanding what infrastructure is required from different services across the council (and from external bodies), keep key stakeholders on board, unblock barriers to progress, and better prioritise how developer contributions can be used alongside other funding; to consider the officer group to coordinate day-to-day infrastructure planning and delivery matters, potentially with the inclusion of external agencies; and to consider developing further a clear, shared understanding of infrastructure priorities to ensure that developer contributions are used effectively.

3 CONSULTATION

- 3.1 There is no requirement to consult the public on the preparation of publication of the Infrastructure Funding Statement.

3.2 The views arising from the Scrutiny Committee will be reported to Cabinet.

4 ALTERNATIVE OPTIONS

4.1 Cabinet will be recommended to approve the submitted 2020/21 Infrastructure Funding Statement for publication.

4.2 If the IFS is not approved for publication then the Council will not fulfil its responsibility to publish details of developer contributions.

5 FINANCIAL IMPLICATIONS

5.1 The report deals with the management and administration of the Community Infrastructure Levy as well as other developer contributions.

5.2 It also gives consideration to the prioritisation and governance for the determination of CIL income received by the Council.

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.

7 DATA PROTECTION IMPLICATIONS

7.1 There are no Data Protection Impact Assessment implications arising from this report.

8 EQUALITY IMPACT ASSESSMENT

8.1 An Equality Impact Assessment has not been completed as it is not deemed relevant to this report.

9 COMMUNITY SAFETY IMPLICATIONS

9.1 None directly arising from this report although there is scope for expenditure from developer contributions to be used to support community safety infrastructure arising from additional development and growth.

10 HEALTH AND WELLBEING IMPLICATIONS

10.1 None directly arising from this report, although there is scope for expenditure from developer contributions to be used to support health infrastructure arising from additional development and growth.

11 ORGANISATIONAL IMPLICATIONS

11.1 Environmental implications - There are no environmental implications arising from this report although there is scope for expenditure from developer contributions to be used to mitigate environmental impact arising from additional development and growth.

11.2 Human Resource implications - to be considered once PAS pilot report is finalised and available.

11.3 Procurement Implications – none identified.

12 CONCLUSION AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS

12.1 The Scrutiny Committee is requested to comment on this report.

13 BACKGROUND PAPERS

13.1 National planning guidance on the Community Infrastructure Levy:
<https://www.gov.uk/guidance/community-infrastructure-levy>

14 APPENDICES

14.1 Appendix 1 –2020/21 Infrastructure Funding Statement

Appendix 2 – Proposed Rutland approach to prioritisation of Community Infrastructure Levy expenditure.

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