

Report to: Cabinet

Date: 20 March 2024

Title: Community Infrastructure Levy (CIL) Governance Review 2024

Report of: Robert Cottrill, Chief Executive

Cabinet member: Councillor Peter Diplock, Cabinet member for housing and planning

Ward(s): All areas

Purpose of report: To provide a review and recommendations for updating the CIL Governance Arrangements, particularly in relation to Neighbourhood CIL Spending within Eastbourne Borough.

Decision type: Key Decision

Officer recommendation(s): To amend the existing CIL Governance Arrangements previously agreed by Cabinet in July 2015, particularly those relating to Neighbourhood CIL spending, as detailed in this report

Reasons for recommendations: To allow for a new fairer and transparent spending mechanism for Neighbourhood CIL across the Borough.

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1 Introduction

1.1 The Community Infrastructure Levy (CIL) was introduced as a mechanism to allow local planning authorities to raise funds from liable developments in order to pay for the infrastructure required to support new development. Eastbourne Borough Council started to implement CIL in 2015, including adopting the decision process for allocating CIL money to infrastructure projects, known as the CIL Governance Arrangements. Eastbourne's CIL Charging Authority Area covers only the part of the Borough that is located outside the South Downs National Park Authority area.

- 1.2 The Community Infrastructure Levy Regulations 2010 (as amended) require that authorities collecting CIL allocate receipts to three spending streams:
- Administrative expenses – up to 5% of receipts
 - Duty to pass CIL to parish councils – minimum 15% of receipts
 - Funding the provision, improvement, replacement, operation of maintenance of infrastructure to support development – up to 80% of receipts.
- 1.3 Where there are no parish councils (such as in Eastbourne), 15% of CIL income is required to be retained by the Council, to be spent within the area of the Council with no parish council. This is referred to as Neighbourhood CIL (NCIL).
- 1.4 Elements of the CIL Governance Arrangements approved in 2015 are now no longer fit for purpose, meaning that there is currently no viable process for spending CIL money allocated into the ‘Neighbourhood’ pot. This report recommends changes to the CIL Governance Arrangements, particularly relating to the Neighbourhood Community Infrastructure Levy pot. This will enable spending of NCIL to take place.

2 Background

- 2.1 Since CIL was implemented in 2015, the Council has collected £1,004,245.02 of CIL money, which has been apportioned between the different pots in line with the CIL Regulations and the Council’s own CIL Governance Arrangements.
- 2.2 Historically, the Council has not opened the CIL pots for spending as the amounts collected in individual years was relatively small. However, it is required under the CIL Regulations to spend the administrative portion. This is applied to part of the cost for the software to implement CIL.
- 2.3 A substantial amount is now consolidated in the NCIL pot to support local infrastructure delivery. The NCIL pot currently contains approximately £153,000.
- 2.4 The existing CIL Governance Arrangements were agreed by Cabinet in July 2015. There are two stages in the operation of the agreed CIL Governance Arrangements:
- a) The distribution of CIL money collected to types of infrastructure funds;
 - b) The decision-making framework to determine who and what infrastructure items receive CIL money.

2.5 Distribution

2.5.1 In terms of distribution, the Governance Arrangements allocate funds into three pots, based on the regulatory requirements:

- 80% of CIL receipts are distributed into the County Council and Other Infrastructure Providers Fund (the 'County Pot'). This should be used to fund new strategic infrastructure or improvements to existing strategic infrastructure which is the responsibility of East Sussex County Council or other external infrastructure providers;
- 15% of CIL receipts are distributed into the Neighbourhood Fund (the 'Neighbourhood Pot'). This which should be used to fund small scale, non-strategic local infrastructure projects and improvements.
- 5% of CIL receipts are distributed into the Administration Fund (the Admin Pot'). This should be used for CIL associated administrative costs.

2.5.2 As the current arrangement for the distribution of CIL money into 'pots' are considered to be fit for purpose and consistent with regulations, **there is no need, at present, to amend the 'Distribution' element of the Governance Arrangements.**

2.6 Decision-making framework

2.6.1 In relation to spending decisions, the current Governance Arrangements identify different processes for awarding CIL money for spending depending on 'pot' type.

2.6.2 For the 'County' pot, the current Governance Arrangements identify that East Sussex County Council (as a provider of strategic infrastructure) and other external infrastructure providers would be invited to bid for CIL funding for their projects. Eastbourne's Cabinet, identified as the CIL Decision Body, is given special remit to ultimately determine which bids should receive CIL funding.

2.6.3 The 'County' pot name is no longer considered to be appropriate as it is not reflective of strategic infrastructure projects from all types of infrastructure providers that should be funded from this pot. Therefore, through the amendments to the Governance Arrangements, **it is recommended that the 'County Pot' name is changed to 'Strategic' pot.**

2.6.4 For the 'Neighbourhood' pot, the current Governance Arrangements identify that a Capital Programme Steering Group will identify neighbourhood projects which could be delivered wholly or partly through CIL monies. This would then be reported directly to Cabinet as the CIL Decision Body for approval.

- 2.6.5 However, it is understood that the identified Capital Programme Steering Group (whose purpose is to identify projects upon which to spend NCIL) no longer exists in its original form. In addition, the process for engagement with communities through it is not clear. Therefore, it is considered that this is not a viable forum for deciding NCIL spending.
- 2.6.6 The NCIL pot has now increased to a meaningful amount that would enable spend. To enable this spend, the Governance Arrangements for the NCIL need to be updated to provide a viable and compliant process for spending NCIL.
- 2.6.7 There are clear requirements which the Council must take into account when determining how to spend NCIL. Firstly, regulations require that NCIL:
...should be used to support the development of the relevant area by funding 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.
- 2.6.8 In locations where there are no town or parish councils, national guidance requires that the Council retain the NCIL portion, but in deciding how to spend it, the Council should:
- engage with the communities where development has taken place and agree with them how best to spend the neighbourhood funding.
 - clearly and transparently set out their approach to engaging with neighbourhoods.
 - ensure that the use of neighbourhood funds matches priorities expressed by local communities.
- 2.6.9 Therefore, based on the CIL Regulations guidance, the updated Governance Arrangements should ensure that:
- a portion of CIL is retained by the Council to be spent in authority areas where parish councils do not exist (non-parished areas)
 - NCIL is used to support the development of the 'relevant area', which is defined as the area of the charging authority with no parish council. This allows freedom to determine the area where NCIL is spent, as long as it is used to support the development of areas without parish councils (i.e. the whole of the Borough).
 - there is some form of engagement with communities where development takes place in order to identify how NCIL should be spent. The process for doing this should be clearly and transparently communicated.

3 Proposal

3.1 There are a number of elements to determining the process and arrangements for spending NCIL. The proposal for the new Governance Arrangements for NCIL are explained below, with each specific element considered individually. This is based on research undertaken by consultants DAC Planning into how local planning authorities similar to Eastbourne govern their CIL spending.

These decisions should be based on the advice and recommendations of a CIL Advisory Board. Following on from the recommendations of this report a CIL Advisory Board will need to be set up.

3.2 Neighbourhood Area Definition

3.2.1 The 'Neighbourhood Area' is defined as the area in which NCIL, wherever collected, can be spent. This could be an individual ward, a group of wards, or the whole Borough.

3.2.2 It is considered that ringfencing CIL to individual wards or groups of wards in the Borough may represent an unfair approach that benefits areas with housing development over areas where development is flatted CIL income by ward does not provide an accurate representation of where development is taking place or where infrastructure funding would be required.

3.2.3 **It is recommended that the Neighbourhood Area is defined as the whole CIL Charging area for Eastbourne**, meaning that NCIL can be spent on a broader basis rather than the ward(s) that it was collected in.

3.3 Bidding Timescale

3.3.1 The bidding timescale relates to how often spending decisions on NCIL are to be made. This could be an open approach that allows bids to be submitted and decided at any time, a more regulated process with bids invited and decisions made on an annual basis, or when the NCIL pot reaches a certain threshold.

3.3.2 An annual application stage for bids would be less resource intensive and would align with a governance approach requiring final approval from Cabinet. Furthermore, placing a threshold on opening the pot each year would ensure that there is sufficient money available in each bidding round. Requiring at least £50,000 in the NCIL pot will mean a sufficient amount of money to fund three or more projects each time the pot is opened will be available. On average, around £15,000 of NCIL is collected annually. Applications received would be screened and assessed against the NCIL spending criteria and then a shortlist taken forward in accordance with approved Governance Structures as discussed

below. Therefore, **it is recommended that NCIL bids to take place on an annual basis, provided that there is £50,000 in the NCIL pot**

3.4 Governance Structures

3.4.1 The Governance Structure relates to the process of who makes decisions on which projects to award NCIL money.

3.4.2 It is considered that Cabinet Members should have significant involvement in the bid determining process, including which infrastructure should receive NCIL funding. This would be a more appropriate approach than delegating decisions to individuals or other council bodies.

3.4.3 **Cabinet currently makes the final decision on which bids to award NCIL and it is recommended that Cabinet continues as the decision maker .** However, all NCIL bids should be assessed against the spending criteria and should be reviewed by a separate CIL Advisory Board / Spending Panel. This Panel would act in an important advisory role and make recommendations to Cabinet on NCIL spend.

3.4.4 The recommended Governance Structure would require the formation of a new and separate NCIL Spending Panel that would assess bids and make recommendations to Cabinet. Membership of the CIL Spending Panel cannot be the existing Local Plan Steering Group (as identified in the 2015 Governance Arrangements), as members of Local Plan Steering Group are also on Cabinet. Therefore, **it is recommended that a new CIL Spending Panel would need to be created through Full Council.**

3.5 Method of Community Engagement

3.5.1 Method of Community Engagement relates to how the community should be engaged in decisions on what NCIL is spent on, as required by the CIL regulations.

3.5.2 It is important to take into account the amount of CIL available for NCIL Bidding and ensure that the level of community engagement is proportionate. Ward Councillors are well placed to engage with their communities and have significant knowledge of community infrastructure needs within their wards, and this can be used to advise whether the CIL bid is supported and desired by the local community.

3.5.3 **It is recommended that community engagement is undertaken through inviting community groups to bidding rounds that are advertised and open**

to all, with a requirement that any CIL bid be supported by the three ward members where the project is located.

3.6 Capping NCIL Bids

3.6.1 This relates to whether the amount of NCIL awarded to individual projects should be capped, and what level it should be capped at.

3.6.2 The amount of NCIL collected in Eastbourne is relatively low, particularly compared to current build costs for the delivery of infrastructure projects. Capping NCIL bids would give greater opportunity for wider infrastructure spending and ensure fairer distribution of spending across the borough. It would also reduce the potential risk that the whole NCIL pot would be reduced to zero within one bidding round, bearing in mind that it has taken eight years to build up the current level of CIL monies. **It is recommended that NCIL bids are capped at £20,000 and that bids should contain matched funding from other sources.**

3.7 Criteria for Assessing NCIL Bids

3.7.1 This relates the criteria that should be used to assess applications for NCIL funding.

3.7.2 **It is recommended that criteria for NCIL bidding, including what NCIL cannot be used to fund, to be clearly and transparently set out before the start of any bidding rounds.**

3.7.3 However, in advance of this it is crucial that infrastructure shortfalls across the borough are identified by updating infrastructure evidence and engaging with all neighbourhoods to ensure that funding priorities identified by the evidence matches those expressed by local communities. Without undertaking this research, it will not be possible to develop an appropriate set of criteria against which to consider NCIL bids.

3.7.4 Therefore, **it is recommended that NCIL bids are not accepted until further research is completed and an NCIL assessment criteria is prepared and formally approved.** It is recommended that the NCIL Bid application form is developed following with Ward Councillor involvement and any planned updates to the infrastructure evidence base, to ensure that applications can be considered against Council and service area priorities.

3.8 **It is also recommended that infrastructure evidence, including the Infrastructure Delivery Plan, is fully updated** and completed to develop an up-to-date picture of infrastructure requirements across the borough, taking into

account growth from both housing and flatted developments. This would ensure that decisions on spending NCIL are informed by up-to-date evidence requirements.

4 Outcome expected and performance management

- 4.1 It is expected that the changes to the CIL Governance will enable a fair and transparent process to spend NCIL across the Borough.
- 4.2 It is proposed to review these changes to CIL Governance after 12 months of implementation to determine if the changes made are appropriate or if further review is required.

5 Consultation

- 5.1 There is no requirement for public consultation on the CIL Governance Arrangements. Although the CIL Regulations set out that the Levy must be spent on infrastructure needed to support development in the area, it falls to local authorities to decide how the funds are spent.
- 5.2 Local Plan Steering Group were consulted in the preparation of the proposed Governance Arrangements for NCIL as detailed in this report.

6 Corporate plan and council policies

- 6.1 The Corporate Plan 2020-2024 supports the improvement of infrastructure including infrastructure required to both mitigate against and adapt to climate change.

7 Business case and alternative option(s) considered.

- 7.1 Options for the Governance Arrangements, including neighbourhood area definition, bidding timescale, governance structures, method of community engagement, capping bids and assessment criteria, were considered as part of the process. An analysis of the options is provided as Appendix 1. This analysis helped inform the recommendations to the Governance Arrangements for NCIL.

8 Financial appraisal

- 8.1 The purpose of this report is to review and recommend an update to the governance arrangements relating to the approval of bids for Neighbourhood Community Infrastructure Levy (NCIL). As such there are no direct financial implications to this report other than clarifying the value of the opening threshold of the Levy pot each year (£50,000), the level at which bids are capped

(£20,000) and that bids should contain matched funding from other sources. The current balance of the NCIL is £153,000.

9 Legal implications

- 9.1 Section 216(2) of the Planning Act 2008 and regulation 59 of The Community Infrastructure Levy Regulations 2010 provide that a Council that charges CIL must apply it, or cause it to be applied, to supporting development by funding the provision, improvement, replacement, operation or maintenance of infrastructure. In this context, “infrastructure” is defined as:-
- (a) roads and other transport facilities,
 - (b) flood defences,
 - (c) schools and other educational facilities,
 - (d) medical facilities,
 - (e) sporting and recreational facilities, and
 - (f) open spaces
- 9.2 Planning Practice Guidance states that this definition allows the Levy to be used to fund a very broad range of facilities such as play areas, parks and green spaces, cultural and sports facilities, academies and free schools, district heating schemes and police stations and other community safety facilities. Charging authorities may not use the Levy to fund affordable housing.
- 9.3 Local authorities must spend the levy on infrastructure needed to support the development of their area, and they will decide what infrastructure is needed. The levy is intended to focus on the provision of new infrastructure and should not be used to remedy pre-existing deficiencies in infrastructure provision unless those deficiencies will be made more severe by new development.
- 9.4 The Levy can be used to increase the capacity of existing infrastructure or to repair failing existing infrastructure, if that is necessary to support new development.
- 9.5 There are no detailed legal requirements as to how the funding decisions are to be made, however a CIL Governance Framework for Eastbourne Borough Council was approved by Cabinet in July 2015. The proposed Governance Arrangements identified in this report are consistent with the CIL Regulations 2010 (as amended) and take account of best practice guidance and will replace those in the July 2015 report.

10 Risk management implications.

- 10.1 The risk of not proceeding with the proposed changes is that NCIL will not be spent in a timely manner which could result in certain types of infrastructure project not being successfully delivered.

11 Equality analysis

- 11.1 The Equalities screen has demonstrated that the recommended change to the Eastbourne CIL governance for Neighbourhood CIL spending will positively impact residents, who will be invited to submit bids for the NCIL, especially residents living in areas of socio-economic challenges. At the time of the Bidding Round, the process will be subject to its own Cabinet report and Equality and Fairness screening report.

12 Environmental sustainability implications

- 12.1 The proposed changes are not anticipated to directly have any negative environmental Impacts. Each bid submitted to any of the CIL Pots will be required to complete a CIL Bidding Form. The form requests details on Environmental Sustainability with regard to positive impacts and measures towards reducing the carbon footprint and providing a biodiversity net gain, if applicable. Each bid will be assessed on its own merit and projects which are deemed a major risk to the environment or cannot show adequate mitigation measures shall not proceed to the next stage of the bidding process.

13 Appendices

- Appendix 1 – Analysis of Options considered for NCIL Governance Arrangements

14 Background papers

The background papers used in compiling this report were as follows:

- [Cabinet Report – July 2015 – Community Infrastructure Levy Governance Arrangements](#)
- [Community Infrastructure Levy Regulations 2010 \(as amended\)](#)
- NCIL Governance and Spending Options (DAC Planning, 2023)

Appendix 1 – Analysis of Options considered for NCIL Governance Arrangements

Issue	Options	Pros	Cons
Neighbourhood Area Definition	a. The ward is the neighbourhood area.	Representative of what CIL has been collected in each area.	<p>NCIL income by ward isn't representative of where development is taking place, as there is zero CIL charge on flats.</p> <p>Ward pots are likely to be too small to be able to be used meaningfully.</p>
	b. Ward groupings represent a neighbourhood area	Results in a slightly larger CIL pot to bid into	<p>Difficulties in deciding how wards should be grouped</p> <p>CIL spending potentially less representative of where it was collected</p>
	c. The entire authority area represents the neighbourhood area	<p>Results in a much bigger pot to bid into</p> <p>Can assist with the spending of CIL in areas where development has occurred (flats zero rated so some areas with development has collected little CIL)</p>	CIL spending potentially less representative of where it was collected
Bidding Timescale	a. Annual bidding round	Gives the community certainty and regulatory of when a bid can be made	There may be little funds available in the pot leading to disappointment. Or larger scaler projects never being able to make a bid.
	b. Applications can be submitted at any time and run on a timetable approach	Allows those who have a project to submit at any time without having to wait.	Applications may need to be updated if a Bidding round does not commence soon after an application is received.

Issue	Options	Pros	Cons
	c. Bidding rounds opened depending on level of NCIL available each year (recommended £50,000.00)	Allows for an amount to be collected which will allow for larger bids to be made or a selection of bids be approved.	Depending upon the level of NCIL this could be years between spending rounds. Bidding may not occur when a project requires the funding Situations may change by the time a bidding round is open.
Governance Structures	a. Decision made by Cabinet	An already formed decision making group. Democratically accountable	Not enough understanding or background knowledge of CIL or the process.
	b. Decision on spend is delegated to Cabinet Member, Assistant Director or Service Head level	A quicker process.	Lack of representation from a wider selection of people and not necessarily democratically decided.
	c. Alternative decision making authority e.g. Selection Panel, CIL Allocations Panel, Grants Determination Sub-Committee	Fair and just process which is representative and specialist in CIL. Allows for a larger geographical representation.	Will require more organising and will be a long process.
Method of Community Engagement	a. Crowdfunding platform and match-funding approach	Enables far reaching community involvement.	Could receive many bids which could become hard to manage. Reliant upon groups being able to use this method.

Issue	Options	Pros	Cons
	b. Resident survey in advance of bidding rounds to understand local priorities	Would enable a robust way of determining residents' priorities.	Time consuming and costly exercise to complete.
	c. Bidding rounds advertised and open to all community groups	Inclusive for all groups of the Community.	Difficulties in ensuring all groups are reached- some may not have access to see or know about CIL.
	d. Council review of corporate and regeneration strategies alongside the Local Plan	Allows CIL funding to be spent in areas that have been identified and matched with Council priorities. This will assist in the assessment of bids to ensure they align with the corporate plan.	Local Plan is unlikely to be completed for some time
	e. CIL Bids from Community Groups are signed off by the ward members to be able to proceed to assessment.	Allows Members who have expert knowledge on their ward to agree or disagree with whether the proposed project is in line with residents views. It is proportionate to the amount of CIL available to bid for.	Will require input from ward members.
Capping NCIL Bids	a. Only allow CIL Groups/wards to bid for NCIL once there is £50,000 or more in the NCIL pot	Would prevent opening the pot with very little in which could result in large workload for little reward.	May mean that the pot is not opened regularly

Issue	Options	Pros	Cons
	<p>b. Set a threshold for bids of over/under £10,000. The value of the bid will determine the governance route</p>	<p>Would allow a simpler approach for smaller, less involved bids. Quicker time frame for releasing funds.</p>	<p>Could be overly complex for processing. A threshold of bids may not be appropriate where on average £15,000.00 is collected each year. Multiple Governance routes could be complex and an unbalanced amount of work.</p>
	<p>c. Set a limit on NCIL bids of £20,000.00</p>	<p>Would enable the NCIL Funds to be further reaching and would allow more projects to receive funding.</p>	<p>Would restrict larger project from receiving funding and limit the scope on CIL funded projects.</p>
<p>Criteria for Assessing NCIL Bids</p>	<p>a. All authorities clearly set out the assessment criteria for NCIL bids. Therefore this is not an option, but must be clearly communicated and publicised so that expectations are set from the beginning.</p>	<p>Allows for a fair and transparent process to occur. A template bidding form which should be publicised will allow for a transparent process and this should include information on how bids are assessed. For example, priority, project readiness, community support.</p>	