

MEETING TITLE AND DATE:

Cabinet (12.2.20)
 Council (26.2.20)

REPORT OF:

Executive Director of Place

Contact officer and telephone number:
 Philip Wadsworth (020 8379 1451)

Agenda - Part: 1	Item: 10
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Subject:

New decision-making arrangements to spend the Enfield community infrastructure levy and section 106 agreements

Wards: All KD 5029

Cabinet member consulted: Cllr Caliskan
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1. EXECUTIVE SUMMARY

- 1.1 Section 106 agreements and the Community Infrastructure Levy (CIL) are used to fund the provision of supporting infrastructure in association with development. They maximise the benefits and opportunities from growth such as employment opportunities and affordable homes.
- 1.2 Both receipts have increased significantly over the past financial year (2018/2019), as a result of major developments in Enfield and improvements to monitoring and collection. In 2018/2019, we collected over £2.7 million of section 106 receipts and over £6.3 million of CIL receipts.
- 1.3 This report seeks approval to set up new decision-making and reporting system to inform the prioritisation and allocation of community infrastructure levy (CIL) and section 106 funding (S106) and ensure compliance with the new CIL regulations, which will facilitate the delivery of timely infrastructure and the phasing of development across the borough.

2. RECOMMENDATIONS

2.1 Cabinet is asked to:

- recommend to Full Council that from April 2020 onwards to allocate CIL spend through the main capital programme and agree on the priorities on its allocation, as part of the annual budget setting process;
- approve the proposed governance arrangements through which decisions on the funding of infrastructure (CIL and S106 agreements) will be determined (see section 3.12);
- note the revocation of the Regulation 123 List (April 2016) which restricts the use of CIL to specified projects;
- delegate authority to the Cabinet Member for Strategic Planning to approve consultation on the neighbourhood portion (based on 15% of CIL receipts) and the priorities on how it is spent;
- approve the publication of the borough's first Infrastructure Funding Statement (see appendix 1) setting out how CIL and S106 income has been spent over the previous financial year (2018/2019) and how spend will be prioritised over the next reporting period; and

- delegate authority to the Executive Director of Place in consultation with the Cabinet Member for Strategic Planning to approve the publication of future Infrastructure Delivery Statements and authority to consult on updates to the Infrastructure Delivery Plan.

3. BACKGROUND

Introduction

3.1 This report proposes the key governance and reporting arrangements to secure the delivery of infrastructure through developer contributions (CIL and section 106) and other funding sources in the borough. It also draws on experience from other charging authorities and the principles of administering the CIL and section 106 agreements set out in the government's Planning Practice Guidance ("PPG").

Context

3.2 The current system of securing developer contributions (Enfield CIL and section 106 agreements) has been in operation since April 2016, following the adoption of the Enfield CIL Charging Schedule and the Enfield Section 106 Supplementary Planning Document.

3.3 **Section 106 agreements (S106)** are used to mitigate the impacts of development (e.g. site-specific) and support the provision of services and infrastructure such as highways, recreational facilities, education, employment and skills, health and affordable housing in association with planning applications. Enfield's adopted S106 Supplementary Planning Document sets out how section 106 agreements will be secured through development (published in 2016 and available on the council's website).

Summary of main S106 spending during 2018/19	
£	Items of infrastructure
2.46 million	Affordable housing delivery as part of the council's estate renewal programme
1.2 million	School expansion projects identified in the pupil places capacity and delivery strategy
303,564	Various transport improvements around the borough
75,862	Parks improvements works
52,707	Air quality/sustainability measures

3.4 The **Enfield Community Infrastructure Levy (CIL)** is a tariff-based charge on most developments to help fund the delivery of infrastructure that is needed to support the borough's future growth. The Enfield CIL Charging Schedule sets out the rates on which the levy is based (depending on the extent of floorspace and the nature and location of the proposed development).

Enfield CIL income since 2016/17	
	Received in year
Year	£
2016/17	207,304.96
2017/18	502,858.61
2018/19	6,398,498.38

3.5 Unlike section 106 agreements, CIL is non-negotiable and can be levied on a much wider range of developments (although there are some exceptions, such as small-scale affordable housing and self-build projects).

3.6 In Enfield, CIL is divided into three parts:

Type	Percentage of total receipts	Commentary
Strategic	80%	<p>Receipts can only be spent on capital projects to fund a wide range of infrastructure projects.</p> <p>However, funding is currently restricted to road and rail projects within the Meridian Water scheme (as identified in the "Regulation 123 List").</p>
Neighbourhood	15% (or up to 25% in a neighbourhood planning area)	Receipts can be spent on both capital projects and revenue projects, such as the maintenance of infrastructure. However, it does not have to be spent in the same area as the development.
Administration	5%	This covers administrative expenses (e.g. staff costs).

3.7 The Community Infrastructure Levy Regulations 2010 (as amended) ("CIL Regulations") were revised in September 2019, with these amendments introducing greater flexibility in how CIL and S106 monies can be spent. Key changes include:

- removing the restriction on pooling and the number of section 106 agreements that can be used to fund projects or types of infrastructure (CIL and S106 income from any number of agreements can now be combined to fund the same infrastructure project or item);
- removing the requirement to maintain and publish a list of infrastructure projects or items that will benefit from CIL funding ("Regulation 123 List")¹; and
- introducing new reporting requirements through the preparation of annual infrastructure funding statements to monitor CIL and S106 income and expenditure.

3.8 Enfield has been set challenging growth targets through the draft London Plan (2019) and National Planning Policy Framework (2019) ("NPPF") to significantly increase the supply of new homes and jobs to meet the growing needs of population. Meeting these will require significant on-going investment aligned with the provision of infrastructure from a range of partners.

3.9 The new Local Plan will set out a framework through which developer contributions (CIL and S106) will be sought towards the provision of necessary infrastructure and services (including new schools, open spaces, transport improvements, health facilities and utilities) to support the planned growth of the borough up to 2036.

3.10 Careful planning and coordination will be required to ensure that sufficient funding is available from CIL, S106 and other sources (e.g. match funding) to facilitate the timely delivery of this infrastructure. CIL and S106 receipts are expected to increase over the

¹ The Regulation 123 Lists specified what Enfield's CIL could be spent on.

next few years in response to rising levels of development. Spending levels will need to be closely monitored to take account of changing priorities and the phasing requirements of development.

- 3.11 Consequently, we need to put in place new governance and reporting arrangements to determine how CIL and S106 income will be spent and administered in the borough. In addition, we need to consult with local communities and stakeholders on how CIL monies should be spent at the neighbourhood level.

Proposed decision-making arrangements

- 3.12 The table below outlines the proposed governance structure through which decisions on the funding of infrastructure (CIL and S106 agreements) will be determined.

Decision making level	When	How
Enfield Capital Programme – the process of allocating CIL income will be undertaken through the capital programme, as part of the annual budget-setting process.	Annual	<p>The current capital programme covers a four-year period (2018/19-2021/22).</p> <p>As part of the annual refresh of the capital budget, specific projects will be identified to meet the spending priorities set out in the Enfield Corporate Plan (2018-2022), with focus on income-generation and match-funding opportunities.</p> <p>Projects will be scrutinised at the Capital Finance Board and then formally approved at Cabinet / Full Council.</p> <p>Once approved, projects will be added to the capital programme and published on the Forward Plan.</p>
Strategic Infrastructure Delivery Board - a director-level group which will approve the allocation of CIL/S106 funding to support the delivery of strategic projects, in consultation with Corporate Finance Chair: Executive Director of Place	Quarterly CIL/S106 income and expenditure will be referred up to the board on a quarterly basis. Project leads will also be expected to report back on scheme delivery and the benefits arising to the Strategic Infrastructure Board.	<p>Strategic CIL: Directorates and service areas will be invited to submit new projects to the Strategic Infrastructure Board.</p> <p>Recommendations will be reported to Cabinet and Full Council in January / March of each year (as part of the capital programme).</p> <p>Neighbourhood CIL: Decisions on spending will be discussed at the Strategic Infrastructure Board, with recommendations made to EMT as part of the annual budget setting process.</p> <p>Funding bids will be expected to show evidence of how the project or</p>

		<p>programme will meet the agreed selection criteria (based on identified priorities set out in the Corporate Plan and the Infrastructure Delivery Plan).</p> <p>Section 106: The Strategic Infrastructure Board will also scrutinise and approve S106 and joint-funded projects.</p> <p>Where appropriate, the Strategic Infrastructure Board will make recommendations to the lead member/portfolio holder and the Capital Finance Board to approve S106/CIL-funded projects in line with the scheme of delegation.</p>
Infrastructure Delivery Steering Group – an officer-level group to discuss the allocation and distribution of S106 and CIL funds and other sources of funding Chair: Head of Strategic Planning & Design	Monthly (prior to Strategic Infrastructure Board meetings)	<p>The Infrastructure Delivery Steering Group will discuss S106/CIL projects at the relevant stages of the planning process.</p> <p>Where a S106/CIL-funded project requires sign-off at director level and above, it will be referred to the Strategic Infrastructure Board.</p>

- 3.13 Decisions on the approval of projects will be made in line with the council's current decision-making procedures for capital and, where appropriate, revenue spend.

Allocation & distribution of Enfield's CIL

Strategic CIL

- 3.14 Over the past three financial years (2016-2017, 2017-2018 and 2018-2019), the entire strategic CIL allocation (circa £6.86 million) has been used to help fund the construction of the new Meridian Water station, in line with the requirements set out in the Regulation 123 List². The new station officially opened in June 2019³.
- 3.15 CIL funding is no longer restricted to the infrastructure items or projects identified in the Regulation 123 List (which has been now revoked following amendments to the regulations).
- 3.16 Instead, the council must now publish an annual infrastructure funding statement setting out the types of infrastructure and projects it intends to fund through the levy over the next reporting period (see appendix 1).

² The Regulation 123 List (April 2016) was limited to specific road and rail projects within the Meridian Water development.

³ 2016-2017, 2017-2018 and 2018-2019

3.17 CIL spending priorities will then be determined on an annual basis as part of the budget-setting process set out in the capital programme (taking account of the specific and cumulative needs arising from development) and in line with the emerging Infrastructure Delivery Plan (see paragraphs 3.33-35). For example, the capital budget agreed at Full Council in January 2020 has allocated £5 million from Enfield's 2019/20 CIL to match fund the Housing Infrastructure Fund (HIF) grant at Meridian Water. Going forward, spend on CIL will be determined through the capital programme aligned with corporate priorities.

Neighbourhood CIL

3.18 The neighbourhood portion of the Enfield CIL can be used to fund a wide range of projects that relate to the provision of infrastructure or address the demands arising from development in an area. Examples include but not limited to:

- cultural spaces and cafes;
- youth facilities;
- public realm works (e.g. street furniture);
- drainage improvements (e.g. SUDS);
- pedestrian and cycle routes;
- community events (e.g. festivals and galas) in association with long term regeneration programmes (e.g. town centres);
- community gardens/orchards;
- skills and training hubs (e.g. digital technology); and
- security measures to reduce crime and anti-social behaviour (e.g. CCTV).

3.20 Each year, local community groups and stakeholders (including service leads, ward councillors and elected members) will be invited to put forward proposed projects through a new Enfield Neighbourhood Fund that will be established later in 2020.

3.21 The recent report of the Enfield Poverty and Inequality Commission Poverty Commission (January 2020) has highlighted 27 measures to tackle Enfield's on-going deprivation and inequalities. The 27 recommendations of the report will form clear criteria for assessing and prioritising spending proposals. This in turn will feed into our corporate priorities and neighbourhood spend.

3.22 The administration of the Enfield Neighbourhood Fund (including the nature of the consultation on future priorities) and decisions on how this money is spent will be reported to Cabinet at a future date.

Allocation & expenditure of section 106 agreements

3.23 Section 106 contributions, once received, will be ringfenced to spend on the projects identified under the terms of the legal agreement. In most cases, a section 106 agreement specifies how the money collected from the development must be spent.

3.24 At the end of each financial quarter, service leads and directorates will seek to spend the funds in accordance with the terms of the section 106 agreements. Once approved, section 106 funding will be allocated for the spend purpose (which may include new open space provision, public transport improvements and education and health facilities) as specified in the agreement.

- 3.25 Many of these projects will be identified in the borough's emerging Infrastructure Delivery Statement and the annual capital programme. The Infrastructure Funding Statement (see appendix 1) identifies several of the key projects that will be funded through S106 agreements over the next reporting period.
- 3.26 Wherever possible, S106 contributions will be used alongside other sources of funding (including crowdfunding, levy receipts and government grants) to secure the delivery of a project or programme.

Reporting & monitoring

Enfield Infrastructure Funding Statement

- 3.27 Under the CIL regulations, local authorities must now publish an annual infrastructure funding statement (before 31 December in each calendar year) to report on the collection, allocation and spending of CIL and S106 contributions.
- 3.28 The (draft) Enfield Infrastructure Funding Statement (see appendix 1) sets out how CIL and section 106 income has been collected and spent over the past financial year (2018/2019) and how it will be spent over the year ahead (taking account of known and expected infrastructure costs and other potential sources of funding).

Enfield's emerging Infrastructure Delivery Plan

- 3.29 The Enfield Infrastructure Delivery Plan will provide the mechanism through which infrastructure projects will be identified and prioritised to support the growth requirements set out in the emerging Local Plan.
- 3.30 As part of the ongoing engagement process of the Local Plan, officers are working with relevant stakeholders (including infrastructure providers, neighbouring authorities and other relevant organisations) to determine the emerging priorities and projects through the Infrastructure Delivery Plan over the short, medium and long term.
- 3.31 The Infrastructure Delivery Plan will be updated annually alongside the Infrastructure Funding Statement to inform the capital programme and monitor the progress of projects and programmes.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 Spending decisions on the use of developer contributions (CIL and section 106) could be determined at member level through a publicly accountable board (e.g. sub-committee). Another option would be to delegate spending decisions to the Executive Director of Place and/or the Leader of the Council/Portfolio Holder for Strategic Planning and/or Finance.
- 4.2 However, it would be more efficient and cost effective to administer CIL and S106 spending through existing governance structures and engagement processes, such as the capital programme and internal cross-directorate officer boards (as per government guidance⁴). This is the standard approach to CIL and S106 governance. A growing

⁴ National Planning Policy Guidance (Ministry of Housing, Communities & Local Government, 2019).

number of London boroughs (including Waltham Forest, Haringey and Harrow) are administering the allocation of CIL through the capital programme and annual budget process.

4.3 Other options considered include delegating the allocation of the neighbourhood portion to ward or parliamentary constituency level. However, the benefits of infrastructure also rarely adhere to ward or constituent boundaries. Spreading the funding across several wards or neighbourhoods would also limit the potential wider benefit of schemes and increase administration costs.

5. REASONS FOR RECOMMENDATIONS

5.1 The council needs to develop transparent and accountable governance and reporting structures to decide how CIL/S106 income is spent and administered (see paragraph 3.12) in line with the CIL regulations.

5.2 This approach will be implemented to ensure that:

- the right infrastructure and land is delivered at the right time and in the right place to support the growth and regeneration of the borough (as per the requirements of the NPPF);
- decisions on the allocation of funding (CIL and S106) are transparent, accountable and based on robust and up-to-date evidence;
- adequate funding and resources are available to support the delivery of infrastructure and services (for example, through pooling contributions and match funding/income-generating opportunities);
- development remains viable across the borough to ensure that new jobs and homes can be delivered;
- infrastructure can be carefully planned through the masterplanning and phasing of development sites; and
- infrastructure spending is aligned with the strategic priorities and requirements set out in the new Local Plan, Corporate Plan and other relevant strategies.

Indicative timeline

Event	Indicative date
Cabinet approval – capital programme, decision-making structure & new reporting arrangements	February 2020
Full Council approval – capital programme	February 2020
Publication of the Enfield Infrastructure Funding Statement	March 2020
Ongoing engagement on the emerging Enfield Infrastructure Delivery Plan	March 2020
Cabinet approval to publish the Enfield Infrastructure Delivery Plan	Summer – Autumn 2020

6 COMMENTS OF OTHER DEPARTMENTS

Financial implications

Enfield's community infrastructure levy

- 6.1 CIL receipts can only be spent on capital projects, although associated revenue spending to maintain those capital items is also permissible.
- 6.2 It is the responsibility of the section 151 officer (Director of Finance) to ensure that decisions relating to the expenditure of Enfield's community infrastructure levy accords with the annual budget. CIL will be used as a resource to help finance the borough's capital programme based on priorities set out in the Corporate Plan in line with the regulations.
- 6.3 Enfield's CIL will be integrated with the medium-term financial strategy and budget setting process and formally allocated through the capital programme (before the end of each financial year).
- 6.4 Since its introduction in April 2016, Enfield's CIL has raised over £5.68 million towards the new railway station within the Meridian Water scheme. CIL receipts have increased year-on-year in response to major development schemes (commencement of planning permissions) and improved monitoring.
- 6.5 The level and timing of CIL funding will, however, depend on the nature and scale of the development, the number of implemented planning permissions, build-out rates, and the phasing of development etc. Due to the uncertainty over forecasting, the amount of CIL funding will be based on the total receipts collected from the previous financial year and any unspent receipts from previous financial years.
- 6.6 Enfield's CIL will be allocated through capital programme in the next financial year (2020/2021) as follows:

Type	Amount of projected funding*	Purpose	Note
Strategic	£2-4 million	<ul style="list-style-type: none">• To support the capital programme (including Meridian Water)	<ul style="list-style-type: none">• Contributions will be sought towards the following items of infrastructure:<ul style="list-style-type: none">• Public realm improvements within estate regeneration schemes and town centres• Sustainable transport (Cycle Enfield & highway maintenance)• Road infrastructure (Meridian Water)• Open spaces (cemeteries and burial space)

Neighbourhood	Up to £1 million ⁵	<ul style="list-style-type: none"> Funding has been ringfenced to spend on community projects and services Receipts from last three financial years remain unspent. The size of the fund could decrease in future years. 	
Administration	5% of total receipts	<ul style="list-style-type: none"> Services from planning and finance will be required to support the smooth running of the new arrangements and oversee the collection and management of Enfield's CIL. 	

*based on the current charging rates set out in the CIL Charging Schedule

- 6.8 Future projections (beyond the current capital programme) will be dependent on the outcome of the review of the Enfield CIL Charging Schedule undertaken to support the new Local Plan 2036. Enfield's charging rates will need to be updated to reflect the emerging infrastructure and growth requirements set out in the Local Plan (taking account of changing market conditions, such as increasing housing prices and the viability of development) in line with the regulations⁶:

Section 106 agreements

- 6.9 Unlike CIL, S106 agreements are subject to negotiation at the planning application stage. S106 income varies on a site-by-site basis depending on a range of factors, such as viability and site-specific considerations. This makes it difficult to forecast future S106 income and expenditure.
- 6.10 Both CIL and S106 spending will be reported on an annual basis through the Infrastructure Funding Statement (see appendix 1).

Legal implications

- 6.11 CIL monies can only be spent on infrastructure, as defined in the Planning Act 2008 (as amended), apart from the neighbourhood portion (15% of CIL monies if there is no adopted neighbourhood plan) which may also be spent on, in addition to infrastructure, anything else that is concerned with addressing the demands that development places on an area. Obligations can be obtained from section 106 agreements for any purpose, provided they comply with the requirements of section 106 of the Town and Country Planning Act 1990 (as amended) and regulation 122 of the CIL regulations. Monies and obligations pursuant to a section 106 agreement must be spent or provided in accordance with any contractual provisions contained therein.

⁵ This figure is based on the approximate amount of CIL collected (15% of all receipts) over the past three financial years (2016-2017, 2017-2018 and 2018-2019).

⁶ Any new charging rates will need to be subject to public consultation and independent examination in line with the requirements set out in the CIL regulations and planning policy guidance.

- 6.12 The CIL regulations have revoked the Regulation 123 List. The first annual infrastructure funding statement, noting what CIL receipts have been spent on and how it is intended they will be spent, must be published no later than 31st December 2020. For the financial year 2018/19, charging authorities must report on CIL it has collected, or any CIL collected on its behalf (as outlined in the PPG).
- 6.13 The infrastructure funding statement must include the details prescribed in schedule 2 of the CIL regulations. This will also include a section 106 report detailing monies and obligations pursuant to section 106 agreements, including affordable housing which is not defined as 'infrastructure' for CIL purposes. There is also now a requirement to publish an annual CIL rate summary each calendar year, no earlier than 2nd December and no later than 31st December, in relation to the next calendar year.
- 6.15 Clear and transparent governance mechanisms (CIL and section 106 agreements) will ensure robust and effective expenditure and reporting in line with the above requirements and ensure compliance with the CIL regulations and the NPPF/PPG to which the council must have regard.

Property implications

- 6.12 This report does not of itself commit the council to any expenditure on its property portfolio. Any related proposals with cost implications would need to be subject to separate reports and full financial appraisal.

7. KEY RISKS

Key risk	Action to mitigate
Lack of accountability/transparency: failure to disclose CIL/S106 income and expenditure activities	Produce and publish an infrastructure funding statement before 31 December of each calendar year (as per the CIL regulations)
Legislative: Risk of legal challenge from developers and landowners (due to non-compliance with the CIL regulations)	Ensure a new governance system is put in place to prioritise CIL and S106 receipts
Lack of adequate funding could adversely affect collection and allocation of CIL/S106 monies.	Ensure adequate resources are available to implement CIL/S106 governance in a timely manner in line with the regulations.
Failure to allocate sufficient funding could undermine the viability of development and inhibit the delivery of infrastructure	Ensure that decision-makers direct CIL/S106 income to delivery of critical infrastructure to support development
Community engagement and accountability: Neighbourhoods and stakeholders may not be given the opportunity to influence how the money is spent at the local level	Ensure all S106/CIL receipts are spent within set deadlines and on the projects identified in the legal agreement/capital programme.
Failure to implement these arrangements would undermine the ability of the council to effectively coordinate the provision and maintenance of infrastructure	Ensure effective decision-making structures/processes are in place to coordinate the future planning and delivery of infrastructure in parallel with the Local Plan.

8. IMPACT ON COUNCIL PRIORITIES

8.1 The approach to infrastructure funding and delivery set out in this report (including the proposed decision-making structure) has been developed to support the overarching priorities as set out in the Corporate Plan.

- **Good homes in well-connected neighbourhoods**

CIL/S106 income will be used to effectively plan and coordinate the delivery of infrastructure alongside new development (e.g. affordable homes) to meet the future needs of the borough.

- **Sustain strong and healthy communities**

CIL/S106 income will be spent in a way that supports development and the creation of sustainable and healthy communities set out in the Local Plan, especially in terms of the provision of new infrastructure (e.g. physical, social and community) and supporting services.

- **Build our local economy to create a thriving place**

CIL/106 income will make a significant positive contribution to infrastructure investment and place-making in the borough.

9. EQUALITY IMPACT IMPLICATIONS

9.1 Local authorities have a responsibility to meet the public-sector duty of the 2019 Equality Act. The act gives people the right not to be treated less favourably because of any of the protected characteristics. We need to consider the needs of these diverse groups when prioritising and spending S106/CIL income so that our decisions do not unduly or disproportionately affect access by some groups more than others. Corporate advice has been sought with regards to equalities and an agreement has been reached that an equalities impact assessment/analysis is not relevant or proportionate in this instance.

9.2 Equality issues will be addressed and integrated into the process of preparing the new Local Plan and the review of the CIL Charging Schedule through the Integrated Impact Assessment.

10. PERFORMANCE & DATA IMPLICATIONS

10.1 The report provides clear evidence of sound financial management, efficient use of resources, promotion of income generation and adherence to best value and good performance management.

11. RESOURCES IMPLICATIONS

11.1 There are no notable human resource implications arising from this report.

12. PUBLIC HEALTH IMPLICATIONS

- 12.1 Better and more effective coordination of infrastructure delivery and financing is vital to the future health and wellbeing of the borough. S106/CIL income will be used to address the impact of development (e.g. carbon offsetting) and secure adequate provision of infrastructure (including health and education facilities, green-grid connections and community facilities) to the support future needs of the borough.

APPENDICES:

Appendix 1 – Infrastructure Funding Statement