



<u>Committee and Date</u>
Performance Management Scrutiny Committee
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<u>Item</u>
Public

Report of the Community Infrastructure Levy task and finish group

Responsible officer

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1.0 Summary

1.1 This report summarise the findings of the Performance Management Scrutiny Committee's Community Infrastructure Levy task and finish group.

2.0 Recommendations

- 2.1 The Community Infrastructure Levy task and finish group recommends that Shropshire Council should:
- keep the proportion of CIL funding allocated to the Neighbourhood Fund to 15% of the total, or 25% where there is a Neighbourhood Plan in place.
 - include the existing members of CIL task and finish group in future meetings of the current informal officer and member CIL discussion groups and
 - as the charging authority, identify priority infrastructure projects as et out in the place plans by September 2019 and seek to commission delivery in the most efficient way.

3.0 Opportunities and risks

- 3.1 Throughout the review, the members of the group were keen to stress the importance of linking spending of CIL funds in the local area where the levy income was generated, and to recognise the success of the current scheme in achieving that. This was important because many local areas had agreed development on the understanding that they would receive the majority of income to spend in their local area. Maintaining the levy income apportioned to CIL Local projects therefore protects current levels of support for housing and commercial development in Shropshire.
- 3.2 The group recognised that a risk of the current CIL funding rules was it limited the levy's capacity to fund strategic infrastructure priorities that would support development elsewhere from where it was generated. The group believes that its recommendation that it participates in future meetings of the current informal

officer and member CIL discussion group will help to provide broader understanding and support for strategic priorities as determined by Shropshire's CIL priority list.

- 3.3 The group also noted the risk that existing rules meant that CIL was unable to fund many of the highways' developments that had been proposed by town and parish councils. A lack of clarity and understanding around permitted could continue to frustrate the CIL funding process and lead to a lack of support among town and parish councils.

4.0 Financial assessment

- 4.1 Developer contributions (Section 106 and CIL) provide a mechanism for Shropshire Council to fund infrastructure in support of new development. The New Homes Bonus (NHB) is a grant paid by central government to local councils to reflect and incentivise housing growth in their areas.
- 4.2 Whilst the task and finish group was established to look at Section 106, CIL and NHB, the focus of the Group's attention has been CIL. In particular, the group has looked at how CIL can be used most productively to support the demands on infrastructure associated with new development.
- 4.3 Evidence presented to the task and finish group over the course of several meetings since June 2017 clearly indicates there are insufficient CIL funds to support all identified local and strategic priorities for the county. These priorities are set out through the Local Plan and the place plans, and include education provision, highway improvement schemes, and additional utility needs, alongside other infrastructure required as a result of new development.
- 4.4 The group also agreed the current arrangements for spending CIL funds needed to change in light of difficulties experienced in allocating CIL funds to projects, due to ineligibility of those projects as per the UK government's CIL regulations. This has resulted in minimal CIL local spend to date.

5.0 Background

- 5.1 During consideration of the Draft Corporate Plan 2016/17 to 2018/19 the Financial Strategy task and finish group took particular interest in the importance of ensuring Shropshire has a prosperous economy. The current and potential future use of 'developer contributions' (flowing from new housing developments such as Section 106, Community Infrastructure Levy (CIL), and New Homes Bonus) was an area of focus, which was subsequently agreed by the Performance Management Scrutiny Committee to be its own Task and Finish Group.
- 5.2 The Task and Finish Group met a number of times over a two-year period. In September 2017 it made a series of interim recommendations, including that:

- the existing developer contributions SPD and the type and affordability of housing SPD be reviewed, seeking to incentivise individual landowners and parishes to bring forward land for affordable housing use
- increased effort be directed into promoting community-led affordable housing schemes;
- the Local Plan Member Group be recommended to consider the need to review existing countryside planning policies (CS5 / CS11 / MD7a & b) in relation to the delivery of affordable housing as part of the current Local Plan review
- arrangements for allocating CIL revenue should be clarified to ensure that available funding is used to support the highest investment priorities.
- the portfolio holder for planning should be asked to agree any spending decisions made by the officer level Internal Infrastructure Group and
- a letter be sent to all Shropshire Council councillors and all parish and town councils clarifying who the responsible authorities are for various parts of the CIL revenue, and Shropshire Council's expectations on how the CIL revenue will be prioritised.

5.3 This report is focussed on the work the Task and Finish Group has carried out since the interim report and relates only to use of CIL funds. The recommendations of this report were agreed at a task and finish group meeting on 05 July 2019.

5.5 The group's report is attached as **appendix 1**.

Background Papers

Community Infrastructure Levy 123 List

Cabinet Member (Portfolio Holder)

The Portfolio Holder for Housing and Strategic Planning

Local Member

All

Appendices

Community Infrastructure Levy task and finish group report



Communities Overview Committee

Report of the Community Infrastructure Levy task and finish group

July 2019

Acknowledgments

The group would like to thank the officers of Shropshire Council, for their considerable support to the group.

Members of the Task and Finish Group

- Cllr Claire Wild (chair)
- Cllr Ted Clarke
- Cllr Roger Evans
- Cllr Cecilia Motley
- Cllr Dave Tremellen
- Cllr David Turner

Introduction

How developers fund investment in infrastructure

Planning legislation provides a number of ways for local authorities to secure contributions from developers to fund investments in community infrastructure that in some way mitigate the impact of their development.

A **Section 106 agreement** is a legal agreement between an applicant seeking planning permission and the local planning authority, which is used to mitigate the impact of development on the local community and infrastructure. For example, a new house will mean another car(s) on the roads and perhaps an additional child will attend a nearby school, putting a little more strain on local services.

As such, Section 106 agreements often require a financial contribution, made before the project starts. Unlike the Community Infrastructure Levy, which is tariff-based, a Section 106 agreement is charged based on the specific needs of the local community arising out that particular development, meaning some councils use the number of bedrooms in the new home to decide what this charge should be. For example, a council might ask for a contribution to the local school for a new four-bedroom family house in an area with limited school places, but less (if anything) for a studio apartment.

The **Community Infrastructure Levy** (CIL) is a charge on new development to help fund infrastructure across Shropshire. In Shropshire, the CIL applies to all new development that involves:

- the formation of one or more new dwellings, (including holiday lets), either through conversion or new build, regardless of size (unless it is 'affordable housing') or
- the establishment of new residential floorspace (including extensions and replacements) of 100sqm or above.

The legislation states that charging 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.

Community Infrastructure Levy in Shropshire

Shropshire Council was one of the first local authorities in England to decide its scheme to administer its Community Infrastructure Levy (CIL). It took a decision in 2012 to distribute CIL funds in the following way:

- Administrative fee: up to 5% of total
- **Neighbourhood Fund:** 15-25%. The Neighbourhood Fund was introduced on 25 April 2013. It's the proportion of the CIL that is to be provided directly to the local community where a development takes place, through the relevant town or parish council. The government intends the Neighbourhood Fund to encourage communities to accommodate new development and to allow them the ability to address the subsequent impact of new development.

The Neighbourhood Fund represents:

- 25% of the total CIL liability where there is an adopted formal neighbourhood plan or neighbourhood development order.
- 15% of the CIL liability where there is not a neighbourhood plan (capped at £100 per council tax dwelling).

Of the remainder:

- **Strategic Infrastructure Funding:** 10%. This funds strategic infrastructure priorities identified through the Place Plan and the Local Plan process. In locations where the 'Strategic Infrastructure Fund' is not sufficient to deliver necessary strategic infrastructure, the use of the 'Local Infrastructure Fund' to deliver Strategic Infrastructure may be agreed with the relevant Town and Parish Councils
- **Local Infrastructure Funding:** 90%. This delivers local priorities to meet the infrastructure needs in the area where development takes place, as identified by town or parish councils within their place plans

Scope and focus of the work

Throughout its meetings, the group sought to:

- understand the processes, legal factors, and policy parameters related to the how and where monies delivered through Section 106, CIL and NHB can be used
- evaluate the criteria by which funding such as the NHB is awarded and the associated implications for resourcing the activities that generate the NHB (i.e. planning, building control, empty properties, housing, enforcement....)
- learn how Shropshire Council currently uses Section 106, CIL and NHB and the impact that this has had
- confirm how town councils, parish councils and hubs can access the CIL which they are responsible for and what they can use it for.
- collate the lessons learned in Shropshire, having regard to changing legislation and policy on both collection and spend aspirations.

- understand phasing issues arising from development progressing ahead of infrastructure improvements
- scrutinise how Section 106, CIL and NHB will be used in Shropshire to enable or encourage projects or initiatives for economic growth and prosperity
- learn from other places how they have used Section 106, CIL and NHB to enable or encourage projects or initiatives for economic growth and prosperity
- identify where and how opportunities for fund matching might exist and
- make evidence based recommendations on how Section 106, CIL and NHB could be used in Shropshire to enable or encourage projects or initiatives for economic growth and prosperity

What has the task and finish group done?

The group met over the course of a number of meetings, focussing its work on:

- Legislation concerning New Homes Bonus, Section 106 funding and Community Infrastructure Levy
- Legislation concerning the governance of local authorities with regard to planning matters
- How Shropshire Councils town and parish council and place plans are organised and
- Options for amending the proportion of funding allocated to CIL local and strategic funds.

Findings

Funding strategic and local projects

Group members recognised that Shropshire Council's current approach to CIL differs from other CIL charging authority, who generally make no distinction between local and strategic funds. Other councils operate a single CIL fund of remaining funds after the neighbourhood fund and administration fee have been taken into account.

Shropshire Council's current position regarding the use of CIL local funds is also shaped by the last Cabinet decision of 29 June 2015. This agreed that priority be given to using CIL local funds to deliver appropriate critical infrastructure, or infrastructure required in order to fulfil the council's statutory functions. This has been a point of much discussion, particularly with some town and parish representatives.

The group heard that the types of infrastructure the CIL funds can be used for are placed into three categories: Critical, Priority, and Key (soon to be renamed as Priority A, Priority B, and Neighbourhood Projects as part of the Place Plan refresh).

Critical (Priority A) infrastructure is defined in the core strategy as necessary to ensure adequate provision of essential utilities, facilities (such as education places and health provision), water management and safe access, and are therefore higher priority items. Other infrastructure needs will either be defined as Priority (Priority B) or Key (Neighbourhood) based on their importance in supporting the development.

The task and finish group focussed its work on clarifying the practical implications of applying the current approach to using CIL Local funds, and the benefits of looking at alternative options for its use.

Officers prepared five possible options for discussion and consideration by the task and finish group. These are laid out in the table below and overleaf, together with a summary of the task and finish group’s feedback.

<p>Option 1 – no change to current policy</p>	<p>Task and Finish Group feedback included:</p> <ul style="list-style-type: none"> • Recognition that the current system does not work. • Dissatisfaction with the function of the IIG. • Dissatisfaction with officer communications around CIL. • Do not want to change system for banked CIL – any change to apply from the point of policy revision only. • All agreed that Option 1 was not preferred.
<p>Option 2 – no change to current policy; change to data presentation only (by Place Plan area rather than Parish)</p>	<p>Task and Finish Group feedback included:</p> <ul style="list-style-type: none"> • Place Plans are not agreed yet so difficult to use for CIL allocation. • Need more local level – i.e. parish focussed – information, not less. • All agreed Option 2 was not preferred.
<p>Option 3 – increase CIL Strategic allocation and decrease CIL Local allocation</p>	<p>Task and Finish Group feedback included:</p> <ul style="list-style-type: none"> • Already a lack of understanding of terms like ‘local’ and ‘strategic’ – changes would be confusing

	<ul style="list-style-type: none"> • CIL Local is still seen as belonging to the Parishes, rather than to Shropshire Council. • Amendment should be to a 50 / 50 split. • No clear agreement on Option 3.
Option 4 – single pot	<p>Task and Finish Group feedback included:</p> <ul style="list-style-type: none"> • Would be interpreted as Shropshire Council taking away ‘local’ money from the parishes. • Could be a north / central / south split rather than a single pot. • Majority agreed Option 4 was not preferred.
Option 5 – single pot + Neighbourhood Fund increase	<p>Task and Finish Group feedback included:</p> <ul style="list-style-type: none"> • No clear agreement on Option 5, although here was support for an increase to Neighbourhood Fund allocations.

There was no consensus from the task and finish group as to which option might be preferred. Members felt that a single pot of CIL funding would weaken the link between housing development and CIL funds being available to spend to support infrastructure in that area. The group felt it was therefore crucial that the local element of CIL was kept in place. The group discussed whether the proportion of funding allocated to local and strategic projects was appropriate, with officers presenting the case to the group that the relatively low proportion allocated to strategic funding could hamper the local authority’s ability to put into the place the investment in infrastructure required to support housing growth. Although members had some sympathy with this argument, they felt that the problem lay not with the proportions of CIL funding allocated to local and strategic projects, but a failure to secure agreement with town and parish councils to pool resources to fund strategic projects. Because the group wanted to instead focus on how the local authority decided how to spend CIL income, it agreed to recommend that CIL continue to be spent in the agreed proportions of administration, Neighbourhood Fund, CIL Local and CIL Neighbourhood.

The role of elected members

Throughout the course of the group’s meetings, members stressed the importance of securing local approval for housing development, and that key to this was demonstrating that locally generated CIL funds were seen to be spent on local priorities. The task and finish group therefore wanted to explore how elected members

could be included in some form as members of the internal infrastructure group in order to oversee the current arrangements for allocating CIL funds.

The group heard that there were numerous barriers to involving elected members in the decision-making process for allocating CIL funds. Because Shropshire Council is a Cabinet- and scrutiny-based council, not a committee-based council, this means that there cannot be a new stand-alone committee of councillors deciding CIL matters as these matters are, constitutionally, for Cabinet or officers to decide. (The exception to this is for matters specifically reserved to full Council, such as setting the budget, or appointing a Chief Executive, or for those matters that are specifically identified as not executive functions such as planning, and other regulatory matters such as licensing.)

The group therefore explored how it might alter constitutional arrangements, While it would be possible to establish a committee-based route to Cabinet, or to a newly-established Committee of Cabinet, such arrangements would then be subject to all of the rules that govern local government cabinet decision making. This would involve full officer reports with recommendations, meetings held in public, publication of agendas and minutes. Given the reduced staff capacity at Shropshire Council, the administration burden of such an arrangement would be significant and, given current resources, effectively undeliverable.

The group heard that at present, working within the current constitutional arrangements, the authority regarding CIL matters is delegated to the Director of Place, and onward delegations have been made to allow decisions to be taken based on the recommendations of the council's Internal Infrastructure Group.

Members were therefore interested to hear about the newly established members' informal advisory group. This group is an informal meeting of local authority officers, Cabinet members and other local members as deemed relevant. The group also noted that there is now a Cabinet Member position with explicit responsibility for communities and place planning, and this cabinet member could call meetings of the Informal Advisory Group as they deem appropriate. This group can then consult with the officers' Internal Infrastructure Group regarding CIL issues.

This approach, using a member's informal advisory group to test and challenge officer decisions around CIL spend, has already been trialled with the current round of CIL expressions of interest, and involved the cabinet member, plus a further two elected members. The approach has proved useful, with comment from members fed back to the Internal Infrastructure Group for their consideration.

If Cabinet is in agreement with this approach, the informal advisory group can continue to review the decisions made by the Internal Infrastructure Group regarding expressions of interest, and can provide comment and challenge to officers for their consideration when allocating CIL funds.

The group recognises that, however, if the Internal Infrastructure Group and the Informal Advisory Group are not in agreement regarding CIL decisions, the final decision would rest with the officer who has delegated authority over these matters.

Unlocking CIL Local

Members of the group expressed some concern about the perceived difficulty in applying for CIL Local funding, as well as the relatively low levels of funding that had already been allocated.

Members explored the application process compared to that for Neighbourhood Fund funding. At present, Neighbourhood Fund monies are passed directly to the relevant town and parish councils in April each year, alongside their precept payment. When the Neighbourhood Funds are passed over to the town and parish councils, they must submit a notification of requirements form to Shropshire Council, confirming that they will abide by the relevant government regulations regarding CIL spend. Shropshire Council then only requires the submission of a short annual monitoring form from recipient Town and Parish Councils in September each year, detailing how Neighbourhood Fund monies have been spent.

Members suggested that a way to unlock CIL local funding may be increase funding into the Neighbourhood Fund. Officers advised that increasing the amount of Neighbourhood Fund that is passed directly to town and parish councils would be unworkable for both Shropshire Council and town and parish councils within the parameters of the current UK Government regulations which apply to CIL spend. It is recognised that if CIL spending arrangements are altered to provide an additional Neighbourhood Fund allocation paid directly to town and parish councils, this would have to be administered in a similar manner to the current CIL Local pot in order to ensure compliance with Government regulations. Given that there is already significant confusion around CIL, adding additional layers of administration would only cause further confusion and frustration, as well as significantly increasing the administration burden placed on officers.

Members therefore suggested that if CIL funding were to remain allocated as at present, then Shropshire Council should do more to spend CIL funds that it had accrued. It was noted that in 2018/2019, there remained close to £14 million of unallocated CIL Local funds. The groups discussed how best to expedite using these funds, and agreed that they would ask officers to identify a list of priority infrastructure projects by September 2019. The group would then seek to review progress in determining suitability of these priority projects through its proposed membership of the future meetings of the current informal officer and member CIL discussion group.

Conclusions and recommendations

Following its considerations, the Community Infrastructure Levy task and finish group therefore recommends that Shropshire Council should:

- keep the proportion of CIL funding allocated to the Neighbourhood Fund to 15% of the total, or 25% where there is a Neighbourhood Plan in place
- include the existing members of CIL task and finish group in future meetings of the current informal officer and member CIL discussion groups and
- as the charging authority, identify priority infrastructure projects as set out in the place plans by September 2019 and seek to commission delivery in the most efficient way.