

Report of the Strategic Director Place to the meeting of the Governance and Audit Committee on 28 February 2017

AA

Subject: GOVERNANCE ARRANGEMENTS FOR THE BRADFORD DISTRICT COMMUNITY INFRASTRUCTURE LEVY (CIL) CHARGING SCHEDULE

Summary statement:

The purpose of this report is to inform Members of the Governance and Audit Committee of the proposed CIL governance arrangements to be put in place following the commencement of the Bradford District CIL as required by the CIL Regulations on 1 July 2017, subject to the formal approval of the CIL Charging Schedule by a resolution of Executive on 7 March 2017 and the Full Council on 21 March 2017.

Steve Hartley
Strategic Director of Place

Portfolio: Regeneration, Planning & Transport

Report Contact: Bhupinder Dev
Team Leader – Infrastructure & Local Plan
Phone: (01274) 432012
E-mail:
Bhupinder.dev@bradford.gov.uk

Overview & Scrutiny Area:
Regeneration and Economy



1. SUMMARY

- 1.1 The purpose of this report is for Members of the Governance and Audit Committee to consider the proposed CIL Governance arrangements to be put in place following the commencement of the Bradford District CIL on 1 July 2017, as required by the CIL Regulations, subject to the formal approval of the CIL Charging Schedule by a resolution to Executive on 7 March 2017 and Full Council on 21 March 2017.
- 1.2 In particular Members of the Governance and Audit Committee are advised to note the following:
- The Council will retain 5% of the total CIL receipts to cover administration and implementation costs.
 - In line with CIL Regulations 15% of CIL income will be passed directly to those parish and town councils where development has taken place (the neighbourhood proportion), subject to the cap set in national CIL regulations, or 25% in areas with an adopted neighbourhood plan.
 - The neighbourhood proportion is proposed to be transferred annually, by the 28th April each year
 - In areas where there is no parish or town council, communities will still benefit from the neighbourhood proportion, however the Council will retain the levy receipts. It is proposed that the existing approach used for Planning Obligations (Section 106) is used to direct spending of the neighbourhood proportion in areas without a Parish or Town Council in consultation with ward councillors
 - That priorities for strategic CIL spend are to be decided on an annual basis as part of the Council's budget setting process, in line with the Regulation 123 List, and taking into account the impact of specific and cumulative infrastructure needs arising from new development.
 - Officers will continue to work closely with parish and town councils and other community groups and infrastructure providers, including through the Local Plan Site Allocations Plan and Neighbourhood Planning, with the aim of shared infrastructure planning and maximising use of CIL resources.
 - To ensure that the levy is open and transparent, the council will produce publish a CIL Annual Monitoring Report which sets out CIL receipts, balances and spend, for the previous financial year.

2. BACKGROUND

- 2.1 Section 206 of the Planning Act 2008 confers the non-mandatory power on Local Authorities to introduce a new charge on different types of new development in their area, known as 'Community Infrastructure Levy' (CIL). The proceeds of this charge should be spent on infrastructure needed to support growth in the District, a proportion of which must be passed to local communities where development has taken place.



- 2.2 The CIL is intended as a means of contributing to the funding of infrastructure required to support growth in the District and deliver the policies and proposals in the Local Plan, including the Core Strategy and other Development Plan Documents. It replaces part of the system of Planning Obligations (Section 106 Agreements), the scope of which has been restricted since 6 April 2015 with regard to pooling of developer contributions. The CIL will help to meet the District's priorities by generating funding to provide infrastructure while being set at appropriate rates that will continue to attract investment, create jobs, and deliver new housing.
- 2.3 The Council has previously agreed to progress setting a CIL charge on new development to help fund infrastructure needed to support growth in the District. There have been various stages of formal consultation on the Bradford District CIL as required by the CIL Regulations, followed by an independent public examination in October 2016. The Council has received the CIL Examination Report in December 2016. The Examination Report recommends that the Bradford District CIL charging Schedule may be approved subject to two modifications necessary to meet statutory requirements.
- 2.4 A report will be taken to the Council's Executive on 7 March 2017 seeking the formal approval of the CIL Charging Schedule by a resolution of the Full Council on 21 March 2017.
- 2.5 Leading up to the anticipated approval and commencement of the CIL, work will be progressed in relation to the roll out of the levy. This work relates to two broad areas, namely, the introduction of appropriate procedural measures for the day-to-day operation of the levy, and the establishment of governance arrangements for the subsequent spend of CIL monies collected.
- 2.6 This report will cover the proposed governance arrangements for CIL collection, spending and reporting. The Council will continue to work in partnership with parish councils and local communities to explore the opportunities for maximising the available resources to best meet needs, including through neighbourhood planning.
- 2.7 The committee are advised to consider the following steps which will be undertaken in order to implement CIL on 1 July 2017, subject to the formal approval of the CIL Charging Schedule by a resolution of Executive on 7 March 2017 and the Full Council on 21 March 2017:
- A. The appropriate internal procedures will be put in place to set up the necessary systems for collection, distribution, and monitoring of the CIL income as of 1 July 2017.
 - B. The CIL Charging Schedule will come into effect on the commencement date set out in the Charging Schedule subject to approval by full council on 21



March 2017 and therefore the necessary procedures will be in place from the commencement date of 1 July 2017 and on-going.

C. The Assistant Director – Planning, Transportation and Highways is the officer responsible for CIL implementation.

3. KEY ISSUES

CIL General Principles

- 3.1 The CIL is a tariff system that local authorities can choose to charge on new development in their area by setting a Charging Schedule. The Charging Schedule will sit alongside the Bradford District Local Plan, but will not form part of the statutory development plan.
- 3.2 Once adopted, CIL is fixed, non-negotiable and enforceable. CIL will be charged on new development. It is charged per square metre on net additional gross internal floor-space of development. CIL is not charged on certain types development including affordable housing and buildings used for charitable purposes.
- 3.3 The amount payable will be set at the time planning permission is granted and payment will be due at the commencement of development. Larger amounts will be payable in instalments over fixed time periods, in-line with any instalment policy.
- 3.4 The process for setting and implementing the Charging Schedule is set out in the CIL Regulations 2010, together with subsequent amended CIL Regulations in 2011, 2012, 2013, 2014 and 2015. Under the CIL Regulations restrictions have come into force for existing planning obligations (Section 106 agreements) from April 2015. This will significantly restrict the current use and pooling of planning obligations.

CIL Governance

- 3.5 The introduction of CIL necessitates the development of governance arrangements for spending and administering the monies collected. There are a number of key reasons for this. Under CIL, the City of Bradford Metropolitan District Council will act as the designated 'Charging Authority' and 'Collecting Authority'. This confers new statutory responsibilities on the Council. In accordance with the CIL Regulations 2010 (as amended) the Council has an obligation to:
 - Prepare and publish the CIL Charging Schedule
 - Calculate CIL liability and collect CIL monies owed
 - Apply the levy revenue it receives to funding the provision, improvement, replacement, operation or maintenance of infrastructure to support development of its area
 - Pass a percentage of CIL receipts (the neighbourhood portion) to communities where a development has taken place, and:
 - Report on the amount of CIL revenue collected, spent and retained each year.
- 3.6 This report sets out the proposed governance arrangements for the Bradford



District CIL.

CIL Collection

- 3.7 The Council as a CIL charging authority and collecting authority sets the CIL charging schedule, calculates individual levy payments and is responsible for ensuring that payment is made. Part 8 of the CIL Regulations, as amended, sets the legal framework for calculating and collecting the levy. The basic process for collecting and administering CIL is set out below:

Stage 1: When an application comes in determine if the development is eligible to pay CIL

Stage 2: When a CIL eligible application is approved, inform the relevant person(s) who will pay CIL how much is liable (Liability Notice)

Stage 3: When the development commences send the bill (Demand Notice)

- 3.8 As CIL is linked to new development which requires planning permission or general consent approval, any CIL liability is calculated as part of the planning application process. CIL will operate through the exchange of formal notices and for most developments there are just four of these:
- The owner/developer or another interested party assume liability for the levy by submitting an assumption of liability form.
 - A Liability Notice is issued by the Council along with the planning permission Decision Notice. It says how much CIL is payable and includes details of the payment procedure.
 - Before the development starts, the owner/developer provides the Council with a Commencement Notice giving a date to start works.
 - The Council then issues the Demand Notice (the bill). The CIL charge is recorded as a Local Land Charge. The Council issues a receipt for each payment received.

Administration

- 3.9 As the accountable department, the Department of Place – Planning Service will use records that are compliant with the Financial Regulations as set out in Part 3F of the Councils Constitution or those as agreed under Regulation 2 of the Financial Regulations.
- 3.10 Administering the new CIL system will primarily involve the Department of Place – Planning Service and the Department of Corporate Services Accounts Receivable Team. The Planning Service will be responsible for calculating any CIL liability, issuing the CIL Liability Notice and issuing the Demand Notice. The Planning service will also be responsible for processing claims for relief. Department of Corporate Services Accounts Receivable Team and Legal Department may also be



involved if action is required over non-payment. The general division of responsibilities is described below:

1. Planning Service processes the planning application (or notice of chargeable development) and additional CIL Information Form submitted with the application to allow the council to calculate the CIL charge
 2. Planning Service determines any CIL liability and issues the CIL Liability Notice along with the planning permission decision notice.
 3. Planning Service receives the Commencement Notice or determines the 'deemed commencement' date. The Planning Obligations Monitoring Officer then issues the Demand Notice (i.e. the invoice) and the CIL charge is recorded as a Local Land Charge (Regulation 66).
 4. Department of Corporate Services Accounts Receivable Team pursue non-payment and Legal may need to become involved if enforcement is required. Planning will be kept fully informed at all stages should this happen and will have a key role in any debt recovery and/or enforcement action which is pursued.
 5. Department of Corporate Services Accounts Receivable Team will need to maintain appropriate records for reporting purposes and Planning will rely on their records to publish an annual report on CIL revenues and expenditure.
- 3.11 The CIL Regulations allow the Council to retain up to 5% of the CIL receipts in the first three years to fund set up and on-going costs, and 5% annually for on-going costs thereafter. It is therefore proposed that 5% of the CIL receipts be retained by the Planning Service for administration costs, subject to annual monitoring and reporting. Any unspent administration monies will be returned to the CIL infrastructure pots.

The Neighbourhood Fund

- 3.12 In line with CIL Regulations the Council must allocate at least 15% of levy receipts to spend on priorities that should be agreed with the local community in areas where development is taking place. This increases to a minimum of 25% where an area has an adopted neighbourhood plan. This is set out in figure 1 below.

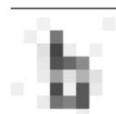
Figure 1: Relationship between the levy and neighbourhoods

<u>Parish/Town Council area without Neighbourhood Plan</u>	<u>Parish Council area with Neighbourhood Plan</u>
15% of CIL income in that area capped at £100 per existing dwelling per year passed directly to parish/town council	25% of CIL income in that area passed directly to parish/town council



<u>Non-parished area without Neighbourhood Plan</u>	<u>Non-parished area with Neighbourhood Plan</u>
15% of CIL income in that area capped at £100 per existing dwelling per year spent by CBMDC in consultation with that community	25% of CIL income in that area spent by CBMDC in consultation with that community

- 3.13 In line with CIL Regulations it is proposed that 15% of CIL receipts will be passed directly to those parish and town councils where the development has taken place. Up to £100 per existing council tax dwelling can be passed to the parish or town council this way each year to be spent on local priorities. Communities with an adopted neighbourhood plan will receive 25% of the levy revenues arising from the development that takes place in their area. This amount is not subject to an annual limit.
- 3.14 Communities without a parish or town council will still benefit from the 15% neighbourhood portion (or 25% portion, if a neighbourhood plan or neighbourhood development order has been made). If there is no parish or town council the Council will retain the CIL receipts but should engage with communities where development has taken place and agree how best to spend the neighbourhood fund.
- 3.15 It should be noted that even at this minimum level some communities will receive substantial CIL funds from development in their area, especially those in the highest CIL residential charging zone, and/or where there is an adopted Neighbourhood Plan. This neighbourhood proportion 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” (CIL Regulations 59C and 59F).
- 3.16 The government does not prescribe a specific process for agreeing how the neighbourhood portion should be spent. Given that the Council has already put in place a structure to manage activity for spending Planning Obligation monies (Section 106) at a local ward level, it is considered that this is the most appropriate mechanism for managing the spend of the CIL neighbourhood fund in areas without town or parish councils. The Council will need to put in place further guidance to ensure that there is transparency and consistency on these issues. Where neighbourhood plans are in preparation then the designated neighbourhood forum will provide one route for local consultation and it can be expected that the neighbourhood plan will identify local spending priorities. It should be noted that some wards may initially receive little CIL funding in this way given that in some wards there will be limited development, and/or have low/nil CIL rates.
- 3.17 It is therefore proposed to use the council’s existing ward structures to direct spending of the neighbourhood fund in areas without a parish or town council in line with the current approach used for Planning Obligations.



- 3.18 In addition it is proposed that further guidance/protocols should be established to ensure a consistent approach for spending and consultation purposes.

Transferring the Neighbourhood Fund

- 3.19 The Council is free to decide the timing of neighbourhood fund payments themselves. However, in the absence of such an agreement, CIL Regulation 59D specifies that the neighbourhood portion of levy receipts must be paid every 6 months, at the end of October and the end of April.
- 3.20 In town and parish council areas the neighbourhood portion must be passed directly to those local councils, as required by national CIL regulations. In non-parished areas the decisions about spending are proposed to be delegated to the relevant Ward Councillors (as the lowest democratic representative), and the CIL neighbourhood proportion will be ring-fenced by the Council for that purpose.
- 3.21 From adoption there will be a time lag before the Council holds any meaningful CIL receipts as a result. It is therefore initially proposed that the neighbourhood proportion of CIL received from the previous financial year is to be transferred once a year by the 28th April of the following financial year.
- 3.22 If a parish or town council does not spend its levy share within 5 years of receipt, or does not spend it on initiatives that support the development of the area, the Council may require it to repay some or all of those funds to the charging authority.

The Strategic CIL Fund

- 3.23 The annual CIL receipt (minus the neighbourhood portion and administration fee) will be pooled into a centralised pot the 'Strategic CIL Fund' for the purpose of delivering strategic infrastructure/improvements on a district-wide basis. The Council must use CIL monies in the Strategic CIL Fund to fund infrastructure to support development across the District. The Council has discretion on how this money is used, subject to it being directed to fund infrastructure of a type identified in the Regulation 123 list.
- 3.24 The CIL regulations that govern how CIL is spent require that it be used to fund the provision, improvement, replacement, operation or maintenance of infrastructure to support the development of the charging authority's area. The definition of infrastructure is broad and includes:
- roads and other transport infrastructure
 - flood defences
 - schools and other educational facilities
 - medical facilities
 - sporting and recreational facilities
 - open spaces



- 3.25 The Regulation 123 List sets out the types of strategic infrastructure within the district that could be funded through CIL. The main purpose of the list is to provide transparency around what the council intend to fund through CIL and those known areas where Section 106 Developer Contributions will continue to be sought. The intention is to ensure that there is no duplication in the use of both CIL and S106 for the same project. Importantly, the list should not be viewed as a spending plan for CIL.
- 3.26 There are many options for how strategic CIL spending might be organised. It is considered that maximum flexibility will be achieved if the strategic CIL funds are retained as a central CIL pot. This would enable CIL funds to be spent on addressing needs arising from growth anywhere in the District, subject to compliance with the Regulation 123 list, and having regard to any identified infrastructure requirements or pressures arising from specific developments. The CIL could be used to part fund schemes where funding is available from other sources, including outstanding S106 funds, New Homes Bonus and the CIL neighbourhood portion. The strategic CIL fund spend could then be agreed as a rolling annual programme as part of the Council's budget setting process. This would enable the CIL spend to reflect corporate priorities and the actual funds available at the time. This flexibility would also enable the balance to vary year on year to respond to changing circumstances and the timing and location of developments and CIL income.
- 3.27 A process for determining the spending of the strategic CIL fund during the budget setting therefore needs to be put in place. It is proposed that priorities for strategic CIL spend are decided on an annual basis as part of the Council's budget setting process, in line with the Regulation 123 List, and taking into account the impact of specific and cumulative infrastructure needs arising from new development.
- 3.28 It is proposed that the Director of Place submits a report to the Council's Executive in November each year making recommendations for Members to consider with a range of options in relation to the allocation of the CIL money derived from the strategic CIL fund. This will allow public scrutiny of CIL spending proposals. The Assistant Director (Planning, Transportation and Highways) will be responsible for producing this report, which will need to be informed by the Council's Local Plan infrastructure evidence (Local Infrastructure Plan) and through consultation with other sections of the Council (education, highways, sport and culture) and external infrastructure providers.
- 3.29 Following the Executive's decision the Authority will then allocate the monies from the strategic CIL fund to the relevant Authority departments with a requirement that this money is ring fenced to fund infrastructure or other appropriate projects in accordance with the CIL Regulations. There will be contracts in place and monitoring mechanisms so as to ensure that money is spent on capital projects. The money will be held in an appropriate account by the Department of Corporate Services Accounts Receivable Team until a suitable capital spend project(s) is identified.



Utilising the strategic CIL fund monies to fund capital infrastructure projects

- 3.30 It is proposed that the strategic CIL fund will be used to fund capital infrastructure projects in the same way as pooled S106 contributions would have been used if they had been secured. The Council have an established process concerning the management of S106 money carried out by the Planning Service and monies are then transferred to appropriate sections of the Council as and when qualifying infrastructure projections (for example school extensions or park or sports field refurbishments) are identified. The spending of this money on particular capital infrastructure projects will then need to be approved by the relevant Head of Service under delegated powers.
- 3.31 It should be noted that CIL income will be limited in the first year or two of operation as much development commenced will be based on applications that pre-date the CIL regime. Therefore, Members may wish to consider 'banking' the first year's or two's receipts so that decisions on spend only commence once a reasonable amount of funding is available.

Monitoring and Reporting CIL

- 3.32 To ensure that the levy is open and transparent, charging authorities must prepare short reports on the levy. The Council must publish a report on its website by 31 December each year, for the previous financial year. The CIL Regulation set out what charging authorities must include in the CIL monitoring report. This includes the following:
- the total CIL receipts for the reported year
 - the total CIL expenditure for the reported year;
 - summary details of CIL expenditure during the reported year including—
the items of infrastructure to which CIL (including land payments) has been applied and the amount of CIL expenditure on each item;
 - the total amount of CIL receipts retained at the end of the reported year.
- 3.33 The report is required to be published no later than 31 December in the year following the financial year being reported on. It is proposed that this report will be prepared by the Planning Service, using records kept by the Department of Corporate Services Accounts Receivable Team.
- 3.34 Parish and town councils must make arrangements for the proper administration of their financial affairs (section 151 of the Local Government Act 1972). They must have systems in place to ensure effective financial control (Accounts and Audit (England) Regulations 2011). These requirements also apply when dealing with neighbourhood funding payments under CIL.
- 3.35 Parish and town councils must also report on their levy income and spending. For each year when they have received neighbourhood funds through the levy, parish, town and community councils must publish the information specified in Regulation 62A. These reports are to be submitted to Bradford Council annually no later than the 31st December and must include the following:



- Total CIL Receipts for the reported year
- Total CIL Expenditure for the reported year;
- Summary of what the CIL was spent on during the reported year
- Total amount of receipts retained at the end of the reported year and previous years

3.36 They should publish this information on their website or on the Council's website. If they haven't received any money they do not have to publish a report, but may want to publish some information to this effect in the interests of transparency.

3.37 There is no prescribed format to these reports and parish and town councils may choose to combine reporting on the levy with other reports they already produce. The levy neighbourhood funding income and spending will also be included in their overall published accounts but are not required to be identified separately in those accounts.

4. OTHER CONSIDERATIONS

4.1 If following approval and implementation of the CIL Charging Schedule the Council wishes to stop charging the levy it may do so at any time by making a formal resolution to do so.

5. OPTIONS

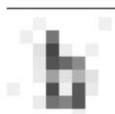
5.1 **Not applicable**

6. FINANCIAL AND RESOURCE APPRAISAL

6.1 There will be a financial implication with regard to implementing, administering and collecting of CIL. The Council, as the charging authority will be able to use funds from the levy to recover the costs of administering the levy, with the regulations permitting up to 5 per cent of their total CIL receipts to be used on administrative expenses to ensure that the overwhelming majority of revenue from the levy is directed towards infrastructure provision.

Enforcement provisions

6.2 If the person or parties who have assumed liability for CIL (or the relevant landowner in default) fails to pay CIL, the council as a collecting authority has a range of sanctions available to it to recover CIL debts and to remedy breaches of the CIL regulations. These include imposing surcharges or interest penalties and extend as far as the service of a CIL stop notice (which can require a development to stop until CIL is paid or the stop notice is withdrawn), or applying for a court order to recover CIL debts. Failure to comply with a CIL stop notice or a court order seeking recovery of a CIL debt is a criminal offence.



7. RISK MANAGEMENT

- 7.1 The collection, spend and reporting of CIL is governed by Legislation set out in the Planning Act 2008 (as amended by the localism act 2011) and the CIL Regulations 2010 (as amended). If the Council does not put in place appropriate governance arrangements consistent with the CIL regulations then the council the Council runs the risk of challenges over the use of CIL monies being upheld.

8. LEGAL APPRAISAL

- 7.1 The Bradford District CIL Charging Schedule has been prepared in line with the appropriate, legislation (UK and EU), regulations and guidance. The process for setting and implementing the Charging Schedule is set out in the CIL Regulations 2010, together with subsequent amended CIL Regulations in 2011, 2012, 2013, 2014 and 2015. Under the CIL Regulations restrictions have come into force for existing planning obligations (Section 106 agreements) from April 2015.

9. RECOMMENDATIONS

- 11.1 **That committee considers that the proposed Bradford District CIL governance arrangements as set out in this report as the most appropriate basis by which the Council will manage the collection, spend and monitoring of CIL receipts.**

12. APPENDICES

Appendix 1 – Bradford District Community Infrastructure Levy (CIL) Charging Schedule (July 2017)

13. BACKGROUND DOCUMENTS

Report of the Executive 3 November 2015 entitled “Bradford District Community Infrastructure Levy (CIL) – Draft Charging Schedule”.

