Portsmouth
CITY COUNCIL

Decision maker: Cabinet 25 March 2019

Subject: Community Infrastructure Levy (CIL) - Review of Neighbourhood Portion (including City Wide CIL)

Report by: Director of Finance & IT

Wards affected: all

Key decision (over £250k): no

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1. Purpose of report

1.1 To consider whether the existing process for allocation of the Community Infrastructure Levy (CIL) neighbourhood portion, where it relates to developments of city wide importance currently defined in value terms by schemes that generate at least £1m in CIL, should remain intact or be amended

2. Recommendations

2.1 That the Cabinet considers which of the following options is in the best interests of residents, considering the balance between retaining a proportion of CIL funding for significant developments within the Ward where it is generated versus the benefits of allocating that funding for City wide use:

a) Option 1 - The current system remains intact whereby developments of city wide importance which generate a CIL receipt above a threshold of £1m is used, in full, for neighbourhood infrastructure that benefits areas including and beyond the Ward in where it was generated

b) Option 2 -

i) Where the CIL generated by a development is at least £1m, the first £150,000 of the neighbourhood portion is allocated to the Ward in which the development sits (as is the case for developments that generate CIL of less than £1m) and the remainder of the neighbourhood portion is allocated for neighbourhood infrastructure that benefits areas including and beyond the Ward in where it was generated (as set out in section 4 and 5 of this report)

ii) That this procedure will take effect from 01 April 2020

3. Background

3.1 15% of CIL receipts (capped at £100 (index linked) per existing dwelling in the ward) are allocated to the Ward in which development has taken place to be spent on local priorities for neighbourhood infrastructure, this is known as the CIL neighbourhood portion. If an adopted neighbourhood plan is in place, this amount is 25% of CIL receipts and is not capped at £100 (index linked) per existing dwelling in the ward.

3.2 On 01 July 2013, following the introduction of regulations governing the CIL neighbourhood portion, a report was brought to Cabinet to agree the way these funds would be administered in the city.

3.3 The Cabinet agreed that developments of city wide importance will, by virtue of their size, generate substantial amounts of CIL. As such, where CIL receipts from an individual development are above a threshold of £1m (known as "City Wide CIL"), the neighbourhood element should be available for neighbourhood infrastructure that benefits areas including and beyond the Ward in which it was generated, and that the allocation of that funding be determined by the Cabinet for the benefit of the wider area.

3.4 On 03 December 2015 a report was brought to Cabinet to agree a revised process for spend of the Community Infrastructure Levy (CIL) neighbourhood portion.

3.5 The Cabinet agreed that the process referred to in 3.2 above will remain unchanged i.e. that CIL receipts above £1m from an individual development area would continue to be used for neighbourhood infrastructure that benefits areas including and beyond the Ward in which it was generated. Spending decisions for this were to be determined by the Cabinet.

3.6 The minutes of the 03 December 2015 Cabinet meeting note that The Leader wished to add an additional recommendation (c):

c) Cabinet noted that DCLG regulations require that neighbourhood contributions from the biggest schemes are not pooled on a city wide basis in areas with adopted Neighbourhood Plans and therefore Cabinet will in general not look to allocate pooled Neighbourhood Proportion funds to schemes in such areas.

4. Option 2 - Alternative Revised Process

4.1 For the avoidance of doubt, the alternative revisions referred to in the following paragraphs relate to the allocation to the Neighbourhood CIL receipts relating to single developments above a threshold of £1m. All other processes to remain as referred to in the Cabinet reports dated 01 July 2013 and 03 December 2015 (as amended).

4.2 There is an argument that wards where significant developments take place are denied, in their entirety, any CIL contribution that would otherwise be available to the Ward if the development was less than £1m and that a more equitable system of allocation should at least provide parity with a scheme generating CIL receipts up to £1m with any balance above that being made available for the wider area. This would provide a more consistent approach to CIL allocations and avoid any "cliff edges"

4.3 In response, an alternative system could operate where the CIL generated by a development is at least £1m, the first £150,000 of the neighbourhood portion is allocated to the Ward in which the development sits and the remainder of the neighbourhood portion is allocated for neighbourhood infrastructure that benefits areas including and beyond the Ward in where it was generated

4.4 Should this option be adopted, it is proposed that this procedure will take effect from

01 April 2020 in order that the current approved Capital Programme relying on City Wide CIL remains intact.

5. Exceptions and limitations:

5.1 Areas that have an adopted neighbourhood plan in place are eligible for 25% of the CIL collected in that area (uncapped). Developments generating at least £1m in CIL in these areas will not be subject to the procedure set out at 4.2 above and will benefit from the full 25% neighbourhood portion. Spending decisions in those areas should be made in support of the neighbourhood plan for that area. There are currently no neighbourhood plans adopted in the city.

5.2 As set out in the CIL regulations, the amount of CIL neighbourhood portion a Ward (which does not have an adopted neighbourhood plan in place) can receive in any financial year is capped at £100 (index linked) per existing dwelling in the ward.

6. Reasons for recommendations

6.1 It is good practice to periodically review the way in which spending decisions are taken considering the balance and equity between the needs of the local area and the needs of the wider city.

7. Equality impact assessment (EIA)

7.1 The report deals purely with financial process matters and an EIA is therefore not needed.

8. Legal Implications

8.1 Decisions on the expenditure of CIL are executive functions. Where neighbourhood CIL is concerned, the Cabinet report of 03 December 2015 sought a general delegation to the Assistant Director of City Development (as they are now known) to spend neighbourhood CIL amounts of less than £1m in consultation with the members of the Ward in which the development took place (paras 4.1-4.5) and the Section 151 Officer. However, that delegation was subject to a limitation that reserved the spending allocation of the neighbourhood portion of CIL arising from total CIL receipts of £1m or more (City Wide CIL) to Cabinet (para 5.1).

8.2 The Council is not a parished area, meaning that Regulation 59F of the Community Infrastructure Levy Regulations 2010 (as amended) applies. This states that the neighbourhood portion of CIL, regardless of:

- the amount in question; or,
- which decision-maker allocates a spend; or,
- the option chosen by Cabinet after considering this report,

must be used:

"to support the development of the relevant area by funding:

(a) the provision, improvement, replacement, operation or maintenance of infrastructure; or
(b) anything else that is concerned with addressing the demands that development places on an area.
… *"relevant area"* means that part of the charging authority's area that is not with [sic] the area of a local council."

8.3 It is assumed that "with" in the definition of "relevant area" is a typographical error in the regulation that should read as "within", because "with" does not make sense. The consequence of the wide definition of the "relevant area" is that the spend of a neighbourhood portion of CIL is not limited in law to the immediate area of the development and can be spent in any ward. This is consistent with the approach that CIL can be spent across boundaries at even the district level (Regulation 59(3)).

In summary, either option that the Cabinet might adopt would be lawful as they both provide for the Council to act within the wide parameters set by the Community Infrastructure Levy Regulations 2010 (as amended).

9. Director of Finance's comments

9.1 The CIL (Amendment) regulations came into force on 25 April 2013.

9.2 The Community Infrastructure Levy (CIL) - Neighbourhood Proportion report approved by Cabinet on 01 July 2013 set out the principles for the spending of the Neighbourhood proportion of CIL. Paragraph 5 of the report set out exceptions and limitations to ward level spend and para 5.2 set out how disproportionate amounts of ward CIL would be managed as follows:

"Some developments will be of city wide importance and will, by virtue of their size, generate substantial amounts of CIL. Examples of this could be developments at the Northern Quarter or at the Hard. These could generate disproportionate amounts of neighbourhood CIL in those Wards. It is therefore suggested that CIL receipts from individual development above a certain threshold should not be linked to wards, but instead go into another pot, spending for which would be determined by the Cabinet, for the benefit of the whole city. The suggested threshold is £1m, development contributing less than this being unlikely to be of city wide significance."

9.3 Consequently, and in accordance with the Council's Capital Strategy which aims to avoid the ring-fencing of capital resources under a "Single Capital Pot" approach, CIL funding received for schemes over £1m has been pooled with all other capital resources but nevertheless spent on Neighbourhood Infrastructure benefiting the area including and beyond the Ward in which it was generated. The rationale for the "Single Capital Pot" approach is to enable a greater degree of choice for Council members in allocating capital resources so that capital investment decisions are made on an unencumbered prioritised basis with all schemes competing for the funding available.

9.4 To date, four developments have been approved which will result in CIL payments of over £1m per development (with the first approval being in

2014/15).

9.5 These four developments are:

- Chaucer House, 12-40 Isambard Brunel Road
- Number One, 8 Surrey Street
- Zurich House, Stanhope Road
- Land at Dugald Drummond Street/Greetham Street

9.6 Under the current policy these four developments will give rise to City Wide CIL of £1.03m.

9.7 The Capital Programme 2018/19 to 2023/24 Report approved by Cabinet and City Council in February 2019 includes two capital schemes designed to improve the public realm around Station Square, Isambard Brunel Road and at other sites within the City totaling £1.34m. The City Wide CIL of £1.03m (described above) has been used in full to fund these schemes with the balance being funded from available Corporate Capital Resources. Both schemes are scheduled to commence in 2019/20.

9.8 Had the alternative Option 2 existed from April 2013 (where the first £150,000 of the Neighbourhood portion is allocated to the Ward in which the development sits), the amount of City Wide CIL available to fund Neighbourhood Infrastructure across a wider area would have been £600,000 less.

9.9 As described in the Capital Programme 2018/19 to 2023/24 report approved by Council on 12 February 2019, there is a significant "Capital Gap" between the cost of the Council's core obligations and aspirations versus the likely funding available, currently City Wide CIL forms part of that funding.

9.10 Should the alternative Option 2 be adopted by Cabinet, then from April 2020 a small but meaningful proportion of capital funding (from City Wide CIL) will no longer be available to the Cabinet and Council to allocate across the wider area. That funding, however, will be directly available to the Ward in which it was generated, similar to the arrangements for wards with developments of less than £1m, and therefore available directly to meet any additional neighbourhood infrastructure requirements for that Ward.

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Signed by:

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
1 July 2013 CIL Cabinet Report	https://democracy.portsmouth.gov.uk/Data/Cabinet/20130701/Agenda/cab20130701r5.pdf
1 July 2013 Cabinet Minutes	https://democracy.portsmouth.gov.uk/documents/s1543/cab20130701m.pdf
3 December 2015 Cabinet Agenda and minutes	https://democracy.portsmouth.gov.uk/ieListDocuments.aspx?CId=126&MID=3198
Government Guidance on Spending CIL	www.gov.uk/guidance/community-infrastructure-levy

The recommendation(s) set out above were approved/ approved as amended/ deferred/

rejected by …… on ……

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Signed by: