

# Scrutiny Committee Report

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Paper for Scrutiny Committee on 9 November 2020

## Review of Community Infrastructure Levy (CIL) Spending Strategy

### Purpose of report

1. The purpose of this report is to seek comments on the amended CIL Spending Strategy (appendix A), following approval of the original spending strategy in November 2018, for income generated by CIL.
2. The key priority of the review is to enable better spending of the available funding and the suggested steps to achieve this are set out in the proposed amendments section of this report (paragraphs 12 to 15).

### Corporate Objectives

3. The proposed changes to the CIL spending strategy will help to support the new emerging corporate plan themes:
  - Homes and infrastructure that meet local needs;
  - Improved economic and community wellbeing;
  - Action on the Climate Emergency;
  - Protect and restore our natural world;
  - Investment and innovation that rebuilds our financial viability;
  - Openness and accountability.

### Background

4. To enable sustainable housing growth in South Oxfordshire, the district needs to ensure that supporting infrastructure is planned for and secured. Developers are

obliged to contribute to new infrastructure investment through the Community Infrastructure Levy (CIL) system.

5. The council started charging CIL in April 2016. Following a period of public consultation, the spending strategy was adopted in November 2018 to be piloted for a period of one year to be followed by a review at Scrutiny and Cabinet in 2020, to ensure compliance in terms of meeting the desired objectives and to review its effectiveness.
6. CIL has not replaced Section 106 (S106) planning obligations. S106 obligations will continue to be used for:
  - a) On-site infrastructure such as open space, play areas, household waste bins, street naming, public art and securing affordable housing on developments within the CIL charging zones.
  - b) Financial and non-financial obligations on district development sites, which are exempt from CIL. These are sites which require developer contributions to make these sites acceptable in planning terms. These developments are identified within the council's Local Plan.
7. The CIL Regulations do not establish governance arrangements for the council, however they are clear that we have a duty to:
  - a) Pass to any town and parish 25% of the CIL revenues raised in those towns/parishes (the neighbourhood proportion) where there is an adopted neighbourhood plan, or 15%, subject to a cap of £100 per existing council tax dwelling, where there is no neighbourhood plan;<sup>1</sup>
  - b) Transfer the CIL income to the relevant town or parish council by 28 April and 28 October in any financial year (unless an alternative schedule is agreed);
  - c) Recover administrative expenses (the admin proportion) incurred in connection with CIL of up to 5% of income generated;<sup>2</sup>
  - d) Spend the levy on infrastructure (see point 8), and
  - e) Report on CIL income generated and how it is spent.<sup>3</sup>
8. Following the allocation of the neighbourhood and admin proportions, the approved CIL spending strategy distributes the remaining amount (the district proportion) on a percentage-based system. This enables the allocation of funding to external partners and internal council departments, based on actual funds received, shown in table one below:

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<sup>1</sup> Funds paid to and not spent by town and parish councils within five years may be claimed back by the district council.

<sup>2</sup> The admin proportion can be rolled over for the first three years following the adoption of CIL. Following this and on an annual basis, any underspend is to be added to the district proportion at the end of the reporting year.

<sup>3</sup> As a requirement of CIL regulation amendments in September 2019, an annual Infrastructure Funding Statement covering both CIL and S106 income and expenditure is to be published by the charging authority by December of each year, covering the previous financial year, from 2020 onwards.

Table 1 Infrastructure type	Percentage of CIL to be allocated
<b>Oxfordshire County Council (OCC):</b>	
Education and transport infrastructure	50%
<b>Oxfordshire Clinical Commissioning Group (OCCG)</b>	
Community health care	20%
<b>South Oxfordshire District Council:</b>	
Sports and Leisure facilities (incl. improved disabled access)	20%
Green Infrastructure/Biodiversity provision	5%
Public art and cultural heritage/Public realm (including improved disabled access)	5%
TOTAL	100%

9. The district proportion must be spent in accordance with the following guidance:

*The levy can be used to fund a wide range of infrastructure, including transport, flood defences, schools, hospitals, and other health and social care facilities (for further details, see [section 216\(2\) of the Planning Act 2008](#), and [regulation 59](#), as amended by the [2012](#) and [2013 Regulations](#)). This definition allows the levy to be used to fund a very broad range of facilities such as play areas, open spaces, parks and green spaces, cultural and sports facilities, healthcare facilities, academies and free schools, district heating schemes and police stations and other community safety facilities. This flexibility gives local areas the opportunity to choose what infrastructure they need to deliver their relevant plan (the Development Plan and the London Plan in London). Charging authorities may not use the levy to fund affordable housing.*

*Local authorities must spend the levy on infrastructure needed to support the development of their area, and they will decide what infrastructure is needed.*

*The levy can be used to increase the capacity of existing infrastructure or to repair failing existing infrastructure, if that is necessary to support development <sup>4</sup>*

10. Officers have reviewed how other authorities spend their CIL funds and the key headlines are as follows:

- CIL regulations relate to all charging authorities (unitary, two tier and London boroughs) and arrangements tend to differ regarding type of authority.
- District councils usually, but not exclusively, set up member spending panels or boards to consider CIL expenditure and make recommendations to cabinet for final approval.
- Many authorities publish spending criteria to guide CIL spending priorities. They usually include reference to Infrastructure Delivery Plans (IDP), Local Plan priorities but sometimes are extended to include local and partnership benefits, other funding contributions, deliverability and local support.

<sup>4</sup> Source: <https://www.gov.uk/guidance/community-infrastructure-levy>

- d) Some authorities set up panels to assess bids (internal and external) for funding, using an agreed CIL grant allocation.

11. A report detailing CIL funding received from 1 April 2016 to 31 July 2020 and spending of these funds can be found in appendix B. The headlines of these figures are as follows:

- a) Total funds received = £21,129,440.74\*
  - i. 1 April 2016 to 31 March 2017 = £509,304.53
  - ii. 1 April 2017 to 31 March 2018 = £2,190,161.82
  - iii. 1 April 2018 to 31 March 2019 = £7,412,863.31
  - iv. 1 April 2019 to 31 March 2020 = £8,779,703.96
  - v. 1 April 2020 to 31 July 2020 = £2,237,407.12
- b) Total neighbourhood proportion = £3,839,001.29 (of which £2,621,312.33 has been passed to town / parish councils as of April 2020)
- c) Total admin proportion = £1,094,065.85 (of which £288,677.06 has been spent on staff costs as of April 2020)
- d) Total district proportion = £16,196,373.68
  - i. OCC (50% of district proportion) £8,098,186.84 of which £2,635,841.00 has been approved / spent
  - ii. OCCG (20% of district proportion) £3,239,274.74 of which £0.00 has been approved / spent
  - iii. Sports and leisure facilities (20% of district proportion) £3,239,274.74 of which £0.00 has been approved / spent
  - iv. Green infrastructure / biodiversity provision (5% of district proportion) £809,818.68 of which £0.00 has been approved / spent
  - v. Public art and cultural heritage (2.5% of district proportion) £404,909.34 of which £0.00 has been approved / spent
  - vi. Public Realm (2.5% of district proportion) £404,909.34 of which £45,301.18 has been approved / spent

\*Variance between total funds received (a) and total of neighbourhood proportion, admin proportion and district proportion (b, c and d) of £0.08 due to payment errors on CIL cases 4179 and 3974.

## Proposed Amendments

12. Following approval of the spending strategy, the financial climate has caused the council to review its approach in delivering new infrastructure. It is therefore proposed that the district council's allocation of funding can be directed towards existing council owned infrastructure, providing that it is spent in accordance with CIL regulations (i.e. it can be for improvement, replacement, operation or maintenance of existing infrastructure providing that this supports development) along with any new infrastructure projects. For projects that meet CIL spending criteria, council departments will be directed to use these funds, wherever possible, prior to using council funds.

13. The Cabinet member for Economic Development and Regeneration has discussed the proposed amendments with officers and is supportive of a wider discussion on the direction of the strategy.

14. The key proposed changes to the strategy are:

- Extending our own funding parameters, so that we can effectively respond to priorities in the Council's Infrastructure Development Plan (IDP) and our new Corporate Plan.
- Minor amendments to the allocation of CIL funding with:
  - 50% to Oxfordshire Council (to support transport and education) with the introduction of an application deadline to encourage timely use of available funding
  - 20% to support healthcare (widening this to other organisations as well as OCCG)
  - 30% to South Oxfordshire District Council – However, it is proposed to remove the percentage split within our allocation (currently set at 20% leisure, 5% green infrastructure, 2.5% public art and 2.5% public realm) so that any department can request use of our allocated CIL funding for a wider range of projects in line with our corporate plan themes and the IDP.
- Widening the geographic area where funds may be spent to provide more flexibility in funding projects across the whole of South Oxfordshire, which should enable more projects to be funded than under the current system.
- We will also allow the use of CIL funding across the district council boundary for projects in the Didcot Garden Town area, part of which is in Vale of White Horse district area.
- Widening the use of funds to enable spending to improve and maintain existing infrastructure, as well as for new infrastructure, provided it supports development.
- Remove the Regulation 123 list and current pooling restrictions, as this is no longer a requirement of the September 2019 CIL regulations, meaning that CIL and S106 funds can now be used in combination to support projects.
- Continuing to develop and improve partnership working with towns and parishes to ensure effective use of both district and their own CIL funds in areas affected by new development.

15. Internal consultation has been widely carried out and the comments incorporated into the strategy where possible.

### **Climate and Biodiversity Implications**

16. The new strategy will allow more flexibility for internal spending and although the 5% allocation for Biodiversity and Green Infrastructure will be removed, the requirement for funds to be spent in line with the council's new corporate priorities will mean that it will still be possible to allocate CIL funding to these type of projects, including those supporting tree planting and climate mitigation.

17. Response to the internal consultation suggested that the CIL strategy includes an element of education and promotion of these new opportunities which could include:

- Electric vehicle charging points
- Battery storage
- Renewable energy installations such as ground mount solar
- Private wire electricity supplies.

## **Financial Implications**

18. Oxfordshire County Council and Oxfordshire Clinical Commission Group, and relevant internal council departments will be informed of the amount of CIL available to them in April each year. This will be based on December year end actual CIL funds received, less transfers made to parishes and a five per cent administration cost deduction. These amounts will be included as part of our budget setting in February each year and detailed in the approved capital programme. Any amounts unspent will be returned to our CIL budget to be reallocated the following year. There will be no other additional budget requirements.
19. The potential change to the spending strategy to allow use of funds for improvement, replacement, operation or maintenance of existing infrastructure. This is on the proviso that this supports development as allowed by CIL regulations, to alleviate existing financial pressures. However, this approach may stifle the opportunity to accumulate funds to support key transformational projects.

## **Legal Implications**

20. A comprehensive response to the internal consultation has been received from the council's Interim Litigation and Planning Team Leader. The key points of this response can be found below in paragraphs 21 to 26.
21. There is an ability for a Council as Charging Authority to spend CIL on maintenance of existing infrastructure that supports the development of its area. There is a requirement that this be confined to areas within the Charging Authority's area that have clearly experienced housing growth. This may ameliorate the demands that such development has made on that specific part of the Charging Authority's area. However, the levy is intended to focus on the provision of new or improved infrastructure and should not be used to remedy known deficiencies, unless those deficiencies will be accentuated by housing development.
22. A definition of "area" could not be found in the interpretation provisions of either the CIL Regs or the Planning Act so and it is therefore reasonable to take it as the normal extent of the relevant district. In any event CIL Reg 59(3) allows expenditure out of the "area" where to do so would support the development of its area. The Council will need to be able legally justify that any existing infrastructure we sought to maintain from CIL supports development in the area on a case by case basis. While this wording leaves a lot more flexibility than in relation to the application of funds received by a planning obligation pursuant to s106, there could be a potential risk of challenge to the Council if it applied funds where it did not " support the development of its area".
23. CIL is not to be used for routine expenditure of the Charging Authority, instead directed towards supporting the development of its area by the provision of new and improved infrastructure.
24. CIL Regulations set the context for the spending of CIL funds on infrastructure. The regulations encourage the accumulation of CIL funds into a 'pot'. Unlike other obligations or charges, CIL spending does not need to be directly related to the donor

development and can address infrastructure needs in general across the Councils' administrative areas.

25. CIL monies can be spent on the provision, improvement, replacement, operation or maintenance of infrastructure, or anything else that is concerned with addressing demands that development places on an area. However, CIL may only be used to fund a project in an area that has experienced housing growth. The Levy can be used to increase the capacity of existing infrastructure or to repair failing infrastructure if that is necessary to support development.
26. CIL cannot be used to fund solutions to existing problems i.e. traffic calming/management or on repairs to existing infrastructure in an area that has not experienced housing growth. The levy is intended to focus on the provision of new or improved infrastructure and should not be used to remedy known deficiencies, unless those deficiencies will be made more severe by new development.

## **Conclusion**

27. The proposed amendments to the CIL spending strategy continue to allocate spending on a percentage-based system being spent in accordance with CIL regulations and it will support the council's new corporate priorities. The amendments to the spending strategy will come into force from 1 April 2021.
28. The proposed amendments to the spending strategy remove the percentage split for the council's internal departments, thus allowing any department to apply to use CIL funds for projects. This is providing that they meet the criteria set out in the CIL regulations and in the spending strategy. Any unspent funds as of 1 April 2021 allocated by percentage to internal departments under the original strategy will be reallocated, in line with the new stipulations.
29. As the Infrastructure Delivery Plan has not been updated since the original spending strategy was approved, the percentage allocation for OCC for transport and education infrastructure (50%) will remain the same, but a deadline for funding applications will be introduced. The allocation of 20% for health care will be widened to allow other organisations to access this funding.
30. The geographic area where funds may be spent is to be widened to provide more flexibility in funding projects across the district, which should enable larger projects to come forward rather than under the current system which restricts projects to specific areas. As part of this, funds within the Didcot Garden Town area can be spent across the wider district council boundary into the Vale of White Horse area, allowing larger projects to be provided for both South Oxfordshire and Vale of White Horse residents.
31. The reviewed CIL spending strategy sets out an option to use CIL funding towards enhancements, increasing capacity and retention of existing infrastructure as allowed within CIL regulations as well as towards new infrastructure projects identified in the IDP.

32. The council continues to contribute towards the neighbourhood proportion to parish councils, in accordance with the schedule set out in the CIL regulations.
33. The strategy will be monitored every year alongside the approval of the annual infrastructure funding statement. Amendments can be identified, and a formal review can be triggered if required. This method would also allow the strategy to be agile enough to allow for any future changes in CIL / planning regulations, such as those proposed in the [Planning for the Future](#) white paper of August 2020.

## **Next Steps**

34. The review will be taken through the normal committee process as follows:
- 9 October 2020 – Cabinet Briefing
  - 28 October 2020 – Climate Change Committee
  - 9 November 2020 – Scrutiny Committee
  - 3 December 2020 – Cabinet
35. Consultation with parish and town councils is currently underway and comments will be considered by Cabinet prior to the formal meeting in December.

## **List of appendices:**

Appendix A – Amended CIL Spending Strategy  
Appendix B – CIL financial report 01.04.2016 to 31.07.2020