

Neighbourhood CIL and Regulation 123 List Updates

Key Decision No. NH P16

CABINET MEETING DATE (2019)

16 September 2019

CLASSIFICATION:

OPEN

WARD(S) AFFECTED

ALL

CABINET MEMBER

Cllr Nicholson

Planning, Culture and Inclusive Economy

KEY DECISION

Yes

REASON

Affects two or more wards

GROUP DIRECTOR

Kim Wright, Group Director of Neighbourhoods and Housing

1. CABINET MEMBER'S INTRODUCTION

- 1.1. The Community Infrastructure Levy is a charge applied to new development in the borough and paid by the developer. It is to help fund strategic borough-wide and neighbourhood based infrastructure to address the needs arising from new development. S106 contributions are also sought and are charged to the developer alongside CIL. S106 applies only to mitigate impacts that directly relate to an individual development and includes affordable housing, affordable workspace, employment and skills, carbon off-set and public realm/ transport improvements specific to an individual site.
- 1.2. CIL does not raise enough money to pay for the scale of infrastructure provision needed in the Borough but it has proven to be an extremely useful source of funding, which has, alongside S106 receipts and match funding through the capital programme, helped deliver key infrastructure to support the needs of our growing communities. Over £24m has been received through the CIL alone since 2015 and £17m of this has been spent to help deliver improvements to our schools, open spaces and railway stations.
- 1.3. The approach to future spend for CIL and S106 through the preparation of an Annual Infrastructure Funding Statement and Neighbourhood CIL fund, as set out in this report, will help ensure we continue to provide the necessary infrastructure to support our residents.
- 1.4. I commend this report to Cabinet.

2. GROUP DIRECTOR'S INTRODUCTION

- 2.1 This report seeks Cabinet's approval of changes to the way in which CIL and S106 money is monitored and spent responding to the needs of our communities and the latest changes to Government legislation. The report seeks approval to develop a new Annual Infrastructure Funding Statement ('the AIFS') and the creation of a boroughwide Neighbourhood CIL fund.
- 2.2 The requirement to produce an AIFS is a new legislative requirement. It will be produced annually and will set out:
 - the infrastructure projects or types of infrastructure that the council intends will or may be wholly or partly funded by the CIL (this will replace the existing 'Regulation 123 list'); and
 - details of CIL and S106 receipts and spend for the previous financial year.
- 2.3 The Neighbourhood CIL fund will comprise of 15% of all CIL money received. It will be a boroughwide fund for which bids can be made to further support growth.

3. RECOMMENDATION

3.1.1 Cabinet is asked to approve:

a) the commencement of the process for replacing the CIL Regulation 123 List with an Annual Infrastructure Funding Statement (AIFS) to set out the Council's priorities for CIL spend; and

(b) the creation of a boroughwide neighbourhood CIL fund

4. REASONS FOR DECISION

4.1 To ensure that structures and processes are in place to best deliver the infrastructure needs of Hackney's communities and to comply with new legislation

5. DETAILS OF ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

5.1 The requirement to replace the Regulation 123 list with an AIFS is a statutory requirement so no alternative options have been considered. Alternative options for the geographical distribution of neighbourhood CIL spend were considered and rejected as detailed in this report.

6. BACKGROUND

6.01. The Community Infrastructure Levy (CIL) is a charge applied to development to help fund strategic (borough-wide) and neighbourhood infrastructure to address deficits that might otherwise be caused by development. Planning obligations (or Section 106 contributions) are also sought and are charged alongside CIL, but only to mitigate impacts that directly relate to an individual development. These S106 contributions can include affordable housing, affordable workspace, employment and skills, carbon offset, and public realm/transport improvements for an individual site. Anything more strategic that responds to the cumulative impact of development (such as school places, leisure, rail/bus infrastructure) would normally fall under CIL rather than S106 and form part of the Council's capital programme.

6.02 Although not capable of paying for such large pieces of infrastructure by itself, CIL can be a useful source of match funding. Local authorities are required to set CIL at a sufficiently high level to help deliver infrastructure to support growth, but not at too high a level that would prohibit growth and stop development, or not leave enough viability for S106 items. It is important that CIL is spent on new infrastructure to support growth, and it cannot be used to address existing deficits or shortfalls that would require improvement even without further growth. Hackney has been charging CIL on new development in the borough since April 2015, with £24m collected during that time, including £7.4m collected in 2018/19. CIL only captures developments that have obtained planning permission since April 2015, and is only payable once those developments start construction. CIL receipts have therefore taken time to build up, with relatively few received in 2015/16 and 2016/17 when most larger permissions had yet to begin construction.

6.03 CIL receipts can be spent in two key ways to support growth across Hackney. The majority of receipts (80%) are spent on borough-wide infrastructure provision linked to the Council's capital programme as set out the Council's existing 'Regulation 123 list'.

The Regulation 123 list sets out those projects or types of infrastructure that the Council intends to fund, or may fund, through its CIL - and spend is required to be in accordance with this list by existing CIL legislation. A smaller proportion (15%) known as 'neighbourhood CIL' is required to be spent in accordance with the wishes of the local community or neighbourhood in which the development took place. Legislation is silent on how this community engagement is carried out and at what geographical scale, and local authorities can develop a localised approach. Legislation also sets out that the remaining 5% of CIL is required for set up and administration costs necessary to set, collect and monitor CIL.

- 6.04 The Council has already applied £17.1 million of CIL funding to expenditure incurred during 2017/18 and 2018/19 through the delivery of its capital programme providing contributions towards new and improved infrastructure across the borough including new facilities at Hackney Marshes, improvements to the Narrow Way in Hackney Central and a new adult day centre, development of the Britannia mixed use development (school and leisure centre), libraries and parks infrastructure, as detailed in Appendix 1
- 6.05 The Council has accumulated just over £3.5 million of Neighbourhood CIL. Legislation enables the Neighbourhood CIL to be spent on a wider range of projects than the general levy (which typically focuses on larger physical infrastructure), and can include the maintenance of infrastructure and anything that is concerned with addressing the demands that development places on an area. Spending proposals for neighbourhood CIL to date in Hackney have had a cultural focus, specifically Hackney Carnival on the back of a Place for Everyone consultation, initially allocating £450k per annum throughout the term of the current administration.
- 6.06 In early 2015 (ahead of the implementation of Hackney CIL) Cabinet adopted some initial principles for a system which split the borough into five neighbourhood areas for the purposes of administering and spending neighbourhood CIL:
- Area 1 – Hoxton West, Hoxton East & Shoreditch, and Haggerston wards;
 - Area 2 – Dalston, Shacklewell, and De Beauvoir wards;
 - Area 3 – Hackney Central, Homerton, Victoria and London Fields wards;
 - Area 4 – Hackney Wick, King's Park and Lea Bridge wards;
 - Area 5 – Woodberry Down, Springfield, Stamford Hill West, Brownswood, Stoke Newington, Clissold, and Hackney Downs wards.
- 6.07 To date no neighbourhood CIL income has been allocated or spent through this area based framework given CIL has taken some time to build up funds following the construction of 'CIL liable' planning permissions, of which £450k per annum has initially been allocated to Hackney Carnival as set out in para 6.05. However, as income has continued to be received, it has become evident that over 80% of the neighbourhood CIL income has been collected within just one neighbourhood area - Area 1 - as the majority of major development is in this southern part of the borough in and around Shoreditch and Hoxton, and this zone also has the highest CIL charges based on development viability (Hackney Wick is within the LLDC area and Woodberry Down currently has a zero CIL charge). Whilst it is inevitable that as the area experiencing the highest level of growth there may be a greater need to address the demands of growth within Neighbourhood CIL Area 1, the impact of development will not just be felt within these immediate neighbourhoods. These neighbourhoods also have higher land values and levels of viability which is a consequence of the economic geography of the borough. It is therefore proposed to consider options for evolving how neighbourhood CIL is administered and spent to allow greater flexibility for spend across all parts of the borough.

6.1. Policy Context

Replacing the Regulation 123 List with an Infrastructure Funding Statement to set out the Council's priorities for CIL spend

- 6.1.1 The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019 came into force on 1st September 2019. This removes the 'Regulation 123' list and instead requires the Council to produce an annual Infrastructure Funding Statement to set out the infrastructure projects or types of infrastructure that will be wholly or partly funded by CIL alongside details of CIL and S106 receipts and spend. The first AIFS must be published by December 2020 to report on the financial year 19/20. The legislation also removes the pooling restrictions of S106 contributions.
- 6.1.2 The first IFS will be prepared in Q1 of 2020/21 following the adoption of the new Local Plan and supporting Infrastructure Delivery Plan currently scheduled for early 2020, and will be informed by the Manifesto and Corporate Plan, as well as emerging Inclusive Economy Strategy. It will also be supported by an update to the S106 Supplementary Planning Document (SPD) with consultation on a new draft SPD programmed for the end of 2019. The IFS will be subject to approval by Cabinet on an annual basis.

Neighbourhood CIL

- 6.1.3 A borough wide Neighbourhood CIL Fund will be created to replace the five neighbourhood area approach detailed in paragraph 6.06 of this report.
- 6.1.4 There would be two elements to the Neighbourhood CIL fund - firstly, a boroughwide element which focuses on the delivery of arts and cultural events that bring communities together and are clearly identified as inclusive, diverse and promote tolerance in our community. These events will be Council led and would include the Hackney Carnival and Discover Young Hackney.
- 6.1.5 For the second element of the Fund, bids for projects across the borough will be invited. This second element would include neighbourhood allocations for ward level (or cross ward) project proposals. Bids for neighbourhood CIL funds would be invited (including from service areas across the Council, and from voluntary, community and not for profit sectors) on a bi-annual basis for assessment and evaluation by an Officer led Area Regeneration Steering Group. Recommended allocations would then be put forward for agreement by the CIL and S106 Corporate Board and Lead Members before consideration by Cabinet.
- 6.1.6 The Neighbourhood CIL process would continue to be facilitated by the Planning Service (with significant input and partnership working with Finance, Area Regeneration, Communications, and relevant Service Areas) using the Exacom ICT system to ensure legal compliance with the associated Planning legislation (including publication of the AIFS). The decision on the allocation of neighbourhood CIL funds would be based on the following considerations:
- Whether the proposal meets the terms of the CIL Regulations.
 - Reflects the priorities of the Council including the Manifesto, Community Strategy, Corporate Plan, Local Plan, Cultural Strategy and Inclusive Economy Strategy and any area specific regeneration proposals/plans.

- Supports and where possible mitigates the impacts of development, with a focus on people and an inclusive economy.
- The project proposal is in accordance with local community priorities.
- Where appropriate, any longer term revenue implications have been identified and agreed.
- The project has a focus on social value, as well as offering value for money.
- Alternative funding sources to neighbourhood CIL have been sought or match funding can be secured (which can be in-kind volunteering not just monetary).
- Any delivery partners are suitable to the scale and cost of the project.
- Delivery is possible within a set period of time and appropriate risk assessments have been undertaken.
- The proposal benefits the wider community having regard to the equalities duties under the 2010 Equalities Act

6.2 Equality Impact Assessment

- 6.2.1 An Equalities Impact Assessment has been undertaken for the new Local Plan which sets out the policy framework for delivering growth and supporting infrastructure. Equalities implications will be considered in assessing bids for the neighbourhood CIL as detailed in paragraph 6.1.4 of this report.

6.3 Sustainability

- 6.3.1 A Sustainability Appraisal has been undertaken for the new Local Plan which sets out the policy framework for delivering growth and supporting infrastructure.

6.4 Consultations

- 6.4.1 Public engagement will be undertaken, taking into account consultation undertaken for the Community Strategy, Inclusive Economy and Cultural Strategy - collectively these will inform the neighbourhood priorities, which will together with priorities set out in Council's plans and strategies, provide a framework for identifying potential projects.

6.5 Risk Assessment

- 6.5.1 Appropriate risk assessments will be undertaken relating to bids for CIL spend.

7. COMMENTS OF THE GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES

7.1 Finance comments have been incorporated throughout the report.

8. COMMENTS OF THE DIRECTOR OF LEGAL

8.1 The recommendations sought in Section 3 of this report are Key Decisions as they concern decision making that is likely to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the area of the Council. Cabinet is authorised to make a decision on whether to approve these recommendations by virtue of Article 13.5 of the Council's Constitution which states that Key Decisions are to be determined by the Executive (ie Cabinet).

8.2 The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019 came into force on 1st September 2019. Regulation 9 inserts regulation 121A and a new schedule, Schedule 2, which require local authorities to publish an annual infrastructure funding statement setting out how much CIL is collected, how much is spent and what it is spent on, and makes similar provision in relation to planning obligations (i.e. agreements under section 106 of the Town and Country Planning Act 1990. Regulation 10 also requires (through new regulation 121C) for charging authorities to publish an annual CIL rate summary showing the rates of CIL in its area adjusted for inflation. Regulation 11 removes regulation 123 of the Community Infrastructure Levy 2010, which restricted the number of agreements under section 106 of the Town and Country Planning Act 1990 which the council could enter into in relation to funding particular infrastructure.

8.3 Pursuant to regulations 59F and 59A of the Community Infrastructure Levy Regulations 2010, 15% of CIL receipts (or 25% of the same if a neighbourhood plan or neighbourhood development order is in place) but not exceeding £100 per council tax dwelling must be set aside to benefit local communities. The council will retain these CIL funds but should engage with the communities where development has taken place and agree with them how best to spend the neighbourhood funding. The council should set out clearly and transparently its approach to engaging with neighbourhoods using its regular communication tools such as website and newsletters. The use of neighbourhood funds should therefore match priorities expressed by local communities. The government does not prescribe a specific process for agreeing how the neighbourhood portion should be spent. Charging authorities should use existing community consultation and engagement processes. Crucially this consultation should be at the neighbourhood level. It should be proportionate to the level of levy receipts and the scale of the proposed development to which the neighbourhood funding relates. Following public consultation, the council can use this neighbourhood CIL portion to support the development of the area by funding 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.

BACKGROUND PAPERS

None

Report Author	Natalie Broughton- Tel: 020 8356 6728 Strategic Planning Manager natalie.broughton@hackney.gov.uk
Comments on behalf of the Group Director of Finance and Corporate Resources	Michael Honeysett – Tel: 020 8356 3332 Director, Financial Management michael.honeysett@hackney.gov.uk
Comments on behalf of the Director of Legal	Siddhartha Jha – Tel: 020 8356 6395 Acting Senior Planning Solicitor Siddhartha.Jha@hackney.gov.uk