

BABERGH DISTRICT COUNCIL

TO: BDC Cabinet	REPORT NUMBER: BCa/18/33
FROM: Cabinet Member for Planning	DATE OF MEETING: 13 SEPTEMBER 2018
OFFICER: Christine Thurlow Professional Lead Key Sites and Infrastructure	KEY DECISION REF NO. CAB77

COMMUNITY INFRASTRUCTURE LEVY (CIL) - CIL EXPENDITURE BUSINESS PLAN

1. PURPOSE OF REPORT

- 1.1 The CIL Expenditure Framework, the CIL Expenditure Framework Communications Strategy and the Timeline for Implementation and Review were all adopted by both Councils on the 24th April 2018 (Babergh) and 26th April 2018 (Mid Suffolk). (Background Documents refer)
- 1.2 The processes and governance around CIL expenditure is set out in these documents and the type of infrastructure that CIL 123 monies can be spent on is set out in each Councils Regulation 123 list. (Background Documents refer).
- 1.3 CIL expenditure operates using a process of twice yearly bid rounds which occur on the 1st- 31st May and 1st - 31st October each year. Once all the Bids have been validated, all valid Bids are then screened for the availability of s106 funds (allowing the opportunity for other funding streams to also be considered). Following this all valid Bids are prioritised using criteria set out in the CIL Expenditure Framework and recommendations on Valid Bids are included within a CIL Business Plan for each District. The CIL Business Plan for that District will be considered by that Councils Cabinet with decisions on all valid Bids either for Cabinet to make or for Cabinet to note (if the valid Bid has been determined using delegated powers).
- 1.4 This report seeks to obtain approval by Cabinet for Babergh' s CIL Business Plan - September 2018 which forms Appendix A to this report. This report also contains the assessment of the Bids including the judgements around the prioritisation criteria. (Appendix B)

2. OPTIONS CONSIDERED

- 2.1 There is a diverse spectrum of approaches to CIL expenditure across the country from Unitary Authorities who have absorbed CIL into their individual Capital Programmes to others who ringfence all funds to be spent locally. A range of different approaches was identified in Appendix A of the Framework for CIL Expenditure report provided to Cabinet's on the 5th and 8th of February 2018 and discussed in full during the workshops with the Joint Member advisory panel. Members however adopted the documents set out in paragraph 1.1 above in April 2018.

3. RECOMMENDATIONS

- 3.1 That the CIL Expenditure Business Plan and accompanying technical assessments of the CIL Bids forming Appendices A and B and which include decisions on valid Bids for Cabinet to make and those for Cabinet to note be approved. (This CIL Business Plan also includes all those valid CIL Bids where offers of other sources of funding have been made for projects as part of the CIL process such that the value of that CIL Bid is reduced).
- 3.2 Cabinet are asked to note that Bid B11-18 has been withdrawn. CIL Bids B01-18, B06-18 and B07-18 are valid but require further work before making any decision or recommendation. All other invalid CIL Bids continue to be worked upon and will be carried forward to the next CIL Bid round 2 for consideration.

REASON FOR DECISION

Community Infrastructure Levy (CIL) monies have been collected since the implementation of CIL on the 11th April 2016. The CIL Expenditure Framework adopted in April 2018 requires the production of a CIL Business Plan for each District which contains decisions for Cabinet to make or note on CIL Bids for CIL expenditure. These decisions relating to the expenditure of CIL monies form the one of the ways which necessary infrastructure supporting growth is delivered.

4. KEY INFORMATION

- 4.1 Given the determination of “available monies” for Bid Round 1 - (paragraphs 6.7 and 6.8 below) Members are advised: -
- 11 Bids submitted in total – all acknowledged and given a reference
 - Majority of Bids were initially invalid due to inadequate or erroneous information. Further information on all such Bids has been requested.
 - A list of Valid Bids is published on the Web site (including a recent addition to the list when another Bid became valid due to satisfactory information being received)
 - 6 out of the 11 Bids are collaborative (ie more than one source of anticipated income for the project.)
 - The remaining 5 bids seek 100% CIL monies for funding for the project.
 - 10 of the 11 remaining Bids are from Parish Councils or Community Groups with the remaining Bid from an infrastructure provider (Suffolk County Council).

- The total value of the Bids being made is **£318,892.94** (excluding all withdrawn CIL Bids and those where the proposal was not Regulation 123 compliant. This figure includes invalid and valid Bids except for the proposal at Thorpe Morieux where the value of the Bid and the cost of the project is unknown).
- Not all of the Bids are CIL 123 Regulation compliant. (ie Bids which do not form part of the CIL 123 list) All such Bidders have been made aware these cannot be progressed.

Conclusions of key information

- 4.2 The amount of money sought from Bidders in Bid round 1 is below the figure of “available funds” from the Local Infrastructure fund. Not all Bids have been made valid yet because further clarifying information is required and/or because not all of the necessary formal approvals are yet in place to allow the Bid (and therefore the project to commence on site (ie the grant of planning permission and /or Building Regulation approval for the project). One Bid has also been withdrawn. Three other Bids have been deferred to allow further work on the Bids to occur before any recommendation is made. This has therefore reduced demand on the available funds for expenditure in this Bid round.
- 4.3 The list of CIL Bids for the first round is contained in the CIL Business Plan and includes Valid and Invalid Bids. (Appendix A) The valid Bids have been the subject of Consultation, Screening (for s106 and the opportunity has been taken to consider other potential sources of funding). In addition, where appropriate, these valid Bids have been assessed using the prioritisation criteria in the CIL Expenditure Framework so that a decision can be made. This forms the technical assessment using all the criteria in the CIL Expenditure Framework and comprises Appendix B. (All valid Bids where a decision is being taken will be the subject of a technical assessment.)
- 4.4 Where decisions on Valid Bids are delegated they have been determined and the decision is for Members to note. Where under the governance arrangements Valid Bids have been submitted and these are for Cabinet to decide, a recommendation has been provided (for each valid Bid) for Cabinet to consider and determine.
- 4.5 All those Bids which are currently listed as invalid in the Appendix A will be carried forward to the next Bid round unless otherwise stated. This will allow further discussions to take place, the submission of further information which clarifies/amends the Bid and/or confirms that all the necessary formal approvals for the project have now been secured.

5. LINKS TO JOINT STRATEGIC PLAN

- 5.1 The effective spending of CIL Monies will contribute to all the three priority areas that Councillors identified in the Joint Strategic Plan. Economy and Environment Housing and Strong and Healthy Communities.

6. FINANCIAL IMPLICATIONS

- 6.1 The adopted CIL Expenditure Framework is critical to the funding of infrastructure to support inclusive growth and sustainable development.

- 6.2 The CIL Regulations stipulate that CIL monies which are collected must be spent on Infrastructure. Each Council is required to publish a list of infrastructures that they will put the CIL towards. These lists, known as the “Regulation 123 lists”, were adopted and published in January 2016. These documents are different for both Councils; the hyperlink for the 123 List for Babergh is contained at paragraph 12.1.
- 6.3 CIL is collected and allocated in accordance with the CIL Regulations 2010 (as amended). Each Council retains up to 5% of the total CIL income for administration of CIL. From the remainder, 15% is allocated to Parish or Town Councils but where there is a Neighbourhood Plan in place this figure rises to 25%. For those parishes where there is no Parish or Town Council in place the Council retains the monies and spends the CIL Neighbourhood funds through consultation with the Parish
- 6.4 Since the implementation of CIL for both Councils on the 11th April 2016 there have been four payments to Parish Councils, in October 2016, April 2017, and October 2017 and April 2018. At the time that the Parish pay-outs are made, the 20% save for Strategic Infrastructure fund is also undertaken. The Strategic Infrastructure Fund money is stored separately to the Local Infrastructure Fund at this point. As this accounting requires Finance to verify the figures, daily accounting in this way would be too cumbersome and resource hungry to carry out. There is no adverse impact on the Bid Round process or cycle to this method of accounting. Indeed, these dates work well with the Bid round process. (Paragraph 1.3 refers).
- 6.5 The remaining 80% of the CIL 123 monies comprises the Local Infrastructure Fund from which the available funds for expenditure against the Bid round are calculated. Within the CIL Expenditure Framework infrastructure provision for major housing developments is prioritised and ringfenced for spend against these housing projects. In this way housing growth occurring within the Districts is supported by infrastructure provision.
- 6.6 When commencement of these major housing schemes occurs, monies are collected according to the CIL Payment plan in place. If the scale of development is large the CIL Payment Plan could be up to 5 equal payments collected over a two-year timescale. Smaller developments are required to pay the money in less instalments and over a shorter timescale. These monies are held in a separate account from the Strategic and Local Infrastructure fund to ensure the monies are safeguarded for that development. The remaining monies are known as the “**available funds**” and it is these (together with Bids for allocated funds if any are submitted) that can be spent against according to the Bid round process.

Available funds For Strategic and Local Infrastructure Funds – Babergh

- 6.7 These are: -
- Total Amount of Regulation 123 monies available (after 5% CIL admin charge and Parish apportionment pay-out on the 28th April 2018)
 - Strategic Infrastructure Fund £ 95,395.47
 - Local Infrastructure Fund £ 381,581.88

- One major housing schemes where commencement has occurred and CIL monies have been paid before 28th April Parish pay- out date. (Former Brett Works Hadleigh)
- As such the Local Infrastructure pot needs to be reduced by £5,772.47 for ring fenced infrastructure. (see CIL Business Plan)

6.8 The available funds (from the Local Infrastructure Fund) for expenditure on Bid round 1 is **£375.809.41** The total value of the CIL Bids for approval of infrastructure in Bid round 1 is £76,402.95. The amount to be carried forward to the next Bid round is £299,406.46

Expenditure	Total	2017/18	2018/19	2019/20
CIL Expenditure “Available Funds” in Bid Round 1		N/A	£375,809.41	N/A
Total Expenditure in Bid Round 1		N/A	£76,402.95	N/A
Amount carried forward to Bid Round 2		N/A	£299,406.46	N/A

7. LEGAL IMPLICATIONS

- 7.1 The detailed framework for CIL expenditure is legally sound and robust and was designed including a legal representative from the Councils Shared Legal Service (who also attended each of the Joint Member workshop sessions and agreed the adopted CIL Expenditure Framework documents (prior to consideration by Cabinet and Council of both Districts).
- 7.2 This report and the accompanying CIL Business Plan for Babergh District Council-September 2018 (including Appendices A and B) has also been endorsed as being sound and legally compliant by the Councils Shared Legal Service.
- 7.3 Governance arrangements agreed in April 2018 as part of the CIL Expenditure Framework are indicated for each Bid in the list of Bids. The delegation for making Delegated decisions for the Community Infrastructure Levy falls to Assistant Director Growth under the governance arrangements in the CIL Expenditure Framework.
- 7.4 Regulation 62 of the CIL Regulations 2010 (as amended) requires CIL charging authorities to publish monitoring statistics for collection allocations and expenditure of CIL monies by the 31st of December for each year. The 2017 Monitoring Report for both Councils is published on our websites (see below).

<https://www.midsuffolk.gov.uk/assets/CIL-and-S106-Documents/Babergh-District-Council-CIL-Monitoring-Report-2016-17.pdf>

- 7.5 The Regulation 62 report for the financial year 2017/2018 forms a separate item to Cabinet for consideration.

8. RISK MANAGEMENT

8.1 This report is most closely linked with the Strategic Risk 1d – Housing Delivery. If we do not secure satisfactory investment in infrastructure (schools, health, public transport improvements etc) then development is stifled and /or unsustainable.

8.2 Key risks are set out below:

Risk Description	Likelihood	Impact	Mitigation Measures
<p>Failure to allocate expenditure such that if we do not secure investment in infrastructure (schools, health, public transport improvements etc.), then development is stifled and/or unsustainable.</p> <p>Current Risk Score: 6</p>	Unlikely (2)	Bad (3)	<p>Adopted Community Infrastructure Levy (CIL), secures investment on infrastructure via the planning process (which includes S106). Creating the Infrastructure Delivery Plan as part of the Strategic Plan, Joint Local Plan with associated Infrastructure Strategy and Infrastructure Delivery Plan will ensure that infrastructure across both Councils is addressed, New Anglia LEP Economic Strategy, draft created together with the Councils Open for Business Strategy.</p>
<p>Failure to produce a yearly Regulation 62 report would result in non-compliance with the CIL Regulations 2010 (as amended) and may mean that Members and the public are not aware of CIL income and expenditure activities.</p>	Highly Unlikely (1)	Noticeable /Minor (2)	<p>The Infrastructure Team produces the report which is checked and verified by Financial services/open to review by External Audit. Reminders are set to ensure the report is published by the statutory date. The format of the Regulation 62 Monitoring report is laid out in the CIL Regulations, so there is no risk in relation to the way the information is presented</p>

<p>Failure to monitor expenditure such that CIL expenditure is not effective.</p>	<p>Unlikely (2)</p>	<p>Bad (3)</p>	<p>The software which supports CIL collection will be used to support CIL expenditure. In addition, it is envisaged that a yearly CIL Business plan (with a 6 month update) will be produced which will include details of all allocated and proposed CIL expenditure and this together with the software will be used for effective monitoring.</p>
<p>If too high a value is allocated into the Strategic 123 CIL Fund, there is a risk that there would be insufficient Local 123 CIL Funding available to deliver the infrastructure required to mitigate the harm, thereby ensuring sustainable development.</p>	<p>Unlikely (2)</p>	<p>Bad (3)</p>	<p>The Infrastructure Team will continue to monitor all allocations of Regulation 123 CIL Funds and the CIL Expenditure Framework review will include this risk as a key element of the review to ensure the level set remains appropriate.</p>
<p>If 25% Neighbourhood CIL is automatically allocated to any Parish/Town councils where there is no Neighbourhood Plan in place, there is a risk that there would be insufficient 123 CIL Funding to allocate to the Strategic 123 CIL Fund and also the risk that there would be insufficient Local 123 CIL Funding available to deliver the infrastructure required to mitigate the harm, thereby ensuring sustainable development.</p>	<p>Unlikely (2)</p>	<p>Bad (3)</p>	<p>The Infrastructure Team will continue to monitor all allocations of Neighbourhood CIL and Regulation 123 CIL Funds and the CIL Expenditure Framework review will include this risk as a key element of the review to ensure allocations of CIL remain appropriate and projects to make development sustainable are able to be delivered.</p>
<p>If commencements of major housing developments were not correctly monitored or the incorrect apportionment of CIL 123 monies were to occur such that monies could not be allocated towards major housing developments, inadequate infrastructure provision would result.</p>	<p>Unlikely (2)</p>	<p>Disaster (4)</p>	<p>The Infrastructure Team will continue to monitor all commencements of development through the service of the required Commencement Notice by developers such that correct apportionment of 123 CIL Funds can be undertaken. The CIL Expenditure Framework review will include this risk as a key element of the review to ensure allocations of CIL remain appropriate and projects to make development sustainable are able to be delivered.</p>

Assurances (for collection of CIL monies)

8.3 In September 2016 Internal Audit issued a report in relation to CIL governance processes. The Audit Opinion was High Standard and no recommendations for improvement to systems and processes were made. Table 5 provides a definition of this opinion:

Table 5

	Operation of controls	Recommended action
High standard	Systems described offer all necessary controls. Audit tests showed controls examined operating very effectively and where appropriate, in line with best practice.	Further improvement may not be cost effective.
Effective	Systems described offer most necessary controls. Audit tests showed controls examined operating effectively, with some improvements required.	Implementation of recommendations will further improve systems in line with best practice.
Ineffective	Systems described do not offer necessary controls. Audit tests showed key controls examined were operating ineffectively, with a number of improvements required.	Remedial action is required immediately to implement the recommendations made.
Poor	Systems described are largely uncontrolled, with complete absence of important controls. Most controls examined operate ineffectively with a large number of non-compliances and key improvements required.	A total review is urgently required.

8.4 On the 18th December 2017 Joint Overview and Scrutiny received a fact sheet on collection and current thinking on CIL expenditure and questions were answered in relation to it. Members of that Committee were advised of the route map towards getting a framework for CIL expenditure formally considered. Members were advised that this would be a key decision for both Councils and would need to go to Cabinet and then full Council. The resulting joint CIL: Expenditure Framework, the CIL Expenditure Communications Strategy and the Timeline for the Expenditure of CIL and its Review were adopted by both Councils on the 24th April 2018 (Babergh) and 26th April 2018 (Mid Suffolk).

8.5 In May 2018 the results of an investigation by Internal Audit on behalf of the Assistant Director Growth were produced following complaints regarding the CIL process in place for Babergh and Mid Suffolk. The investigation concluded: -

- “The information provided to the public in relation to the CIL process is superior to that found for some other Councils and the team go over and above the requirements when supporting applicants where resources allow them to do so. It is Internal Audit’s opinion that the Infrastructure team, even though working under challenging conditions with increasing numbers of applications, are providing a good service to customers and also pro-actively looking for ways to improve where possible.”
- “The audit opinion is therefore high standard” – (paragraph 8.3 defines high standard classification)

Assurances (for collection and expenditure of CIL Monies)

- 8.6 It is likely that a further internal audit of CIL collection and expenditure will occur in quarter three of 2018, commencing September onwards (Audit Workplan 2018) As such Internal Audit have already been invited to be part of the Review process of CIL and have already attended the Joint Member panel meeting on the 10th July 2018.
- 8.7 It is expected that internal audit will continue to regularly audit CIL collection allocation and expenditure processes and actual expenditure once any scheme is developed and implemented.
- 8.8 As Members will recall there is a timeline for implementation of CIL and its review which contains key dates for the remainder of the CIL expenditure year cycle (Background papers refer)
- 8.9 The Review of the CIL Expenditure Framework starts after the first Bid round has been completed in September 2018 and occurs at the same time as the second Bid round is happening such that the Review is completed by April 2019.
- 8.10 Both Councils also agreed in April 2018: -
- That the Review of the CIL Expenditure Framework should be the subject of scrutiny by Overview and Scrutiny after the first Bid round. Dates have been included for this in the forward workplan for Overview and Scrutiny on the 18th and 22nd October 2018.
 - The Joint Member Panel will also inform the Review going forward before its formal consideration.

9. CONSULTATIONS

- 9.1 The CIL Expenditure Communications Strategy contains a requirement for both Councils to consult the following bodies or organisations (for a period of 21 days) where Valid Bids for their Wards or Parish have been submitted: -
- Division County Councillor
 - District Member(s)
 - Parish Council
- 9.2 Where appropriate as part of the CIL process and assessment of the Bids, Officers have also taken advice from other Officers within the Council; including the Communities team and the Strategic Leisure Advisor.
- 9.3 Regular Parish events and Member briefings will continue to be held to familiarise all with the Expenditure Framework and how we can continue to work together to provide infrastructure for the benefit of our communities.

10. EQUALITY ANALYSIS

- 10.1 There are no equality and diversity implications arising directly from this report.

11. ENVIRONMENTAL IMPLICATIONS

It is important that appropriate infrastructure migrates harm which could be caused by new development without its provision. CIL is one way in which infrastructure is provided and the CIL Expenditure Framework requires two bid rounds per year supported by the provision of a Business Plan for each bid round. This CIL Expenditure Framework contains the Bids and outcomes for bid round 1. There is no EIA Assessment required.

12. APPENDICES

Title	Location
A The CIL Business Plan for Babergh -September 2018	ATTACHED
B Appendix B to the CIL Business Plan for Babergh -September 2018	ATTACHED

13. BACKGROUND DOCUMENTS

13.1 The CIL Expenditure Framework, the CIL Expenditure Framework Communications Strategy and the Regulation 123 List for Mid Suffolk District Council together with the Timetable for the implementation of the CIL Expenditure Framework and Review constitute background papers for this report. These were adopted by Mid Suffolk on the 26th April 2018 and are as follows:-

- The CIL Expenditure Framework:

<https://baberghmidsuffolk.moderngov.co.uk/documents/s9921/CIL%20Appendix%20A.pdf>

- The CIL Expenditure Framework Communications Strategy:

<https://baberghmidsuffolk.moderngov.co.uk/documents/s9922/CIL%20Appendix%20B.pdf>

- Regulation 123 List for Babergh District Council:

<https://www.midsuffolk.gov.uk/assets/CIL-and-S106-Documents/BDC-123-list-Jan-2016.pdf>

- The Timetable for the implementation of the CIL Expenditure Framework and Review

<https://baberghmidsuffolk.moderngov.co.uk/documents/s9925/CIL%20Appendix%20E.pdf>

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