

REPORT TO: EXECUTIVE and COUNCIL

Date of Meeting: 9 July 2019 and 23 July 2019

Report of: Director, Bindu Arjoon

Title: COMMUNITY INFRASTRUCTURE LEVY 'INFRASTRUCTURE PAYMENTS' DOCUMENT AND CIL FUNDING FOR PART OF THE STRATEGIC CYCLE LINK BETWEEN THE MONKERTON STRATEGIC ALLOCATION AND EXETER CITY CENTRE

Is this a Key Decision?

No

Is this an Executive or Council Function?

Council

1. What is the report about?

This report seeks Executive and Council approval to:

- 1.1 Implement and apply a Community Infrastructure Levy (CIL) 'Infrastructure Payments' Document; and
- 1.2 Approve the transfer of an element of (yet to be received) CIL receipts to Devon County Council to deliver part of a strategic cycle route included on the Council's CIL Regulation 123 List.

2. Recommendation:

2.1 It is recommended that:

- (i) Executive approves the production of a Community Infrastructure Levy (CIL) 'Infrastructure Payments' Document, and delegates authority to the Director to develop and finalise the content of the document in discussion with the Leader of the Council and Portfolio Holder for City Planning and Development and subsequently to issue the document; and,
- (ii) Executive recommends and Council approves the transfer of up to a maximum of £375,000 of the CIL receipts from the Sandrock development at Monkerton (application reference: 17/1320/FUL) to Devon County Council, to address the fact that the section of the strategic cycle link between the Monkerton strategic allocation and City Centre, which passes through the site, must effectively be paid for by the County Council. Such funds are not to be paid to Devon County Council until they have been received in relation to the Sandrock Development at Monkerton by the Council. Authority to transfer the funds to be delegated to the City Development Manager in consultation with the Leader of the Council.

3. Reasons for the recommendations

- 3.1 Government regulations that dictate how the Community Infrastructure Levy is applied and administered allow for local authorities to make provision for CIL 'infrastructure payments' and 'payments in kind' to be taken in lieu of CIL, subject to those authorities' publication of a document giving notice of their intention to accept such

payments. Circumstances in Exeter are such that it is now appropriate to make provision for such payments to be taken.

- 3.2 Delivery of the section of the strategic cycle link between the Monkerton strategic allocation and the City Centre could not be secured through the Section 106 mechanism, due to the fact that the cycle link is referenced on the City Council's Regulation 123 List, and there is a need to secure it through alternative means.

4. What are the equality and diversity impacts of this decision?

- 4.1 An Equalities Impact Assessment is appended to the report.

5. What are the resource implications including non-financial resources

- 5.1 CIL and S106 receipts are a significant source of income with which to deliver infrastructure. They are, for example, one of the principal sources of funding for the St. Sidwell's Point leisure complex.
- 5.2 Providing for 'Infrastructure Payments' and / or Infrastructure 'Payments in Kind' to be made in lieu of CIL payments will mean that, in cases where 'Infrastructure Payments' are accepted, some CIL receipts will be foregone in favour of the delivery of infrastructure by others, but CIL receipts which are foregone will nonetheless be invested in infrastructure which is on the Council's Regulation 123 List or, in future, referenced in its Annual Infrastructure Funding Statement.
- 5.3 The transfer of (yet to be received) CIL receipts from the Sandrock development at Monkerton to Devon County Council, for the purposes explained, will reduce overall CIL by an amount equivalent to the amount to be transferred, but the CIL receipts will nonetheless be invested in infrastructure which is on the Council's Regulation 123 List.

6. Section 151 Officer Comments:

- 6.1 The contents are noted. Government legislation requires CIL to be collected prior to spending, therefore the Council must ensure that it has received sufficient CIL prior to transfer. If this was not the case the funds would have to be allocated from other Council sources.

7. What are the legal aspects?

- 7.1 Regulation 73 of the Community Infrastructure Regulations 2010 (CIL 2010) relates to 'payment in kind' and states that a charging authority may accept one or more land payments in satisfaction of the whole or part of the CIL due in respect of a chargeable development. Where CIL is paid by way of a land payment, the amount of CIL paid is an amount equal to the value of the acquired land. Regulation 73 sets out the conditions which apply to the acquisition of land in these circumstances.
- 7.2 Regulation 73A of CIL 2010 relates to 'infrastructure payments' and states that if a charging authority has made infrastructure payments available in its area it may accept one or more infrastructure payments in satisfaction of the whole or part of the CIL due in respect of a chargeable development.
- 7.3 An 'infrastructure payment' is defined as '...the provision of one or more items of infrastructure by a person who would be liable to pay CIL in respect of a chargeable development on commencement of that development. In those circumstances where

CIL is paid by way of an infrastructure payment the amount of CIL paid is an amount equal to the value of the infrastructure provided. The charging authority must aim to ensure that the infrastructure provided through the infrastructure payment will be used to support the development of its area. Regulation 73A sets out further conditions which must be satisfied in order for the charging authority to accept the infrastructure payment

7.4 Exeter City Council does not currently have a policy in place on allowing infrastructure payments in its area. Regulation 73B of the Community Infrastructure Regulations 2010 states that where a charging authority wishes to allow infrastructure payments in its area, it must:

- issue a document which gives notice of its willingness to accept infrastructure payments in its area;
- state the date on which the charging authority will begin to accept infrastructure payments; and
- include a policy statement setting out the infrastructure projects, or types of infrastructure which it will consider accepting the provision of as infrastructure payments. This may be done by reference to the charging authority's infrastructure list.

7.5 The document must be published on the charging authority's website and made available for inspection at its principal office or such other places within its area as it considers appropriate.

7.6 The following points should also be noted:

- Exeter City Council as the charging authority for the purposes of CIL is prohibited from borrowing against future CIL receipts in order to forward fund infrastructure delivery. Accordingly, funds cannot be released to Devon County Council until they are received by the charging authority from chargeable developments.
- It has to be established that the Council as charging authority has the authority to spend CIL funds for the purpose of the strategic cycle link between Monkerton and the City Centre, which passes through the Sandrock Nursery site. The Regulation 123 infrastructure list refers to the 'Strategic cycle link between Monkerton strategic allocation and City Centre'. Therefore the authority to proceed with expenditure on the cycle link exists.

8. Monitoring Officer Comments:

8.1 The relevant issues are set out in paragraph 7. It will be necessary to consult with the Council's legal Services department on the agreement to be entered into between Exeter City Council and Devon County Council. The specification of works and the precise amount of the payment to be made to Devon County Council must be agreed in advance of the works being carried out. It would also be appropriate to include a 'clawback' provision so that the charging authority receives any costs savings.

9. Report Details / Background

'Infrastructure Payments'

- 9.1 The CIL regulations currently¹ require the City Council to have in a place a ‘Regulation 123 List’, which details the infrastructure on which the City Council may spend CIL receipts (the Regulation 123 List derives its name from CIL regulation 123). The CIL Regulation 123 List is attached as an Appendix to this report.
- 9.2 CIL regulation 123 (2) effectively states that it is unlawful to seek developer contributions through Section 106 agreements to deliver infrastructure items or types of infrastructure which are included in Regulation 123 Lists. In Exeter, for example, it is currently unlawful to seek developer contributions through Section 106 to deliver ‘Community Buildings’, because ‘Community Buildings’ are included on the City Council’s Regulation 123 List, indicating that CIL is intended to fund these.
- 9.3 The inclusion of references to particular strategic cycle links in the Council’s Regulation 123 List means it is currently unlawful for the City Council to secure the implementation of those cycle links through the Section 106 mechanism.
- 9.4 Impending changes to the CIL regulations² are likely to result in the removal / omission of CIL regulation 123, and may therefore help to resolve such complications, but in the interim, and contemplating future changed circumstances for negotiating Section 106 agreements, it would be helpful and advantageous to put in place an ‘Infrastructure Payments’ Document, which would provide for the City Council to agree arrangements with developers to deliver infrastructure projects or types of infrastructure included on the Regulation 123 List (delivery of which cannot currently be sought through Section 106) or referenced in future in any Annual Infrastructure Funding Statement, in return for a reduction in the amount of CIL payable to the City Council.
- 9.5 CIL regulations 73A to 74 provide for such ‘Infrastructure Payments’ and ‘Payments in Kind’ to be taken, subject to an ‘Infrastructure Payments’ Document being put in place, and subject to specific procedures being followed to provide for the value of the infrastructure being provided to be independently assessed, as part of any agreement to secure the delivery of the infrastructure in return for a reduction in the amount of CIL payable to the City Council. CIL regulations 73A and 74 are likely to be retained (with very minor and inconsequential modifications) in any amended regulations.
- 9.6 CIL regulation 73B sets out notification requirements in respect of the introduction and withdrawal of any Infrastructure Payments Document.

Strategic Cycle Link Between the Monkerton Strategic Allocation and the City Centre

- 9.7 The strategic cycle link between the Monkerton Strategic Allocation and the City Centre is one of the infrastructure items on the City Council’s CIL Regulation 123 List, indicating the intention that this will be paid for by CIL, at least in part. As intimated in paragraph 9.2 above, because the cycle link is on the Regulation 123 List, it has not been possible to secure contributions for it through the Section 106 mechanism.
- 9.8 The cycle link in question passes through the Sandrock development site. Whilst in the past it may have been possible to require the developer of this site to deliver the connection through S106, Devon County Council will provide this section of the link, on

¹ This requirement is likely to change soon, insofar as the Government has introduced amendment regulations to Parliament which will effectively do away with Regulation 123 Lists in favour of Annual Infrastructure Funding Statements.

² Developer Contributions Reform: Technical Consultation – see:
<https://www.gov.uk/government/consultations/developer-contributions-reform-technical-consultation> and
<http://www.legislation.gov.uk/ukdsi/2019/9780111187449>

the assumption that CIL receipts will be used to pay for this. Cycle access along this section of the link will be provided by an easement in favour of the County Council, with dedication of the land for the intended purpose taking place upon completion of the works necessary to create the cycle path.

- 9.9 In recognition of the fact that the County Council will bear the cost of implementing this infrastructure, which the City Council signalled that it intended to fund (at least in part) through CIL, (by including the cycle link on its Regulation 123 List), it is proposed that some of the CIL receipts³ from the Sandrock development are transferred to Devon County Council.

10. How does the decision contribute to the Council's Corporate Plan?

- 10.1 The Council's Corporate Plan 2018-21⁴ sets out a vision, which is to be supported by three broad strategic delivery programmes to address the City's current major challenges, each of which will give rise to the need to develop and deliver infrastructure projects which could be funded in part or in full from CIL and / or S106 receipts. The three delivery programmes are as follows:

- Tackling congestion and accessibility.
- Promoting active and healthy lifestyles.
- Building great neighbourhoods.

- 10.2 The decision provides for the delivery of infrastructure which facilitates the realisation of these three delivery programmes

11. What risks are there and how can they be reduced?

- 11.1 There is a risk that, without the introduction of an Infrastructure Payments Document, infrastructure which the City Council has identified as a priority will not be delivered. The recommendations in this report seek to address this risk.

12. What is the impact of the decision on health and wellbeing; safeguarding children, young people and adults with care and support needs, economy, safety and the environment?

- 12.1 The decision will impact positively on health and wellbeing, the environment and, potentially, community safety, by ensuring the delivery of infrastructure which may be necessary to promote health and wellbeing, to deliver economic and environmental enhancements, and improvements to community safety.

13. What other options are there, and why have they been dismissed?

- 13.1 There is an option not to proceed with introducing a CIL 'Infrastructure Payments Document, but it is considered that this will detract from the Council's ability to secure the delivery of infrastructure through having a variety of mechanisms at its disposal.

³ Receipts equivalent to the costs of implementing the cycle link through the Sandrock site. The specification of works and, consequently, the costs, will be agreed between DCC and ECC prior to the transfer of any CIL receipts.

⁴ Exeter City Council Corporate Plan 2018-21 – see: <https://exeter.gov.uk/council-and-democracy/council-information/corporate-plan-2018-21/>

- 13.2 There is an option not to approve the transfer of some of the (yet to be received) CIL receipts from the Sandrock development at Monkerton to Devon County Council, but it is considered that this would result in failure to deliver a section of the cycle path. The delivery of the route in its entirety would therefore be compromised, potentially fatally.

Bindu Arjoon, Director

Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

- See the documents referenced in footnotes 2 and 4 in the body of the report above.

Contact for enquires:

Democratic Services (Committees)

Room 2.3

01392 265275

Appendix – Exeter City Council Regulation 123 List



Exeter City Council

Community Infrastructure Levy Regulation 123 List

October 2013

The table below comprises Exeter City Council's Regulation 123 list. It consists of the infrastructure that the Council intends to apply CIL monies to.

Infrastructure considered likely to benefit from the application of CIL funding:

- Mitigation of recreational impact on European designated habitats
- Off site broadband infrastructure
- Sporting facilities excluding multi use games areas
- New City Centre Leisure Centre
- Public realm enhancements including signage and CCTV
- Community buildings
- Cultural facilities
- Strategic flood defences
- Bus priority on the key routes and City Centre bus infrastructure
- School facilities
- New highway link from Tithebarn Lane to Cumberland Way
- New road junction on to A379 at Newcourt
- New railway station at Marsh Barton
- New railway station at Newcourt
- New park and ride facilities
- Strategic cycle link between Newcourt strategic allocation and City Centre
- Strategic cycle link between Monkerton strategic allocation and City Centre
- Bus real-time passenger information facilities not provided in direct relation to new development and smartcard technologies
- Improvements to junction capacity at Moor Lane roundabout
- Library facilities



Equality Impact Assessment

Title of work being assessed: Community Infrastructure Levy (CIL) ‘Infrastructure Payments’ Document, and CIL Funding for Part of the Monkerton to City Centre Strategic Cycle Link

Introduction

The report recommends the production and publication of a CIL ‘Infrastructure Payments’ Document, and the transfer of some CIL receipts from a development at Monkerton to Devon County Council to ensure the delivery of a section of the Monkerton to City Centre strategic cycle link.

Lead officer: Peter Hearn, Principal Project Manager, Strategic Infrastructure Planning.

Service Manager: Andy Robbins, City Development Manager.

Stakeholders: Councillors and the Community.

For each of the areas below, an assessment has been made on whether the proposal has a **positive, negative or neutral impact**, and brief details of why this decision was made and notes of any mitigation are included. Where the impact is negative, a **high, medium or low assessment** is given. The assessment rates the impact of the proposal based on the current situation (i.e. disregarding any actions planned to be carried out in future).

High impact – a significant potential impact, risk of exposure, history of complaints, no mitigating measures in place etc.

Medium impact –some potential impact exists, some mitigating measures are in place, poor evidence

Low impact – almost no relevancy to the process, e.g. an area that is very much legislation led and where the Council has very little discretion

Protected characteristic/ area of interest	Neutral	Positive	Negative
Race and ethnicity (including Gypsies and Travellers; migrant workers asylum seekers etc.)	There is no evidence to suggest that the proposals would have a potential impact on this characteristic.		
Disability (as defined by the Equality Act - a person has a disability if they have a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities).	There is no evidence to suggest that the proposals would have a potential impact on this characteristic.		
Sex/Gender	There is no evidence to suggest that the proposals would have a potential impact on this characteristic, although there is evidence to suggest that women are less likely to cycle than men for a number of reasons.		
Gender reassignment	There is no evidence to suggest that the proposals would have a potential impact on this characteristic.		
Religion and belief	There is no evidence to suggest that the proposals would have a potential		

	impact on this characteristic.		
Sexual orientation (including heterosexual, lesbian, gay, bisexual)	There is no evidence to suggest that the proposals would have a potential impact on this characteristic.		
Age (children and young people aged 0 – 24, adults aged 25 – 50, younger older people aged 51 – 75/80; older people 81+. The age categories are for illustration only as overriding consideration should be given to needs).	There is no evidence to suggest that the proposals would have a potential impact on this characteristic, although it is noted that cycle links can benefit younger age groups in that they provide choices for people who have not yet reached the legal driving age.		
Community relations	The proposals would not prevent Members from working with independent organisations to support the local community.		
Human Rights	There is no evidence to suggest that the proposals would have a potential impact on this characteristic.		
Actions identified as a result of the impact assessment	None.		

	Equality Impact Assessment Report Questions checklist
1.	Describe the piece of work you are assessing and the reason it is being carried out. Are you: <ul style="list-style-type: none"> ○ Making a strategic budget proposal ○ Developing a new policy, strategy or project ○ Reviewing and revising a policy, strategy or project ○ Reviewing a function or a service ○ Restructuring a service. <p>Include any options appraisal and if you have a preferred option explain why.</p>
2.	What are the timescales for completing the work? What committee deadlines do you have to meet?
3.	What are the aims and objectives of the work? How do these link to wider council or strategic objectives.
4.	Who will be the main beneficiaries of the piece of work and in what way? All people in Exeter? Council staff? A specific stakeholder group? A combination of these?
5.	What data do you have on how different groups would be affected by the work?
6.	What research studies or reports have been carried out in other areas of the country or nationally that provide information about the likely impact of your work on equality groups?
7.	What consultation has taken place or is planned with customers (individuals and groups) from equality groups?
8.	What does the consultation indicate about any differential positive or negative impact(s) of this piece of work?
9.	If there are gaps in your previous or planned consultation and research are there any experts/relevant groups that can be contacted to get further views or evidence on the issues? If so please explain who they are and how you will obtain their views.
10.	If you have indicated there is a negative impact on any group, is that impact Legal; Intended; of high or low impact?
11.	If you identified any negative impact that is of low significance, can you minimise or remove it? If so how?

12.	Could you improve the strategy/policy/project's positive impact and if so how?
13.	How do you intend to continue monitoring the impact of this strategy/policy/project?
14.	If there are gaps in your evidence base, do you need to carry out any further research about the likely impact of your work on equality groups?
	There might be a time delay here as you will need to get the results of your consultation before you can continue working your way through the questions.
15.	As a result of this assessment and available evidence collected, including consultation, what if any changes do you need to make to the strategy/policy/project?
16.	Will the changes planned ensure that the negative impact is: Legal; Intended; of low impact?
17.	What monitoring/evaluation/review process have you set up to check the successful implementation of the strategy/policy/project?
18.	How will this monitoring/evaluation further assess the impact on the equality groups/ensure the strategy/policy/project is non-discriminatory?
19.	Please provide an action plan showing any recommendations that have arisen from the assessment and how you plan to take them forward. Are your actions SMART (specific, measurable, achievable, relevant and time-based).
20.	When will you next review this work and the impact assessment?