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| Report Title:                                | <b>Infrastructure</b> including Community Infrastructure Levy (CIL) Governance  |
| Contains Confidential or Exempt Information? | NO - Part I   |
| Member reporting:                            | Councillor Coppinger, Lead Member for Planning, Health & Sustainability         |
| Meeting and Date:                            | Cabinet 28 June 2018  |
| Responsible Officer(s):                      | Russell O'Keefe, Executive Director Place and Jenifer Jackson, Head of Planning |
| Wards affected:                              | All   |

## REPORT SUMMARY

1. The borough has published an Infrastructure Delivery Plan (IDP) to support the submitted Borough Local Plan (BLPSV). The IDP sets out the infrastructure required to support planned development.
2. The council introduced its Community Infrastructure Levy (CIL) Charging Schedule and a Regulation 123 list on 1 September 2016. The Community Infrastructure Levy is a charge on new floor space arising from developments in residential or retail use and the monies collected must be used to deliver the infrastructure required to support new development in the Borough.
3. It is important that appropriate governance arrangements are put into place to spend monies collected against the Regulation 123 List. It proposes that an amended Regulation 123 list be produced and consulted upon given the recent BLPSV Submission on 31 January 2018.

## 1 DETAILS OF RECOMMENDATION(S)

**RECOMMENDATION:** That Cabinet notes the report and approves:

- (i) The terms of reference for the Infrastructure Working Group, see Appendix A.
- (ii) The appointment of five borough councillors to the Member/Officer Infrastructure Working Group.
- (iii) That the Infrastructure Working Group will make recommendations to Cabinet in future about how monies collected by the Levy will be spent with due regard to the published Regulation 123 list.
- (iv) That a revised Regulation 123 List will be produced by 31 August 2018 for consultation as appropriate and then for review of the comments received to be reported to the Infrastructure Working Group to consider and make any amendments to the revised 123 List before publication.
- (v) That, prior to receiving payments in April and October each year, the Parish Councils (and relevant Ward Councillors) will each receive an itemised statement of those applications in their Parish for which CIL has been collected which identifies the application number, the site

**address, the amount collected in total and the neighbourhood portion due to be paid at the next payment date.**

- (vi) That in communities that are non-parished, the ward councillors will receive a statement of the applications in that ward where CIL has been collected which identifies the application number, the site address, the amount collected in total and the neighbourhood portion. From October 2018 the ward councillors and any designated Neighbourhood Forum will be consulted in writing on the spending priorities for that area.**

## **2 REASON(S) FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED**

- 2.1 The Community Infrastructure Levy (CIL) Regulations made in 2010 (and subsequently amended) restricted the pooling of contributions negotiated under S106 from 1 April 2015. Therefore CIL becomes the mechanism to be used to fund the majority of infrastructure projects in the borough. The Regulation 123 List sets out the projects that are required to help mitigate the effect of new development and that the council intends to fund through CIL. This gives clarity to developers on where the funds will be spent and ensures that developers and residents are confident that the infrastructure will be in place to support planned developments.
- 2.2 Historically the impact of new development on services, amenities and infrastructure has been mitigated through the collection of financial contributions for specific works or through provision of facilities/infrastructure on development sites. All of these have been secured using Section 106 of the Planning Act through a formal legal agreement linked to the planning permission. Councillors will previously have received monitoring reports in relation to spending of those monies for the specific purposes set out in the legal agreements. It would not be unusual for monies to be collected in a 'pot' from several sites before sufficient money has accrued to deliver that piece of infrastructure. In 2008 Government decided to introduce a different way of doing this through a Community Infrastructure Levy that would offer more certainty to developers of the monies to be paid and be more transparent in what they would go towards.
- 2.3 This council implemented its CIL Charging Schedule on 1 September 2016 although it is likely to take some time for money to be received. This is due to the levy only being chargeable on applications decided after this date and at their commencement. When money is accrued this will have to be spent with due regard to the agreed Regulation 123 list which sets out the schemes to be delivered but does not prioritise those schemes. A mechanism will need to be in place for the priorities to be agreed to best serve future residents in those new developments in terms of infrastructure provision.
- 2.4 Local Planning Authorities operating CIL will pass on 15% of the money raised from development within a parish/town council area direct to them (25% if a neighbourhood plan had been adopted covering their area). Communities (wards) that are not in a parish/town council area will be consulted through their ward councillors and Neighbourhood Forums on priorities for infrastructure spending but the funds will remain with the council to spend. The money will only be able to be spent on the provision, improvement, replacement, operation

or maintenance of infrastructure or anything else that the community is concerned with addressing demands that development places on an area.

- 2.5 Section 106 agreements will still be used to secure affordable housing provision or payment in lieu of provision and other non-financial requirements.
- 2.6 This report seeks to gain approval for governance arrangements for determining the priorities for spending CIL monies collected. This would be undertaken by a joint member/officer group which would report to cabinet and make recommendations having consulted with ward councillors, and infrastructure providers, including utility companies.
- 2.7 The terms of reference for the group are attached at Appendix A. The group cannot project manage but will seek to programme manage the delivery of infrastructure projects. As the group evolves the terms of reference may need to be reviewed accordingly and be the subject of a future report to cabinet.
- 2.8 The focus of spending of CIL will be on the projects on the Regulation 123 list which is informed by the IDP. It will be important to ensure that additional infrastructure capacity is timed to coincide with the expected delivery of new development in a particular area. The spending of CIL will therefore need to be carefully planned and managed. CIL receipts must be spent on capital projects; CIL can be used to increase the capacity of existing infrastructure or to repair failing infrastructure if that is necessary to support new development.
- 2.9 The BLPSV and Infrastructure Delivery Plan will provide additional priorities in terms of the infrastructure needs and the phasing required to support the new development planned. The IDP is a living document, recently updated in December 2017, it will be updated on an annual basis.
- 2.10 The Regulation 123 list refers to types of infrastructure but will not always specify particular schemes or projects and reference back to the IDP will be necessary. The list will be kept under review by the officer working group to ensure that it reflects the infrastructure required to support development. In order to amend the Regulation 123 list appropriate consultation will be undertaken as required by the CIL regulations. The report seeks authority for this to be carried out and any changes made as a result of the feedback received to be reviewed by the joint member/officer infrastructure working group prior to publication.
- 2.11 Once the likely level of available CIL is known stakeholders will be invited to 'bid' for funding towards their projects in line with the criteria in table 2.

**Table 1 Criteria for prioritising CIL spending**

| Criteria   |
|--|
| Be included in the Infrastructure Delivery Plan.   |
| Be included in the Regulation 123 list.  |
| Deliver specific policies of the Borough Local Plan.   |
| Contribute to the delivery of other approved Council strategies linked to the Borough Local Plan through planning policy, e.g. open space. |

|   |
|---|
| Contribute to the delivery of the Council's Strategic Priorities identified in the Council Plan.  |
| Contribute towards the delivery of infrastructure by a provider where it can be satisfactorily be demonstrated that the infrastructure would not otherwise be delivered i.e. that all other possible funding sources are insufficient.  |
| Address a specific impact of new development beyond that which has been secured through a section 106 obligation or a section 278 agreement.  |
| Lever in other funds that would not otherwise be available e.g. need to match or draw grant funding.  |
| Offer wider as well as local benefits.  |
| Be deliverable in the year that the funding is being programmed i.e. justified by<br>(i) a project plan including a timetable and resources available to meet the timetable<br>(ii) consultation summary report to indicate stakeholder support; and<br>(iii) arrangements for ongoing maintenance. |

2.12 The projects will then be categorised to assist the process of prioritisation to distinguish which projects are critical to enabling development and those that mitigate the effects of the development compared to those that are important to deliver high quality place making. The categories and descriptions are set out in table 2.

**Table 2 Categories and descriptions**

| Category    | Description  |
|-------------|--|
| Critical    | Infrastructure that must be provided to enable growth and without it development cannot be allowed to proceed e.g. major utilities infrastructure.   |
| Essential   | Infrastructure that is considered essential and necessary to support and/or mitigate the impact arising from development. The timing and phasing of these projects e.g. school places and public transport projects are usually linked to the occupation of development sites.   |
| Deliverable | Infrastructure that is required to support wider strategic objectives, to build sustainable communities and to make places. This type of infrastructure is influenced more by whether a person chooses to use the facility e.g. community facilities. The timing is not critical and is usually linked to completion of development. |

**Table 3: Options considered**

| Option   | Comments   |
|--|--|
| An Infrastructure Working Group, supported by an officer led infrastructure group, to make recommendations on Infrastructure projects to be funded year by year which will be aligned to the capital programme and Medium Term Financial Plan. | Considered to align with the priorities identified in the Council Plan and be the best method of ensuring projects are delivered in a timely manner to support development and that available funding is directed to the critical projects which are critical to support development rather than those which may be desirable but cannot be supported by evidence to |
| <b>The recommended option</b>  |  |

| Option  | Comments  |
|---|---|
|   | demonstrate need.   |
| Apportion to services as per historic S106 Spend.<br><b>Not the recommended option.</b> | This is not considered to be an appropriate option. CIL funds should be used to ensure strategic projects are delivered to support the development of the area. This option would likely not result in the achievement of the infrastructure needed to support the delivery of the BLP and would lead to high demand for infrastructure provision which could not be met. This would not meet the priorities in the Council Plan. |
| Capital programme funded via CIL funds.<br><b>Not the recommended option.</b>           | Lack of overall strategic approach to the provision of infrastructure to support new development given that this would be based on 'bidding' from services for spend with no corporate consideration of the competing priorities to ensure support to the BLP and delivery of Council priorities.   |

### 3 KEY IMPLICATIONS

- 3.1 A formal governance process is needed due to the importance of infrastructure delivery to the Council and for its stakeholders, together with the need to work in partnership with other organisations to deliver priorities.

**Table 4: Outcome**

| Outcome  | Unmet                          | Met                  | Exceeded               | Significantly Exceeded | Date of delivery |
|--|--------------------------------|----------------------|------------------------|------------------------|------------------|
| Infrastructure Working Group Set up and 4 meetings per year taking place commencing July 2018                        | <4                             | 4                    | 5                      | 6                      | 31 July 2018     |
| Infrastructure Working Group reports to Cabinet twice a year on spending priorities identifying how this aligns with | Reports less than twice a year | Reports twice a year | Reports 3 times a year | Reports 4 times a year | October 2018     |

| <b>Outcome</b>   | <b>Unmet</b>     | <b>Met</b>       | <b>Exceeded</b> | <b>Significantly Exceeded</b> | <b>Date of delivery</b> |
|--|------------------|------------------|-----------------|-------------------------------|-------------------------|
| the MTFP.  |                  |                  |                 |                               |                         |
| Revised Regulation 123 list produced and consulted upon. | 31 December 2018 | 30 November 2018 | 31 October 2018 | 30 September 2018             | 30 November 2018        |

#### **4. FINANCIAL DETAILS / VALUE FOR MONEY**

4.1 No financial implications directly arising from the report recommendation.

#### **5. LEGAL IMPLICATIONS**

5.1 Under the Community Infrastructure Levy Regulations (2010) the council is required to provide an annual monitoring statement on funds received and spent. The council is also required to collect and distribute the neighbourhood portion to parish councils' twice a year: in October and April. Parish Councils are regulated in terms of what this money is spent on, as set out in the legislation; and also required to publish this information.

#### **6 RISK MANAGEMENT**

6.1 Risk management should be considered in the narrow focus of CIL governance. The responsibility for CIL sits with the Council as the local planning authority and it is a regulatory function. In the absence of any alternative governance model the Council would use the existing structure for decision making. In the event of the Cabinet being unable or not accepting the recommendations of the Infrastructure Working Group the risk will be mitigated by that decision being referred to the appropriate decision making committee of the Council.

**Table 4: Impact of risk and mitigation**

| <b>Risks</b>  | <b>Uncontrolled Risk</b> | <b>Controls</b>   | <b>Controlled Risk</b> |
|---|--------------------------|---|------------------------|
| CIL monies collected are not spent on infrastructure needed to support BLP delivery | HIGH                     | Appropriate governance and prioritisation arrangements put in place | LOW                    |
| CIL monies do not amount to the sums required to deliver key infrastructure         | HIGH                     | Seek alternative funding from other sources                         | MEDIUM                 |
| In Maidenhead   | HIGH                     | Review CIL post   | MEDIUM                 |

| <b>Risks</b>   | <b>Uncontrolled Risk</b> | <b>Controls</b>   | <b>Controlled Risk</b> |
|--|--------------------------|---|------------------------|
| where there is nil charge infrastructure is not delivered to support development |                          | adoption of the BLP   |                        |
| Section 106 cannot be used to mitigate the impact of development                 | HIGH                     | Review the Regulation 123 list, consult and adopt revised version | LOW                    |

## **7 POTENTIAL IMPACTS**

7.1 An Equality Impact Assessment (EQIA) is not required.

## **8 CONSULTATION**

8.1 The report will be considered by Planning and Housing Overview and Scrutiny Panel in June 2018, comments will be reported to Cabinet.

8.2 A consultation on the revised regulation 123 list will be conducted in accordance with the adopted Statement of Community Involvement.

## **9 TIMETABLE FOR IMPLEMENTATION**

**Table 5: Implementation timetable**

| <b>Date</b>      | <b>Details</b>   |
|------------------|--|
| 31 July 2018     | Infrastructure Delivery Group set up                                       |
| 31 August 2018   | Revised regulation 123 list produced for consultation                      |
| 31 October 2018  | Meeting of the IWG   |
| 30 November 2018 | Consultation closed on the revised regulation 123 list and list published. |

9.1 Implementation date if not called in: Immediately.

## **10 APPENDICES**

10.1 Appendix 1 Terms of reference for Infrastructure Delivery Group

## **11 BACKGROUND DOCUMENTS**

11.1 None.

## **12 CONSULTATION (MANDATORY)**

| <b>Name of consultee</b> | <b>Post held</b>                                  | <b>Date sent</b> | <b>Commented &amp; returned</b> |
|--------------------------|---|------------------|---------------------------------|
| Cllr David Coppinger     | Lead Member for Planning, Health & Sustainability | 24/5/18          | 30/5/18                         |
| Alison Alexander         | Managing Director                                 | 24/5/18          | 30/5/18                         |
| Russell O'Keefe          | Executive Director                                | 24/5/18          | 29/5/18                         |
| Andy Jeffs               | Executive Director                                | 24/5/18          | 1/6/18                          |
| Rob Stubbs               | Section 151 Officer                               | 21/5/18          | 24/5/18                         |
| Hilary Hall              | Deputy Director                                   | 24/5/18          | 29/5/18                         |
| Nikki Craig              | Head of HR  | 24/5/18          | 29/5/18                         |
| Mary Severin             | Monitoring Officer                                | 24/5/18          |                                 |
| Louisa Dean              | Communications and Marketing Manager              | 24/5/18          |                                 |
| David Scott              |   | 24/5/18          |                                 |

## REPORT HISTORY

|  |                            |
|--|----------------------------|
| <b>Decision type:</b><br>Key decision first entered on to the Forward Plan in April 2018 | <b>Urgency item?</b><br>No |
| Report Author: <b>Jenifer Jackson, Head of Planning, 01628 796042</b>                    |                            |





## Terms of Reference: Infrastructure Delivery Group

## Appendix 1

|                               |  |
|-------------------------------|--|
| <b>1) Remit</b>               | The infrastructure working group is a joint Member and officer consultative and working group set up to work jointly and collaboratively on infrastructure capacity, infrastructure requirements, infrastructure related to development and infrastructure delivery across the Borough, using CIL or other funding streams including consideration of capital funding.   |
| <b>2) Membership of Group</b> | <p>Lead Member for Planning<br/> Lead Member for Highways<br/> Two Conservative Members<br/> Opposition Member<br/> Head of Planning<br/> Planning Policy Manager<br/> Business Development Manager<br/> Executive Director, Operations<br/> Executive Director, Place<br/> Section 151 Officer<br/> Director of Children's Services<br/> Head of Commissioning: Communities<br/> Head of Communities</p> <p>The group will reserve the right to seek representation from other borough service areas as required.</p>   |
| <b>3) Meetings</b>            | Quarterly  |
| <b>4) Aim of the group</b>    | <ul style="list-style-type: none"> <li>• To meet the challenge of aligning infrastructure delivery to development coming forward on the back of the BLP,</li> <li>• To deliver the infrastructure requirements of the BLP as amplified in the Infrastructure Delivery Plan.</li> <li>• To facilitate delivery of the schemes identified in the CIL Regulation 123 list.</li> <li>• To coordinate with other infrastructure providers including utility companies.</li> </ul> <p><b><u>Objectives</u></b></p> <p>The delivery group objectives are:</p> <ul style="list-style-type: none"> <li>• to ensure that overarching infrastructure delivery mechanisms are secured;</li> <li>• to make recommendations to Cabinet, supported and advised by the Officer Working Group, on the Reg 123 List schemes and their priority, in delivery terms, to ensure maximum benefit to the community; and</li> <li>• to ensure that capital funding for infrastructure is aligned to infrastructure requirements.</li> </ul> <p>To achieve this the group will:</p> <ul style="list-style-type: none"> <li>• Receive and review project progress reports from the Infrastructure Working Group</li> <li>• Be supported by officer evidence and information as required</li> </ul> |
| <b>5) Output</b>              | Reports to Cabinet on CIL priorities and CIL spending  |