

# ARUN DISTRICT COUNCIL

## REPORT TO AND DECISION OF PLANNING POLICY SUB-COMMITTEE ON 15 DECEMBER 2020

**SUBJECT: Community Infrastructure Levy Governance**

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**DATE:** November 2020

**EXTN:** x 37654

**PORTFOLIO AREA:** Planning

### EXECUTIVE SUMMARY:

This report sets out the proposed governance arrangements for apportioning, prioritising and agreeing the spend of Community Infrastructure Levy (CIL) monies on infrastructure schemes that mitigate the impact of cumulative growth in Arun District.

### RECOMMENDATIONS:

That Planning Policy Sub Committee notes that the Principal Planning Officer will prepare a report to the Constitution Working Party to recommend changes to New Constitution (Committee System) as set out in paragraph 7.5 of this report; and recommends that Full Council approves:-

- 1) the CIL arrangements set out in sections 4 to 7 (inclusive) of the report, and CIL District Pot apportionment set out under paragraph 4.3;
- 2) that the first Infrastructure Investment Plan (2022-2025), which sets out CIL spending priorities over the three year period, will be completed, subject to Full Council approval, by December 2021 and will last for a period of 3 years.
- 3) That Planning Policy Committee (PPC) is granted delegated authority to approve bids for funding infrastructure projects that are not listed on the Infrastructure Investment Plan (IIP) (subject to the correct application process being undertaken in accordance with processes set out in Background Paper 3).
- 4) That the Group Head of Planning in consultation with the Group Head of Corporate Support, is granted delegated authority to authorise money to be passed to infrastructure providers to spend on CIL projects on the IIP. Where projects are not listed within the IIP, spending will be subject to Planning Policy Committee approval.
- 5) To execute all necessary documentation to ensure CIL is passed to service providers, and spent in accordance with the council's Infrastructure Investment Plan.

## **BACKGROUND**

- 1.1 The Arun Local Plan 2011-2031 was adopted in July 2018 and the Arun Community Infrastructure Levy (CIL) Charging schedule, was approved by Full Council on 15 January. The Charging Schedule came into effect on 1st April 2020.
- 1.2 The Council now has the responsibility for the collection and monitoring of CIL receipts and the allocation of CIL monies to key infrastructure projects. It must do this by preparing:
  - Governance arrangements for prioritisation of infrastructure projects and the process for spending CIL; and
  - an Infrastructure Investment Plan (IIP) setting out infrastructure spending priorities over the next three years; and
  - prepare an Infrastructure Funding Statement annually (which monitors CIL and s.106 income and expenditure).
- 1.3 There will be a need to amend and revise the Council's Constitution in order to apportion the governance functions for CIL. This will take place subject to the principles set out in this paper, being approved.
2. **How does CIL change the Council's use of s.106 Developer Contributions?**
  - 2.1 With the introduction of CIL, the council's historic approach to the use of s.106 developer contributions will be scaled back, on 'non-strategic sites' to address site specific infrastructure provision e.g. on-site provision of open space or affordable housing. Strategic housing allocations will continue to pay s.106 to deliver all mitigating infrastructure.
  - 2.2 Therefore, all 'CIL liable sites' (sites which are charged a specific amount of CIL per square metre) will generate CIL receipts (upon commencement) which can be spent on infrastructure projects anywhere in the district. CIL can be used to fund a wide range of infrastructure, including transport, flood defences, play areas, open spaces, parks and green spaces, cultural and sports facilities, healthcare facilities, academies and schools, district heating schemes, police stations and other community safety facilities.
  - 2.3 The implementation of CIL is estimated to generate circa £30m over the lifetime of the current adopted Arun Local Plan (2011-2031). However, this income may be somewhat slowed due to the current Covid-19 pandemic which may delay the commencement of development.
  - 2.4 This means that over the first 6 months from 1<sup>st</sup> April 2020 to the time of writing, CIL income has been minimal, and may only begin to increase in the next 3 years.
  - 2.5 As a result, it is realistic to schedule the preparation of the first Infrastructure Investment Plan (IIP) to begin in early 2021, with the aim of publishing the first IIP by January 2022. This is to ensure that sufficient CIL income can be saved to allow

spending to commence from 2022. Where CIL receipts are raised in the intervening time period, only the town and parish proportion will be passed across to those councils. The amount of CIL that can be spent by the district will be saved until the IIP has been approved.

### **3. What can the Council spend CIL on?**

3.1 In accordance with CIL Regulations 2010 (as amended), Part 7, CIL income must:

- i. fund the provision, improvement, replacement, operation or maintenance of infrastructure to support the development of its area (see para 2.2 above); and
- ii. the provision, improvement, replacement, operation or maintenance of infrastructure outside its area where to do so would support the development of its area.
- iii. Pass to every local council (i.e. Parish or Town Council) within its area a proportion of CIL receipts (either 15% or 25% of CIL receipts generated in the local council area, depending on whether the local council has a neighbourhood development plan in place, in relation to the relevant area on the day when planning permission first permits that development)<sup>1</sup>.

3.2 The CIL Regulations also allow CIL charging authorities to apply CIL the administrative expenses incurred by it in connection with CIL (up to 5% of CIL receipts).

3.3 Given the strict requirements on spending CIL, it is important at this stage to emphasise that CIL can only be spent on projects that are shown to support the development of the area, by providing evidence to support the prioritisation of the project.

3.4 Evidence may include, details to show that the project is linked to the delivery of the Local Plan's strategic objectives and infrastructure policies as supported by the Arun Infrastructure Capacity Study and Delivery Plan (ICS DP 2017).

3.5 The first CIL 'infrastructure list' is set out in the Arun CIL Charging Schedule and the accompanying Infrastructure Funding Statement for 2019/20. This is a high level list of CIL spending priorities, but more detailed projects must now be collated to support the determination of spending priorities for the council.

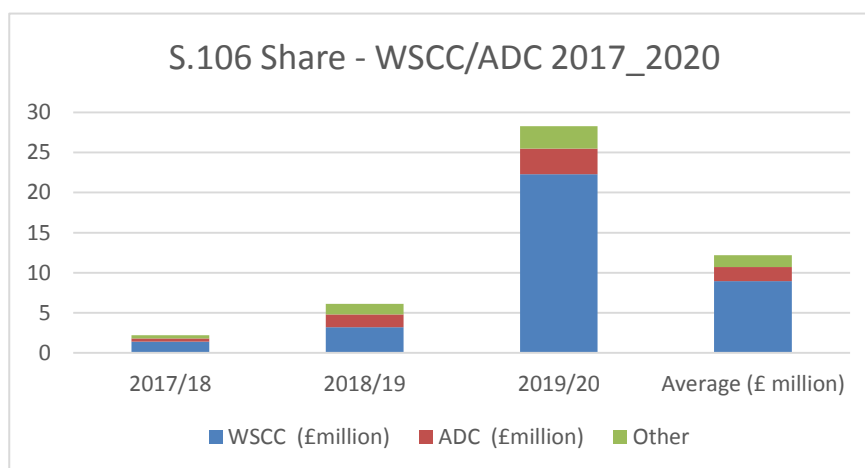
### **4. How will the CIL pot be shared?**

4.1 Most projects required to support development of the district will ultimately be projects that are the responsibility of the County Council, such as roads/transport projects, waste management, libraries, the fire service and schools. Therefore, a large proportion of the CIL money received will justifiably be allocated to the County Council to spend on strategic infrastructure projects.

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<sup>1</sup> Regulation 59A paragraph (3) of the CIL Regulations 2010 (as amended) states "In England, where all or part of a chargeable development is within an area that has a neighbourhood development plan in place the charging authority must pass 25% of the relevant CIL receipts to the parish council for that area". There is nothing in the regulations to indicate that a Neighbourhood Development Plan could not be considered to be 'in place' if some policies in it were not up to date, or if the Plan was undergoing a review.

- 4.2 A review of s.106 income over the last three full financial years, (excluding strategic sites), illustrates the amount of s.106 which was spent on County Council projects, and may now need to be covered by CIL receipts. The chart below shows that on average, WSCC typically receives 70%, Arun District Council (ADC) 20% and other service providers e.g. the NHS and Sussex Police 10% of s.106 income from development sites.



- 4.3 This report therefore, proposes that the best way to ensure that the right amount of CIL is ringfenced for County Council projects is to allocate the District CIL pot in a way that reflects current s.106 spending<sup>2</sup>. Therefore, for the preparation of the first Arun IIP, the division of CIL will be as follows:

CIL Pot 100% CIL received from developer. This is broken down into:-

- i. The 'CIL Administration pot' – 5% to fund the CIL Officer post, system administration for IT and CIL software etc<sup>3</sup>.
- ii. 'Parish Proportion' 15-25% of CIL received (this is passed to the parishes twice a year on 28 October and 28 April)<sup>4</sup>

The 'District Pot' (70% of total CIL income). Shared as follows:

- i. 70% - WSCC projects
- ii. 20% - ADC

<sup>2</sup> It should also be noted here that there is always the potential for town and parish councils to work with the county and district councils to discuss putting the local proportion towards jointly funded projects. This is something that can be considered as part of the IIP process. Local councils must note that Regulation 59A (12) makes allowance for part or the whole of its CIL to be retained by the district council.

<sup>3</sup> The CIL Regulations allow for 5% of the average amount of the first three year's CIL income to be used to cover administrative expenses. However, due to the uncertainty of future CIL income, this is a challenge. An estimate of the 5% will be taken in years one and two. By year three a much more accurate figure, to be spent on CIL administrative expenses will be known.

<sup>4</sup> Where a parish does not have a Neighbourhood Development Plan in place and their proportion of CIL is 15% (capped at £100 per council tax dwelling), the amount passed to the "District Pot" will be slightly larger. This amount will then be distributed across the different categories of WSC, ADC and Other.

iii. 10% - other

## **5. How will the Arun Infrastructure Investment Plan be Prepared?**

- 5.1 The purpose of the Council preparing a CIL Infrastructure Investment Plan (IIP) is to ensure that all infrastructure projects identified are agreed by the council, in consultation, with the service providers who will be spending CIL to deliver their projects. A business planning approach provides certainty to infrastructure providers and spending managers, as well as a transparent approach for residents.
- 5.2 As mentioned above, there must be evidence to support the funding of an infrastructure project. Therefore, a clear methodology for preparing the IIP is important. The full methodology can be found in Background Paper 1.
- 5.3 The starting point for preparing the IIP will be the Arun Local Plan and Infrastructure Capacity Study and Development Plan 2017. These documents indicate whether the projects are critical to the delivery of development, and therefore will have greater priority.
- 5.3 Secondly, in preparing the IIP, it is important to identify projects that can be fully funded and delivered within the timeframe covered by the plan. The IIP will therefore include CIL income trajectories which link up to service providers delivery timescales.
- 5.4 Finally, as part of the preparation of the IIP, officers will engage with all service providers, including the town and parish councils (who will receive a proportion of CIL) to ensure that spending is aligned with their spending strategies.

## **6. Governance - Approving the Infrastructure Investment Plan and Spending CIL.**

- 6.1 It should be noted that by the time this process is used to prepare the IIP, the council's overall administration would have shifted to a 'committee system'. Therefore, the following process is explained as if Planning Policy Sub-Committee has been replaced by the Planning Policy Committee. The methodology for preparing the Infrastructure Investment Plan (IIP) is set out in Background Paper 1 and the overall decision making process regarding CIL spend, is provided in Background Paper 2.
- 6.2 The overall preparation of the IIP will commence with officers discussing infrastructure projects and opening a consultation event. The event would request that service and infrastructure providers comment on the original Local Plan infrastructure list, by providing additional supporting information; and also submit further applications for CIL funding to be considered as part of the IIP.
- 6.3 Using the responses to this consultation, officers will score the infrastructure projects, as part of a screening, and early prioritisation process, and commence the preparation of the IIP infrastructure list, in discussion with infrastructure providers and West Sussex County Council officers in early 2021. This list will then be reviewed and discussed by an informal meeting of Arun District Council and West Sussex officers and members, at the "Arun Officer and Member CIL Liaison Meeting".

- 6.4 This meeting will consider the infrastructure projects that have been submitted by infrastructure providers, and will review the scoring that has been carried out by officers, to date. Attendees of this meeting are listed below, and the group will meet in May and September each year (further meetings may be arranged, if required):
- Director of Place,
  - Group Head of Planning,
  - Group Head of Economy
  - Planning Policy Team Leader
  - Group Head of Corporate Support
  - Group Head of Neighbourhood Services
  - Group Head of Community Wellbeing
  - Chair of Planning Policy Committee
  - Team Leader of Planning Policy and Infrastructure (WSCC)
  - WSCC member – as nominated by the Leader of WSCC.
- 6.3 Following the meeting in May, an information item will be added to the Planning Policy Committee agenda in the spring. This item will provide the committee with an update on the IIP and also provide an opportunity for members of the committee to request to meet informally with officers to discuss the emerging IIP priorities. These meetings will take place following the Committee meeting, and would be expected to take place from June – August.
- 6.4 Consultation with infrastructure providers will also continue throughout this time to ensure that the IIP is as up to date as possible. Only schemes that meet particular criteria, and have scored the highest, will be added to the final IIP short-list (set out in Background Paper 1).
- 6.5 Following a further Arun CIL Officer and Member Liaison meeting in September, the final IIP will be submitted to Planning Policy Committee. Subject to approval by Full Council, the final plan will establish which infrastructure projects will be delivered between 2022-2025.
- 6.6 The adoption of the IIP 2022-2025 would trigger the preparation of master contracts with the service providers responsible for the projects listed on the plan. These will be drawn up between Arun District Council, and the infrastructure provider, that has a project identified on the approved IIP. The contract will clearly set out that CIL money will be passed to them, upon receipt of a formal application and, subject to them meeting certain conditions. The contract will also set out that CIL money will only be spent on the approved item within the IIP.

## **7. How Will CIL Money Be Passed to Service Providers?**

- 7.1 The Flowchart in Background Paper 3 shows that there are two ways that the Council may receive a request for CIL money, as follows below.
- 7.2 The preferred method would be that a service provider requests money for a CIL project that is listed on the IIP. In which case, they would have already entered into a CIL master-contract with the council. Therefore, they would simply complete a proforma to request the CIL money, setting out the details of the project (including cost,

timescales and evidence to show that a contract is in place/imminently in place for the works). Once checked and approved, the proforma would be appended as a supporting document to the master-contract. Upon completion of the contract, the Group Head of Planning would have authority to pass that CIL money to the service provider, in accordance with the CIL spending contract.

- 7.3 It is important to note that there is always a possibility that numerous requests for CIL money may be received at the same time for projects listed on the IIP. This highlights the importance of very careful preparation of the IIP, including detailed consultation with service providers. Taking time to prepare the IIP, will ensure that project delivery schedules align with CIL income, and do not overlap in a way that would make funding numerous projects simultaneously unachievable.
- 7.4 If a request is made, for a project that is not on the IIP, then a different process will be used, as shown in Background Paper 3. It is proposed that Planning Policy Committee would be able to approve spending on projects that are not included on the IIP, subject to the schemes meeting certain criteria. However, if the project is over the value of £25,000, Planning Policy would have to make a recommendation to Full Council to approve the spend or not. Subject to this spending approval, a master contract and proforma will need to be entered into. This is a much lengthier process, and would not be the preferred route for CIL spending.
- 7.5 Both spending processes described above will require two specific updates to the Council's Constitution as follows:
- That Planning Policy Committee has the authority to approve funding for infrastructure projects, which are not on the IIP and are under a value of under £25,000 (requests will only be considered if there is £50,000 available in the CIL 'other' pot as shown in paragraph 3.3 vi above); and
  - that the Group Head of Planning, in consultation with the Group Head of Corporate Support, is granted authority to pass CIL to service providers where they have entered into a CIL spending contract (to include the master-contract and appended proforma) with the council (the value would be unlimited, due to the fact that Full Council would have already approved the spend via the IIP, and through the signing of master-contracts).

## **8. Next Steps**

- 8.1 Subject to agreement of the proposals set out above, in section 4 to 7 (inclusive) a number of actions will need to be taken:-
- Set up the first CIL Officer and Member Liaison Meeting for spring 2021.
  - Commence preparation of the Infrastructure Investment Plan
  - Prepare the master contract template for CIL spending and CIL request proforma.
  - Recommend updates to the Constitution in relation to the terms of reference for Planning Policy Committee and the Financial Procedure Rules, in relation to the Group Head of Planning's authority to spend CIL.

8.2 Further reports may be brought before Planning Policy Committee to consider further matters regarding CIL governance relating to more detailed processes.		
<b>9. OPTIONS:</b>		
9.1 The following options are available:		
<ul style="list-style-type: none"> <li>To agree the recommendations of the report in order to secure the allocation of CIL monies to key infrastructure providers;</li> <li>or not to agree the report and fail to deliver appropriate Governance for the implementation of CIL and allocation of CIL monies towards necessary infrastructure.</li> </ul>		
<b>10. CONSULTATION:</b>		
<p>This report has been prepared in consultation with Legal Services to discuss the principle of preparing a master-contract, to be entered into by all service providers, responsible for the delivery of infrastructure projects listed on the IIP.</p> <p>Officers have engaged with town and parish councils regarding infrastructure lists so that they are aware of the importance of preparing lists that may sit alongside, and inform (where possible) the council's Infrastructure Investment Plan.</p> <p>The report has also been prepared in liaison with the Team Leader of Planning Policy and Infrastructure at West Sussex County Council.</p> <p>The report has also been prepared in consultation with the Director of Place, Group Head of Planning and Team Leader of Planning Policy and Conservation.</p>		
Has consultation been undertaken with:	<b>YES</b>	<b>NO</b>
Relevant Town/Parish Council	<b>x</b>	
Relevant District Ward Councillors		<b>x</b>
Other groups/persons (please specify): West Sussex County Council -	<b>x</b>	
<b>5. ARE THERE ANY IMPLICATIONS IN RELATION TO THE FOLLOWING COUNCIL POLICIES: (Explain in more detail at 6 below)</b>	<b>YES</b>	<b>NO</b>
Financial	<b>x</b>	
Legal	<b>x</b>	
Human Rights/Equality Impact Assessment		<b>x</b>
Community Safety including Section 17 of Crime & Disorder Act		<b>x</b>
Sustainability		<b>x</b>
Asset Management/Property/Land		<b>x</b>
Technology		<b>x</b>
Other (please explain) listed above	<b>x</b>	



**6. IMPLICATIONS:**

The recommendations of the report will require amendments to the Council's constitution, legal and financial arrangements to ensure contracts are in place, and that processes meet financial regularity and probity.

**7. REASON FOR THE DECISION:**

To ensure that development in the Arun Planning Authority area mitigates its impact through setting a transparent and equitable Governance and implementation process for the allocation of CIL monies towards key infrastructure priorities.

**8. EFFECTIVE DATE OF THE DECISION: *Committee Services to insert*****9. BACKGROUND PAPERS:**

BP1: Infrastructure Investment Plan (IIP) Methodology

BP2: CIL Governance Process – Process Flowchart 1 – Preparation and Approval of the Arun Infrastructure Investment Plan 2022-2025

BP3: CIL Spending Flowchart I

BP3: CIL Spending Flowchart II

