

# TEWKESBURY BOROUGH COUNCIL

<b>Report to:</b>	Executive Committee
<b>Date of Meeting:</b>	10 January 2024
<b>Subject:</b>	Cheltenham, Gloucester and Tewkesbury Community Infrastructure Levy (CIL) Joint Committee
<b>Report of:</b>	CIL Manager
<b>Head of Service/Director:</b>	Associate Director: Planning
<b>Lead Member:</b>	Lead Member for Built Environment
<b>Number of Appendices:</b>	2

<p><b>Executive Summary:</b></p> <p>This report seeks the support of the Executive Committee in recommending to Council approval of the governance arrangements for the allocation of CIL ‘Infrastructure’ funding by agreeing to the establishment of a Member Joint Committee in accordance with the appended Terms of Reference (see Section 2 which explains the move from preparing a Memorandum of Understanding as previously proposed). This includes approving to pooling arrangements by the three Joint Committee partner councils for the ‘Infrastructure’ portion of CIL receipts; approval for publication of an amended ‘Infrastructure List’ (Appendix 2) is also requested. The Infrastructure List; and further engagement with a wider range of infrastructure providers.</p>
<p><b>Recommendation:</b></p> <p><b>To RECOMMEND TO COUNCIL:</b></p> <ol style="list-style-type: none"> <li>1. That establishment of a <b>Community Infrastructure Levy Joint Committee with the Terms of Reference as set out at Appendix 1, including the pooling of strategic Community Infrastructure Levy monies by Cheltenham Borough, Gloucester City and Tewkesbury Borough Councils, be APPROVED.</b></li> <li>2. That the amended Infrastructure List, set out at Appendix 2, be <b>APPROVED</b> for publication.</li> <li>3. That engagement with a wide range of infrastructure providers e.g. NHS, emergency services, Environment Agency be <b>ENDORSED</b> in order to identify any wider infrastructure priorities to be considered by the <b>Community Infrastructure Levy Joint Committee.</b></li> </ol>

<p><b>Financial Implications:</b></p> <p>There are no direct financial implications of the recommendations in this report for the Council; however, indirect benefits will be realised from the strategic ‘infrastructure’ element of the CIL which can be used to enhance the borough, improve infrastructure and support economic growth. Work is to be undertaken within existing resources and budgets including the 5% portion of CIL receipts that may be used for administration.</p>
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**Legal Implications:**

The “strategic” element of CIL receipts (being otherwise than up to 5% for administration and the 15% to 25% neighbourhood portion) must be spent on ‘infrastructure’. Charging authorities can choose to pool a proportion of their Community Infrastructure Levy receipts to fund infrastructure including for out of their own area spending. Each of the charging authorities included in the pooling arrangements should be content that funding for infrastructure outside the authority’s area will support development of its own area.

Under National Planning Policy Guidance (NPPG), charging authorities are encouraged to consider publishing a Memorandum of Understanding detailing the administration, principles, and governance that will be implemented for any pooled fund, covering, but not limited to:

- a proposed governance structure and decision-making process for agreeing how the pooled fund is implemented and spent;
- the proportion or amount of levy each charging authority will contribute;
- the procedure for collecting the pooled levy;
- the strategic infrastructure projects the pooled fund will be spent on;
- a system for returning pooled funds to an authority in the event that it is necessary to do so;
- a proposed review mechanism for the memorandum.

It is further recommended that the Memorandum of Understanding is a publicly accessible document, which clearly explains how the pooled levy will be administered and spent. A Memorandum of Understanding is not being proposed, but the Joint Committee’s Terms of Reference will set out how the pooled levy will be administered and spent.

The authority has a variety of legislative powers relating to its governance arrangements, including the general power of competence set out in Section 1 of the Localism Act 2011. This includes the setting up of Joint Committees under Section 101(5) and Section 102 of the Local Government Act 1972 and the Local Authorities (Arrangement for the Discharge of Functions) (England) Regulations 2012 which enable two or more local authorities to discharge any of their functions (other than those which are the responsibility of an authority’s executive under section 13 of the Local Government Act 2000).

The production of an Infrastructure Funding Statement (IFS) at least annually (by 31 December each year in respect of the previous financial year), including a Regulation 121A ‘Infrastructure List’, is a statutory obligation as a result of amendments to the Community Infrastructure Levy Regulations 2010 by the Community Infrastructure Levy (Amendment) (England) (No.2) Regulations 2019. The December 2023 IFS was approved at the Council meeting on 12 December 2023.

The government’s National Planning Practice Guidance on the Community Infrastructure Levy states that local authorities can publish updated data and infrastructure funding statements more frequently if they wish.

**Environmental and Sustainability Implications:**

None directly from this report; however, CIL infrastructure projects that may be funded in the future have the potential to have a positive impact on all three dimensions of sustainable development.

**Resource Implications (including impact on equalities):**

None directly from this report; however, CIL infrastructure projects that may be funded in the future may have implications.

**Safeguarding Implications:**

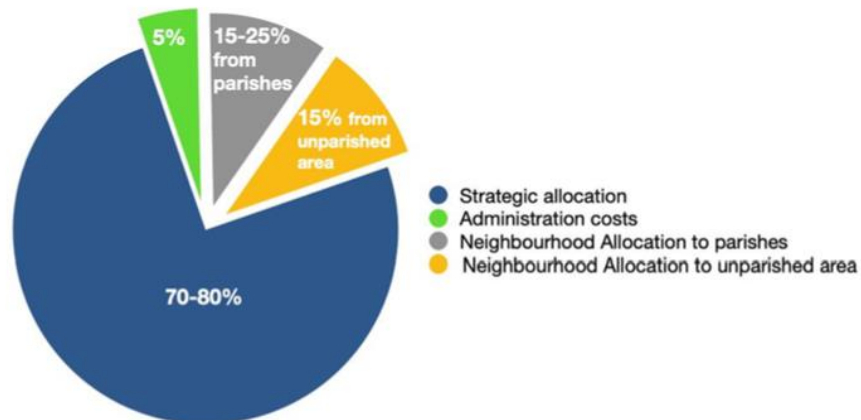
None

**Impact on the Customer:**

Meetings of the Joint CIL Committee which make decisions on the allocation of CIL funding will be held in public.

**1.0 INTRODUCTION**

- 1.1 The Community Infrastructure Levy (CIL) is a charge which can be levied by local authorities on new development in their area. It is an important tool for local authorities to use to help them deliver the infrastructure needed to support development in their area. In England, authorities which can charge the levy are the local planning authorities for the area. CIL is governed by the CIL Regulations 2010 (as amended).
- 1.2 Tewkesbury Borough Council approved the introduction of CIL on 15 October 2018 with commencement of charging on planning applications granted permission on or after 1 January 2019.
- 1.3 CIL is paid to the Council by developers after their planning permissions commence, in line with the Council’s adopted Instalments Policy. CIL is a significant means, outside wider government funding, by which the Councils are able to collect and pool developer contributions to deliver infrastructure improvements.
- 1.4 The breakdown of CIL is aligned with CIL regulations as shown in the diagram below. Please note that, as a fully parished borough, 15% from unparished areas is not held by Tewkesbury Borough Council.



**2.0 WHY A JOINT COMMITTEE?**

- 2.1 Members will note that this report differs from previous governance proposals, to form a CIL Board, to that of a Joint Committee. The Joint Committee has the benefit of introducing a more coherent and less complex approach to making decisions on bids for CIL money and provides a robust framework for collaboration and collective decision making.

- 2.2** This change has arisen responding to a number of key factors, including:
1. The concern of the time and administration that would be needed to service a CIL Board and then recall decisions back to each individual Council for final approval, building in delay and uncertainty for infrastructure providers.
  2. More efficient to engage on a collective basis with infrastructure providers and adds transparency into future CIL allocation and the setting of priorities through the operation of a Joint Committee.
  3. Commitment given by Cheltenham Borough and Gloucester City Councils to define a Terms of Reference and build in the safeguards that included:
    - a. full consensus vote;
    - b. review triggers;
    - c. link back to infrastructure commitments contained with the Infrastructure Funding Statements published by the Councils which includes the Infrastructure List (including any interim assessments) and the Infrastructure Delivery Plan (being updated to support the emerging Cheltenham, Gloucester and Tewkesbury Strategic and Local Plan);
    - d. decisions made by the Committee will be subject to the decisions being reported back through relevant Cabinet/Executive Committee of each of the member Councils;
    - e. Gloucestershire County Council will be entitled to attend meetings of the Committee to input on matters relevant to the functions and activities of the Committee but shall have no voting rights nor be involved in scrutiny; and
    - f. pooling and its review.
  4. Positive and constructive engagement with Gloucestershire County Council on the preparation of the draft Terms of Reference.
- 2.3** Gloucestershire County Council is not a CIL charging authority; however, county councils are responsible for the delivery of key strategic infrastructure. As set out in national Planning Practice Guidance (NPPG), charging authorities must consult and should collaborate with them in setting the levy and should work closely with them in setting priorities for how the levy will be spent in two-tier areas.
- 2.4** The NPPG goes on to advise that *“Charging authorities should think strategically in their use of the levy to ensure that key infrastructure priorities are delivered to facilitate growth and the economic benefit of the wider area. This may, for example, include working with neighbouring authorities...”*
- 2.5** This report and the Joint Committee proposal relates only to the strategic element of CIL, responsibility for the neighbourhood element of CIL sits wholly with Tewkesbury Borough Council and sits outside the proposals of the recommendations of this report.
- 2.6** An Officer Working Group is being established to support the work of the Joint Committee; a Terms of Reference for this working group is being prepared and will be agreed by the Joint Committee once established.
- 3.0 THE PROPOSAL**
- 3.1** It is proposed that a Joint Committee be set up between Gloucester City Council, Cheltenham Borough Council and Tewkesbury Borough Council supported by an Officer Working Group to work jointly and collaboratively to advise the councils on the expenditure of the strategic ‘Infrastructure’ pot of CIL monies that have been pooled.

- 3.2** The Joint Committee will:
- Oversee the strategic CIL application process and scrutinise each project bid for strategic fit and compliance with CIL requirements.
  - Be accountable for the oversight, monitoring and governance of awards.
  - Take an objective and detached view of applications.
- 3.3** Each charging authority shall appoint a Committee Member and a substitute who shall be either the Leader or other appointed Executive Members. The quorate membership of the Joint Committee will be three, made up of one Member from each charging authority. Each charging authority will have one vote.
- 3.4** The Officer Working Group will be made up of appropriate officers of each charging authority, who may call on infrastructure providers, including Gloucestershire County Council, where appropriate to provide professional advice. The Officer Working Group will work together to assess bids for Community Infrastructure funding and submit recommendations to the Joint Committee for approval.
- 3.5** The Officer Working Group activities shall include:
- Making recommendations to the Committee.
  - Contract management where triggered.
  - Application revisions and extensions.
  - Financial updates.
  - Project delivery scrutiny.
  - Compliance with funding agreements.
- 3.6** The Committee will be hosted under local government arrangements by Tewkesbury Borough Council with hosting arrangements reviewed every two years. The host authority will provide Secretary/Clerk, S151 and Monitoring Officer roles to the Committee.
- 3.7** Meetings will occur at least annually to agree strategic CIL allocations on 'infrastructure'. Other meetings may be required to respond to the programme of the additional functions. Meetings which make decisions on the allocation of CIL funding will be held in public.
- 3.8** The proposed Terms of Reference for the Joint Committee are provided at Appendix 1, those for the Officer Working Group will be approved by the Joint Committee once established.
- 3.9** In preparation for the work of the Joint Committee, the Councils have reviewed and updated the list of infrastructure projects that "may be wholly or partly funded" by strategic CIL 'Infrastructure' funds. The 'Infrastructure List' (amended from version approved for publication as Chapter 3 of the December 2023 IFS) is provided at Appendix 2 to this report and Members are asked to approve this for publication. Any future updates will be brought to Members for agreement. The combined list will provide a starting point for the work of the CIL Joint Committee.

## **4.0 POOLING OF FUNDS**

- 4.1** In order to make the most effective use of CIL funds, and ensure sufficient monies to deliver strategic scale infrastructure, it is proposed that the strategic ‘infrastructure’ portion of receipts from each CIL charging authority are pooled. The pooling of CIL contributions is supported by national guidance, the NPPG sets out that *“Charging authorities can choose to pool a proportion of their Community Infrastructure Levy... Where local authorities are working jointly to prepare development plans for their areas, pooling of levy receipts may be a useful mechanism for funding strategic infrastructure projects that have cross-boundary benefits. Each of the charging authorities included in the pooling arrangements should be content that funding for infrastructure outside the authority’s area will support development of its own area”*.
- 4.2** The NPPG encourages charging authorities, where pooling is agreed, to publish a Memorandum of Understanding detailing the administration, principles, and governance that will be implemented for the pooled fund. However, the proposal which has been progressed across the partner councils is to put in place a Joint Committee and the pooling element has been incorporated into the Terms of Reference now presented.
- 4.3** Whilst a Memorandum of Understanding was an appropriate mechanism in the context of previous governance proposals for a CIL Board, considering the changes now proposed to move to a Joint Committee, such an approach would not provide a robust position.
- 4.4** A Memorandum of Understanding is helpful in setting out an agreed position, however it is not legally binding on any party and has no enforceability outside goodwill of the parties concerned. Utilising a Terms of Reference adds more weight as the responsibilities of the Joint Committee are enforceable by the partner councils.
- 4.5** The Terms of Reference appended to this report (Appendix 1), proposes 100% pooling of just the strategic ‘Infrastructure’ portion of CIL receipts. The key justifications for this are:
- Taking into account S106 obligations, CIL to date and other funding either secured or identified, there is, and will remain, a significant funding gap to meet the infrastructure demands of the adopted Gloucester, Cheltenham and Tewkesbury Joint Core Strategy, the three district level plans and the emerging replacement Strategic and Local Plan (SLP).
  - Without commitment to pooling, all Councils will face ongoing challenges to fund large infrastructure projects, and it will take a longer period of time to deliver priorities for investment.
  - By committing to pooling, within the parameters of the Joint Committee Terms of Reference, it sends a positive message to the broad range of infrastructure providers that the SLP Councils are committed to enabling infrastructure priorities across the SLP area.
  - By building in trigger point reviews regarding pooling, this provides all partner Councils with the ability to renegotiate the level of pooling in the future.
  - If Tewkesbury was to retain a percentage of the strategic CIL Infrastructure receipts, in parallel to the Joint Committee it would have to put in separate governance procedures which, given the level of CIL currently being collected may be a challenge to allocate due to the high values of strategic infrastructure and this would not be efficient in respect of time and resources.
- 4.6** From time to time there may arise from one or more Councils an exceptional case to reprioritise infrastructure, bringing forward a new infrastructure request. The draft Terms of Reference recognises this and makes provision for this flexibility.

## **5.0 INFRASTRUCTURE LIST**

- 5.1** The Infrastructure Funding Statement (IFS) must include, as well as reports on CIL and S106 Planning Contributions for the preceding financial year, an Infrastructure List.
- 5.2** In preparation for the work of the Joint Committee, the Councils have reviewed and updated the list of infrastructure projects or types of infrastructure which “the charging authority intends will be, or may be, wholly or partly funded by CIL”.
- 5.3** The Infrastructure List is shared by the three Joint Core Strategy (JCS) Councils of Gloucester, Cheltenham and Tewkesbury reflecting their co-operation on the JCS and its successor, the Strategic and Local Plan.
- 5.4** Previous reporting had highlighted that the agreed Infrastructure List was not representative of current priorities so the JCS/SLP Councils, alongside Gloucestershire County Council, prepared an updated Infrastructure List which was approved for publication as part of the IFS in December 2023.
- 5.5** As a result of comments received from Gloucestershire County Council the list, included at Appendix 2 for approval to publish, no longer includes a section explicitly excluding any categories of infrastructure or specific projects. This is a decision for Members after consideration by the Joint Committee of the wider implications of doing so. Approval will apply to Tewkesbury Borough Council’s list and for this to be combined with the lists of Cheltenham, Gloucester and Gloucestershire County Council, as presented, to provide a starting point for the work of the CIL Joint Committee.
- 5.6** It is recognised that a full reassessment of the Infrastructure Delivery Plan (upon which the Infrastructure List approved for publication in the December 2020 IFS was based) is required. The full reassessment will take place alongside the preparation of the SLP. However, the provision of infrastructure cannot wait until that is completed to better reflect current priorities and this report therefore also seeks to do the following:
1. Gain approval for the establishment of a Joint Committee to facilitate governance of the allocation of Community Infrastructure Levy ‘Infrastructure’ receipts received by Cheltenham, Gloucester and Tewkesbury.
  2. Gain agreement of pooling arrangements by the three Joint Committee partner councils, managed through the Community Infrastructure Levy Joint Committee Terms of Reference.
- 5.7** The Councils are very aware that infrastructure identified by the local authorities may not identify all priorities. With this in mind a wider targeted exercise is being undertaken with key stakeholders such as NHS, emergency services, utilities, Environment Agency, Sport England etc. Should additional items be identified for our area which are considered priorities ahead of the full review of the IDP to support the SLP an update to the Infrastructure List will be presented to Executive and Council.

## **6.0 NEXT STEPS**

- 6.1** Recommendation to Council on 23 January 2024.
- 6.2** Alongside the preparation of the SLP, ensure the infrastructure needed to accommodate planned future development is fully considered through ongoing engagement with a full range of infrastructure providers, including running an open and transparent bidding process with the aim of producing a comprehensive Infrastructure Delivery Plan, from which schemes which meet not only the needs of new development but also the priorities of the Council may be selected for inclusion on a deliverable future Infrastructure List to support the new plan.

## **7.0 CONSULTATION**

7.1 None

## **8.0 ASSOCIATED RISKS**

8.1 Failure to co-ordinate spending of the strategic 'infrastructure' portion of CIL receipts would undermine the ability to deliver such projects, be inefficient and present a far higher risk of failure to deliver.

## **9.0 MONITORING**

9.1 There is a statutory obligation to produce an annual IFS with detailed accounts of income and expenditure of CIL. The updated Infrastructure List, if approved for publication, will replace the list approved for publication in the December 2023 IFS. However, this is potentially only the first of such inter-annual updates. Whilst the Councils undertake to publish the IFS, with list, at least annually, the list will continue to be reviewed and updated as the work on engagement with other infrastructure providers, the decisions of the Joint Committee and the delivery of schemes approved to receive funding are completed.

## **10.0 RELEVANT COUNCIL PLAN PRIORITIES/COUNCIL POLICIES/STRATEGIES**

10.1 Joint Core Strategy 2011 to 2031(December 2017).

Joint Core Strategy 2011 to 2031 Infrastructure Delivery Plan (2014) and Addendum (2017).

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**Background Papers:** Community Infrastructure Levy (CIL) Formal Adoption of Charging Schedule and Supporting Policies alongside Approval of the Regulation 123 List for Publication and Setting a Commencement Date for Charging (October 2018).

Tewkesbury Infrastructure Funding Statement Reports to Council (annual)

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**Appendices:** Appendix 1 – Community Infrastructure Levy (CIL) Joint Committee Terms of Reference  
Appendix 2 – Amended Infrastructure List