

Wiltshire Council

Cabinet

11 December 2018

Subject: Prioritisation of Community Infrastructure Levy Spending

Cabinet Member: Councillor Toby Sturgis - Cabinet Member for Spatial Planning, Development Management and Property

Key Decision: Yes

Executive Summary

Cabinet on 14 March 2017 approved the process for the review of the Regulation 123 List and prioritising the spending of strategic funds raised through the Community Infrastructure Levy (CIL). The purpose of this report is to agree funding towards priority projects on the Council's Regulation 123 List following the workshop that took place in July 2018. The informal workshop with members of Cabinet and the Wiltshire Public Services Board considered a shortlist of priority projects drawn up by officers against approved criteria.

Given the limited amount of strategic CIL funding available, the shortlist was drawn up from 'essential' projects only, which are prioritised over 'place shaping' projects in the event of competing demands. It focused on education and transport projects, as well as those projects that also support growth and are necessary to ensure compliance with the Habitats Regulations.

The workshop recommended that a preliminary study and preparatory works for the expansion of secondary school places at Abbeyfield School, Chippenham, be prioritised in this funding round. This would help firm up the costs and profile of expenditure for delivery of the remainder of the project and release of future funds ensuring the Council is well placed to deliver places needed by 2021.

Regarding the transport projects, in line with the recommendation of the workshop, further information has now been prepared to help determine the sequence of delivery for the 8 priority transport projects and those that require immediate CIL funding. Subsequently, it has been identified that preliminary studies should be funded for three projects (Malmesbury Road Roundabout and Bridge Centre Gyratory in Chippenham, and the A361 Holy Trinity Gyratory in Trowbridge) to refine costs and firm up the profile of spend for delivery. This in turn would inform further release of CIL funds and significantly improve the Council's ability to access alternative sources of funding.

The workshop recognised that part of CIL is ring-fenced for projects relating to European protected sites and that funding would need to be allocated in a timely way. Strategies are currently in development and will identify projects

that require funding in the short term. These relate to the Nutrient Management Plan for the River Avon Special Area of Conservation and the Trowbridge Bat Mitigation Strategy (not currently referenced on the Regulation 123 List but is likely to contain projects that require funding through CIL). Funding for the Stone Curlew and Salisbury Plain Special Protection Area will need to come from CIL in 2019/20 as Section 106 funds will have been exhausted.

In the interest of efficient decision making and in line with the agreed prioritisation criteria, delegated authority is sought for future allocations of the strategic CIL fund to be directed towards projects as and when needed that support growth and ensure compliance with the Habitats Regulations.

A proposal for CIL to form match funding and help deliver third generation artificial turf pitches (3G ATP) was also tabled at the workshop. An initial appraisal against the prioritisation criteria does not support the use of strategic CIL funds and further consideration needs to be given to alternative sources of match funding including the neighbourhood proportion of CIL received by parish and town councils in the locality of the proposals.

To allow strategic CIL funding to be allocated towards relevant projects in the emerging Trowbridge Bat Mitigation Strategy an amendment would be needed to the Regulation 123 List. Adding projects to the Regulation 123 List requires consultation and the subsequent approval of a Revised List by Cabinet. This should be undertaken in a timely way once the strategy is sufficiently developed and projects have been identified.

Proposal(s)

That Cabinet:

- (i) Approve the allocation of £119,000 CIL funding for preliminary studies for the expansion of secondary school places at Abbeyfield School, Chippenham.
- (ii) Approve the allocation of £136,000 CIL funding for preliminary studies for the following three transport projects; Malmesbury Road Roundabout, Chippenham; Bridge Centre Gyratory, Chippenham, and A361 Holy Trinity Gyratory, Trowbridge.
- (iii) Delegate authority to the Director for Economic Development and Planning, in consultation with the Cabinet Member for Spatial Planning, Development Management and Property and Director for Finance and Procurement, to approve variances to the funding approved in (i) and (ii).
- (iv) Delegate authority to the Director for Economic Development and Planning to approve in consultation with the Cabinet Member for Spatial Planning, Development Management and Property and Director for Finance and Procurement the allocation of CIL funding towards projects on the current and future Regulation 123 Lists relating to European protected sites as and when required.

- (v) Delegate authority to the Director for Economic Development and Planning to undertake consultation on the inclusion of relevant projects on the Regulation 123 List, for subsequent approval by Cabinet, once identified in the Trowbridge Bat Mitigation Strategy.

Reason for Proposal(s)

To assist with the effective operation of CIL and ensure open and transparent decision making in the allocation of strategic CIL funds.

Alistair Cunningham
Corporate Director

Wiltshire Council

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Key Decision: Yes

Purpose of Report

1. To recommend and seek approval for: the first allocation of CIL funding from the strategic fund; delegated authority to approve allocation of strategic CIL funding in relation to projects needed to support growth and ensure compliance with the Habitats Regulations; and consultation to be undertaken on a limited change to the Regulation 123 List.

Relevance to the Council's Business Plan

2. The priorities 'Growing the Economy' and 'Strong Communities' are relevant, together with the general need for effective and efficient working practices.
3. Effective prioritisation will help ensure open and transparent decision making in the allocation of strategic CIL funds. CIL supports the Council's vision to create strong communities, raising and spending revenue from new development to help pay for infrastructure to support growth. The purpose of CIL is to contribute to the funding of the infrastructure needed to support growth and aspirations as set out in the Wiltshire Core Strategy.

Background

4. On 14 March 2017, Cabinet approved the process for the review of the Regulation 123 List and prioritising the spending of strategic funds raised through the Community Infrastructure Levy (CIL). This is summarised at **Appendix 1**. Cabinet also agreed that the next step would be to prioritise projects for funding from the Regulation 123 List approved by Cabinet on 13 September 2016.
5. The process for the prioritisation of strategic projects involves an informal workshop with members of Cabinet (now Cabinet Capital Asset Committee has been dissolved) to which members of the Wiltshire Public Service Board are also invited. The purpose of the workshop is to consider infrastructure projects on the Regulation 123 List against set criteria to inform a subsequent formal recommendation to Cabinet to agree spending.

- 6 The total estimated cost of all 67 projects on the Regulation 123 List is circa £150m. At the end of September 2018, total CIL receipts stood at around £9.5m. Of this, circa £8m is in the strategic fund available to spend on projects on the Regulation 123 List. This is the level of funds left once administrative costs and the local proportion that is passed to town and parish councils has been accounted for. The total projected CIL receipt by 2026 is only around 5% of the total cost of projects on the Regulation 123 List and, therefore, it is necessary to prioritise spending. Many individual projects cost more than the funds accrued and spending could be deferred to allow the pot to grow further.
7. The informal workshop took place on 3 July 2018. To inform discussion and given the limited pot of funding, officers drew up a shortlist of priority projects from the Regulation 123 List against the prioritisation criteria. Projects requiring funding will need to be supported by evidence including the costs and practicality of delivering the scheme or project and the implications of not achieving funding. **Appendix 2** sets out the prioritisation criteria and explains how the shortlist was derived, together with the estimated costs for each project.

Main Considerations for the Council

8. The shortlist of priority projects was generally agreed at the workshop and included only 'essential' infrastructure given the limited funding in the strategic CIL fund. In accordance with Core Policy 3 of the Wiltshire Core Strategy, 'essential' projects are prioritised over 'place shaping' projects in the event of competing demands. The shortlist therefore related to education and transport projects, as well as those that also support growth and are necessary to ensure compliance with the Habitats Regulations. The outcomes of the workshop and subsequent work that has been undertaken to inform the recommendations in this report is set out below.

Priority education projects

9. The expansion of secondary school places at Abbeyfield School, Chippenham, has been identified as an immediate priority for CIL funding to fulfil the Council's statutory duty to provide school places. These places are needed to meet the cumulative demand from strategic housing sites at the town. No Government funding has been identified or is likely to become available to support the project. Table 1 below sets out the profile of spend and phasing.

	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	Total phase 1 & 2
Phase 1 (300 places)	£72,500	£304,500	£1,391,500	£5,228,000	£0	£0	£0	

Phase 2 (200 places)	£46,500	£195,500	£158,500	£0	£0	£3,201,000	£1,003,000	
Totals:	£119,000	£500,000	£1,550,000	£5,228,000	£0	£3,201,000	£1,003,000	£11,601,000

Table 1: Spend profile for additional secondary school places at Abbeyfield School, Chippenham

10. The expansion of Abbeyfield School can be split into two phases. The first phase would deliver 300 additional places for occupation in September 2021. Phase two would deliver the final 200 places for occupation in September 2024. The timing is based upon the housing delivery rate in the *Wiltshire Housing Land Supply Statement 2017* (published March 2018). If the housing delivery rate is slower this could delay the requirement for the extra places. The design for phases one and two would be done together so planning permission is secured for all 500 places, which is why there are costs for phase two starting in 2018/19. As a first step, the Council will need to commission a preliminary study and preparatory work shortly to take the project forward. The costs for this are set out against the year 2018/19.
11. It is therefore recommended that the expansion of secondary school places at Abbeyfield School, Chippenham, be prioritised and a first tranche of funding is released to undertake preliminary work (circa £119,000 as shown in Table 1). This will firm up the actual costs and inform timing for the future release of CIL funds.

Priority transport projects

12. The majority of the eight priority projects on the shortlist were highways schemes proposed in transport strategies. They were considered necessary either to: mitigate the cumulative impact of strategic growth; reduce congestion; support the strategic road network; improve the accessibility and attractiveness of town centres, railway stations and/ or schools; or to improve road safety. Further information was requested to help determine the sequence of delivery and those that require immediate funding. **Appendix 3** sets out estimates for the profile of spend for all projects. It was recognised that commencing the projects would enable them to be progressed to a point where they could attract other sources of funding (see paragraph 1.15, Appendix 2).
13. Appendix 3 shows that funding for preliminary studies for three of these transport projects will be needed at the start of the financial year 2019/20. These are the Malmesbury Road Roundabout and Bridge Centre Gyratory schemes in Chippenham, and the A361 Holy Trinity Gyratory in Trowbridge; and are the strongest candidates for alternative funding sources. Table 2 shows the spend profiles for these projects. As such it is recommended that £136,000 CIL funding is allocated.

	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25
Malmesbury Road	£0	£80,000	£280,000	£3,640,000	£0	£0	£0

Roundabout, Chippenham							
Bridge Centre Gyrotory, Chippenham	£0	£36,000	£126,000	£1,638,000	£0	£0	£0
A361 Holy Trinity Gyrotory, Trowbridge	£0	£20,000	£70,000	£91,000	£0	£0	£0
Totals:	£0	£136,000	£476,000	£5,369,000	£0	£0	£0

Table 2 - Spend profile for the transport projects requiring CIL funding by the start of the financial year 2019/20

Environmental priority projects

14. The workshop recognised that an agreement with Natural England during the Core Strategy's preparation means that part of the strategic CIL pot is in effect ring-fenced for projects relating to European protected sites. As such, strategic CIL funds may need to be directed towards projects relating to European protected sites before other projects to meet the requirements of the Habitats Regulations and support growth.
15. The items identified on the Regulation 123 List currently comprise the Stone Curlew and Salisbury Plain Special Protection Area, Nutrient Management Plan for the River Avon Special Area of Conservation and New Forest Recreation Management Project. In addition, as reported to Cabinet and Council in July 2018 in relation to the submission of the Wiltshire Housing Site Allocations Plan, the Trowbridge Bat Mitigation Strategy is in preparation to support the delivery of the Plan. It is anticipated that CIL may be the appropriate funding mechanism for specific projects identified in the strategy and if so, these items will need to be added to the Regulation 123 List once they have been identified.
16. While changes can be made to the Regulation 123 List to include new projects these must first be subject to 'appropriate local consultation', following which a decision can be made by Cabinet to approve revisions to the List.
17. Delegated authority is therefore sought to undertake consultation in accordance with the CIL Regulations 2010 (as amended) on the inclusion of relevant projects on the Regulation 123 List, for subsequent approval by Cabinet, once identified in the Trowbridge Bat Mitigation Strategy. This will facilitate timely decision making and support the examination of the Wiltshire Housing Site Allocations Plan. The consultation would be for a period of four weeks in accordance with the agreed process set out in Appendix 1. It would include notification to consultees on the consultation database and online publication on the Council's website including consultation portal. The proposed addition of any projects on the list from the Trowbridge Bat Mitigation Strategy is unlikely to significantly impact on the viability evidence that supports the examination of the charging schedule (see paragraph 40 below).

18. In addition, to support efficient and effective decision making and the timely allocation of funds, it is proposed that delegated authority be given to the Director of Economic Development and Planning in consultation with the Cabinet Member for Spatial Planning, Development Management and Property and Director for Finance and Procurement to approve the allocation of CIL funding towards projects relating to European protected sites as and when required.
19. The level of funding required will be determined by the nature of the project but is not considered to be so substantial to negatively impact on the ability to allocate strategic funds to other essential projects. For example, funding for the Stone Curlew and Salisbury Plain Special Protection Area project will need to come from CIL in 2019/20 as Section 106 funds will have been exhausted at that point. This is currently circa £21,000 per annum.
20. Another example is the anticipated funding that will need to be allocated in the short term once the additional work relating to the Nutrient Management Plan to identify offsetting measures to ensure phosphate neutral development within the catchment of the River Avon Special Area of Conservation has been completed. This is likely to include measures such as the creation of wetlands at a cost of around £20,000 each. Funding through CIL will need to be allocated in a timely way to support growth in the emerging Wiltshire Housing Site Allocations Plan.

Leisure projects

21. At the workshop, a proposal was tabled to consider the use of CIL as part of wider match funding to support the provision of six projects for third generation artificial turf pitches at: Green Lane, Devizes; Doric Park, Trowbridge; Sarum Academy, Salisbury; Boscombe, Amesbury; Matravers School, Westbury; and at Salisbury in the parish of Laverstock and Ford. This would require new projects to be added to the Regulation 123 List and it has been suggested that the fund could be directed towards the 'floodlighting' element of the projects. However, there is a risk that the use of the strategic CIL pot alongside the anticipated use of Section 106 contributions (even if directed towards the pitch element of the projects) would be perceived as double dipping, which is not permitted under the CIL Regulations 2010 (as amended).
22. While the proposed projects could be considered to perform well against criterion (vi) given the potential to secure significant external funding towards each project from the Football Foundation, as place shaping infrastructure and given the competing demands from essential infrastructure funds would be diverted away from such projects. An appraisal of the proposal against the prioritisation criteria therefore does not support the use of strategic CIL funds and further consideration needs to be given to alternative sources of match funding including the neighbourhood proportion of CIL received by parish and town councils in the locality of the proposals.

Overview and Scrutiny Engagement

23. No scrutiny engagement has been undertaken for this item. However, the Environment Select Committee recently discussed the Council's approach to Community Infrastructure Levy funds at its 1 May 2018 meeting

Safeguarding Implications

24. There are no safeguarding issues related to this report.

Public Health Implications

25. Utilisation of CIL funding for programmes should be considered alongside the opportunity costs of alternative calls on this funding. CIL funding can be used for a range of specific healthcare infrastructure needs as a result of development, such as GP surgeries, hospitals and other health and social care facilities. It can also be used for wider infrastructure that could improve health or reduce health inequalities such as green infrastructure, park improvements, cycle paths, safer road schemes, flood defences, schools and leisure centres.

Procurement Implications

26. There will be direct procurement implications if CIL funding for one or more of the priority projects is approved. The Strategic Procurement Hub will be consulted to ensure any such projects comply with the Council's Procurement and Contracts Regulations and UK Procurement Law.

Equalities Impact of the Proposal

27. There are no direct equalities impacts arising from the proposal.

Environmental and Climate Change Considerations

28. CIL can help fund infrastructure to support sustainable development and adapt to a changing climate, by funding specific projects. For example, sustainable transport, strategic open space and green infrastructure, flood mitigation measures, sustainable energy infrastructure and strategic habitat protection.
29. CIL may need to be directed towards projects relating to European protected sites before other projects to meet the requirements of the Habitats Directive. This is recognised in the prioritisation criteria.

Risks that may arise if the proposed decision and related work is not taken

30. The Council has set out its process and criteria for the prioritisation of CIL in the interest of openness and transparency. The allocation of spending in line with this will help ensure CIL is effective in supporting growth.

31. Without the allocation of CIL funding, there is a substantial risk that the Council would not be able to fulfil its statutory duty in relation to school place provision and the additional places at Chippenham would not be provided alongside planned development. Not taking forward the transport projects would severely compromise the Council's ability to exploit other funding sources and mitigate the impact of development on road infrastructure.
32. The delegated authority proposed supports the Council's ability to be efficient and effective. The inability to make timely decisions on delivering habitats projects could compromise the plan making process and decisions on planning applications.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

33. Local communities may continue to have the expectation that CIL funds raised in the area should be spent on local infrastructure requirements rather than strategic requirements to support growth. Officers will continue to work with parish and town councils to help manage expectations.
34. The delegations in proposals (iii) and (iv) could be considered less transparent than decisions by Cabinet. To manage this risk, the Council sets out how funds have been spent in their annual monitoring reports which are made publicly available on the Council's website. In addition, Cabinet will also be updated on the position when future recommendations are made to allocate CIL.

Financial Implications

35. As set out above, strategic CIL funds that could be allocated are around £8m (see paragraph 6). The proposed allocations of funds of around £255,000 will enable priority projects to be commenced and costs to be firmed up to inform the future draw down of CIL funding in relation to these projects. While the total estimated costs of these projects exceed the current strategic CIL fund it is expected that the fund will grow further enabling further allocations to be made in line with the projected expenditure. In addition, officers will keep under review the ability to lever in alternative funding streams to deliver later stages of the transport projects (see paragraph 11).
36. All approved allocations will be actioned by Finance as appropriate and additional allocations will only be made in line with the delegated authorities proposed in the report. The likely allocation of funds in relation to habitats projects is not expected to be so significant to undermine the ability to allocate funding in the future to other essential infrastructure projects.
37. On adoption of CIL in May 2015 it was estimated that income from CIL in the period to 2026 would be around £48m. Since then Government has introduced further exemptions for CIL payments e.g. self-build and custom

build, which has had a negative effect on the level of CIL. Current estimates based on the rate of CIL receipts up to end of 2017/2018 financial year suggests that CIL funding could be around £25 million, with a strategic fund of around £19 million by 2026.

Legal Implications

38. The Community Infrastructure Levy was introduced by the Planning Act 2008. The Community Infrastructure Levy Regulations 2010 (as amended) govern how the levy is spent. The Regulations restrict the use of Section 106 Agreements and projects on the Regulation 123 List cannot be funded by such agreements (see paragraph 21 above).
39. A Regulation 123 List is a list prepared under the Community Infrastructure Levy Regulations 2010. There is no prescribed procedure for amending a Regulation 123 List. However, the Government's Planning Practice Guidance (PPG) makes it clear that local planning authorities are able to amend the list so long as they undertake appropriate consultation.
40. The Government's PPG has the following guidance on amending a Regulation 123 List:

When charging authorities wish to revise their regulation 123 list, they should ensure that these changes are clearly explained and subject to appropriate local consultation. Charging authorities should not remove an item from the regulation 123 list just so that they can fund this item through a new section 106 agreement. Authorities may amend the regulation 123 list without revising their charging schedule, subject to appropriate consultation. However, where a change to the regulation 123 list would have a very significant impact on the viability evidence that supported examination of the charging schedule, this should be made as part of a review of the charging schedule.
41. Cabinet when making this decision must take account of this advice in the PPG.
42. As set in the Main Considerations, the use of CIL funding to support appropriate infrastructure will ensure compliance with the Conservation of Habitats and Species Regulations 2017.

Options Considered

43. See Main Considerations section and Financial Implications.

Conclusions

44. Approval of the proposals for CIL funding towards projects on the Regulation 123 List enables transparency in the spending of strategic funding and will help deliver the provision of strategic infrastructure in Wiltshire. The proposed delegated authority will enable efficient and effective decision making and ensure funds can be allocated to projects

that are needed to support growth and ensure compliance with Habitats Regulations in a timely way.

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22 November 2018

Appendices

Appendix 1 - Process for review of CIL Regulation 123 List and prioritisation of spending strategic funds

Appendix 2 - Shortlist of Regulation 123 priority projects (July 2018)

Appendix 3 - Projected spend profile for transport priority projects