

## Overview and Scrutiny Committee

Held at:	Remote Meeting
Date	Tuesday, 19 May 2020
Present	Councillors Miss Susan Carey, Laura Davison, Gary Fuller, Peter Gane, Michelle Keutenius (Vice-Chair), Terence Mullard, Patricia Rolfe, Rebecca Shoob (Chairman) and John Wing
Apologies for Absence	None
Officers Present:	Andy Blaszkowicz (Director of Housing and Operations), Kate Clark (Case Officer - Committee Services), James Hammond (Strategic Policy Officer), Amandeep Khroud (Assistant Director), Aaron McKinney (Building Surveyor), Susan Priest (Chief Executive), Adrian Tofts (Strategy, Policy & Performance Lead Specialist) and Jemma West (Committee Service Specialist)
Others Present:	Councillors David Monk, Jenny Hollingsbee, John Collier, Tim Prater and Lesley Whybrow

### 1. **Declarations of Interest**

Councillors Rolfe, Gane and Mullard declared a disclosable pecuniary interest with regard to Agenda item 4 (Proposed changes to the O & S Committee) as they are Directors of Oportunitas Ltd. Dispensations have been applied.

Councillor Patricia Rolfe made a voluntary announcement with regard to Agenda item 5 (Play Strategy) as she is a member of New Romney Town Council.

Councillors Peter Gane and Michelle Keutenius each made a voluntary announcement with regard to Agenda item 5 as they are members of Folkestone Town Council.

Councillor Gary Fuller made a voluntary announcement with regard to Agenda item 5 as he is a member of Sandgate Parish Council.

Councillor Miss Susan Carey made a voluntary announcement with regard to Agenda item 6 (CIL Governance Framework) as she is a member of Kent County Council.

All councillors took part in discussions and affirmations for the duration of the meeting.

2. **Minutes**

The minutes of the meeting held on 18 February 2020 were agreed and approved. The Chairman agreed that her electronic signature could be added to these minutes.

3. **Proposed changes to the Overview & Scrutiny Committee**

Councillors Rebecca Shoob, Chairman of this committee, went through the points in the presentation. She explained that in light of the current situation timeframes had changed and further training and briefings had been put on hold at the present time.

Members were advised that further work and support would be arranged with the Centre for Public Scrutiny in helping them to refine skills needed in questioning, shaping and responding to topics brought forward. It is vital that a clear methodology is used showing how and why topics are chosen.

Members recognised that the Coronavirus pandemic has raised further topics for discussion and this may mean subsequent changes to what is currently listed on the potential Overview & Scrutiny work plan.

Dr Susan Priest, Chief Executive, assured members that Ian Parry (from the Centre for Public Scrutiny), in attending the previous Governance Working Group, was fully aware of the decisions made so far and that the information provided in tonight's presentation represented good practice.

Generally, members felt this was a positive step forward, however keeping in mind that scrutiny of Cabinet decisions is also an important part of the committee's functions. Councillor Shoob reminded members that the 'call in' function should be seen as an important tool, to be used as circumstances dictated.

Proposed by Councillor Rebecca Shoob  
Seconded by Councillor Patricia Rolfe

**RESOLVED:**  
**To receive and note the presentation.**

The Chairman sought and received affirmation from all members present.

#### 4. **Play Area Strategy 2020-2030 - Consultation Responses and Outcome**

Report No. C/19/48 considered the draft Play Area Strategy 2020-2030 as presented to Cabinet on 11/12/2019. The report detailed how high quality play areas will be provided and maintained throughout the District over the next ten years. Cabinet resolved:

1. That report C/19/48 be received and noted
2. That the suggestion of sites to be sold in respect of non-strategic play areas be removed
3. That the principles of the draft Play Area Strategy 2020-2030 and associated action plan be approved
4. To proceed to formal consultation
5. That a report be brought back to Cabinet following formal consultation with a view to approving the Strategy from 1 April 2020

These resolutions have been actioned with the formal consultation beginning 20/12/2019 and concluding on 31/01/2020. Report C/20/04 summarised the consultation responses and minor amendments to the strategy.

Mr Andy Blaszkowicz, Director – Housing and Operations, presented this report and advised members the consultation results have been published on the Council's website.

Councillor Gane noted Densole Way LEAP will be adopted by Folkestone Town Council, this is incorrect and Mr Blaszkowicz is aware and will amend accordingly. He also mentioned that any reference to Cheriton Park should read Cheriton Recreation Ground and that South Cheriton Action Group no longer exists.

Councillor Mullard raised a query about the three play areas in St Mary in the Marsh, two of which are closed. He mentioned a new housing development in the area and consideration be given to the regeneration of these closed areas. Mr Blaszkowicz gave assurance that an officer would be in contact.

Further points raised by members:

- Dowry payments. S106 monies will take precedence if they were available as they are larger sums.
- Timescales; a suggestion for reviews every three years, however this strategy will be under constant review. .
- Consultation timings spanned over Christmas and New Year with a deadline at the end of January 2020 which seemed impractical. Members had received comments from consultees that this time of the year is not ideal.
- Play deprivation – this needs to be borne in mind in current situation.
- Deprivation Indices used in report are from 2015 however 2019 figures are available.
- The importance of green spaces especially at the present time, members asked if there is a guarantee that these would not be developed for

housing in the future. It was confirmed there are no plans for development at present and that this is not a focus for this strategy.

- Parish and Town Councils are encouraged and empowered to provide facilities in their local area and are best placed to do this.
- Currently, transfers are taking place with Folkestone Town Council, Sandgate Parish Council, New Romney Town Council and conversations are taking place with Lydd Town Council. Any other strategic play areas that are not adopted by Town or Parish Councils will be reviewed at a later date.
- The Play Strategy is due to be approved by Cabinet shortly and notwithstanding the current situation work will continue on transfers.
- The £20K budget mentioned in the report, this was clarified as funding across the whole district for maintenance of play areas, however it does not include labour costs, the Coastal Park or the Royal Military Canal Play areas, these have their own budgets. .
- A member raised a concern regarding Hawkinge not having a designated Priority Play Area. It was confirmed that Hawkinge had many play areas but none of them were big enough to be designated as PPA's. Officers are always keen to work with Town Councils over future development of existing play sites.

Councillor Miss Susan Carey submitted a question, prior to the start of this meeting, which is detailed below along with a response.

The capital cost of play equipment can often be found from grants and local fundraising efforts but maintenance, regular health and safety inspections and replacement of older equipment are significant ongoing costs. During the quarantine for Covid-19 play areas were out of bounds to reduce the risk of transmission of the virus although it seems children are both less susceptible to catching or transmitting it and that being in the open air also appears to reduce transmission. Whilst the document before us tonight is a strategic one, are there considerations about play equipment, hygiene and social distancing that we should be taking account of in the light of the ongoing pandemic?

Mr Aarron McKinney, Building Surveyor, read out the following response.

The council has worked closely with community groups, charitable organisations, local and County Council grant funding to provide major play area projects in recent years. Most notably the Radnor Park Community Group successfully lobbied and fundraised for the renovation of Radnor Park play area and the subsequent accessible swing and fitness area. The council will continue to work closely with our partners to deliver key projects going forward.

The ongoing maintenance of play areas is a challenge recognised with the Play Area Strategy, FHDC will work closely with Town & Parish Councils throughout the asset transfer and will provide a 5 year maintenance dowry. It is clear that Town & Parish Councils are uniquely positioned to provide and maintain high quality play areas as demonstrated in our district.

Throughout this challenging time FHDC are continuing to work closely with our partners and are following government guidelines at every step, unfortunately this has required us to close play areas and outdoor gyms. We look forward to the opportunity to re-open these sites but are fortunate that our district has brilliant green spaces to be enjoyed.

Mr Blaszkowicz added that daily updates on the pandemic are provided to the Council from the Kent Resilience Forum. Play areas will remain closed at present and reviews on opening will be taken once further guidance is received.

Proposed by Councillor Rebecca Shoob  
Seconded by Councillor Patricia Rolfe and

**RESOLVED:**  
**To receive and note report C/20/04.**

The Chairman sought and received affirmation from all members present.

5. **Community Infrastructure Levy (CIL) Governance Framework**

Report OS/20/01 set out the proposed CIL Governance Framework for the committee's consideration.

Mr James Hammond, Strategic and Policy Senior Specialist, presented this report. He also gave a presentation which is attached to these minutes.

As planned two questions provided by Councillor Martin Whybrow were read out by Mr Hammond, after the Chairman had sought affirmation from members.

The questions and answers are provided below:

The first question related to (3.5, page 150 of the agenda pack) where the report stated: "the District Council is to prepare an IFS in conjunction with the County Council, and other stakeholders, the scheme prioritisation process for the allocation of CIL spend is to cross-reference the IFS once this document has been prepared and has been endorsed by the District Council".

**Question 1:** What will be the involvement of town and parish councils and elected county, district and town/parish councillors in helping to identify and prioritise schemes for allocation of CIL spend?

The CIL Governance Framework has been drafted to enable a balance of infrastructure to be provided across three broad scales in accordance with prevailing legislation:

1. **Town and parish level** infrastructure – through the 15-25% allocation of CIL revenue for the town/parish in which the development occurs;
2. **District-scale infrastructure** – projects that could benefit a number of towns and parishes in the district; and

3. **County-level infrastructure** within Folkestone & Hythe district – education, waste, transport and other infrastructure provided by Kent County Council within the district.

There is considerable freedom for Parish and Town Councils to spend their proportion of CIL on the things that address the impacts of development on their area.

It is the opinion of officers that the appropriate means of identifying and prioritising the spend of CIL receipts on infrastructure projects shall be through cross-reference to the IDP documents that have already been prepared, and through re-engagement with service providers as part of ongoing work to prepare the first IFS. The IFS document itself will be something of a 'fact check' exercise, but presents a real opportunity to set out in a clear and transparent manner the infrastructure that they have, and may be funding, through CIL and section 106 planning obligations.

Nonetheless, it will be important to ensure that town and parish councils and elected county, district and town/parish councillors are kept informed of the key infrastructure items to be captured within the IFS. In terms of opportunities for active participation/engagement in the consideration of what CIL funding could support in terms of local infrastructure needs, the production of a Town or Parish Infrastructure Delivery Plan (IDP) can be a useful starting point for local prioritisation (at the town or parish council level) of infrastructure projects. This is perhaps the best opportunity to allow local infrastructure requirements to be captured within future IFS documents, and which could include prioritisation of future CIL spend on some projects defined at the local scale. The key point is having evidence presented to demonstrate

Those town and parish councils that are in receipt of CIL monies (at the time of writing Hythe town council is the only example), are required to prepare an Annual CIL Report for each financial year (1 April to 31st March) they receive CIL.

**Question 2:** Whether CIL spend will be wholly in the area that it was collected?

For example, will CIL collected from developments in, say, Dymchurch be used solely for schemes in Dymchurch (this is over and above the percentage that is allocated to a town or parish councils) on the basis that it is intended to alleviate the impact of developments on local communities?

It is understood that Cllr Whybrow is referring to the strategic component of collected CIL receipts that is held and where the allocation of spend is controlled by the district council. The purpose of the strategic CIL component is to support the delivery of strategic and local infrastructure improvements on a district wide basis. Given the scale of some items of strategic infrastructure that are needed in order to support development across the district, it is likely that a significant proportion of receipts received in any year will be accumulated for larger projects.

Accordingly, these monies are not proposed to be 'ring-fenced' for associated spend in the area in which the CIL receipt arose. CIL cannot be used to fund solutions to existing problems i.e. traffic calming/management or on repairs to existing infrastructure in an area that hasn't experienced housing growth.

However, officers are to profile the expected future CIL receipts by town or parish area to provide a broad indication as to what monies could be reasonably expected to be made to the district council each year until 2031, and from that the local apportionment shall flow to town or parish councils. This will give town and parish councils a level of foresight as to the expected flow of CIL monies under the Neighbourhood allocation, and from that the priorities of a Town or Parish Council can responding accordingly within the local Infrastructure Delivery Plan.

Councillor Mullard raised a question regarding a large property development in the ward of St Mary in the Marsh, where, he believes the CIL payment was made to New Romney. Mr Hammond advised he would look into this query.

Members raised the following points:

- Fairness and transparency when allocating funding is paramount. Internal oversight will be apparent and the IFS statements will set out overall objectives for direction. The IFS Framework statement is designed for the next ten years however, the Council will carry out annual reviews.
- Collaboration with town and parish councils including partners such as coastal community teams and local CCGs to be encouraged in highlighting potential projects for receipt of CIL monies.
- Town and parish councils will be offered support by the District Council in identifying allocation of funds into the local community, however the Council would, ultimately, receive a bigger portion of CIL monies.
- Parish wards with a neighbourhood plan are awarded a higher amount of funding, at present, there is only one ward in the district with a plan.

Overall members were keen to encourage town and parish councils to carefully consider how CIL funding is spent with the support of the district council. A gap exists in large housing and infrastructure projects which needs to be rectified. Ultimately this will mean more houses being built.

Proposed by Councillor Rebecca Shoob  
Seconded by Councillor Gary Fuller and

**RESOLVED:**  
**To receive and note report OS/20/01.**

The Chairman sought and received affirmation from all members present.

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# COMMUNITY INFRASTRUCTURE LEVY (CIL) GOVERNANCE FRAMEWORK

## PRESENTATION TO OVERVIEW & SCRUTINY COMMITTEE

19<sup>th</sup> MAY 2020

# Introduction

- Since the adoption of CIL in 2016, it has taken some time for CIL-liable developments to go through the planning process, be granted permission and for development to start on site – the point at which CIL is liable to be paid.
- However, as CIL funds have now begun to accumulate the Council needs to put in place a process for identifying priorities and allotting funds to particular infrastructure projects so as to ensure the collection and allocation of CIL monies (i.e. the deployment of CIL income) follows clear and appropriate processes.

# Allocation of CIL income

- The Regulations state that the CIL is to be allocated as follows:
  - Administrative CIL: 5% of CIL receipts may be retained by FHDC
  - Neighbourhood CIL: 15%-25% of CIL receipts must be paid to Town and Parish Councils, the proportion depends on whether a Neighbourhood Plan is in place \*
  - Strategic CIL: the remaining 70-80% of CIL to be allocated to infrastructure projects by FHDC

\* St Mary in the Marsh is the only area within the district that has an adopted, or 'made', Neighbourhood Plan.

# The 2019 CIL Regulations

- Regulations laid before parliament in June 2019 proposed a series of changes to the way in which local authorities charge, collect and report on developer contributions raised through S106 and the Community Infrastructure Levy (CIL). The Regulations apply in England only and came into effect on the 1st September 2019.
- The regulations introduce a requirement for councils to publish Infrastructure Funding Statements (IFS). These statements will replace existing Regulation 123 lists and should include details of how much money has been raised through developer contributions and how it has been/is to be spent. Statements must be published on local authority websites at least once a year. Councils will be required to publish their first statements by 31 December 2020.
- The requirement to prepare and annually publish an IFS presents a real opportunity to work proactively with infrastructure providers and communities to set out in a clear and transparent manner the infrastructure that they have, and may be funding through CIL and section 106 planning obligations.

# Governance for CIL spend

## *Proposed allocation of CIL receipts to Kent County Council*

- The District Council acknowledges the crucial role played by the County Council in the delivery of key strategic infrastructure. Collaborative working between County Councils and charging authorities is especially important in relation to the preparation of Infrastructure Funding Statements, bearing in mind the potential impact on the use of highway agreements by the County Council and the timely delivery of schools.

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Under the proposed governance arrangements the District Council is pledging to assign 35% of CIL receipts from the strategic pot to Kent County Council in order to enable KCC to spend this proportion of the receipts in accordance with their own priorities for infrastructure delivery within Folkestone & Hythe district.

- A requirement of the proposed governance arrangements is that the County Council's priority infrastructure schemes shall be recorded within the Infrastructure Funding Statement (IFS); the associated spend of CIL receipts by the County Council must be in accordance with the prioritisation of CIL funds and be spent within Folkestone and Hythe district.

# Governance for CIL spend

## *Scheme prioritisation through reference to the Infrastructure Funding Statement*

- The scheme prioritisation process for the allocation of CIL spend by the District Council is to cross-reference the IFS once this document has been prepared and has been endorsed by the District Council. Interim arrangements for the allocation of spend is explained on the next slide.
- Decisions to be taken by the District Council on spend of CIL receipts from the strategic pot would be taken in accordance with the IFS priorities and through the involvement/discussions between the Planning Policy team which leads on preparation of the IFS and one of the following Directors, depending on the directorate area where a particular project falls:
  - Director of Place
  - Director of Housing and Operations
  - Director of Corporate Services
- In terms of reporting, it is proposed that a Cabinet statement is prepared every 6 months to provide an update on CIL receipts received and expenditure

# Governance for CIL spend

## *Interim arrangements for allocation of District Council spend*

- In the intervening period until the IFS has been prepared, the District Council proposes to allow delegated authority to a named Director in consultation with the Cabinet Member for Finance (to ensure Member oversight for any investment decisions made) to approve CIL spending up to a specified financial limit of £50,000 on any single project to be CIL awarded funding.
- Under interim arrangements it is expected that the allocation of CIL funding up until the end of December 2020 is to be in general conformance with the Regulation 123 list, although it is recognised that as the December 2020 deadline for abolition of the Regulation 123 list approaches delegated authority for the spend of CIL monies up to the capped amount of £50,000 will increasingly be made in accordance with those projects referenced within the emerging IFS.
- Should there be a request for spend of CIL monies above the £50,000 capped limit then the decision on spend will be taken by Cabinet.

# Governance for CIL spend

## *Monitoring and reporting*

- There is a requirement for FHDC, as the Charging Authority, to prepare an annual report detailing CIL receipts, balances and spend for each financial year. The progress on spends will be monitored and reported to the S106/CIL working group.
- All parish and town councils that are in receipt of CIL monies shall have to produce a similar annual report relating to their Neighbourhood Allocation.

## ***How are S106 projects identified, prioritised and reported?***

- Development often places extra demand and pressure on the environment and infrastructure of the local area. For example, new homes can mean more demand for school places and doctor's surgeries. New supermarkets can put pressure on the road system and public transport.
- Local authorities can require s106 contributions from developers to secure scheme benefits needed to support the new development and to mitigate the impact of the development. It is set out in national planning regulations that in order to set a S106 obligation, it must meet the following three legal tests:
  1. necessary to make the development acceptable in planning terms;
  2. directly related to the development; and
  3. fairly and reasonably related in scale and kind to the development.
- Section 106 obligations and CIL receipts are recorded and monitored on an annual basis to ensure that the Council is receiving all of the monies due under the legal agreements and that an update report should be provided to the then Development Control Committee at least on an annual basis.

# What are the criteria for distribution of S106 monies? (St Mary in the Marsh PC)

- S106 money is allocated to a range of projects or ring-fenced to specific programmes which will deliver improvements in accordance with the specific terms negotiated through legal agreements. The legal agreement identifies, as tightly as possible, exactly what the money secured is for and/or how it is to be prioritised in the future when it is paid.
- S106 monies are often paid in instalments at key stages during the construction of a development. The stages at which payments are due are known as 'Trigger Points'. For example S106 contributions could be payable by instalments towards (say) the expansion of an existing primary school, with (for example) 50% paid upon commencement of development and the remaining 50% paid upon completion of a development.
- When S106 money is available, i.e. is held on account by the District Council following receipt of payment from a developer, and that money is required for a project, the party seeking a transfer payment (e.g. KCC in the case of a school expansion) is required to contact the Development Control Manager and clearly set out details of the project, its S106 justification, responsibilities for governance on spend and associated programming for delivery for S106 monies to be released. This is to ensure monies are spent in accordance with the specific legal agreements in a controlled project management environment.

# Questions?

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