

POLICY AND RESOURCES COMMITTEE 24 JANUARY 2022

PART I – NOT DELEGATED

9. CIL SPENDING APPLICATIONS (DCES)

1 Summary

1.1 The report seeks to allocate a total of £1,623,574 of CIL funding to local infrastructure projects to support growth in Three Rivers.

2 Details

2.1 Three Rivers became a Community Infrastructure Charging Authority on 1 April 2015. CIL is the main way in which the Council now collects contributions from developers for infrastructure provision to support development in the area.

2.2 The Council has the responsibility for spending the CIL on infrastructure needed to support the development of the area, it is primarily a tool to support capital infrastructure. The Council has the opportunity to choose what infrastructure is prioritised in order to support development.

2.3 Since the introduction of the CIL Charging Schedule in April 2015 a total of £7,368,534 has been collected.

2.4 The CIL monies collected are divided into three pots – Main CIL Pot (80%) Neighbourhood Pot (15%) and the remaining 5% set aside for the administration and the Exacom software costs to support the CIL in line with the CIL Regulations.

2.5 This report relates only to the Main CIL Pot which, as of 16 December 2021, amounts to £5,888,061.

2.6 Whilst this is a substantial amount, CIL does not generate enough funds to cover the whole cost of infrastructure needed to support planned development, as such there will be competing demands on the Main Pot from infrastructure providers who used to rely on S106 developer contributions (such as Hertfordshire County Council, NHS and TRDC etc.) going forward.

2.7 What can CIL be spent on?

2.8 Regulation 59 of the CIL Regulations states:

(1) A charging authority **must** apply CIL to funding the provision, improvement, replacement, operation or maintenance of infrastructure *to support the development of its area, and*

(2) A charging authority **may** apply CIL to funding the provision, improvement, replacement, operation or maintenance of infrastructure outside its area where to do so *would support the development of its area.*

2.9 The definition of infrastructure in relation to CIL is set out in section 216(2) of the Planning Act 2008 (as amended by regulation 63 of the Community Infrastructure Levy Regulations);

a) roads and other transport facilities,

- b) flood defences,
- c) schools and other educational facilities,
- d) medical facilities,
- e) sporting and recreational facilities, and
- f) open spaces

2.10 The Infrastructure List¹ sets out the types of infrastructure that the Council intends will be, or may be, wholly or partly funded by CIL.

- Education
- Strategic and local transport proposals
- Publicly accessible leisure facilities,
- Open Space Provision (including, children play areas and outdoor/indoor sports and leisure facilities, allotments)
- Health Care Facilities
- Other Social and Community Facilities including: - community halls, youth facilities, library services
- Emergency Services

2.11 The inclusion of a project or type of infrastructure on the Infrastructure List does not signify a commitment from the Council to fund (either whole or in part) the listed project or type of infrastructure.

2.12 The levy cannot be used to fund affordable housing or for any on-going or revenue spend (such as consultancy fees, viability/feasibility studies, staff costs etc.) relating to the provision of infrastructure.

3 Applications for CIL Funds

3.1 We have received three applications for CIL funds from infrastructure providers. The table below provides a brief summary with the full details contained in Appendices 1 to 3 to this report:

Table 1.

Applicant & Project Name	Infrastructure	Total Cost	Additional Funding	CIL Amount	Year funds required
TRDC Leisure Team Denham Way Play Area/ Maple Cross Playing Fields (Appendix 1)	New play area Community pavilion, 3 floodlight tennis courts Outdoor fitness zone MUGA Playing pitch improvements	£457,000	HS2 £75,000 (Sought) Football Foundation £25,000 (Sought) LTA £10,000 (Sought)	£347,000	2022/2023

¹ Infrastructure List was the Regulation 123 List adopted by the Council but now replaced by the Annual Infrastructure Funding Statement as a result of changes to the CIL Regulations. The Annual Infrastructure Funding Statement is published in December each year on the Council's web site <https://www.threerivers.gov.uk/egcl-page/cil-reports>

	Access pathways Seating formal garden				
TRDC Leisure Team South Oxhey Playing Fields (Appendix 2)	Tennis Courts AGP Basketball Court Skate/BMX Park Outdoor Gym Pathways	£375,000		£375,000	2022/2023
HCC Breakspeare School (Appendix 3)	Expansion and relocation of SEND school	Unknown	Dept of Education £3,818,000 (secured) HCC School Repairs & Maintenance Budget £1,000,000 (Secured) S106 £758,139 (Secured) CIL from Hertsmere, Dacorum and Watford Councils £4,910,954 (Sought) HCC Capital Borrowing – up to £17.9m (if required to cover shortfall) (Sought)	£901,574	2022/2023.

- 3.2 An assessment of the applications has been undertaken by the Community Infrastructure Officer and the Head of Planning Policy & Projects to determine whether the applications meet the definition of ‘infrastructure’, meet the requirement to ‘support the development’ of the area and are included on the Infrastructure List. The assessment is contained in Section H of the applications in Appendices 1 – 3.
- 3.3 In summary, the assessment determined that all three applications meet the above requirements.
- 3.4 Next Steps**
- 3.5 As the CIL Charging Authority it is for the Council to decide how to spend the CIL Main Pot.
- 3.6 A decision needs to be made as to whether CIL funds are allocated to these infrastructure projects and, if so, the amount to be allocated.
- 3.7 Where funding is agreed, the infrastructure provider will be expected to provide information until the scheme has been completed and all CIL funding has been spent. As a minimum, an annual report will need to provide information on the progress of each scheme that funding has been allocated to. A requirement to submit this information will form part of the agreement that the successful applicant is required to sign between themselves and Three Rivers District Council.
- 3.8 If an applicant does not spend CIL money within five years of receipt or does not spend it as agreed then the Council may require the applicant to repay some or all of those funds.

3.9 Details about planning obligation receipts and anticipated expenditure in relation to CIL and S106 is published in the Infrastructure Funding Statement by the 31 December each year in accordance with Regulation 121A of the CIL Regulations.

4 Future CIL Income

4.1 Between 1 July 2019 and 17 December 2021, liability notices for a potential value of £ 3,052,017.00 have been issued. These notices are raised following the grant of planning permission and set out what the liable charge would be should work on the development start and no exemptions are applied. The realisation of the remainder of these monies is therefore totally dependent on a developer implementing their planning permission and not benefiting from any exemptions. It is common to have multiple planning permissions on a site, for a permission not to be implemented and exemptions to be granted (mainly for self-build). This figure, while informative, should not therefore be treated as guaranteed future income.

4.2 Where a demand notice has been issued, this means that development has commenced and that CIL is now due for payment. The council's CIL instalment policy allows developers fixed timescales at 60, 120 and 360 days (post-commencement) to pay the amount due. The number of instalments available is dependent on the total amount of CIL due, with higher CIL charges allowing for more time to pay. A further £307,481.00 is due to be collected over the next year on developments that have already commenced. Further demand notices may also be issued if other developments commence.

5 Options and Reasons for Recommendations

5.1 To ensure the delivery of important community infrastructure to support growth and development.

6 Policy/Budget Reference and Implications

6.1 The recommendations in this report are within the Council's agreed policy and budgets. The relevant policy is entitled Community Infrastructure Funding Statement and was agreed on 24 February 2015.

7 Equal Opportunities, Staffing, Environmental, Community Safety, Public Health, Customer Services Centre, Communications & Website, Risk Management and Health & Safety Implications

7.1 None specific.

8 Financial Implications

8.1 The commitment of CIL funds of £1,623,574 will leave a balance of £4,264,487 in the CIL Main Pot for infrastructure projects going forward.

8.2 The CIL funds committed in relation to the South Oxhey Playing Fields and Denham Way Play Area/Maple Cross Playing Fields will mean that £722,000 will not need to be committed from the Capital Budget in future years to deliver the infrastructure.

9 Legal Implications

9.1 The legislation governing the development, adoption and administration of a Community Infrastructure Levy (CIL) is contained within the Planning Act (2008) and the Community Infrastructure Levy Regulations 2010 (as amended).

10 Risk and Health & Safety Implications

- 10.1 The Council has agreed its risk management strategy which can be found on the website at <http://www.threerivers.gov.uk>. In addition, the risks of the proposals in the report have also been assessed against the Council's duties under Health and Safety legislation relating to employees, visitors and persons affected by our operations. The risk management implications of this report are detailed below.
- 10.2 The subject of this report is covered by the Economic and Sustainable Development Service. Any risks resulting from this report will be included in the risk register and, if necessary, managed within this/these plan(s).

Nature of Risk	Consequence	Suggested Control Measures	Response <i>(tolerate, treat, terminate, transfer)</i>	Risk Rating <i>(combination of likelihood and impact)</i>
Failure to progress/manage and maintain Community Infrastructure Levy income and expenditure.	Council could be challenged on CIL expenditure	Governance Arrangements	Tolerate	4

- 10.3 The above risks are scored using the matrix below. The Council has determined its aversion to risk and is prepared to tolerate risks where the combination of impact and likelihood scores 6 or less.

Very Likely ----- Likelihood ----- ▼ Remote	Low	High	Very High	Very High
	4	8	12	16
	Low	Medium	High	Very High
	3	6	9	12
	Low	Low	Medium	High
	2	4	6	8
	Low	Low	Low	Low
	1	2	3	4
	Impact			
	Low	-----▶		Unacceptable

Impact Score

4 (Catastrophic)

3 (Critical)

2 (Significant)

1 (Marginal)

Likelihood Score

4 (Very Likely (≥80%))

3 (Likely (21-79%))

2 (Unlikely (6-20%))

1 (Remote (≤5%))

- 10.4 In the officers' opinion none of the new risks above, were they to come about, would seriously prejudice the achievement of the Strategic Plan and are therefore operational risks. The effectiveness of the management of operational risks is reviewed by the Audit Committee annually.

11 Recommendation

- 11.1 That Members approve CIL funding for the following schemes detailed in Table 1 of this report and summarised in the table below for 2022/2023:

Applicant & Project Name	Infrastructure	CIL Amount
TRDC Leisure Team Denham Way Play Area/ Maple Cross Playing Fields (Appendix 1)	New play area Community pavilion, 3 floodlight tennis courts Outdoor fitness zone MUGA Playing pitch improvements Access pathways Seating formal garden	£347,000
TRDC Leisure Team South Oxhey Playing Fields (Appendix 2)	Tennis Courts AGP Basketball Court Skate/BMX Park Outdoor Gym Pathways	£375,000
HCC Breakspeare School (Appendix 3)	Expansion and relocation of SEND school	£901,574

Report prepared by: Claire May, Head of Planning Policy and Projects

Data Quality

Data sources: Exacom (Planning Obligations Software)

Data checked by: Debbie Wilson, CIL Officer

1	Poor	
2	Sufficient	
3	High	X

Background Papers

The Community Infrastructure Regulations (2010) (As amended)
<https://www.legislation.gov.uk/ukdsi/2010/9780111492390/contents>

Section 216(2) of the Planning Act 2008 (as amended by regulation 63 of the Community Infrastructure Levy Regulations);

Infrastructure Funding Statement <https://www.threerivers.gov.uk/egcl-page/cil-reports>

Guidance provided by the Department for Levelling Up, Housing and Communities and Ministry of Housing, Communities & Local Government

<https://www.gov.uk/guidance/community-infrastructure-levy#spending-the-levy>

APPENDICES

Appendix 1 Denham Way Play Area/ Maple Cross Playing Fields

Appendix 2 South Oxhey Playing Fields

Appendix 3 Breakspeare School