

BABERGH DISTRICT COUNCIL

TO: Cabinet	REPORT NUMBER: BCa/21/33
FROM: Clive Arthey- Cabinet Member for Planning	DATE OF MEETING: 6 December 2021
OFFICER: Tom Barker Assistant Director Planning and Building Control	KEY DECISION REF NO. CAB323

COMMUNITY INFRASTRUCTURE LEVY (CIL) - CIL EXPENDITURE PROGRAMME DECEMBER 2021

1. PURPOSE OF REPORT

- 1.1 The CIL Expenditure Framework and the CIL Expenditure Framework Communications Strategy were adopted by both Councils on the 23rd of March 2021 (Babergh) and 25th March 2021 (Mid Suffolk). These were accompanied by a Key CIL Dates Calendar 2021/22. (Background Documents refer).
- 1.2 The processes and governance around CIL expenditure is set out in these documents and the type of infrastructure that CIL monies can be spent on is set out in each Councils Infrastructure Funding Statement – Infrastructure List. (Background Documents refer).
- 1.3 CIL expenditure operates using a process of twice-yearly bid rounds which occur on the 1st - 31st May and 1st - 31st October each year. Once all the Bids have been validated, all valid Bids are then screened for the availability of s106 funds and other funding streams. Following this all valid Bids are prioritised using criteria set out in the CIL Expenditure Framework and recommendations on Valid Bids are included within a CIL Expenditure Programme for each District. The CIL Expenditure Programme for that District will be considered by that Councils Cabinet with decisions on all valid Bids either for Cabinet to make or for Cabinet to note (if the Bid has been determined using delegated powers).
- 1.4 This report seeks to obtain approval by Cabinet for Babergh's CIL Expenditure Programme – December 2021 which forms Appendix A to this report. This report contains the assessment of one CIL Bid (B21-04) including the judgement around the prioritisation criteria for that Bid (Appendix B).

2. OPTIONS CONSIDERED

- 2.1 There is a diverse spectrum of approaches to CIL expenditure across the country from Unitary Authorities who have absorbed CIL into their individual Capital Programmes to others who ringfence all funds to be spent locally. A range of different approaches was identified in Appendix A of the Framework for CIL Expenditure report provided to Cabinet's on the 5th and 8th of February 2018 and discussed in full during the workshops with the Joint Member advisory panel. Members adopted the documents set out in paragraph 1.1 above by Council decision in April 2018 which

were subsequently reviewed and adopted on the 19th March 2019 (Babergh) and 18th March 2019 (Mid Suffolk) and then reviewed for the second and third time and adopted by both Councils on the 20th April 2020 and 23rd March 2021(Babergh) and 25th March 2021(Mid Suffolk) respectively.

3. RECOMMENDATIONS

- 3.1 That the CIL Expenditure Programme (December 2021) and accompanying technical assessment of the CIL Bid – B21-04 (forming Appendices, A and B) which includes decision on this CIL Bid for Cabinet to make and approve as follows: -

Decision for Cabinet to approve: Brantham - Ringfenced and Local Infrastructure Fund.

CIL Bid, Location and Infrastructure Proposed	Amount of CIL Bid and total cost of the infrastructure	Cabinet Decision
B21-04 BRANTHAM Brooklands Primary School	Amount of CIL Bid £345,360 Total cost of the project £1,935,169 Total of other funding obtained by Suffolk County Council is £1,589,809 as follows <ul style="list-style-type: none"> - Section 106: £950,118 - Basic Need funding: £639,691 	Recommendation to Cabinet to approve CIL Bid B21-04 for £345,360, £443.78 from the Ringfenced Fund and £344,916.22 from the Local Infrastructure Fund

- 3.2 Cabinet are also asked to note and endorse this CIL Expenditure Programme which includes the position in respect of approved CIL Bids from Rounds 1, 2, 3, 4, 5, 6 and 7 (including Cabinet decisions – June and October 2021. (Appendix A Section B) together with details of emerging infrastructure /CIL Bids (Appendix A Section C).

REASON FOR DECISION

Community Infrastructure Levy (CIL) monies have been collected since the implementation of CIL on the 11th April 2016. The CIL Expenditure Framework (originally adopted in April 2018 and reviewed with amendments adopted on the 18th March 2019 and with further amendments on the 20th April 2020 and March 2021) requires the production of a CIL Expenditure Programme for each District which contains decisions for Cabinet to make or note on CIL Bids for CIL expenditure. These decisions relating to the expenditure of CIL monies form one of the ways in which necessary infrastructure supporting growth is delivered.

4. KEY INFORMATION

4.1 Given the determination of “available monies” (paragraphs 6.8 - 6.9 inclusive) Members are advised:

- Bid round 8 opened on the 1st October and closes on the 31st of October 2021 and all bids received to date are listed in Appendix A. All new Bids received to date will be acknowledged when the bid window closes. Under the CIL Expenditure Framework all Bids are examined and validated, and where valid they are then screened, consulted upon, and assessed against prioritisation criteria (under the agreed procedures). The decisions are then presented to Cabinet to make and/or note (where delegated decisions have been made). These are included in the CIL Expenditure Programme and the Technical Assessments and both are presented to Cabinet to consider.
- This CIL Expenditure Programme document focuses on the following CIL Bid. Further key information about this Bid is set out below (augmented by the Technical Assessments comprising Appendix B) as follows-
 - **B21 –.04 – Brantham – Extension to Brooklands Primary School** - The project aims to increase capacity of Brooklands Primary School from 210 to 315 places. This increase in additional provision is planned with some internal remodelling as well as an expansion of the existing facilities. The expansion of existing facilities is to be achieved through the erection of a new teaching block located at the rear of the main school building. The new accommodation will provide 3 classrooms, a studio, a small group room, as well as storage and pupil toilets.
 - The need for the additional pupil places is derived from committed growth within the Brantham area with a total of 374 dwellings.
 - As such this project is essential infrastructure (classed as such in the Infrastructure Delivery Plan (September 2020) and arises from approved housing growth. It also falls within the projects listed within the Infrastructure Funding Statement (Infrastructure List) – project IDP028 refers

4.2 This CIL Expenditure Programme also provides an up-to-date progress position on all those CIL Bids which have previously been approved in Bid rounds 1, 2, 3, 4, 5, 6 and 7 (including Cabinet decisions – June and October 2021) together with a section which outlines the progress of emerging CIL Bids which are being discussed at pre submission stage (Appendix A section C).

5. LINKS TO JOINT CORPORATE PLAN

- 5.1 The effective spending of CIL monies will contribute to all the three priority areas that Councillors identified in the Joint Corporate Plan. Economy and Environment Housing and Strong and Healthy Communities.

6. FINANCIAL IMPLICATIONS

- 6.1 The adopted CIL Expenditure Framework is critical to the funding of infrastructure to support inclusive growth and sustainable development.
- 6.2 The CIL Regulations stipulate that CIL monies which are collected must be spent on Infrastructure. Before 1st September 2019, each Council was required to publish a list of infrastructure that they will put the CIL monies towards. These lists were known as the “Regulation 123 Lists”. However, on the 1st September 2019, new CIL Regulations were enacted, with the CIL 123 Lists being abolished, and in order to provide clarity given this changing situation, each Council adopted a CIL Position Statement containing a list of infrastructure that it would spend its CIL monies on. The authority for this was provided by a Council decision in March 2019 when the first review of the CIL Expenditure Framework was undertaken and a revised scheme was agreed (by both Councils). The CIL Position Statements were identical for both Councils.
- 6.3 However, these replacement documents (known as the CIL Position Statement) were replaced by separate Infrastructure Funding Statements (Infrastructure List) for both Councils. They were both approved by each Councils Cabinet in November 2020.
- 6.4 CIL is collected and allocated in accordance with the CIL Regulations 2010 (as amended). Each Council retains up to 5% of the total CIL income for administration of CIL. From the remainder, 15% is allocated to Parish or Town Councils (subject to a cap) but where there is a made Neighbourhood Plan in place this figure rises to 25% (without a cap). For those parishes where there is no Parish or Town Council in place the Council retains the monies and spends the CIL Neighbourhood funds through consultation with the Parish.
- 6.5 Since the implementation of CIL for both Councils on the 11th April 2016 there have been ten payments to Town/Parish Councils; these have taken place in October 2016, April and October 2017, April and October 2018, April and October 2019, April and October 2020 and April 2021. At the time that the Neighbourhood payments are made, the 20% set aside for Strategic Infrastructure fund is also undertaken. The Strategic Infrastructure Fund money is stored separately to the Local Infrastructure Fund at this point. In addition, money is also stored in a Ringfenced Infrastructure Fund (explained in Paragraph 6.7 below). As this accounting requires Finance to verify the figures, daily accounting in this way would be too cumbersome and resource hungry to carry out. There is no adverse impact on the Bid Round process or cycle to this method of accounting. Indeed, these dates work well with the Bid round process. (Paragraph 1.3 refers).
- 6.6 The remaining 80% of the CIL monies comprises the Local Infrastructure Fund (with the exception of the monies held in the Ringfenced Infrastructure Fund - explained in paragraph 6.7 below).
- 6.7 Within the CIL Expenditure Framework, infrastructure provision for major housing developments is prioritised and ringfenced for spend against these housing projects. In this way housing growth occurring within the Districts is supported by infrastructure

provision. When commencement of these major housing schemes occurs, monies are collected according to the CIL payment plan in place. If the scale of development is large the CIL payment plan could be up to 5 equal payments collected over a two-year timescale. Smaller developments are required to pay the money in less instalments and over a shorter timescale. The monies (accrued from developments of 10 dwellings and above) are held in a Ringfenced Infrastructure Fund account separate from the Strategic and Local Infrastructure Funds to ensure the monies are safeguarded towards infrastructure supporting these developments. The remaining unallocated monies are known as the “available funds” and it is these that can fund the majority of CIL bids.

6.8 These available funds are: -

- Strategic Infrastructure Fund (including interest) as of 30th September 2021 = £1,095,226.91
- Total Ringfenced Fund as of 30th September 2021 = £2,959,284.96
- Local Infrastructure Fund available as of 30th September 2021 = £2,009,343.97

6.9 These are expressed as follows:

EXPENDITURE	TOTAL
Total Expenditure allocated in Bid Rounds 1-7 (Strategic Infrastructure Fund only)	£531,103.56
Percentage of fund allocated to projects	33%
Total Expenditure allocated in Bid Rounds 1-7 (Ringfenced Fund only)	£195,829.59
Percentage of fund allocated to projects	6%
Total Expenditure allocated in Bid Rounds 1-7 (Local Infrastructure Fund only)	£1,355,481.95
Percentage of fund allocated to projects	40%

AVAILABLE FUNDS FOR BID ROUND 8 – December 2021	TOTAL
Total amount available for Bid round 8 (October 2021) (Strategic Infrastructure Fund)	£1,095,226.91
Total amount available for Bid round 8 (October 2021) (Ringfenced Infrastructure Fund)	£2,959,284.96
Total amount available for Expenditure for Bid round 8 (October 2021) (Local Infrastructure Fund)	£2,009,343.97

7. LEGAL IMPLICATIONS

- 7.1 The detailed framework for CIL expenditure is legally sound and robust and was designed including a legal representative from the Councils Shared Legal Service (who also attended each of the Joint Member workshop sessions) and agreed the adopted CIL Expenditure Framework documents (prior to consideration by Cabinet and Council of both Districts).
- 7.2 This report and the accompanying CIL Expenditure Programme for Babergh District Council – December 2021 – Appendix A (including the technical assessments comprising Appendix B) have also been endorsed as being sound and legally compliant by the Councils Shared Legal Service.
- 7.3 Governance arrangements agreed in April 2018 and which have remained largely unchanged as part of the first second and third CIL Expenditure Framework reviews are clear in respect of the determination of these Bids. They are Cabinet decisions.
- 7.4 Regulation 62 of the CIL Regulations 2010 (as amended) required CIL charging authorities to publish monitoring statistics for collection allocations and expenditure of CIL monies by the 31st of December for each year. The 2017, 2018 and 2019 Monitoring Report for Babergh are published on the website (see below).

<https://www.babergh.gov.uk/assets/CIL-and-S106-Documents/Babergh-District-Council-CIL-Monitoring-Report-2016-17.pdf>

<https://www.babergh.gov.uk/assets/CIL-and-S106-Documents/FINAL-BDC-Reg-62-Report.pdf>

<https://www.babergh.gov.uk/planning/community-infrastructure-levy-and-section-106/community-infrastructure-levy-cil/cil-reporting/>

- 7.5 Under the new CIL Regulations 2019, each Council has produced and approved an annual Infrastructure Funding Statement (dealing with both income and expenditure for both CIL, s106 developer contributions and Neighbourhood CIL). There is also a

requirement for each Council to produce an “Infrastructure List” – a list of infrastructure projects that each Council is /or will be funding going forward. (Under the new CIL Regulations this must be produced annually by both Councils with the first one meeting a deadline of 31st December 2020.

7.6 For Babergh the annual Infrastructure Funding Statement was approved by Cabinet on the 9th November 2020. This document (which includes the “Infrastructure List”) was published on the Councils Website on the 11th December 2020. (Background Papers refer).

8. RISK MANAGEMENT

8.1 The following have been identified as key risks pertaining to this report.

8.2 Key risks are set out below:

Risk Description	Likelihood	Impact	Mitigation Measures
<p>Failure to allocate expenditure such that if we do not secure investment in infrastructure (schools, health, public transport improvements etc.), then development is stifled and/or unsustainable.</p> <p>Current Risk Score: 6</p>	Unlikely (2)	Bad (3)	<p>Adopted Community Infrastructure Levy (CIL), secures investment on infrastructure via the planning process (which includes S106). Creating the Joint Corporate Plan, the emerging Joint Local Plan with associated Infrastructure strategy and Infrastructure Delivery Plan and Infrastructure Funding Statement will ensure that infrastructure across both Councils is addressed. New Anglia LEP Economic Strategy, draft created together with the Councils Open for Business Strategy.</p>
<p>Failure to produce a yearly Regulation 62 report would result in non-compliance with the CIL Regulations 2010 (as amended) and may mean that Members and the public are not aware of CIL income and expenditure activities.</p> <p>Under the CIL Regulations 2019 an annual Funding Statement is required to</p>	Highly Unlikely (1)	Noticeable /Minor (2)	<p>The Infrastructure Team produces the required report which is checked and verified by Financial services/open to review by External Audit. Reminders are set to ensure the report is published by the statutory date. The format of the Monitoring report which in future will be known as the annual Infrastructure Funding Statement (IFS) is laid out in the CIL Regulations, so there</p>

address CIL and s106 developer contributions and a list of infrastructure projects (“Infrastructure List”) with the first one meeting a deadline of the 31st December 2020. Failure to do so will also result in non-compliance with the CIL Regulations (as amended)			is no risk in relation to the way the information is presented
Failure to monitor expenditure such that CIL expenditure is not effective.	Unlikely (2)	Bad (3)	The software which supports CIL collection will be used to support CIL expenditure. In addition, it is envisaged that a twice yearly (at least) CIL Expenditure Programme will be produced which will include details of all allocated and proposed CIL expenditure and this together with the software will be used for effective monitoring.
If too high a value is allocated into the Strategic Infrastructure Fund, there is a risk that there would be insufficient Local Infrastructure Funding available to deliver the infrastructure required to mitigate the harm, thereby ensuring sustainable development.	Unlikely (2)	Bad (3)	The Infrastructure Team will continue to monitor all allocations of CIL Funds and the CIL Expenditure Framework review will include this risk as a key element of the review to ensure the level set remains appropriate.
If 25% Neighbourhood CIL is automatically allocated to any Parish/Town councils where there is no Neighbourhood Plan in place, there is a risk that there would be insufficient CIL Funding to allocate to the Strategic Infrastructure Fund and also the risk that there would be insufficient Local Infrastructure Funding available to deliver the	Unlikely (2)	Bad (3)	The Infrastructure Team will continue to monitor all allocations of Neighbourhood CIL and other CIL Funds and the CIL Expenditure Framework review will include this risk as a key element of the review to ensure allocations of CIL remain appropriate and projects to make development sustainable are able to be delivered.

<p>infrastructure required to mitigate the harm, thereby ensuring sustainable development.</p>			
<p>If commencements of major housing developments were not correctly monitored or the incorrect apportionment of CIL monies were to occur such that monies could not be allocated towards major housing developments, inadequate infrastructure provision would result.</p>	<p>Unlikely (2)</p>	<p>Disaster (4)</p>	<p>The Infrastructure Team will continue to monitor all commencements of development through the service of the required Commencement Notice by developers such that correct apportionment of CIL Funds can be undertaken. The CIL Expenditure Framework review will include this risk as a key element of the review to ensure allocations of CIL remain appropriate and projects to make development sustainable are able to be delivered.</p>

Assurances (for collection of CIL monies)

8.3 In September 2016 Internal Audit issued a report in relation to CIL governance processes. The Audit Opinion was High Standard and no recommendations for improvement to systems and processes were made. Table 5 provides a definition of this opinion:

Table 5

	Operation of controls	Recommended action
High standard	Systems described offer all necessary controls. Audit tests showed controls examined operating very effectively and where appropriate, in line with best practice.	Further improvement may not be cost effective.
Effective	Systems described offer most necessary controls. Audit tests showed controls examined operating effectively, with some improvements required.	Implementation of recommendations will further improve systems in line with best practice.
Ineffective	Systems described do not offer necessary controls. Audit tests showed key controls examined were operating ineffectively, with a number of improvements required.	Remedial action is required immediately to implement the recommendations made.
Poor	Systems described are largely uncontrolled, with complete absence of important controls. Most controls examined operate ineffectively with a large number of non-compliances and key improvements required.	A total review is urgently required .

8.4 On the 18th December 2017 Joint Overview and Scrutiny received a fact sheet on collection and current thinking on CIL expenditure and questions were answered in relation to it. Members of that Committee were advised of the route map towards getting a framework for CIL expenditure formally considered. Members were advised that this would be a key decision for both Councils and would need to go to Cabinet and then full Council. The resulting joint CIL Expenditure Framework, the CIL Expenditure Communications Strategy and the Timeline for the Expenditure of CIL and its Review were adopted by both Councils on the 24th April 2018 (Babergh) and 26th April 2018 (Mid Suffolk).

8.5 In May 2018, the results of an investigation by Internal Audit on behalf of the Assistant Director Planning and Communities were produced following complaints regarding the CIL process in place for Babergh and Mid Suffolk. The investigation concluded: -

“The information provided to the public in relation to the CIL process is superior to that found for some other Councils and the team go over and above the requirements when supporting applicants where resources allow them to do so. It is Internal Audit’s opinion that the Infrastructure team, even though working under challenging conditions with increasing numbers of applications, are providing a good service to customers and also pro-actively looking for ways to improve where possible.”

“The audit opinion is therefore high standard” – (paragraph 8.3 Table 5 defines high standard classification).

8.6 In September 2018 Internal Audit conducted a review of CIL Expenditure processes and released a written report. It contains a Substantial Assurance audit opinion (with two good practice points needing to be addressed relating to further clarification of “best value” (one of the criteria for assessing CIL Bids) and storage of all electronic communication.

8.7 On the 19th September 2019, a report was prepared for consideration by Joint Overview and Scrutiny on CIL expenditure with five witnesses including Infrastructure Providers, Cockfield Parish Council, and a member of the Joint Member Panel; the latter of which informed the second review of the CIL Expenditure Framework. The changes agreed under this review process were adopted by both Councils on the 20th April 2020. The CIL Expenditure Framework documents were reviewed for a third time with changes being approved in March 2021 by both Councils.

Assurances (for collection and expenditure of CIL Monies)

8.8 It is expected that Internal Audit will continue to regularly audit CIL collection allocation and expenditure processes and actual expenditure once any schemes are developed and implemented.

8.9 As Members will recall there is a timeline for implementation of CIL and its review which contains key dates for the remainder of the CIL expenditure year cycle (Background papers referred.)

8.10 The first review of the CIL Expenditure Framework took place in 2018 following consideration by Joint Overview and Scrutiny in November 2018. The Joint Member Panel also informed the review, and the conclusions were presented to both Councils and adopted in March 2019. This decision by both Councils planned for a further review of the CIL Expenditure Framework. This second review of the CIL Expenditure Framework was adopted by both Council in April 2020. In making this decision Members agreed that a further third review would take place at the same time as Bid round 6 (October 2020) so that it is in place before Bid round 7 (in May 2021). This review took place over the autumn/winter of 2020 and amendments were considered and adopted by both Councils in March 2021.

8.11 In making this decision Members agreed that a further (fourth) review would take place at the same time as Bid round 8 (October 2021) so that it is in place before Bid round 9 occurs (in May 2022).

9. CONSULTATIONS

9.1 The CIL Expenditure Communications Strategy contains a requirement for both Councils to consult the following bodies or organisations (for a period of 14 days) where valid Bids for their Wards or Parish have been submitted as follows: -

- District Member(s)
- Parish Council
- Division County Councillor

9.2 Where appropriate as part of the CIL process and assessment of the Bids, Officers have also taken advice from other Officers within the Council; including the Communities team

9.3 Regular Parish events and Member briefings will continue to be held to familiarise all with the Expenditure Framework and how we can continue to work together to provide infrastructure for the benefit of our communities.

10. EQUALITY ANALYSIS

10.1 Please see attached Screening report.

11. ENVIRONMENTAL IMPLICATIONS

11.1 It is important that appropriate infrastructure mitigates harm which could be caused by new development without its provision. CIL is one way in which infrastructure is provided and the CIL Expenditure Framework requires two bid rounds per year supported by the provision of a CIL Expenditure Programme for each Bid round. There is no EIA Assessment required.

12. APPENDICES

Title	Location
A. Appendix A - CIL Expenditure Programme for Babergh – December 2021	ATTACHED
B. Appendix B - Technical Assessment of CIL Bid (B21-04) – December 2021	ATTACHED
C. Appendix C Screening report for Equality Analysis	ATTACHED

13. BACKGROUND DOCUMENTS

13.1 The CIL Expenditure Framework, the CIL Expenditure Framework Communications Strategy and the Infrastructure Funding Statement (including the Infrastructure List) together with the Key CIL Calendar dates for 2021/22 constitute background papers for this report. The original documents were adopted by both Councils in April 2018. They were reviewed, amended and adopted by both Councils in March 2019 and April 2020. They were further reviewed, amended and adopted by both Councils in March 2021. The following documents are those that were further amended and approved in March 2021 unless otherwise stated. They represent background documents to this report: -

- The CIL Expenditure Framework (amended in March 2021):
<https://www.midsuffolk.gov.uk/assets/CIL-and-S106-Documents/CIL-Expenditure-Framework-Babergh-and-Mid-Suffolk-March-2021.pdf>
- The CIL Expenditure Framework Communications Strategy (amended in March 2021):
<https://www.midsuffolk.gov.uk/assets/CIL-and-S106-Documents/CIL-Expenditure-Framework-Communication-Strategy-March-2021.pdf>
- Key CIL Calendar dates - 2021/22
<https://www.midsuffolk.gov.uk/assets/CIL-and-S106-Documents/Key-Dates-CIL-Expenditure-Calendar-2021and-2022.pdf>

- Infrastructure Funding Statement for Babergh – December 2020

<https://www.babergh.moderngov.co.uk/documents/s20600/BDC%20Infrastructure%20Funding%20Statement.pdf>

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