

Report For:	Regulatory and Appeals Committee
Meeting Date:	1 July 2019
Part:	Part 1 - Open
If Part 2, reason:	N/A

### SUMMARY

<b>Title of Report:</b>	Delegated powers for CIL enforcement and transfer of local allocations
Officer Contact: Direct Dial: Email:	Rub Nawaz 01494 421142 Rub.nawaz@wycombe.gov.uk
Ward(s) affected:	All
Reason for the Decision:	<p>1. The Community Infrastructure Levy (CIL) may be payable for developments which involve the creation of new dwellings or developments of 100 square metres or more. It is charged on residential and retail developments only. It is vital that the Council's decision-making arrangements are as robust and streamlined as possible, including the collection of CIL payments and appropriate enforcement action when payments are not received.</p> <p>The Community Infrastructure Levy Regulations 2010 (as amended) also impose a requirement on the Council as a collecting authority to pass a proportion of CIL receipts (the "local allocation") to parish / town councils. The local allocation is a separate funding pot that is not controlled by the Council; our role is only to administer its collection</p>

	<p>and transfer, unlike the main CIL receipts which we have an established approval process for allocating and spending.</p> <p>2. At present, the constitution does not explicitly delegate authority on matters of CIL enforcement and for administering the transfer of local allocations. Accordingly, such decisions would fall to Full Cabinet to make. To ensure the decision making arrangements for administering and operating CIL are as robust as possible it is proposed the constitution be amended to delegate power to the Head of Planning and Sustainability to ensure all developers pay their fair share toward infrastructure improvements through the use of enforcement action where necessary, and that local communities may be supported through the transfer of the local allocation of CIL funds.</p>
<p><b>Proposed Decision/Recommendation:</b></p>	<p>That:</p> <p>(i) The Head of Planning and Sustainability be granted delegated power to make decisions in all matters relating to CIL enforcement and the transfer of local allocations covered by the Community Infrastructure Levy Regulations 2010 as amended.</p>
<p>Sustainable Community Strategy/Council Priorities - Implications</p>	<p>Developers have a right of appeal against CIL enforcement, if procedures are not correctly followed. Ensuring swift robust enforcement methods through appropriate delegation ensures developers can be pursued for payment in appropriate cases.</p> <p>Equalities: None.</p> <p>Health &amp; Safety: None.</p>
<p>Monitoring Officer/ S.151 Officer</p>	<p><b>Monitoring Officer:</b></p>

Comments	<p>The Community Infrastructure Levy scheme, and its administration, are governed by the Community Infrastructure Regulations 2010, as amended.</p> <p>Under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as amended, decisions of the kind described in the report are classed as “executive decisions” (rather than “non-executive decisions” and can legally be made either by Cabinet, individual Cabinet member or an officer. Delegating to an appropriate officer enables quicker and more timely enforcement action to be taken where it is necessary.</p> <p>Wherever the delegation rests, consideration may need to be given to the Spending Protocol being set up between</p> <p><b>S.151 Officer:</b> The financial implications are set out within the report.</p>
Consultees:	None.
Options:	<ol style="list-style-type: none"> <li>1. There are two options: <ol style="list-style-type: none"> <li>a) To provide delegated authority to the Head of Planning and Sustainability, or,</li> <li>b) To provide for such decisions to be made by cabinet.</li> </ol> </li> <li>2. The Constitution provides that the authority to exercise planning enforcement rests with the Head of Planning &amp; Sustainability and in practice, authority is then exercised by senior Planning Officers through an internal scheme of delegation.</li> <li>3. The Head of Legal Democratic and Policy has authority “To <b>issue, make and/or serve any notice</b>, order or process authorised to be issued, made and/or served and .....”, which reads as giving Legal authority to issue, <u>if</u> it has been authorised.</li> <li>4. This is the combination that we rely on for Planning Enforcement Notices. The Head of Planning &amp;</li> </ol>

Sustainability may authorise Notices under the Town and Country Planning Act 1990, and the Head of Legal issues. However no similar arrangement exists for CIL Stop Notices or other methods of enforcing CIL.

5. There is currently nothing in the scheme of delegations or the Constitution about enforcing CIL.
6. It is proposed that similar authority to Planning Enforcement Notices be provided with regards to CIL. This would allow for the imposition of surcharges and late payment interest set out in regulations 80-88 and the authorisation of a Stop Notice under Regulation 90 of the CIL Regulations (2010) (as amended), and other associated methods of enforcement.
7. Under this proposal, surcharges and late payment interest would be issued under the authority of the Head of Planning & Sustainability. CIL stop notices would be authorised by the Head of Planning & Sustainability and then issued by the Head of Legal, as we currently do for Planning Enforcement Notices. The further debt collection is subject to the Council's established financial regulations.
8. Separately, the passing of local allocations to parish and town councils is required of us by the CIL regulations (2010) (as amended):

*59A (2): Subject to paragraph (12) and regulation 59E(5) a charging authority, other than the Mayor, must pass to every local council within its area a proportion of CIL receipts calculated in accordance with this regulation and regulation 59B.*

9. This is a purely administrative task which we are

	<p>legally required to do. While local allocations are recognised in the Constitution at paragraph 3.8.1 d) on page 3G – 29, there is no provision elsewhere in the Constitution for carrying out this function.</p> <p>10. For the reasons outlined above, which remain cogent, it is recommended that for efficiency and speed the delegation is provided to the Head of Planning &amp; Sustainability.</p>
Next Steps:	The recommendation from this Committee on the preferred option will be considered by Full Council at its next meeting.
Background Papers:	None
Abbreviations:	CIL: Community Infrastructure Levy

Appendices to this report are as follows:

None

## 1. Detailed Report

### Corporate Implications

- 1.1 It is vital that the Council's decision making arrangements are as robust as possible as these arrangements underpin the delivery of the whole range of Council's objectives and services, and there is a need to ensure that they conform with good practice and governance.
- 1.2 The Community Infrastructure Levy (CIL) may be payable for developments which involve the creation of new dwellings. It may also be payable for developments with an internal floor area of 100 square metres or more. The Wycombe CIL includes charges for residential and retail developments only.
- 1.3 The Council has a corporate duty to manage the public funds over which it has control in an efficient and responsible manner. This involves the collection of CIL payments and appropriate enforcement action when payments are not received. A further duty is introduced in the requirement to pass a local allocation of CIL receipts to town and parish councils to support infrastructure improvements in their local area.

### Executive Summary

- 1.4 The Wycombe Community Infrastructure Levy (CIL) was adopted in November 2012. It introduced a charge on certain types of development, such as the creation of new dwellings, and developments where more than 100 square metres of gross internal floor area is being created.
- 1.5 The Wycombe CIL is only charged for residential and retail developments. The receipts of CIL are used to fund infrastructure improvements throughout the district including the town centre masterplan and enhancements to schools and surgeries.
- 1.6 Wycombe District Council has a corporate duty to manage the public funds over which it has control in an efficient and responsible manner. This involves the collection of CIL payments and appropriate enforcement action when payments are not received. This also involves transferring a local allocation of receipts to parish and town councils (25% of receipts in an area with an adopted neighbourhood plan, and 15% elsewhere).

1.7 Authority is sought to give the Head of Planning & Sustainability delegated authority to authorise CIL enforcement action and to carry out the transfer of the local allocation of receipts to parish and town councils.

## **Implications**

1.8 The Council's decision making arrangements are critical as they underpin the delivery of the whole range of Council's strategies and priorities.

1.9 The amendment to the powers of delegation to enable the Head of Planning & Sustainability to authorise CIL enforcement action does not itself carry a financial implication other than legal and officer costs associated with taking the necessary enforcement action. There is a risk a developer subject to enforcement action may appeal against our decision – this risk will be weighed on a case-by-case basis and action only taken where officers consider there to be cogent reason to take enforcement action and in those cases only where it is expedient to do so.

1.10 The transfer of the local allocation of receipts to parish and town councils does not carry with it any financial implication as the local allocation is effectively ring-fenced by the CIL regulations and held separate from the main pot of CIL funds.

## **Background and Issues**

1.11 The Constitution provides that the authority to exercise planning enforcement rests with the Head of Planning & Sustainability and in practice, authority is then exercised by senior Planning Officers through an internal scheme of delegation.

1.12 The Head of Legal Democratic and Policy has authority

“To **issue, make and/or serve any notice**, order or process authorised to be issued, made and/or served and .....

”, which reads as giving Legal authority to issue, if it has been authorised.

1.13 This is the combination that we rely on for Planning Enforcement Notices. The Head of Planning & Sustainability may authorise Notices under the Town and Country Planning Act 1990, and the Head of Legal issues. However no similar arrangement exists for CIL Stop Notices or other methods of enforcing CIL.

1.14 Methods of enforcing CIL within the CIL regulations (2010) (as amended) include:

- Imposing surcharges and late payment interest (regulations 80 – 88)
- Issuing CIL stop notices requiring work on site to cease (regulation 90)
- Referring debts to a magistrates' court to issue a liability order (regulation 97)
- The seizure and sale of goods or land to settle the debt owed (regulation 98, 103, 104 and 107)
- The enforcement of local land charges.

1.15 The Constitution currently states that the adoption of a CIL Charging Schedule is reserved to Council on a recommendation from Cabinet but there is nothing in the scheme of delegations or the Constitution about enforcing CIL.

1.16 It is proposed that similar authority to Planning Enforcement Notices be provided with regards to CIL. This would allow for the imposition of surcharges and late payment interest set out in regulations 80-88 and the authorisation of a Stop Notice under Regulation 90 of the CIL Regulations (2010) (as amended), and other associated methods of enforcement.

1.17 Under this proposal, surcharges and late payment interest would be issued under the authority of the Head of Planning & Sustainability. CIL stop notices would be authorised by the Head of Planning & Sustainability and then issued by the Head of Legal, as we currently do for Planning Enforcement Notices.

1.18 The amendment required to the Constitution is an additional paragraph to 6.2 on page 2C-6 on CIL, worded along the lines of the planning enforcement powers e.g.

[6.2 To authorise the exercise of the powers of the Council in respect of the enforcement and collection of outstanding Community Infrastructure Levy (CIL) debts and breaches of payment in accordance with the Planning Act 2008 and the CIL Regulations 2010 (SI 2010/948) as amended].

1.19 Consequential changes would also be required to paragraph 3.8.4 on page 3G – 31 to amend 3.8.4 (c):

[3.8.4 (c) To administer the CIL scheme and issue notices and invoices in accordance with agreed timescales, **and take enforcement or recovery action where necessary**]

1.20 Any debt collection process that comes about as a result of CIL enforcement action would be subject to the Council's established financial regulations.



- 1.21 The Constitution provides that the Head of Planning & Sustainability should ensure that contributions are spent in line with the s106 / CIL requirements.
- 1.22 Regulation 59A (2) of the CIL regulations (2010) (as amended) states that:
- 1.23 59A (2) Subject to paragraph (12) and regulation 59E(5) a charging authority, other than the Mayor, must pass to every local council within its area a proportion of CIL receipts calculated in accordance with this regulation and regulation 59B.
- 1.24 As the requirement is to pass a proportion of CIL receipts to local councils (defined elsewhere in the CIL regulations as Parish and Town Councils) we are not spending the funds. The Constitution does provide for the administration of the CIL scheme but this is in respect of issuing notices and collecting funds. The Constitution is therefore silent on how we should go about meeting our legal obligation as required of us by the CIL regulations.
- 1.25 It is proposed that an explicit responsibility to pass the local allocation of CIL receipts to parish and town councils be provided. This would allow us to more efficiently meet our obligations under regulation 59A (2) of the CIL regulations (2010) (as amended).
- 1.26 Under this proposal, the transfer of each individual local allocation would be carried out in line with the existing authorisation matrix for purchase orders and collectively signed off by the Head of Planning & Sustainability.
- 1.27 The amendment required to the Constitution is an additional point to be added to paragraph 3.8.4 on page 3G-31:
- [3.8.4 (d) To ensure that the local allocation of CIL are passed to the relevant town / parish council in accordance with agreed timescales]

## **Options**

- 1.28 There are two options:
- a) To provide delegated authority to the Head of Planning and Sustainability, or,
  - b) To provide for such decisions to be made by cabinet.
- 1.29 For the reasons outlined above, which remain cogent, it is recommended that for efficiency and speed the delegation is provided to the Head of Planning & Sustainability.

## **Next Steps**

1.30 The recommendation from this Committee on the preferred option will be considered by Full Council at its next meeting.