



Cabinet

Tuesday 14, February 2023

Annual Infrastructure Funding Statement (Planning)

Report of the Director – Development and Economic Growth

Cabinet Portfolio Holder for Planning and Housing, Councillor R Upton

1. Purpose of report

- 1.1. Each year an Infrastructure Funding Statement (IFS) is produced by the Borough Council to provide information on the monetary (and non-monetary) contributions sought and received from developers for the provision of infrastructure to support development in Rushcliffe, and the subsequent use of those contributions by the Borough Council.
- 1.2. The IFS is presented as a factual statement which does not require adoption. However, following approval of the Community Infrastructure Levy (CIL) Framework Appraisal in December 2021 and subsequent Priority Funding List in May 2022 (Included as an appendix to the IFS, itself at appendix A), future renditions of the IFS will also include information on the agreed spending priorities for developer contributions.
- 1.3. The IFS sets out future spending priorities on infrastructure and affordable housing in line with up-to-date or emerging plan policies. This should provide clarity and transparency for communities and developers on the infrastructure and affordable housing that is expected to be delivered. Infrastructure funding statements should set out the infrastructure projects or types of infrastructure that the Borough Council intends to fund, either wholly or partly, by the levy or planning obligations. This will not dictate how funds must be spent but will set out the Council's intentions.

2. Recommendation

It is RECOMMENDED that Cabinet acknowledges the content of the 2021/22 Annual Infrastructure Funding Statement.

3. Reasons for Recommendation

- 3.1. The Infrastructure Statement, provided at Appendix A to this report, presents infrastructure funding received as payments and secured as future payments through agreements or delivered as on-site provision and secured for future on-site delivery.
- 3.2. As such, the statement is a factual report of funds received, secured for future receipt, and spent in the financial year, which it covers. The reporting of the

document helps ensure that Councillors are aware of income and outgoings from CIL and s106 funds.

- 3.3. The Council's adopted Infrastructure List currently identifies the categories of infrastructure on which Strategic CIL will be spent. Previously, the infrastructure which could be funded through CIL was limited to items on the list through section 123 of the CIL Regulations. That requirement has since been withdrawn and in future the Council has the option to change the categories of infrastructure on which CIL funds can be spent. Any decision to make changes to these infrastructure categories will be dealt with through the CIL Framework Appraisal process.
- 3.4. If the Council chooses to, one way of deciding what, if any, additional infrastructure types could be funded through Strategic CIL will be to consider the way in which local communities are utilising their neighbourhood CIL.

4. Supporting Information

- 4.1. The Council collects funds intended to deliver infrastructure through CIL and through s106 agreements.
- 4.2. For s106 funding, this money is typically collected for a specified purpose, often on behalf of third parties, such as the County Council as Education or Highways Authority. In such cases, funding for infrastructure has been identified as a necessary requirement by those external agencies at the time planning permission was granted. Contributions are then collected during development and made available to deliver the infrastructure for which it was collected. The Borough Council collects the funds to ensure that the infrastructure can be financially delivered
- 4.3. A question frequently raised by Councillors is why the Council holds so much unspent money in respect of s106 and CIL contributions.
- 4.4. In terms of CIL, the Council began collecting funds in late 2019 and has been able to begin spending those funds since the adoption of the priority funding list in May 2022.
- 4.5. Whilst CIL allows us to pool funds and then direct them towards specific projects, there is still a requirement to prioritise funding towards the most critical elements of infrastructure and those able to be brought forwards in short timescales (typically 0-3 years).
- 4.6. This will sometimes mean that money needs to be accumulated to fund a high-cost critical piece of infrastructure. Whilst money is being accumulated it may be possible that there are smaller projects on which funds in hand could be spent, but releasing funds towards such projects would mean that it takes longer to accumulate funds for a critical piece of infrastructure.
- 4.7. For example, as part of the Delivery Plan, relevant extract provided as part of Appendix A, the Council also identified the park and ride project along the A52

as a high cost critical piece of infrastructure not expected to be delivered until c. 10 years time.

- 4.8. As this project is both high value and critical, the Council needs to allocate and reserve some collected funds towards it to avoid the risk of funding multiple desirable projects now only to find that the economic climate stifles development and CIL is under-collected over the plan period, leaving the Council unable to fund a piece of critical infrastructure, not because insufficient funds were collected but because funds have been spent on less critical projects along the way.
- 4.9. As the Plan period progresses, a better idea will be gained as to whether CIL is likely to be collected in line with (or above) estimates; in which case the setting aside of funds becomes less critical and can be reviewed.
- 4.10. For s106 funds, each individual contribution is secured for a specified purpose and there are several reasons which combine to explain how the Council ends up with a substantial sum of money on hand.
- 4.11. Firstly, it is common to secure funding in instalments, a developer may find it difficult to pay large financial contributions up front and it is reasonable to agree that these payments are spread out such that they will have received some revenue from house sales before the later instalments must be paid.
- 4.12. It may not be practically possible, or economically desirable, to deliver the infrastructure in phases and as such the infrastructure cannot be delivered until after all instalments have been received. On some larger sites this might mean that the Council has the first instalment for several years before the last is received and it might be in a position to spend the funds.
- 4.13. In other cases, more than one development might be making contributions towards delivery of one piece of infrastructure – a junction improvement or a new school for example. In these cases, if one of the developments contributing towards a piece of infrastructure stalls and does not progress at a similar pace to the others, the Council may be in a position of holding 75% of the funds necessary for a piece of infrastructure for many years – unable to spend what is held until the remaining development progresses and the remaining 25% is received.
- 4.14. In some cases, the period between a contribution being requested towards a project and the funds being collected might be in the region of 8+ years (ie a s 106 agreement on an outline permission, with reserved matters approved in year five and work commenced in year three of the reserved matters approval). Sometimes, the party who requested the funds may have reviewed their approach to infrastructure delivery such that the project for which the funding was requested is no longer required. In these cases, we will collect and hold money that cannot be spent, eventually a repayment trigger may see the funds returned to the developer. Whilst it is possible to renegotiate with a developer and seek to allocate funds to an alternative project (similar in nature) this does require both the developer's agreement and the Council being aware that the

infrastructure provider has changed its plans such that the specific project named in the agreement will no longer take place.

- 4.15. Sometimes, there is a need for infrastructure and a provider will reasonably request contributions towards its provision – but without a clear plan as to how the infrastructure will be delivered, or a site available to deliver it on. In these cases, it is hoped that the provider will work towards identifying a site and claiming the funds which have been collected, but there are examples of cases where this has taken in excess of 10 years.
- 4.16. In recent times the Borough Council has moved towards having Nottinghamshire County Council (NCC) as signatories on new s106 agreements, as such payments for education, highways and other ‘county’ infrastructure matters will be made directly to NCC. The Borough Council will no longer hold new payments of this type helping to reduce the funds which are held.
- 4.17. As s106 funds are collected towards specific purposes it is not possible to cross fund from one pot of monies to another. It may be frustrating that in one instance delivery of infrastructure is delayed in anticipation of a final instalment when the Council has funds elsewhere, which it sees no prospect of spending in the short term but the nature of s106 funding prevents moving funds between pots.
- 4.18. The reason for this is partly owing to the way in which individual legal agreements are drafted but also that for the developer to pay the funding it has to be ‘necessary’ to secure the infrastructure required. If the Council is able to find money from elsewhere, such that the infrastructure has already been provided before a final instalment is paid, then the developer could quite reasonably argue that the Council does not need that final instalment in order to deliver the infrastructure as it has already done so.
- 4.19. It is also relevant that of the c. £40 million held in s106 funding over half (c. £23 million) has only been collected in the period since 2019. The current level of funds on hand is reflective of relatively large levels of development reaching payment triggers over the past three years, rather than funds which have been held for substantial periods and remain unspent.
- 4.20. Whilst construction continued through the Covid disruption as far as possible, some of the usual delivery bodies delivering high value infrastructure projects would have been focused on continuing to deliver their service against the backdrop of Covid restrictions. It is reasonable to say that both the Clinical Commissioning Group (CCG) and County Education service will have spent some 18 months or so, highly focused on continuing delivery with a reduced focus on addressing future infrastructure needs.

5. Alternative options considered and reasons for rejection

The IFS is a factual accounting statement, and its content is set out within the Community Infrastructure Levy Regulations. The regulations require an IFS to

be published for the tax year by the end of the calendar year, there is no option to not publish an IFS.

6. Risks and Uncertainties

This report gives rise to no identified risks or uncertainties and is presented as a factual statement.

7. Implications

7.1. Financial Implications

7.1.1. The Council collects funds intended to deliver infrastructure through CIL and through s106 agreements.

7.1.2. Whilst s106 funds are collected by the Council (paragraph 4.1-4.2), where the infrastructure is to be delivered by a third party, the Council has no power to compel that third party to deliver the infrastructure and claim the funds held to deliver it.

7.1.3. The balance of funds held as at 31 March 2022 are £35,905,957.58 for s106 and £1,610,958.48 for Strategic CIL and these are held in an interest bearing account.

7.1.4. Pursuant to regulation 61 the Council has collected administrative expenses for 2021/22 amounting to £80,763.84

7.2. Legal Implications

The production of the annual Infrastructure Funding Statement is a legal requirement. The report was published in December 2022 and uploaded to the Council's website as a public document in line with requirements within the CIL regulations.

7.3. Equalities Implications

There are no identified equalities implications arising from this report.

7.4. Section 17 of the Crime and Disorder Act 1998 Implications

There are no identified community safety implications arising from this report.

8. Link to Corporate Priorities

Quality of Life	As part of the infrastructure provided by funding this can include various sporting and outdoor leisure provision which can promote health lifestyles, as well as sustainable transport improvements, improved access to education facilities and healthcare provision.
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Efficient Services	There are no links between the recommendations of this report and the Council's Efficient Services priority
Sustainable Growth	Planning Contributions are collected to provide infrastructure necessary to make new developments in planning terms, the collection and spending of funds on infrastructure supports the sustainable growth of the Borough.
The Environment	There are no links between the recommendations of this report and the Council's Environment priority

9. Recommendation

It is RECOMMENDED that Cabinet acknowledges the content of the 2021/22 Annual Infrastructure Funding Statement.

For more information contact:	James Bate Team Manager Planning, Monitoring and Implementation 0115 914 8483 jbate@rushcliffe.gov.uk
Background papers available for Inspection:	<i>Adopted Infrastructure Funding List</i> Microsoft Word - R123 list (rushcliffe.gov.uk) <i>2020/21 Annual Infrastructure Funding Report</i> IFS Final 2020-2021.pdf (rushcliffe.gov.uk)
List of appendices:	Appendix A: 2021/22 Annual Infrastructure Funding Report