

	<b>Cabinet</b> 12 December 2022
	<b>Report from the Director of          Regeneration Growth and          Employment</b>
<b>Brent Infrastructure Funding Statement 2021/22</b>	

<b>Wards Affected:</b>	All, excluding parts of Harlesden, Kensal Green, Stonebridge and Tokyngton where Old Oak and Park Royal Development Corporation is the Local Planning Authority
<b>Key or Non-Key Decision:</b>	Key
<b>Open or Part/Fully Exempt:</b> <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
<b>No. of Appendices:</b>	One Appendix 1: Brent Infrastructure Funding Statement 2021/22
<b>Background Papers:</b>	None
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## 1 Purpose of the Report

1.1 This report introduces the Council's third Infrastructure Funding Statement (IFS), which has been prepared in line with the CIL Regulations (amended 2019).

1.2 It outlines:

- Performance on Brent's Community Infrastructure Levy (CIL) in relation to 2021/22;
- Performance on Section 106 (S106) planning obligations in relation to 2021/22;
- Amount of Section 278 Highways agreements entered into and for what purpose in relation to 2021/22; and
- An indication of future spending priorities on infrastructure in line with the Brent Local Plan and associated Infrastructure Delivery Plan.

## **2 Recommendations**

- 2.1 To note the content of this report and Appendix 1 'Brent Infrastructure Funding Statement 2021/22'
- 2.2 To recommend the Infrastructure Funding Statement for approval to be published online.

## **3 Detail**

- 3.1 The Council has been collecting the borough's Community Infrastructure Levy (CIL) since July 2013. CIL is a levy applied to most developments granted planning permission that commence, and is to help deliver the infrastructure needed to support the development of the area. CIL is also important in demonstrating to communities the benefits that new development can bring, including through key infrastructure projects, place-making and local improvements.
- 3.2 This is the Council's third Annual Infrastructure Funding Statement (IFS) and it covers the financial year **2021/22**. It has been prepared in line with the Community Infrastructure Levy (Amendment) Regulations 2019 and covers income and expenditure relating to CIL, S106 obligations and s278 highways agreements.
- 3.3 It also, where possible, sets out future spending priorities on infrastructure in line with the growth identified in the Brent Local Plan, Borough Plan, Capital Pipeline and Long Term Transport Strategy.
- 3.4 CIL is allocated within the framework of the Council's capital programme governance arrangements.
- 3.5 The borough CIL receipts can be broken down into three portions – the Strategic CIL, the Neighbourhood CIL and the Administration CIL. A Mayoral CIL of £60 per sqm is collected as well and passed on to TfL on a quarterly basis. The borough keeps 4% of this levy for administrative purposes. All London Boroughs are subject to this levy, with the money used to fund the Elizabeth Line and Crossrail 2.
- 3.6 The IFS is an annual requirement that reports to the Government, amongst other things, how the CIL has been spent in line with the regulations. Reporting on CIL in this way helps communities and developers see how contributions have been spent ensuring a transparent and accountable system.
- 3.7 The Council also enters in to Section 106 agreements with developers - a mechanism which makes a development proposal acceptable in planning terms. S106 agreements are focused on site-specific mitigation of the impact of development such as securing affordable housing or requiring improvements to an access road. CIL, on the other hand, is designed to raise funds for infrastructure needed generally as a result of an increase in development in an area, and is spent on community infrastructure projects across the borough.

- 3.8 The Annual Infrastructure Funding Statement outlining how much CIL and s106 income it has received for the previous year, what it has been spent on and future spending priorities must be published each year by 31<sup>st</sup> December. Reporting on CIL and S106 in this way allows our communities to have a better understanding of how developer contributions have been used to deliver infrastructure in Brent.
- 3.9 The IFS is a statement of spend as required by the regulations and not a statement on the allocation process of CIL and S106.
- 3.10 Although the Council has had high CIL receipts compared to the majority of other London Boroughs, it is important to note that future years CIL receipts may not be as strong given the current financial and economic conditions in the UK which may affect the commencement of developments and subsequently, CIL receipts.

**Summary of CIL performance in 2021/22**

- 3.11 The Infrastructure Funding Statement 2021/22 is set out at Appendix 1 of this report.
- 3.12 Brent CIL is made up of Strategic CIL (SCIL), Neighbourhood CIL (NCIL) and CIL Admin. A summary of Brent CIL receipts, allocation and expenditure for 2021/22 is set out below:

Table 1: Total Brent CIL receipts

<b>Brent CIL item</b>	<b>Total receipts</b>
<b>The total value of BCIL set out in all demand notices (issued when a planning permission provides a commencement date) issued in 2021/22</b>	<b>£29,681,100.33</b>
The total amount of SCIL received	£14,630,461.57
The total amount of NCIL received	£2,839,323.86
The total amount of BCIL Admin received	£919,462.39
<b>Total BCIL receipts received</b>	<b>£18,389,247.82</b>

- 3.13 In 2021/22 SCIL was allocated to the following infrastructure items:

Table 2: Total SCIL allocated in 2021/22

<b>Infrastructure project</b>	<b>SCIL Allocation</b>	<b>Ward</b>
Neville House, Winterleys Court, Carlton House and Carlton Hall (NWCC) Infrastructure and Public Realm	£4,900,000.00	Kilburn
<b>Total SCIL allocated</b>	<b>£4,900,000.00</b>	

- 3.14 In 2021/22 SCIL was spent on the following infrastructure items:

Table 3: Total SCIL expenditure in 2021/22

Infrastructure project	SCIL Expenditure	Ward
Olympic Way Public Realm Improvements	£5,909,654.00	Tokyngton
North End Road (Wembley Transport Improvements)	£1,148,568.00	Tokyngton
<b>Total SCIL expenditure</b>	<b>£7,058,222.00</b>	

3.15 A summary of SCIL at the end of the reported year:

Table 4: SCIL at the end 2021/22

CIL Type	Total Unallocated	Total allocated	Total Unspent*
SCIL	£59,331,790.86	£42,222,000.00	<b>£101,553,790.86</b>

*\*Unspent is money which is yet to be allocated along with money that has been allocated and has yet to be drawn down by the projects to which it is allocated.*

#### **Neighbourhood CIL performance in 2021/22**

3.16 For the reported year **£2,839,323.86 of NCIL** was collected.

3.17 **£4,575,043.36** was spent on projects during the same period.

3.18 The Council approved 67 projects for NCIL funding to deliver a variety of infrastructure projects across the borough. The projects and allocated NCIL amounts, along with NCIL spend are outlined in Appendix 2 of the Infrastructure Funding Statement.

Table 5: NCIL position at the end of 2021/22

CIL Type	Total Unallocated	Total allocated	Total Unspent*
NCIL	£6,380,849.05	£5,272,390.45	<b>£11,653,239.50</b>

*\*Unspent is money which is yet to be allocated along with money that has been allocated and has yet to be drawn down by the projects to which it is allocated.*

#### **Summary of S106 performance in 2021/22**

3.19 During the reported year, 27 S106 agreements were negotiated which are outlined in paragraph 3.3 of the IFS.

Table 6: S106 Receipts

Regulation requirement	S106 amount
The total amount of money to be provided under any planning obligations which were entered into during 2021/22	£5,462,979.56*
The total amount of money under any planning obligations which was received during 2021/22	£8,307,265.22
The total amount of money under any planning obligations which was collected in years previous to 2021/22 and carried forward into 2021/22 which has not been allocated by the authority prior to 2021/22	£4,533.412.50

\* Subject to index linking

Table 7: Summary of S106 allocation and expenditure

Name of project	S106 expenditure
The total amount of money (received under any planning obligations) which was allocated but not spent during the reported year	£1,766,491.01
The total amount of money (received under any planning obligations) which was spent by the authority (including transferring it to another person to spend)	Spent by Brent: £3,867,591.33 Transferred to TfL: £491,378.05 <b>Total: £4,358,969.38</b>

- 3.20 The total amount of money received (under any planning obligations) during any year which was retained at the end of 2021/22 is **£18,572,734.09** Table 8 shows the breakdown of these funds. Appendix 3 of the IFS shows the projects which had S106 money allocated to them in 2021/22.

Table 8: S106 position at the end of 2021/22

Total Unallocated S106 Funds	Total Allocated S106 Funds	Total Unspent*
£9,521,873.96	£9,050,860.13	<b>£18,572,734.09</b>

\* Unspent is money which is yet to be allocated along with money that has been allocated and has yet to be drawn down by the projects to which it is allocated

- 3.21 For non-monetary contributions – **1,107** affordable housing units were secured with an average of 23.8% affordable units secured per scheme. The names of the schemes along with the number of affordable housing units secured are in Table 11 of the IFS.
- 3.22 During 2021/22 the Council entered into two s278 highways agreements. The associated developments along with the description and value of these highway works are outlined in Table 14 of the IFS.

### ***Future spending priorities***

- 3.23 The Local Plan outlines an ambitious strategy for development in the borough to 2041. Over this time, the borough will continue to see a significant increase in its population, similar to levels seen over the last 20 years. This will require a substantial amount of new homes, jobs and associated physical and social infrastructure.
- 3.24 The Council has an ambitious programme of capital expenditure, and Strategic CIL will be used to fund, in part or full, some of these items, which are linked to the Infrastructure Delivery Plan (IDP) and other Borough priorities. The Council will continue to focus the spending of CIL and S106 receipts on essential infrastructure to support the level of growth outlined. It will do this jointly with partners through effective and ongoing engagement ensuring key infrastructure is delivered at the right time and in the right place to support growth and development.
- 3.25 SCIL funds have matured over a number of years. Prudent financial practice and good future infrastructure planning demands that the fund is judiciously allocated over time. This allows for important infrastructure coming forward in the future to be funded. In view of this, the Council is currently updating its IDP to help with the future planning of infrastructure ensuring it aligns with the growth anticipated to come forward in the Local Plan. This provides transparency to residents, members, infrastructure providers and the wider development industry on the type of infrastructure required to support long-term growth and development of the borough.
- 3.26 It is important to highlight that although a significant amount of SCIL has been collected over the past couple of years, the Council has nevertheless secured a significant amount of infrastructure investment through other mechanisms. These include planning consents, infrastructure provided within developments and funding for infrastructure secured via s106 legal agreements. Infrastructure has also been secured through work that has been undertaken with partners such as the Department for Education and TfL.

### **Next steps**

- 3.27 Following Cabinet, if agreed, the IFS will be published online at; <https://www.brent.gov.uk/planning-and-building-control/planning-policy-and-guidance/community-infrastructure-levy-and-section-106#howcilisspent>

### **Alternative Options Considered**

- 3.28 The requirement to produce an Annual Infrastructure Funding Statement is set out in the amended CIL regulations (2019). The Council must prepare an IFS for 2021/22 and publish it online before 31<sup>st</sup> December 2022. For these reasons, no alternative options have been considered.

## **4 Financial Implications**

4.1 No implications as a result of this report.

## **5 Legal Implications**

5.1 Paragraph 62 of the CIL Regulations (as amended, 2019) require local planning authorities to produce an Annual Infrastructure Funding Statement and publish it each year by 31<sup>st</sup> December. It will include:

- The total value of CIL set out in all demand notices issued in the reported year;
- The total amount of CIL receipts for the reported year;
- The total amount of CIL receipts, collected by the authority before the reported year but which have not been allocated;
- The total amount of CIL receipts, collected by the authority before the reported year and which have been allocated in the reported year;
- The total amount of CIL expenditure for the reported year; and
- The total amount of CIL receipts, whenever collected, which were allocated but not spent during the reported year.

5.2 In relation to CIL expenditure for the reported year, summary details of:

- The items of infrastructure on which CIL (including land payments) has been spent, and the amount of CIL spent on each item;
- The amount of CIL spent on repaying money borrowed, including any interest, with details of the items of infrastructure which that money was used to provide (wholly or in part); and
- The amount of CIL spent on administrative expenses pursuant to regulation 61, and that amount expressed as a percentage of CIL collected in that year in accordance with that regulation.

5.3 In relation to CIL receipts, whenever collected, which were allocated but not spent during the reported year, summary details of the items of infrastructure on which CIL (including land payments) has been allocated, and the amount of CIL allocated to each item.

5.4 The Statement must address CIL collection and spend, infrastructure projects and S106 collection and spend.

5.5 Section 216 of the Planning Act 2008 sets out what SCIL must be used to fund. the improvement or replacement of infrastructure (e.g. education, transport facilities, medical facilities, schools, sporting and open space/recreation facilities) that supports growth in the borough. Whilst it cannot be used to resolve pre-existing deficiencies, it can secure improvements to existing infrastructure if it is shown that this supports development. The term development is as defined within the Planning Act 2008 which” means— (a) anything done by way of or for the purpose of the creation of a new building, or (b) anything done to or in respect of an existing building.”

- 5.6 Where CIL funds have been applied in such a way that does not conform to the requirements of the Planning Act 2008 and the CIL Regulation (as amended) then it is likely that action could be taken against the Council by way of Judicial Review. There would an argument that the Council would be required to repay any funds that have not been applied in accordance with legislation.
- 5.7 In relation to NCIL however, 5.7 Regulations 59A and 59F authorises the application of NCIL by a local council or a charging authority. In either case such an application is limited by reg. 59C or as appropriate reg. 59F(3) to funding:
- (a) the provision, improvement, replacement, operation or maintenance of infrastructure; or
  - (b) anything else that is concerned with addressing the demands that development places on an area
- 5.8 As regards the limitation in reg. 59C gives councils greater freedom over what to spend the neighbourhood funding element on.
- 5.9 These wider spending powers are important because they allow the community to decide what they need to help mitigate the impact of development. Part (a) is the same authorisation as applied to strategic CIL whilst (b) is very evidently an extension. It is, however, intended to be a limitation. The wording is not such that it is intended to confer unlimited power to apply the monies for any purpose. It is a limitation which has to be abided by as an application which does not comply with reg. 59C will be an unauthorised application giving rise to issues of challenge for the Council.
- 5.10 What is to be provided by the funding if it is not infrastructure has to be justified as addressing demands that are being placed or will be placed on the area by reason of the construction of new buildings or work to or changes of use of existing buildings. It is not enough that what is to be provided is for the general wellbeing of the area. The focus should however very much be on buildings and infrastructure and should produce physical outcomes and a degree of permanency.

## **6 Equality Implications**

- 6.1 The infrastructure projects have been established as part of the evidence work to support the Brent Local Plan which has been subject to Equality Impact Assessment. This has informed the policies and projects including analysis of potential alternatives, to seek to reduce adverse impacts and wherever possible improve the outcomes for those with protected characteristics and the social, economic and environmental outcomes of the Plan.

## **7 Consultation with Ward Members and Stakeholders**

- 7.1 Quarterly reporting on infrastructure priorities and projects as well as CIL and S106 expenditure and income has been provided to the Lead Member for



Regeneration and Planning over the financial year, providing clear links back to decisions, which in turn help to deliver priorities and objectives of the Brent Local Plan and other Borough priorities.

## **8 Human Resources/Property Implications (if appropriate)**

8.1 None.

**Report sign off:**

**Alice Lester**

Director of Regeneration Growth and Employment