

# North Tyneside Council

## Report to Cabinet

### Date: 28 November 2022

#### Title: Developer contributions governance

|                                   |  |                             |
|-----------------------------------|--|-----------------------------|
| <b>Portfolio(s):</b> Deputy Mayor | <b>Cabinet Member(s):</b> Councillor Carl Johnson                      |                             |
| <b>Report from Service Area:</b>  | <b>Planning and Strategic Transport</b>                                |                             |
| <b>Responsible Officer:</b>       | <b>John Sparkes, Director of Regeneration and Economic Development</b> | <b>Tel: (0191) 643 6091</b> |
| <b>Wards affected:</b>            | <b>All wards</b>   |                             |

#### PART 1

##### 1.1. Executive Summary:

- 1.1.1. This report presents the Authority's revised infrastructure list and updated development contributions governance arrangements. This is proposed for the Authority to continue to make best use of developer contributions that support growth and development and to ensure the borough continues to be an attractive, sustainable place to live and work.
- 1.1.2. Developer contributions are an important mechanism to support investment in infrastructure and are secured through either planning obligations entered into with developers under section 106 of the Town and Country Planning Act 1990 (commonly referred to as "section 106 agreements"), the payment of a levy by a developer under the Community Infrastructure Levy (CIL) or through agreements for the execution of works entered with developers under section 278 of the Highways Act 1980 (commonly referred to as "section 278 highway agreements"). Their use is subject to legislative controls designed to ensure they are used fairly.
- 1.1.3. In March 2018 Cabinet adopted an update to the Authority's Planning Obligations Supplementary Planning Documents (SPDs). The Planning Obligations SPD provides guidance for planning applicants on the circumstances in which planning obligations might be sought from developments across a range of different infrastructure needs.
- 1.1.4. In November 2018 full Council approved the Authority's Community Infrastructure Levy (CIL) Charging Schedule and Cabinet approved the Infrastructure List associated with CIL.
- 1.1.5. A formalised developer contributions governance process was agreed by Cabinet in May 2018. This process outlined how the Authority would ensure decisions taken regarding section 106 planning obligations would be fair and reasonable and aligned with the priorities of the Mayor and Cabinet.

1.1.6. This process and the CIL charge have now been in place for over four years and have remained under continuous review to ensure they are effective and fit for purpose. In order to continue to ensure developer contributions are utilised to best support the sustainable development of the area this report considers some amendments to the Authority's Infrastructure List and developer contributions governance arrangements.

## **1.2. Recommendations:**

It is recommended that Cabinet:

- (1) Approve the updated Infrastructure List 2022 included at Appendix 1 of this report, and
- (2) Approve the amended Developer Contributions governance process as set out at Appendix 2 of this report, and authorise the Director of Regeneration and Economic Development, in consultation with the Director of Resources, the Assistant Chief Executive and, the Deputy Mayor and the Cabinet Member for Finance and Resources to make any minor amendments to the process as necessary.

## **1.3. Forward Plan:**

1.3.1. Twenty eight days notice of this report has been given and it first appeared on the Forward Plan that was published on 28 October 2022.

## **1.4. Council Plan and Policy Framework**

1.4.1. This report relates to the following priority in the 2021-2025 Our North Tyneside Plan through managing the process of securing the necessary infrastructure to support the delivery of development and the implementation of the Authority's Local Plan:

A thriving North Tyneside – In supporting the Local Plan's strategy for growth and economic investment

A secure North Tyneside – Particularly in assisting the Local Plan's strategy to tackle health and social inequality and delivery of affordable housing.

A family friendly North Tyneside – In managing the Local Plan's strategy for infrastructure provision including education, training and skills development.

A green North Tyneside – In enabling the Local Plans strategy for environmental protection, waste management, and promotion of sustainable transport.

## **1.5. Information:**

1.5.1. Background

1.5.2. Developer contributions is the term used to refer to the Community Infrastructure Levy (CIL) and planning obligations "(commonly referred to as 'Section 106' or S106 contributions after Section 106 of the Planning Act). These are planning tools used to secure financial or non-financial contributions towards the provision of infrastructure to support and enable development and to mitigate the impact of development.

1.5.3. Within North Tyneside the framework for administering developer contributions is comprised of:

- *North Tyneside Local Plan 2017 (adopted by full Council, July 2017)* – the adopted Local Plan sets out the formal policy framework against which applications for development and their suitability can be considered. Development that conflicts with Local Plan policy may be able to remedy such conflicts if improvements to infrastructure are agreed.
- *Planning Obligations Supplementary Planning Document (adopted by Cabinet, 12 March 2018)* – this SPD provides further guidance to developers regarding the Authority’s expectations for s106 planning obligations. Section 106 Planning Obligations are secured through negotiation as part of individual planning applications. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) requires a planning obligation to be:
  - Necessary to make the development acceptable in planning terms;
  - Directly related to the development;
  - Fairly and reasonably related in scale and kind to the development.
- *Community Infrastructure Levy Charging Schedule (CIL) (adopted by full Council, 22 November 2018)* – CIL is a fixed non-negotiable charge upon the floor area created by any liable development within North Tyneside. Monies raised through CIL are pooled into a single fund to help pay for identified strategic and local infrastructure. This infrastructure is identified in a CIL Infrastructure List (formerly a Regulation 123 List) which is published alongside CIL.
- *Community Infrastructure Levy Infrastructure List (former Regulation 123 List) (approved by Cabinet 19 November 2018)* – The Infrastructure List is a formal statement setting out the type of infrastructure or specific projects that the Authority intends to deliver through its CIL funds. The infrastructure included on an Infrastructure List is taken from the Authority’s Infrastructure Delivery Plan (2022 update included as a background document to this Report) and published through the Authority’s annual Infrastructure Funding Statement - prepared in accordance with Regulation 121A of the CIL Regulations 2010 (as amended).
- *Developer Contributions Governance Arrangements (adopted by Cabinet 14 May 2018)* – Following adoption of the Local Plan and Planning Obligations SPD, Cabinet agreed formal governance arrangement to agree the contributions to be sought from developers prior to the consideration of planning applications by the Planning Committee. These arrangements ensure planning obligations are aligned to the policy direction of the Mayor and Cabinet whilst still meeting the legislative tests to which they are subject.

1.5.4. Cabinet in March 2018 agreed the following authorisations (delegations previously made to the Head of Environment, Housing and Leisure and Head of Law and Governance are now the responsibility of the Director of Regeneration and Economic Development and Director of Resources respectively.):

- the relevant Chief Officer (now Director) or Head of Service to make representations to the Head of Environment, Housing and Leisure (as it then was) on contributions that they consider necessary to mitigate the impact of proposed developments in line with the policy objectives of the Elected Mayor and Cabinet;
- the Head of Environment, Housing and Leisure (as it then was), the Cabinet Member for Finance and Resources, the Deputy Mayor, other relevant Cabinet Members and the Head of Law and Governance (as it then was) to agree

appropriate contributions for consideration by Planning Committee to mitigate the impact of proposed developments;

- the Head of Commissioning and Investment in consultation with the Head of Finance to commission formal site viability assessments, such cost to be met by developers, where developers challenge the level of contributions sought by the Authority under a s106 agreement;
- the relevant Head of Service in consultation with the Head of Environment, Housing and Leisure, the Head of Finance, the Cabinet Member for Finance and Resources, the Deputy Mayor, other relevant Cabinet Members to deliver proposed infrastructure projects; and
- the Head of Environment, Housing and Leisure in consultation with Head of Finance, Head of Law and Governance, the Deputy Mayor and the Cabinet Member for Finance and Resources to make any minor amendments to the process (as set out in Appendix 1 to the Report of 14 May 2018) as necessary.

1.5.5. Each of the above arrangements have been in place for a number of years. This report details proposals to refresh the Authority's Infrastructure List, as part of the Infrastructure Funding Statement 2022, and amend the process associated with Developer Contributions governance arrangements approved in 2018.

1.5.6. Updating the Authority's Infrastructure List

1.5.7. The current Infrastructure List for North Tyneside is informed by the Infrastructure Delivery Plan 2018 (IDP 2018). This IDP 2018 identified 98 separate infrastructure projects or types and a total cost for their delivery of over £386m. From this evidence of infrastructure requirements, the Community Infrastructure Levy (CIL) was adopted. Alongside adoption of the CIL charge five key infrastructure projects or types were identified to be funded by CIL receipts:

- Secondary education.
- Health facilities.
- Suitable Alternative Natural Greenspaces.
- Community Facilities.
- Off-site walking and cycling connections associated with Murton Gap and Killingworth Moor.

1.5.8. The total estimated cost of delivering these infrastructure items in 2019 was some £33.5m. An index linked assessment of costs suggests this would have increased to over £35m. To date, total planning permissions granted since 2019 have secured in excess of £2.5m in CIL payments with approximately £300k received.

1.5.9. The IDP update has refreshed the Authority's understanding of infrastructure requirements in terms of updated costs and consideration of the most effective approach to utilising developer contributions to assist in the development of the area – in accordance with the purpose of CIL funds set out at Regulation 59 of CIL Regulations 2010 (as amended).

1.5.10. It is considered the findings of the updated IDP justify making amendments to the current Infrastructure List that was agreed by Cabinet in 2018. In making such changes the use of CIL must continue to be for the wider benefit of the Borough in supporting infrastructure needs arising from its growth and development.

1.5.11. *Secondary Education:*

The Local Plan establishes a potential need for secondary education provision at Killingworth Moor. Any additional secondary school spaces created would be as a result of overall pupil growth in the Borough and would benefit from flexibility to draw on funding from development across the Borough. It is therefore considered that secondary education remains a CIL infrastructure item and funds are directed to boosting secondary capacity as required.

1.5.12. *Health Facilities:*

The requirement for provision of new health facilities is ongoing. Discussions with the Clinical Commissioning Group has established an ongoing intention to explore options for provision of new GP practices in the Borough. This could include new services at Killingworth Moor strategic allocation. CIL provides significant flexibility for delivery of new facilities or enhancements when and where required to best meet health needs. It is therefore appropriate for health to remain a CIL item.

1.5.13. *Suitable Alternative Natural Green Space (SANGS):*

Provision for off sites SANGS as an infrastructure item reflected a need at the time of the Local Plan adoption to secure a wide range of measures to mitigate the potentially harmful impact of development upon the internationally protected Northumberland Coast Special Protection Area. In 2019 the Authority adopted the Coastal Mitigation Supplementary Planning Document (SPD). This SPD introduces a new tariff, in addition to CIL, for new residential accommodation. The tariff will be used to fund mitigation of the recreational impacts of development at the coast.

1.5.14. Use of CIL monies to provide SANGS is therefore no longer required. However, the need to make funds available to support coastal mitigation should remain under continual review – informed by the monitoring undertaken by Coastal Wardens.

1.5.15. *Community Facilities:*

1.5.16. Support for new or enhanced community facilities via CIL was proposed as a means of creating a pot of money for investment that can support neighbourhoods and communities. Whilst there are presently no specific projects identified that would draw on the Community Facility fund the potential use of CIL for such purposes is encouraged by government as a means of delivering benefits to the communities where development takes place. This is established through Regulation 59F(3) of the CIL Regulations 2010 (as amended) establish that for Authorities such as North Tyneside an element of CIL funds can be used for anything else – beyond defined infrastructure – that addresses the demands that development places on an area. Use of CIL monies to support Community Facilities is therefore proposed to be retained.

1.5.17. *Walking, Cycling and Wheeling Connections:*

1.5.18. The inclusion of off-site walking, cycling and now wheeling links to ensure connectivity of the strategic allocations of Murton Gap and Killingworth Moor were included in the Local Plan to provide the Council with a flexible source of funding to enhance such routes. Such provision remains a key priority for the Council and use of CIL funds for this purpose is proposed to be retained.

1.5.19. *(New Infrastructure Item) Sustainable Transport Connections:*

1.5.20. Engagement with the Highways and Transport Team has identified that CIL could provide a useful funding source to support investment in sustainable transport connections. This would be a new item of infrastructure open to CIL funding. It is proposed that the opportunity to utilise CIL funds in the way would have strategic benefits for the growth and development of the area. It will assist the Authority in its

programme for transport including priorities aligned with the North East Transport Plan, the North Tyneside Transport Strategy (and supporting documents) and the Action Plan to tackle the Climate Emergency.

**1.5.21. (New Infrastructure Item) Strategic Highway Improvements:**

Work with key infrastructure providers, applicants and the Highways and Transport Team since adoption of the Local Plan has highlighted the substantial costs arising in delivering some elements of new highway infrastructure required to support the delivery of the Local Plan. Where a strategic highway improvement has a wider role in supporting development of the Borough, CIL funding could be considered to assist their delivery.

1.5.22. Taking into account the above proposed changes a revised Infrastructure List as contained within the Infrastructure Funding Statement 2022, is included at Appendix 1 of this report.

**1.5.23. Updating the Authority's Developer Contributions Governance Arrangements**

1.5.24. In accordance with the delegated Authority and process agreed by Cabinet in May 2018; the process for defining and agreeing section 106 agreements and subsequent project delivery is managed through a section 106 sub-group of the Authority's Investment Programme Board (IPB). The membership of IPB is the most appropriate group to endorse decisions regarding developer contributions as the board that oversees the delivery of the Authority's capital programme once funding is established in the Authority's budget setting process.

1.5.25. The process of decision making was formalised in the May 2018 Cabinet report. This now requires amendment to ensure decision making regarding the monitoring and identification of CIL funded projects is appropriately reflected.

1.5.26. The revised process for Developer Contributions governance is included at Appendix 2 of this report.

**1.6. Decision options:**

1.6.1. The following decision options are available for consideration by Cabinet:

Option 1

Approve the recommendations as set out in section 1.2 of this report.

Option 2

Not to approve the recommendations as set out in section 1.2.

Option 1 is the recommended option.

**1.7. Reasons for recommended option:**

Option 1 is recommended for the following reasons:

The Authority has a duty to administer developer contributions in accordance with the relevant regulations and ensure appropriate funding is secured from development and directed in the most effective way to address the impacts and support the development of the area. The recommendations will extend the ability of the Authority to use CIL funds

effectively and improve the governance regarding developer contributions decision making.

## 1.8. Appendices:

Appendix 1 Infrastructure List, November 2022

Appendix 2 Developer Contributions Governance Process, November 2022

## 1.9. Contact officers:

Martin Craddock, Planning Policy Team Leader (07708 354066)

Jackie Palmer, Planning Manager (07711 425574)

David Dunford, Senior Business Partner (0191) 643 7027

## 1.10. Background information:

The following background papers/information have been used in the compilation of this report and are available at the office of the author:

- (1) North Tyneside Local Plan, 2017\_  
<https://my.northtyneside.gov.uk/sites/default/files/web-page-related-files/North%20Tyneside%20Local%20Plan%202017-2032.pdf>
- (2) Planning Obligations Supplementary Planning Document\_  
[https://my.northtyneside.gov.uk/sites/default/files/web-page-related-files/planning%20obligation\\_0.pdf](https://my.northtyneside.gov.uk/sites/default/files/web-page-related-files/planning%20obligation_0.pdf)
- (3) Coastal Mitigation Supplementary Planning Document\_  
<https://my.northtyneside.gov.uk/sites/default/files/web-page-related-files/Coastal%20Mitigation%20SPD%20Final%20Document.pdf>
- (4) The Town and Country Planning Act 1990\_  
<https://www.legislation.gov.uk/ukpga/1990/8/contents>
- (5) The Town and Country Planning (Local Planning) (England) Regulations 2012 (legislation.gov.uk) (as amended)\_  
<https://www.legislation.gov.uk/uksi/2012/767/contents/made> and The Town and Country Planning (Local Planning) (England) (Amendment) Regulations 2017\_  
<https://www.legislation.gov.uk/uksi/2017/1244/made>
- (6) Planning Act 2008 <https://www.legislation.gov.uk/ukpga/2008/29/contents>
- (7) National Planning Policy Framework, 2021\_  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1005759/NPPF\\_July\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005759/NPPF_July_2021.pdf)
- (8) Community Infrastructure Levy Charging Schedule, 2019\_  
<https://my.northtyneside.gov.uk/sites/default/files/web-page-related-files/NTC%20CIL%20Charging%20Schedule.pdf>
- (9) Community Infrastructure Levy Infrastructure List (regulation 123 List), 2019\_  
[https://my.northtyneside.gov.uk/sites/default/files/web-page-related-files/Appendix%201%20CIL%20Regulation%20123%20List\\_0.pdf](https://my.northtyneside.gov.uk/sites/default/files/web-page-related-files/Appendix%201%20CIL%20Regulation%20123%20List_0.pdf)
- (10) Community Infrastructure Levy Regulations 2010 (as amended) [The Community Infrastructure Levy Regulations 2010 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2010/1244/made)
- (11) North Tyneside Infrastructure Delivery Plan 2022 (TO ADD)
- (12) Cabinet Report of 14 May 2018 – Developer Contributions\_  
<https://my.northtyneside.gov.uk/sites/default/files/meeting/related-documents/3%20Planning%20Contributions%20Report.pdf>
- (13) Cabinet Report of 19 November 2018 – Community Infrastructure Levy\_  
<https://my.northtyneside.gov.uk/sites/default/files/meeting/agenda/ex%20cab%20for%2019%2011%202018.pdf>

## **PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING**

### **2.1. Finance and other resources**

2.1.1. There are no direct financial implications arising from this decision.

### **2.2. Legal**

2.2.1. The legal implications that arise from this report are dealt with in the body of the report.

2.2.2. In accordance with the Authority's Constitution Planning Committee approve or reject planning applications on behalf of the Authority, save for those which are delegated to officers. As part of the planning process, the Planning Committee may approve a planning application subject to the terms set out in a section 106 agreement.

2.2.3. The legal terms of any section 106 agreement or section 278 highway agreement are negotiated and agreed by legal officers and the developers' representatives following the Planning Committee's decision. under delegated authority.

### **2.3. Consultation/community engagement**

2.3.1. Internal Consultation – review of the Authority's Infrastructure Delivery Plan and consideration of the Infrastructure List have been informed by discussion and engagement with officers across the Authority and with Members of the Local Plan Steering Group.

2.3.2. External Consultation/Engagement – discussions with external stakeholders have been taken into consideration in developing the review of the Infrastructure Delivery Plan and Infrastructure List. This has included discussion with developers and service providers on an ongoing basis since approval of the current infrastructure list.

### **2.4. Human rights**

2.4.1. There are no human rights implications directly arising from this report.

### **2.5. Equalities and diversity**

2.5.1. There are no direct implications for Equalities and diversity arising from this decision. The adopted Local Plan was subject to Equalities Impact Assessment which is regularly reviewed and continues to be applicable to implementation of the Local Plan.

### **2.6. Risk management**

2.6.1. Risks associated with the management of planning obligations funding are monitored via the Authority's Risk Management process.

### **2.7. Crime and disorder**

2.7.1. There are no crime and disorder implications arising directly from this report.



## 2.8. Environment and sustainability

- 2.8.1. There are positive implications for Environment and sustainability arising from this decision as the role of developer contributions can be to manage and enhance the environment and support sustainable development of the Borough. Sustainable transport and cycling connections in particular support the delivery of the Authority's Carbon Net-Zero 2030 Action Plan. The adopted Local Plan was subject to Sustainability Appraisal and Habitat's Regulation Assessment that considered the sustainability effects of each policy of the Local Plan.

### PART 3 - SIGN OFF

- Chief Executive
- Director(s) of Service
- Mayor/Cabinet Member(s)
- Chief Finance Officer
- Monitoring Officer
- Assistant Chief Executive