

<p>Non-Executive Report of the:</p> <p>Overview and Scrutiny Committee</p> <p>24 July 2023</p>	 <p>TOWER HAMLETS</p>
<p>Report of Janet Fasan Divisional Director Legal and Monitoring Officer</p>	<p>Classification: Unrestricted</p>
<p>Call in - Neighbourhood Community Infrastructure Levy (NCIL) 21/6/23</p>	

Originating Officer(s)	Joel West, Democratic Services Team Leader (Committee)
Wards affected	All

CONSIDERATION OF THE CALL IN

A call in request has been received on the decision of Cabinet, 21 June 2023 on Item 6.2 Neighbourhood Community Infrastructure Levy (NCIL) 21/6/23

In accordance with the Council's call in procedure rules, the matter is referred to the Overview and Scrutiny Committee (OSC) for its consideration and to decide whether to refer the matter back to Cabinet for further consideration. The following procedure is to be followed by the Committee for consideration of the Call In:

- i. Chair to invite a call-in member to present call-in.
- ii. Chair to invite members of the Committee to ask question.
- iii. Chair to Invite Cabinet Member to respond to the call-in.
- iv. Chair to invite members of the Committee to ask questions.
- v. Followed by a general debate.

It is open to the OSC to either resolve to take no action (which would have the effect of endorsing the original Cabinet decisions), or to refer the matter back to the Cabinet for further consideration setting out the nature of its concerns and possibly recommending an alternative course of action.

RECOMMENDATION

That the Overview and Scrutiny considers:

1. The contents of the attached report, review the Cabinet's decision (provisional, subject to call in) arising; and
2. Decide whether to accept the decision or to refer the matter back to the Cabinet with proposals and reasons.

INTRODUCTION

On 24 May 2023, the Mayor in Cabinet considered a report on Housing Revenue Account (HRA) 2022 - 25 Capital Programme: Latest position.

As a result of discussions on the report it was **RESOLVED**:

1. Approve the revised Local Infrastructure Initiatives Programme consisting of LIF Programmes 1-3 as set out in paragraph 3.9-3.11 and Appendix 1 of the report.
2. Note the return of £17.285m of LIF from discontinued projects from LIF Programmes 1-3 to the main NCIL pot
3. Approve the proposed NCIL implementation framework for decision making on the allocation of future NCIL set out in paragraph 3.12 (Table 3) of the report to ensure that spending of NCIL remains in accordance with CIL Regulations 2010 (as amended).
4. Approve the proposed NCIL allocations of £20.456m for 2023-24 to 2025/26 set out in paragraph 3.13 a-c of the report.
5. Note that decisions on project level allocations of NCIL on an annual basis to Capital Programme and Affordable Housing schemes, will be made via the Council's standard Capital Programme governance process up to Cabinet.
6. Note that decisions on the allocation of NCIL to individual grants will be made via the existing Council Grants process set out in the Cabinet Paper approved at the 29th of March 2023 Cabinet meeting.
7. Delegate approval of detailed PIDs and change notes for individual projects remaining to be delivered through LIF Programmes 1 – 3 to the Director, Planning & Building Control following consultation with the Mayor and Chief Executive.
8. Note the Equalities Impact Assessment / specific equalities considerations as set out in Paragraphs 4.1-4.4 of the report.

The decisions above have been Called-In by Councillors) Sirajul Islam, Sabina Akhtar, Shubo Hussein, Amy Lee, James King. This is in accordance with the provisions of the Overview and Scrutiny Procedure Rules of the Council's Constitution.

In accordance with the OSC Protocols and Guidance adopted by the Committee at its meeting on 4th June 2013, any Member(s) who present(s) the "Call In" is (are) not eligible to participate in the general debate.

REASONS FOR THE CALL IN

The call in requisition from the Councillors noted above has provided reason(s) for the call-in. The reason(s) are replicated below:

The aforementioned Councillors, call in the above decision taken by Cabinet at its meeting on the 21/6/23, they do so on the following grounds:

It is in contravention to Part A, Article 3, Section 1, Subsections a, b, and e of the Borough of Tower Hamlets Constitution: 'Principles of Decision-Making':

A This decision does not seem proportionate to the desired outcomes.

Under section 1 of the Cabinet paper: 'Reasons for the decisions' the reason for the changes to the LIF/NCIL programme are given as: "administrative changes to the Council necessitated the review of the current NCIL (LIF) approach to ensure that delivery aligns with the priorities set out in the new Strategic Plan 2022- 26".

The 61 cancelled schemes within the LIF/NCIL can be delivered in line with the strategic plan as each scheme aligns with the 8 priorities individually or in combination.

- 25 of the cancelled schemes satisfy priority 4 'Boosting culture, business, jobs, and leisure'.
- 18 of the cancelled schemes satisfy priority 6 'empowering communities and fighting crime'
- Therefore, the cancelling of these schemes does not seem proportionate to the given reason for the making of the decision. As, delivering these schemes would better satisfy the given rationale for cancelling them.

B This decision does not seem to have been taken with due and proper consultation.

This report was taken to cabinet without the consultation of the Isle of Dogs and Roman Road neighbourhood forums and the community interest groups who had originally put forward some of the schemes listed for cancellation.

These groups are fundamental to the s106 process and could have/should be consulted on how their communities will be affected by the proposed changes.

The decision proposed the annual resident's survey as a method of consultation on how NCIL/LIF funding should be spent, this does not align with the government guidance on the matter. Government guidance states:

'(Charging authorities) should engage with the communities where development has taken place and agree with them how best to spend the neighbourhood funding. Charging authorities should set out clearly and transparently their approach to engaging with neighbourhoods using their regular communication tools... ..The use of neighbourhood funds should therefore match priorities expressed by local communities, including priorities set out formally in neighbourhood plans.'

The annual resident's survey, whilst a useful tool for council to monitor its performance and collect data, is far less specific and does not specifically deal with the matter of how s106 funding should be spent within a community.

Furthermore, both the Isle of Dogs and Roman road have existing neighbourhood plans which include recommendations for NCIL spending – the cabinet report at section 3.10.c states:

'the council's chosen public engagement approach will ensure that the use of NCIL funds aligns to the priorities expressed by local communities, including those set out formally in the neighbourhood plans'

With the council's chosen public engagement approach being the ARS, it is not clear how the formal priorities detailed in the neighbourhood plans would be addressed unless they are by chance raised within the survey itself.

The report's suggestion that it would address the top boroughwide concerns as the consultation rationale for spending will therefore not necessarily align with what communities may have expressed as their priorities within their neighbourhood plans.

'using neighbourhood level statistics to ensure local priorities are being addressed. Is not consultation, it is statistical analysis that will be used to inform spending.'

E there is a lack of clarity of aims and desired outcomes.

Linking where this decision has deviated from subsections a and b is the lack of clarity of the desired aims of this decision – as detailed above the reason given for the cancelling of these schemes was to align with the new corporate goals which they already appear to do.

The chosen method of consultation which this decision seeks to adopt would seemingly require NCIL funding to continue being spent on issues it is already being spent on:

The top 3 priorities identified in the 2021 ARS:

- crime and anti-social behaviour
- lack of affordable housing
- litter/dirt in the streets

Two of these examples align to corporate goals 6 and 7 (Crime/ASB and Litter) of which 18 and 32 cancelled schemes would have fulfilled respectively.

This suggests there is an incoherence of aims and outcomes, as why would these schemes need to be cancelled in order to better fulfil community priorities they are already set to fulfil.

There are also statutory and equalities issues with the decision:

At section 4. of the report which concerns Equalities implications there is not an acknowledgement that some of the cancelled schemes were earmarked for improved accessibility, the creation of inclusive equipment, measures that would improve air quality and other schemes that would have had direct impact on residents protected by the Equality Act 2010 – there is no guarantee that equal funding would be reinstated for residents in the communities these schemes that were set to take place. It is not acknowledged that they could be disproportionately affected by this decision.

At section 5 of the cabinet report, it lists environmental (incl. air quality) and crime reduction statutory implications as addressed:

“Environmental (including air quality) - The processes proposed in this document will ensure effective oversight in using NCIL to deliver infrastructure. This will mean that matters such as environmental issues will be appropriately accounted for in the delivery of local infrastructure.”

“Crime Reduction - The proposals set out in this report will enable the effective delivery of infrastructure using CIL. This infrastructure might include projects that will help reduce crime and disorder and decrease anti-social behaviour.”

It is not acknowledged at this section that some of the funding being returned into the NCIL pot, will be from cancelled schemes that were specifically earmarked to deal with both of these statutory implications with no guarantee that they will receive funding or be addressed in the same way with the new funding model.

ALTERNATIVE COURSE OF ACTION PROPOSED

- Revisit the consultation process associated with the report on the grounds that it is unconstitutional Part A, Article 3, Section 1, Subsection b, ‘This decision does not seem to have been taken with due and proper consultation.’
- Ensure that consultation has taken place with affected groups such as neighbourhood forums and community groups and rewrite the consultation process to utilise neighbourhood forums/plans as the primary consultation method (in areas without forums/plans carry out targeted community consultation) to ensure that the report is line with government guidance on s106 funding.
- Pause the cancellation of the s106 projects listed at appendix 1b of the report on the grounds that it is in contravention to Part A, Article 3, Section 1, Subsections a, and e of the Borough of Tower Hamlets Constitution:

- This decision does not seem proportionate to the desired outcomes.
 - there is a lack of clarity of aims and desired outcomes.’
 - Assessing the cancelled schemes to ensure that they do not already in line with the Council’s strategic plan as this was the given reason at 1.2. for bringing the paper to cabinet.
 - Under the proposed method for consultation some of the cancelled schemes at appendix.1b would also continue to qualify for NCIL funding as they align with the issues identified in the ARS and asking for re-submission seems incoherent for best use of resources and officer time.
 - Cabinet should re-assess whether any of these schemes would fit into the new NCIL programme and revise its blanket cancellation of the schemes at appendix 1b adding more schemes to the list at appendix 1a where appropriate.
 - Investigate as to whether the cancellation of certain schemes may have equality/statutory implications and subsequently; ensure residents with protected characteristics will receive like for like earmarked funding so they are not disproportionately affected by any decision to cancel schemes e.g., funding for accessible play equipment, dropped curbs etc.
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Linked Reports, Appendices and Background Documents

Linked Report

- None

Appendices

- Appendix 1 – **Neighbourhood Community Infrastructure Levy (NCIL)**

Local Government Act, 1972 Section 100D (As amended) List of “Background Papers” used in the preparation of this report

- None.