



City of Westminster

Cabinet Member Report

Decision Maker:	Cabinet Member for City Management and Air Quality
Date:	09 July 2024
Classification	For General Release
Title:	Westminster Neighbourhood CIL – Elgin Avenue Central Island Improvements (Eastern Area)
Wards Affected:	Maida Vale
Policy Context	<p>The Neighbourhood CIL funding programme to invest in local infrastructure projects across the City.</p> <p>The improvement of public realm across the City.</p>
Key Decision:	Key Decision
Financial Summary:	This report seeks to allocate £172,181 of funding from the Little Venice and Maida Hill Neighbourhood CIL pot to the Elgin Avenue Improvements (Eastern Area)
Reason for decision:	<p>To ensure robust and effective expenditure and reporting in line with the Planning Act (2008) and the Community Infrastructure Levy Regulations 2010 (as amended) and in accordance with the council’s strategic priorities, the revised CIL Spending Policy Statement (2022), and the council’s frameworks for resource allocation and management</p> <p>Approval of Neighbourhood CIL funding allocation is required to enable this scheme to proceed to delivery.</p>

Report of:

Deirdra Armsby, Director of Town
Planning and Building Control

Executive Summary

- .1. The purpose of this report is for the Cabinet Member to consider and approve Neighbourhood CIL funding from the Little Venice and Maida Vale Neighbourhood Area pot to the Elgin Avenue Central Island Improvements (Eastern Area) scheme.
- .2. In line with legislation, a portion of the Community Infrastructure Levy (CIL) is apportioned to neighbourhood areas in Westminster. The neighbourhood share constitutes 15% of CIL receipts, capped at £100 per council tax paying dwelling per year, or 25% without a cap in neighbourhood areas with an adopted neighbourhood plan. The council receives applications for Neighbourhood CIL funds through quarterly rounds, subject to national regulations, local policies, and Westminster's CIL Spending Policy Statement. Consultation with stakeholders, including Neighbourhood Forums, Business Improvement Districts, and ward members, is a prerequisite. The applications undergo a thorough assessment by Infrastructure Planning and Delivery officers, with input from relevant council teams and the Infrastructure Working Group and Infrastructure Delivery Board, as well as any relevant external stakeholders.
- .3. Feasibility funding for a wider scheme for Elgin Avenue was approved by the Cabinet Member for Business and Planning in April 2020 (NCIL/017), the feasibility work has since been largely delivered. Further NCIL funding was sought in early 2022 for the design and implementation of a reduced area between Lanark Road and Maida Vale (Eastern Area) and between Delaware Road and Morshead Road (Western Area) (NCIL/061). This was approved by the Cabinet Member for City Management and Air Quality in November 2022, under delegated authority of the Leader of the Council. Design progressed and following consultation it was concluded that due to perceived increased risks to cyclist's safety it was not possible to deliver the entirety of the proposed scheme.
- .4. At a similar time to the allocation of NCIL/061 changes were made to the NCIL decision-taking process, and subsequently WCC Legal and Governance services have advised that the previous Neighbourhood CIL allocation for improvements at Elgin Avenue (NCIL/061) is invalid.
- .5. This report seeks approval for funding to deliver a reduced scheme for the eastern area only (between Lanark Road and Maida Vale), which has the support from the amenity society and ward councillors.

Recommendation

- .1. The Cabinet Member is asked to approve the Neighbourhood CIL bid for Elgin Avenue Central Island Improvements (Eastern Area), details of which are set out in this report.

Reasons for Decision

- .1. To ensure robust and effective expenditure and reporting in line with the Planning Act (2008) and the Community Infrastructure Levy Regulations 2010 (as amended) and in accordance with the council's strategic priorities, the revised CIL Spending Policy Statement (2022), and the council's frameworks for resource allocation and management.
- .2. To mitigate the impact of development, including the construction nearby on Hamilton Terrace, to improve the feel of the public realm by implementing a configuration similar to that already implemented further west on Elgin Avenue.
- .3. Neighbourhood CIL applications are normally decided by the Cabinet Member for Planning and Economic Development. However in this case the Cabinet Member lives locally to the project and was an earlier advocate for the Central Island Improvements at Elgin Avenue. It is therefore considered it would have been inappropriate for him to take the decision which is the subject of this report. Accordingly, the Cabinet Member for City Management and Air Quality will take the decision.

Background

- .1. The Community Infrastructure Levy (CIL) is a charge that local authorities can legally impose on new development to help raise funds to deliver infrastructure that is required to support the development and growth of their area. WCC's became effective on 1 May 2016 and applies to liable developments that were granted planning permission on or after this date. CIL is payable when works to implement the development commence.
- .2. All CIL funding decisions are taken with regard to national legislation and regulations. Local policy and priorities, as set out in the Westminster CIL Spending Policy Statement (October 2022), inform decisions.
- .3. CIL Regulations require apportionment of CIL receipts between:
 - the **City CIL Strategic Portion (70-80%)** – spent by the Council according to its strategic infrastructure priorities.
 - **a Neighbourhood Portion of receipts from development in each neighbourhood (15-25%)** – spent by the Council in agreement with the neighbourhood communities concerned (other than in Queen's Park, where the portion is paid to, and spent by, the Community Council);
 - **a CIL Administrative Portion (5%)** – spent by the Council on the administrative costs of CIL collection and administration.

- .4. Neighbourhood CIL is apportioned to the neighbourhood area within which the development took place to provide local infrastructure. Neighbourhood CIL is collected and held by the council and spent by the council in consultation with the local community. The council accepts applications to provide Neighbourhood CIL to deliver projects.
- .5. In early 2020, the Paddington Waterways and Maida Vale Society (PWMVS) proposed a public realm improvement project along Elgin Avenue. NCIL/017 provided funding to support a feasibility study to install new islands with trees and additional car parking from Delaware Road in the west to Maida Vale Road in the east. The result of this study estimated the project cost to exceed expectations at approximately £720,000. The scheme was reduced to look at an eastern section, between Lanark Road and Maida Vale and a western section between Morshead Road and Delaware Road. This option, which was estimated to cost approximately £435,000, was submitted by the PWMVS as a second Neighbourhood CIL application for funding which was agreed under the old NCIL decisions process, in November 2022 (NCIL/061).
- .6. The Stage 2 Initial Design proceeded and Section 6 and TMO consultation occurred in October 2023. When the findings of the consultations were presented to the Maida Vale ward councillors in February 2024, due to the perceived introduced risk to cyclists safety west of the pedestrian crossing at Morshead Road and some residents not supporting the scheme, the councillors gave a steer to reduce the extent on the western side to only incorporate the changes around the Morshead Road junction as this was seen by them to add benefit to the public realm. PWMVS did not agree with this approach as this reduced extent did not align with their original aspirations for the street who wanted to achieve tree planting and new carparking spaces to make use of the space in the middle of the carriageway. Ward councillors and PWMVS were supportive for the eastern area (between Lanark Road and Maida Vale) to proceed.
- .7. When looking to proceed to Detailed Design, in May 2024, WCC Legal Services and WCC Cabinet Services and Secretariat advised that the November 2022 decision to allocate funding for the project was invalid. This is because the decision taken by the Cabinet Member in November 2022 was under delegated authority from the Leader issued on 14 October 2022. However, on 17 October 2022, Cabinet agreed to a new process for Neighbourhood CIL decision-making, which included that any application with a value higher than £249,999.99 be determined by Full Cabinet therefore funding for the project was invalid. The decision was not valid because it was made after the adoption of this new process and the application therefore should have been decided by Full Cabinet.
- .8. Given the invalidity of the decision to allocate funding to the project and the disagreements over the extent of the scheme to be implemented, officers recommend that the Cabinet Member agree to a revised version of the scheme as set out below.

Elgin Avenue Improvements (Eastern Portion)

- .1. This revised scheme seeks to proceed with the Stage 2 Design that was proposed for the eastern area of the scheme, between Lanark Road and Maida Vale. This would deliver public realm improvements to relocate the taxi rank which is currently in the centre of the carriageway to the kerbside which allows for easier and safer alighting for passengers, especially those with mobility issues. This provides the opportunity to reconfigure the centre of the carriageway to include three new trees on raised islands and a net increase of two additional pay-by-phone parking bays. A Traffic Management Order consultation has already occurred for this area and if the recommendation is approved, the scheme could be delivered before winter 2024.
- .2. The project would help to address the impact of development and growth within the local area and across the City. Developments taking place in the local area, such as on the nearby Hamilton Terrace, would be offset by increased urban greening and an investment in place-making.
- .3. It is recommended that this scheme is approved to allow detailed design to be completed in Summer 2024 and implementation of the scheme by Winter 2024.

Financial Implications

- .1. As of 28th June 2024, the council has collected £24,229,397 in Neighbourhood CIL. £9,398,303 has been allocated, leaving a balance of £14,831,094. This report will allocate a further £172,181 of Neighbourhood CIL, bringing the balance to £14,658,913.
- .2. This report would allocate the £172,181 of Neighbourhood CIL from the Little Venice and Maida Vale pot. As of 28th June 2024, the council has collected £1,856,043 of Neighbourhood CIL apportioned to the Little Venice and Maida Vale pot. £739,425 has been allocated or spent, leaving a balance of £1,116,617. This report will allocate a further £172,181 from that pot, bringing the balance to £944,436.
- .3. The project incurred costs which were drawn down under the now invalidated NCIL/061. The recommended NCIL allocation will retroactively cover these costs. The remaining costs of the scheme will be met by this recommended allocation, supplemented by the remaining balance of earlier NCIL allocation NCIL/017.
- .4. Of the £172,181 that is recommended to be approved in this CMR, £45,031.38 will retroactively cover the now invalidated NCIL/061 costs. £88,830 is forecast to be spent this financial year with the remaining £38,320 to be monitored and drawn down to manage risk and contingency factors. Any unused funds at project completion will be returned to the CIL account.

5. Funding Summary and Spend:

Subject to the approval of the recommendation of this report, financial slippage risk is not expected as the Stage 3 detailed design can commence immediately followed by scheme implementation. This is because the Stage 2 design, surveys and consultation has been completed.

Allocation Reference	Stage	Amount	Spent / Draw-down requested	Remaining NCIL allocation (as at finance year-end April 2024)
NCIL/017 'Central Island Improvements for Elgin Avenue'	Feasibility (A)	£30,000	£24,310.10	£5,689.90*
NCIL/061 'Elgin Ave Central Island Improvements'	Implementation (B)	£435,605	£45,031.34	£390,573.66* ² This CMRpt is seeking allocation of funds to replace this contribution, for the reduced scheme extent.
Contribution from Highways Build Out for Trees Budget (if required)	Implementation	£33,970	£33,970, Transfer from Highways Buildout for Trees budget for install and maintenance	Existing Capital Programme Budget

*assuming latest draw-down request April 2024 of £8,619.58 from NCIL/017 is fully transferred.

*² assuming latest draw-down request April 2024 of £45,031.34 from NCIL/061 is fully transferred.

As at finance year end 2023/4 £69,341.34 of the total £464,605 NCIL allocation, had been spent on this project = just under 15% of the total allocation.

Legal Implications

- .1. The legislation governing the development, adoption, and administration of a Community Infrastructure Levy (CIL) is contained within the Planning Act (2008) and the Community Infrastructure Levy Regulations 2010 (as amended). The associated National Planning Practice Guidance is also important in guiding this process. There are other areas of law which should be considered when assessing certain developments for CIL liability and determining the appropriate sum due. These include matters relating to social housing, procurement, charitable institutions, and state aid.
- .2. As detailed in paragraph 7 of the Background section to this report, an earlier version of the scheme was subject of a report approved by the Cabinet Member for City Management and Air Quality on 14 November 2022. This

decision was invalid because the value of the proposed allocation was beyond the authority of the Cabinet Member to approve, and the decision should have been taken by the Full Cabinet.

- .3. This report now supersedes that earlier report (Westminster Neighbourhood CIL – Autumn 2022 Allocation (Central Island Improvements at Elgin Avenue), and as the sum to be approved is less than £250,000.00 the decision can now be taken by the Cabinet Member for City Management and Air Quality.
- .4. Legal Services has reviewed this report and is satisfied that the measures proposed comply with the relevant legislation and guidance set out in paragraph 1 above.

Consultation

- .1. Local policy requires local ward councillors, neighbourhood forums, and business improvement districts, where they exist, be given the opportunity to comment on all proposals within their area. Since the CIL allocation was awarded in November 2022, a site visit with the amenity society was held in December 2022 and they have been informed as the design progressed via online meetings including informal engagement with key stakeholders such as TfL and City of Westminster College (Maida Vale campus). A Section 6 consultation went ahead in September 2023 and statutory bodies, ward councillors, resident societies, and frontages within a 25m radius of the scheme proposals were given the opportunity to provide feedback on the scheme proposals. Ten responses were received. Highways reviewed the feedback and responded to consultees via return email in October 2023. As the feedback was considered by Highways to be a typical level of a scheme of this size and nature, and that the scheme proposals align with Fairer Westminster, Highways proceeded with the statutory TMO consultation from October 30th to November 22nd.
- .2. The extent of the TMO consultation included 616 consultees made up of three ward councillors, two local residents' associations, 45 statutory bodies and 566 frontagers. 15 responses were received. Five were categorised as supportive/neutral of the scheme, three were mixed and seven were non-supportive. If the recommendations in this Cabinet Member Report are approved, Highways will issue responses and take any necessary actions in response to the TMO consultation inline with how the scheme will proceed (for the eastern area to progress to Stage 3 design and implementation).

Equalities

- .1. Under the Equalities Act 2010 the council has a “public sector equality duty”. This means that in taking decisions and carrying out its functions it must have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the 2010 Act; to advance equality of

opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it; and to foster good relations between persons who share a relevant protected characteristic and those who do not share it.

- .2. The council is also required to have due regard to the need to take steps to take account of disabled persons' disabilities even where that involves more favourable treatment; to promote more positive attitudes toward disabled persons; and to encourage participation by disabled persons in public life.
- .3. The 2010 Act states that "having due regard" to the need to promote equality of opportunity involves in particular having regard to: the need to remove or minimise disadvantages suffered by persons sharing a protected characteristic; take steps to meet the needs of persons sharing a protected characteristic that are connected with it; take steps to meet the needs of persons who share a protected characteristic that are different from those who do not; and encourage persons with a protected characteristic to participate in public life or any other activity in which participation by such persons is disproportionately low.
- .4. The courts have held that "due regard" in this context requires an analysis of the issue under consideration with the specific requirements set out above in mind. It does not require that considerations raised in the analysis should be decisive; it is for the decision-maker to decide what weight should be given to the equality's implications of the decision.
- .5. All decisions on spending CIL will themselves be subject to assessment to ensure the 2010 Act duties are complied with. The council will review its CIL charging schedule on a biennial basis.

If you have any queries about this Report or wish to inspect any of the Background Papers, please contact:

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BACKGROUND PAPERS

Report to Cabinet dated 17 October 2022 on Priorities for the Community Infrastructure Levy (CIL) and update to the CIL Spending Policy Statement and governance arrangements

Westminster CIL Spending Policy Statement

Report to Cabinet Member dated 14 November 2022 on Westminster
Neighbourhood CIL – Autumn 2022 Allocation (Central Island Improvements at Elgin
Avenue)

Elgin Avenue Central Island Improvements (Eastern Area) general arrangement
drawing

Elgin Avenue Central Island Improvements (Eastern Area) project cost summary

Elgin Avenue Central Island Improvements (Eastern Area) EqIA Screening