

TITLE	Community Infrastructure Levy Regulation 123 List Clarification
FOR CONSIDERATION BY	The Executive on 28 July 2016
WARD	None specific
DIRECTOR	Heather Thwaites, Director of Environment
LEAD MEMBER	Mark Ashwell, Executive Member for Planning and Regeneration

OUTCOME / BENEFITS TO THE COMMUNITY

The proposed clarifications should help ensure a clearer, fairer and more transparent system of collecting developer contributions and securing infrastructure required as a result of new development.

RECOMMENDATION

It is recommended that the Executive approve the Draft Regulation 123 List Consultation Document, attached at Appendix A to the report, for public consultation for a period of 6 weeks from 01 September 2016.

SUMMARY OF REPORT

The Wokingham CIL Regulation 123 List of infrastructure that can or may be funded by CIL was adopted by Full Council in February 2015. It was intended that the list would be reviewed and updated on a periodic basis using the benefit of our experience in operating the system as initially adopted. This paper addresses the learning from adopting the original Regulation 123 list and provides information on proposed clarifications to it, the justification for these changes, and it sets out the next steps towards making these changes in terms of consultation. The changes will help provide further assurance that there will be no double counting of CIL and S106 planning obligations and they also help ensure that site-specific planning obligations can be secured where they are required by new development.

Background

On 6 April 2015, the Council implemented the Community Infrastructure Levy (CIL), which replaced the previous Section 106 led tariff-based approach for collecting developer contributions in the Borough. As part of new this new approach towards collecting developer contributions the Council adopted what is known as a 'Regulation 123 List' of infrastructure.

The Regulation 123 List serves as a means of identifying those infrastructure needs which can or may be delivered through the use of CIL funds. Inclusion on the list does not imply priority, or that the Council will spend CIL on every item, or not spend CIL on other unlisted items. Prioritisation of CIL funds will be member-led, through the Councils Capital Programme.

However, the main purpose of the Regulation 123 List (as set out in the CIL Regulations) is to prevent CIL expenditure and Section 106 planning obligations from overlapping, and hence prevent developers from being 'double charged' for the same items of infrastructure.

As such, the Council, as Local Planning Authority, is not able to also negotiate a S106 obligation for any type or item of infrastructure included on the CIL Regulation 123 list. Therefore, it is important that the Regulation 123 List does not limit the Council's ability to negotiate a S106 obligation where directly related and specific infrastructure needs are identified.

Analysis of Issues

The Council was clear from the outset as to the intention and nature of the types and items of infrastructure on the list. However, it has come to light that the way in which some of these items and types of infrastructure are worded on the Regulation 123 List could lead to a broader interpretation than was intended, thus restricting the Councils ability to negotiate S106 obligations.

In order to address any ambiguity in the wording of the 'Regulation 123 List', the Draft CIL Regulation 123 List Consultation Document attached at Appendix A proposes changes to clarify the original intention of the Regulation 123 List items or types of infrastructure and to avoid any misinterpretation as to their meaning in the future. For example, the words 'Corridor Improvements' were included under the heading 'Transport' on the adopted Regulation 123 List. The words 'Corridor Improvements' were inserted so that CIL could be used to provide sustainable transport improvements (bus stop, footpath, cycleway) on roads in the Borough that are not directly related to development sites but could require improvement due to the cumulative impact of development in the Borough. However, in legal terms the words 'corridor improvements' could be interpreted much more widely. A wider interpretation could restrict the Council from entering into S106 planning obligations for site-specific transport improvements which was not the original intention. Therefore it is proposed to further define corridor improvements as follows; 'Corridor Improvements - the delivery of sustainable transport measures that are not directly related, in part or in whole, to development sites, including: bus stop improvements; and, footpath / cycleway improvements.'

Changes are proposed to the wording of several of the other schemes and exclusions listed in the adopted Regulation 123 List in order to provide clarification and more tightly define the original intention of the schemes and exclusions listed. Proposed changes and the reasons for these changes are listed in the Draft CIL Regulation 123 Consultation Document which is attached at Appendix A.

Removing any ambiguity ensures that where site-specific mitigation is required alongside CIL for a development proposal (for example, the construction of a new roundabout for a large residential scheme), this can be secured through a separate legal agreement. Importantly, where S106 planning obligations are sought for such purposes, they need to meet a number of statutory tests, which are set out in the CIL regulations. The obligation must be:

1. necessary to make the development acceptable in planning terms;
2. directly related to the development; and
3. fairly and reasonably related in scale and kind to the development.

The clarifications should also provide further assurance to developers that there will be no ‘double counting’ of CIL and planning obligations.

Proposed changes to the ‘Regulation 123 List’ and reasons for these changes are set out in the Draft Regulation 123 List Consultation Document attached at Appendix A. Statutory guidance sets out that authorities may amend the Regulation 123 list without revising their charging schedule, subject to appropriate consultation. If any changes to the Regulation 123 list would have a very significant impact on the viability evidence that supported examination of the charging schedule, this should be made as part of a review of the charging schedule.

The changes set out at Appendix A do not have any implications on the level at which CIL is set as the changes are to clarify the intention of the original List. There is a continuing infrastructure need and consequently a continued funding gap.

Consultation

Statutory guidance states that changes to any Regulation 123 List should be subject to appropriate local consultation. This consultation will take the form of a 6 week consultation beginning on 01 September 2016.

FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

The Council faces severe financial challenges over the coming years as a result of the austerity measures implemented by the Government and subsequent reductions to public sector funding. It is estimated that Wokingham Borough Council will be required to make budget reductions in excess of £20m over the next three years and all Executive decisions should be made in this context.

	How much will it Cost/ (Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1)	Nil	N/a	N/a
Next Financial Year (Year 2)	Nil	N/a	N/a

Following Financial Year (Year 3)	Nil	N/a	N/a
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Other financial information relevant to the Recommendation/Decision

The amended Regulation 123 List will allow the Council to continue agreeing Section 106 obligations (where justified in accordance with CIL Regulation 122). Failure to clarify the list could compromise the Council's ability to negotiate some site-specific infrastructure through planning obligations (S106).

Between 6th April 2015 and 1st June 2016 the Council has collected £287k in CIL contributions; invoiced for a further £1.1 million, and; issued a further £6.3 million in Liability Notices (Liability Notices become payable on commencement of development). On average the Council currently secures £37,960 per 100sq.m of net additional residential floorspace.

Cross-Council Implications

Potential to negotiate infrastructure through S106 outside of CIL, thus enabling services to deliver more infrastructure.

List of Background Papers

Appendix A – Draft Regulation 123 Clarification consultation document
Appendix B – Wokingham Regulation 123 List

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