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| <b>TITLE</b>                | <b>Community Infrastructure Levy Regulation 123 List Clarification</b> |
| <b>FOR CONSIDERATION BY</b> | The Executive on 26 January 2017                                       |
| <b>WARD</b>                 | None specific  |
| <b>DIRECTOR</b>             | Josie Wragg, Interim Director of Environment                           |
| <b>LEAD MEMBER</b>          | 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:

- 1) notes the consultation responses to the Draft Regulation 123 List Consultation Document (attached at Appendix A); and
- 2) adopt the updated Regulation 123 List Document as amended (attached at Appendix B)

## **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.

Executive approved an updated list for consultation on 28/07/2016. Consultation was held from 01/09/2016 to 13/10/2016.

This paper provides a summary of representations received together with individual officer responses to the representations. 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.

An updated Regulation 123 List will support the effective implementation of the Community Infrastructure Levy and S106 Agreements in Wokingham. It is recommended that the Executive adopt the updated Regulation 123 List.

## **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' and to clarify the original intention of the Regulation 123 List, the Draft CIL Regulation 123 List Consultation Document was approved for public consultation at a meeting of the Executive on 28/07/2016. The consultation took place between 01/09/2016 and 13/10/2016.

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 also provide further assurance to developers that there will be no

'double counting' of CIL and planning obligations. A copy of the consultation document is attached at Appendix C for information

A summary of representations together with an individual officer response to each representation is attached at Appendix A.

In summary, there were four respondents to the consultation:

| <b>Respondent</b>   | <b>Officer Response</b>  |
|---|--|
| <b>Arborfield and Newland Parish Council</b> – comments were on detailed points in relation to the prioritisation or addition of specific schemes.  | As this was just an exercise in clarification no schemes were added. Also, The Regulation 123 List is a list of infrastructure items that can, or may, be funded via CIL. It is not a prioritisation exercise. Other detailed points are dealt with in Appendix A  |
| <b>Finchampstead Parish Council</b> – comments were on detailed points in relation to the prioritisation or addition of specific schemes.   | See above.   |
| <b>Gladman Developments Ltd</b> – comments were on the general approach to updating the Regulation 123 List. In particular that the changes meant that items could be secured under S106 which developers would have expected to fall under CIL and that the viability evidence supporting the charging schedule had not been revised | This is an exercise in clarification – no items would be secured by S106 after the proposed clarifications than was originally intended. The changes just remove any ambiguity. The changes set out at Draft Revised Regulation 123 List do not have any implications on the level at which CIL is set as the update indicates a continuing infrastructure need and consequently a continued funding gap. Gladmans have not provided any viability evidence to the contrary. |
| <b>Persimmon Homes</b> – Comments were in support of having the South Wokingham Distributor Road on the list and also in relation to prioritisation of that project.  | The Regulation 123 List is a list of infrastructure items that can, or may, be funded via CIL. It is not a prioritisation exercise.  |

## **Conclusion**

An updated Regulation 123 List will support the effective implementation of the Community Infrastructure Levy and S106 Agreements in Wokingham. It is recommended that the Executive adopt the updated Regulation 123 List.

## **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) | -                             | Funded  |                     |
| Next Financial Year             | -                             | Funded  |                     |

|                                   |   |        |  |
|-----------------------------------|---|--------|--|
| (Year 2)                          |   |        |  |
| Following Financial Year (Year 3) | - | Funded |  |

**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 Councils ability to negotiate some site-specific infrastructure through planning obligations (S106).

**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 – Summary of Consultation Responses to the Draft Regulation 123 Clarification consultation document  
Appendix B – Draft Revised Wokingham Regulation 123 List  
Appendix C – Draft Regulation 123 Consultation Document

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| <b>Date</b> 18 December 2016     | <b>Version No.</b> 1                       |