

Management Committee

6th February 2018

Community Infrastructure Levy (CIL) – Further Revised Regulation 123 List

For Decision

Briefholder

Cllr R Nowak – Environment and Sustainability

Senior Leadership Team Contact:

S Hill, Strategic Director

Report Author:

Andrew Galpin, Implementation Team Leader

Statutory Authority

The Community Infrastructure Levy Regulations 2010 (as amended)

Purpose of Report

- 1 To seek approval of the further revised CIL Regulation 123 List and authorisation for carrying out a consultation exercise on the proposed changes.

Recommendations

- 2 (a) To approve the further revised Regulation 123 List and accompanying explanatory note (Appendix B) for consultation.

(b) To delegate power to the Implementation Team Leader to undertake all action in relation to the carrying out of the consultation exercise as detailed in the report.

Reason for Decision

- 3 (a) To clarify the Council's position in relation to the interaction between column A and B of the Regulation 123 List in order to enable the authority to collect contributions towards all necessary infrastructure.

(b) To enable meaningful consultation on the proposed amendments to the Regulation 123 List. The reason for the request is to enable the council to alert relevant stakeholders to potential changes and to glean their views prior to confirming the amendments.

Background and Reason Decision Needed

- 4 On the 18 July 2016, Weymouth & Portland Borough Council implemented the Community Infrastructure Levy (CIL), which means that liable

development proposals now pay a financial charge related to the proposed scale of development. In time, the levy will help deliver additional funding to carry out a wide range of infrastructure projects that support growth and benefit the local community.

- 5 The Regulation 123 List accompanies the CIL charging schedules. It sets out the types of infrastructure the council will seek to use CIL contributions towards and the council's priorities for spending the levy and is required by Regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended).
- 6 On the 8th November 2016, members of Management Committee agreed amendments to the original Regulation 123 List which was approved alongside the CIL charging schedule in October 2015. The purpose of the amendments were to clarify the relationship between infrastructure sought through CIL and infrastructure sought through S106 agreements to avoid the potential for development to pay twice for the same item of infrastructure under both planning obligation mechanisms.
- 7 Members of this committee agreed changes which effectively split the adopted list into two columns.
 - Column A – the infrastructure themes which will be funded in whole or partly by CIL.
 - Column B – specific infrastructure projects within each theme which will be delivered in whole or in part by S106/S278 agreements.
- 8 Following the Management Committee decision, the revised list was published on the council's website superseding the original list. A copy of the revised list can be found in Appendix A.
- 9 The revised Regulation 123 List has come under scrutiny during negotiations on a CIL exempt development sites where the infrastructure is proposed to be secured via a S106 agreement. A case has been put forward by a third party that challenges the intention and interpretation of the list in relation to the provision of infrastructure to support secondary school education. A case has been put forward that as secondary education infrastructure is not referred explicitly in column B of the revised list, a planning obligation to provide capital funding towards education would be prohibited by Regulation 123(2) of the Community Infrastructure Regulations. Furthermore, it is argued that the list, as drafted, provides for the funding of secondary education through CIL under the education theme.
- 10 Officers did not intend the Regulation 123 List and CIL Charging Schedules to operate in this way. The intention was, as recognised by the Inspector at the CIL examination, that all key sites which were zero-rated for CIL, would be required to make contributions towards all infrastructure requirements via s106 planning obligations and having zero rated the strategic sites from a CIL charge; it was not intended that s106 obligations would be restricted by the Regulation 123 List or otherwise.

- 11 The borough, district and county council have jointly sought Counsel Advice on the validity of this third party interpretation of the Regulation 123 List. That advice favours the position put forward by the third party and recommends revising the amended list to clarify the council's true intention and to ensure that this interpretation does not hinder the council's ability to secure developer contributions towards secondary education provision on other strategic sites which are zero rated from a CIL charge.
- 12 Appendix B sets out a further revised Regulation 123 List containing current up-to-date projects intended to meet the specific infrastructure needs arising wholly or partly from the CIL exempt strategic sites. For example, the inclusion of full details of education infrastructure including secondary schools and other institutions which will benefit from s106 planning obligations. The precise specification of these projects may be subject to change. These amendments help clarify the intended relationship between CIL and S106.
- 13 Accompanying the list is an explanatory note explaining the rationale for the proposed revisions and the process for responding to the consultation.

Implications

- 14 **Corporate Plan** Building a Stronger Local Economy - *Secure the delivery of the infrastructure that is needed to support people and employers to work in the borough*
- 15 **Financial** Failure to further amend the Regulation 123 list could inhibit the ability to seek developer contributions towards the provision of secondary education infrastructure in the Borough. There are no abnormal costs associated with this consultation as consultees will be notified by email and consultation material will be hosted by Dorsetforyou.
- 16 **Equalities** There are not considered to be any equalities issues as a result of this report and its recommendations.
- 17 **Environmental** The provision and enhancement of community infrastructure can have environmental benefits, both in terms of the living environment for local people and the natural environment, where green infrastructure is provided.
- 18 **Economic Development** The provision and enhancement of community infrastructure can have economic benefits, both in terms of employment and tourist attraction.
- 19 **Risk Management (including Health & Safety)**
The counsel advice considers that it is not necessary to revise the adopted CIL charging schedule or await any review of the charging schedule prior to updating the regulation 123 list.
- 20 **Human Resources** The Community Infrastructure Levy is administered by the Community Infrastructure Levy Officer, part of the Implementation Team.

Consultation and Engagement

- 21 Planning Practice Guidance requires that any proposed changes to the regulation 123 list are to be 'clearly explained' and subject to 'appropriate local consultation' when updating the regulation 123 list.
- 22 It is proposed that the amended Regulation 123 List as set out in Appendix B is subject to a focused consultation, i.e. consultation with statutory consultees, local developers, landowners and planning agents for a period of four weeks. A copy of the further amended list will be placed on Dorsetforyou.com, each consultee will be notified by email with links to the consultation material. This focused approach is consistent with the approach taken in the development of the original regulation 123 list. The findings of the consultation, together with any necessary modifications will be reported back to this committee with a recommendation to approve the list as modified following consultation.

Appendices

- 23 Appendix A – Current Regulation 123 List (November 2016)
24 Appendix B – Further Revised Regulation 123 List

Background Papers

- 25 Inspector's Report into Community Infrastructure Levy Examination (August 2015)

Footnote

- 26 Issues relating to financial, environmental, economic and equalities implications have been considered and any information relevant to the decision is included within the report.

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