

Management Committee

17th April 2018

Community Infrastructure Levy (CIL) – Approval of 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 consider the representations made on the further revised CIL Regulation 123 List and approve the amended Regulation 123 List as modified.

Recommendations

- 2 (a) to approve the final revised Regulation 123 List as set out in Appendix C.

(b) that the Regulation 123 List approved under recommendation (a) supersedes any previously published version of the Weymouth & Portland Regulation 123 List.

Reason for Decision

- 3 (a) to put in place a list which clarifies 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.

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 In February 2018, officers brought to members' attention a challenge to the interpretation of the currently published list in relation to the provision of infrastructure to support secondary school education. A case had been put forward by a third party that as secondary education infrastructure was not referred explicitly in column B of the Regulation 123 List, a planning obligation to provide capital funding towards secondary education would be prohibited by Regulation 123(2) of the Community Infrastructure Regulations. Furthermore, it was argued that the list, as then drafted, provided for the funding of secondary education through CIL under the education theme. Members of this committee were asked to approve for consultation an amended Regulation 123 List which clarified the intention that all key sites which were nil-rated for CIL, would be required to make contributions towards all infrastructure requirements via s106 planning obligations and having nil 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.
- 7 The amended list (Appendix A) was subject to a focused consultation with statutory consultees, local developers, landowners and planning agents. Consultation took place for a period of four weeks between 14th February and 14th March 2018. A copy of the amended regulation 123 List was published on www.dorsetforyou.com. The consultees were notified by email with links to the consultation material online. It was agreed in the February report that the findings of the consultation, together with any necessary modifications would be reported back to this committee.
- 8 There were a total of seven responses to the consultation. A summary of the representations can be found in Appendix B and in full online at www.dorsetforyou.com.
- 9 Representations from Dorset Clinical Commissioning Group, Dorset County Council and Sport England offered minor clarifications to add flexibility to the choice of infrastructure project. Representations from the Environment Agency and South Somerset raised no substantive issues. Representations from Betterment Properties were not relevant to the consultation.
- 10 The most extensive representation and therefore the focus of this report were the comments submitted by WYG on behalf of CG Fry & Son Ltd. The representation can be split into three distinct elements:
 - (a) WYG on behalf of CG Fry & Son Ltd consider that the extent of the proposed changes to the Regulation 123 List could not be considered 'minor' and could *potentially significantly affect the balance and viability of planned growth* prompting the need to hold an Examination in Public

of the CIL charging schedule, the Regulation 123 list and supporting evidence including the council's Infrastructure Delivery Plan. In response, officers accept that the consultation raised a number of changes, but on the whole, these changes clarified rather than introduced new infrastructure projects. No other developer raised these issues and without evidence to demonstrate the threat to viability supporting the response, officers consider that it should not be necessary to undertake a re-examination of the CIL charging schedules to address this matter.

- (b) That the council's Infrastructure Delivery Plan (IDP) (2014) should have been updated as part of the consultation to inform viability as it contains items that have been '*scoped out of S106 negotiations*'. WYG suggest going forward that the IDP is updated every 12 months. In response, officers consider that S106 negotiations naturally evolve and therefore an element of flexibility should be used to take account of new infrastructure requirements as reflected in the wording of the list. Notwithstanding this, the IDP is scheduled for an update as part of the Local Plan Review.
- (c) That column B of the list does not specify delivery or contribution of the infrastructure listed. In response, officers consider that where necessary and appropriate the list does specify this, e.g. education. Secondly, not specifying one or the other allows flexibility for the council and developer in choosing the best option for the particular site. In any event, any delivery or contribution would have to be regulation 122 compliant.

11 Officers have considered all the representations and amended the Regulation 123 List accordingly. A summary of the representations are set out in Appendix B and changes to the list in Appendix C include:

- Inclusion of the term 'community' under the provision of health infrastructure in Column B to allow greater flexibility and choice.
- Deletion of the words 'wholly and partly' from the introductory paragraphs
- Phrasing strategic sites as 'nil-rated' for CIL rather than 'zero-rated' to ensure consistency with the terminology used in the adopted charging schedule.
- Inclusion of reference to 'Policy COM1 and other identified policies' in the heading of Column B to provide clarity over the relevant Local Plan policies.
- Inclusion of reference to a maintenance sum alongside relevant sports infrastructure.

12 Should members support the recommendation, the list as shown in Appendix C will be published online at www.dorsetforyou.com superseding any previous versions published.

Implications

- 13 **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*
- 14 **Financial** Failure to further amend the Regulation 123 list could inhibit the ability to seek developer contributions towards the provision of secondary education infrastructure. There were no abnormal costs associated with the consultation as consultees were notified by email and consultation material was hosted by Dorsetforyou.
- 15 **Equalities** There are not considered to be any equalities issues as a result of this report and its recommendations.
- 16 **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.
- 17 **Economic Development** The provision and enhancement of community infrastructure can have economic benefits, both in terms of employment and tourist attraction.
- 18 **Risk Management (including Health & Safety)**
Legal advice sought by the council prior to consultation considered that it was not necessary to revise the adopted CIL charging schedule or await any review of the charging schedule prior to updating the regulation 123 list. While there is a risk of challenge, it is considered that the risk has been reduced by the legal advice, the consultation process and the nature and substance of other consultee responses.
- 19 **Human Resources** The Community Infrastructure Levy is administered by the Community Infrastructure Levy Officer, part of the Implementation Team.

Consultation and Engagement

- 20 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.
- 21 The amended Regulation 123 List as set out in Appendix A was 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 list was placed on www.dorsetforyou.com, each consultee was 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.

Appendices

- 22 Appendix A – Further Revised Regulation 123 List (subject of consultation)
- 23 Appendix B – Summary of consultation responses
- 24 Appendix C – Final Revised Regulation 123 List incorporating changes from consultation.

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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