

Wiltshire Council

Council

18 October 2016

Revised Planning Obligations Supplementary Planning Document

Executive Summary

On 12 May 2015, Council adopted a Community Infrastructure Levy (CIL) Charging Schedule, Planning Obligations Supplementary Planning Document (SPD), CIL Instalments Policy and Regulation 123 List. The Council became a CIL Charging Authority on 18 May 2015.

It has become clear that the Regulation 123 List would benefit from review to clarify which infrastructure projects may be funded through CIL in order to address perceived uncertainties.

The Government's Planning Practice Guidance recognises that Regulation 123 Lists may need updating and advises "*Authorities may amend their charging schedule, subject to appropriate consultation. However, where a change to the Regulation 123 list would have a very significant impact on the viability evidence that supported the examination of the charging schedule, this should be made as part of a review of the charging schedule*" (PPG ref: 25-098-20140612).

As the Planning Obligations SPD clarifies the relationship between CIL and planning obligations, changes were also proposed to this document in the interest of clarity and accuracy, and to recognise that the Regulation 123 List would be reviewed and updated periodically.

On 26 February 2016, the Cabinet Member for Strategic Planning, Development Management, Strategic Housing, Operational Property and Waste resolved by delegated decision to approve a Draft Revised Regulation 123 List and Draft Revised Planning Obligations SPD for consultation.

The Council undertook consultation for six weeks on both documents (14 March to 25 April 2016) and also made available a Draft Updated Infrastructure Delivery Plan for comment. Comments received during the consultation period have been taken into account and final versions of the documents were proposed.

On 13 September 2016, Wiltshire Council's Cabinet adopted a Revised CIL Regulation 123 List and recommended to Council that it adopts the proposed Revised Planning Obligations SPD.

Adopting the proposed Revised Planning Obligations SPD will assist the effective operation of CIL.

Proposals

That Council:

- (i) Notes the response to the consultation on the Draft Revised Planning Obligations Supplementary Planning Document set out in **Appendix 2**.
- (ii) Adopts the proposed Revised Planning Obligations Supplementary Planning Document (**Appendix 1**).
- (iii) Agrees that the Associate Director for Economic Development and Planning, in consultation with the Cabinet Member for Strategic Planning, Development Management, Strategic Housing, Operational Property and Waste undertake the final stages associated with the formal adoption of the Supplementary Planning Document, including any minor textual changes in the interest of clarity and accuracy.

Reason for Proposals

To assist with the effective operation of CIL and planning obligations and ensure appropriate infrastructure is secured as part of development proposals.

Dr Carlton Brand
Corporate Director

Wiltshire Council

Council

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Revised Planning Obligations Supplementary Planning Document

Purpose of Report

1. To:
 - a) Update Council on the response to the consultation on the Draft Revised Planning Obligations Supplementary Planning Document (February 2016).
 - b) Recommend that the Revised Supplementary Planning Document be adopted by Council.

Relevance to the Council's Business Plan

2. Adopting the Revised Planning Obligations SPD will support the effective implementation of the Community Infrastructure Levy (CIL) and planning obligations within Wiltshire. CIL and planning obligations support the Council's vision to create resilient communities by ensuring new development helps to deliver infrastructure to support growth.

Background

3. On 12 May 2015, Council adopted a Community Infrastructure Levy (CIL) Charging Schedule, Planning Obligations Supplementary Planning Document (SPD), CIL Instalments Policy and Regulation 123 List. The Council became a CIL Charging Authority on 18 May 2015.
4. The Regulation 123 List supports the CIL Charging Schedule, setting out strategic infrastructure types or projects that Wiltshire Council may fund, wholly or partly, through CIL.
5. Projects on the Regulation 123 List cannot be funded by planning obligations. The Planning Obligations SPD clarifies the relationship between CIL and planning obligations and should be read alongside the Regulation 123 List.
6. The existing CIL Regulation 123 List had been in operation since 18 May 2015. It became apparent as development proposals have come forward that the List would benefit from reviewing to clarify which infrastructure projects may be funded through CIL in order to address perceived uncertainties.

7. Planning Practice Guidance (PPG) recognises Regulation 123 Lists may need updating. It advises charging authorities should ensure changes are explained and subject to appropriate local consultation. It says “*Authorities may amend their charging schedule, subject to appropriate consultation. However, where a change to the regulation 123 list would have a very significant impact on the viability evidence that supported the examination of the charging schedule, this should be made as part of a review of the charging schedule*” (PPG ref: 25-098-20140612).
8. CIL is only one of the mechanisms used to fund the infrastructure required to support Wiltshire’s growth. Core Policy 3 of the Wiltshire Core Strategy and the Planning Obligations SPD set out how CIL works alongside, rather than replaces, Section 106 agreements. Section 106 agreements ensure delivery of infrastructure that is directly related to a development. They are important to ensure that sustainable development can be achieved with infrastructure delivered at the right time alongside development.
9. Changes were also proposed to the Planning Obligations SPD in the interests of clarity and accuracy and to recognise that the Regulation 123 List will be reviewed and updated periodically.
10. On 26 February 2016, the Cabinet Member resolved by delegated decision to approve a Draft Revised Regulation 123 List and Draft Revised Planning Obligations SPD for consultation. Following consultation both documents were to be finalised for consideration by Cabinet and, subject to the Cabinet resolution, the SPD recommended to Council for adoption.
11. The Council undertook consultation for six weeks on both documents (14 March to 25 April 2016) and also made available a Draft Updated Infrastructure Delivery Plan for comment. Comments received during the consultation period have been taken into account and final versions of the documents were proposed.
12. While Cabinet can approve revisions to the Regulation 123 List, Council reserved the power under the constitution to agree amendments to Local Development Documents, including SPDs. The SPD will need to be adopted by Council following a recommendation by Cabinet.
13. On 13 September 2016, Wiltshire Council adopted a Revised CIL Regulation 123 List, included at **Appendix 3**, and recommended to Council that it adopts the proposed Revised Planning Obligations SPD.

Main Considerations for Council

14. From 14 March until 25 April, 2016, the Council consulted for six weeks upon the Draft Revised Planning Obligations SPD. Further information can be found on the Council’s website at:
http://www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/community_infrastructurelevy.htm.
15. A Consultation Statement detailing the approach to the consultation, consultation responses and proposed changes to address matters raised is set

out in **Appendix 2**. This demonstrates how the document has been prepared in line with legislation and the Council's Statement of Community Involvement. In total, there were 87 respondents to the consultation.

16. In summary, the main issues raised during the consultation were as follows:

Draft Revised Planning Obligations SPD

- Suggestions on how it could allow for recent and anticipated changes to national planning policy regarding affordable housing (including starter homes).
 - Concerns about the pooling of Section 106 contributions and how this is monitored.
 - Concerns about how open space in new developments is managed and whether this can be undertaken by parish councils.
 - Comments on minor textual and formatting issues and how to improve the clarity.
17. Sections 5 of **Appendix 2** presents more detail on the representations made on the Draft Revised Planning Obligations SPD and sets out officer responses and proposed changes.
18. The proposed final version of the Revised Planning Obligations SPD is set out in **Appendix 1**. The Revised SPD shows tracked changes to the existing adopted SPD that have arisen as a result of changes proposed in the consultation draft, new changes arising from the consultation feedback and further minor changes in the interest of clarity and accuracy. Section 7 of the consultation report clarifies the nature of the changes to the SPD.

Overview and scrutiny engagement

19. There has been no engagement with the Committee.

Safeguarding Implications

20. There are no safeguarding implications from this proposal.

Public Health Implications

21. CIL and Section 106 agreements will help fund infrastructure to support growth. Well-planned development supports the health and wellbeing of local communities by providing green infrastructure, sports facilities and measures to encourage walking and cycling.

Procurement Implications

22. There are no direct procurement implications.

Environmental and Climate Change Considerations

23. CIL and Section 106 agreements will help fund infrastructure to support

sustainable development and adapt to a changing climate, by funding specific projects. For example, sustainable transport, strategic open space and green infrastructure, flood mitigation measures, sustainable energy infrastructure and strategic habitat protection. They should ensure all projects are assessed on their sustainability merits.

Equalities Impact of the Proposal

24. The public consultation aimed to ensure all interested parties were able to comment on the Draft Revised Planning Obligations SPD.

Risk Assessment

25. To ensure effective implementation of CIL and planning obligations, revisions should be made to the existing Planning Obligations SPD to clarify what infrastructure may be funded by CIL and planning obligations and to recognize that the Regulation 123 List will be reviewed and updated periodically.

Risks that may arise if the proposed decision and related work is not taken

26. By retaining the existing SPD, the Council would continue to address perceived uncertainties over CIL and planning obligations funding on an application-by-application basis, with potential for legal challenge.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

27. Risks have been considered under Legal Implications.

Financial Implications

28. The financial implications of finalising the Revised Planning Obligations SPD will be met from the Economic Development and Planning budget.

Legal Implications

29. Regulation 123 of the CIL Regulations 2010 (as amended) prevents the Council from seeking contributions from development towards the same type or item of infrastructure through both CIL and Section 106 agreements. The Revised Planning Obligations SPD clarifies the relationship between CIL and Section 106 agreements.
30. Section 26(1) of the Planning and Compulsory Purchase Act 2004 allows for a Local Planning Authority to revise Local Development Documents, including SPDs. This follows the same process as the preparation of an SPD. In accordance with Part 5 Regulations 11 to 16 of the Town and Country Planning (Local Planning) (England) Regulations 2012, before a local planning authority can adopt an SPD (or revisions to one) it must consult for not less than four weeks and then prepare a Consultation Statement setting out who was consulted, a summary of the main issues and how they have been addressed in the SPD.

31. As soon as reasonably practicable after the local planning authority adopt a supplementary planning document they must:
- a) Make available in accordance with Regulation 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012, by publishing on their website and making available for inspection at their principal offices and other places within their area as the local planning authority consider appropriate (e.g. all council libraries and main office hubs) during normal office hours, the:
 - Supplementary planning document, and
 - an adoption statement, which includes the date on which the supplementary planning document was adopted and, pursuant to Section 23(1) of the Planning and Compulsory Purchase Act 2004, any modifications made since the draft supplementary planning document was subject to consultation, and
 - b) Send a copy of the adoption statement to any person who has asked to be notified of the adoption of the supplementary planning document.
32. Any person with sufficient interest in the decision to adopt the supplementary planning document may apply to the High Court for permission to apply for judicial review of that decision, and that any such application must be made promptly and in any event not later than three months after the date on which the supplementary planning document was adopted.

Options Considered

33. On 13 September 2016, the Council adopted the Revised Regulation 123 List. Alongside the Revised 123 List, some changes are also necessary to the existing Planning Obligations SPD in the interest of clarity and accuracy, and to recognise that the Regulation 123 List will be reviewed and updated periodically. The adoption of the Revised Planning Obligations SPD will provide clarity on the types or items of infrastructure that the Council will seek through CIL and Section 106 agreements.

Conclusions

34. Adopting the Revised Planning Obligations SPD will assist the effective operation of CIL and planning obligations. It will ensure that the Council, within viability constraints, can maximise developer contributions for infrastructure to support sustainable growth in the county.

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Appendices

Appendix 1: Revised Wiltshire Planning Obligations Supplementary Planning Document (September 2016)

Appendix 2: Wiltshire Community Infrastructure Levy - Consultation Report (August 2016)

Appendix 3: Wiltshire Revised Community Infrastructure Levy Regulation 123 List (September 2015)

Background Papers

The following documents have been relied on in the preparation of this report:

None