

## Wiltshire Council

### Cabinet

13 September 2016

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**Subject:** Community Infrastructure Levy Revised Regulation 123 List and Revised Planning Obligations Supplementary Planning Document

**Cabinet Member:** Councillor Toby Sturgis - Strategic Planning, Development Management, Strategic Housing, Operational Property and Waste

**Key Decision:** Yes

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#### Executive Summary

On 12 May 2015, Wiltshire 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, as development proposals have come forward, that the Regulation 123 List would benefit from reviewing 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).

On 26 February, 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 would be finalised for consideration by Cabinet and, subject to the Cabinet resolution, the SPD be recommended to Council for adoption.

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.

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 are proposed. A future Cabinet should consider the process for prioritising spending on the Regulation 123 List and the process for future reviews in the interest of openness and transparency.

Adopting the Revised CIL Regulation 123 List and Revised Planning Obligations SPD will assist the effective operation of CIL.

## **Proposals**

That Cabinet:

- (i) Notes the response to the consultation on the Draft Revised Community Infrastructure Levy Regulation 123 List, Draft Revised Planning Obligations Supplementary Planning Document and Updated Infrastructure Delivery Plan, set out in **Appendix 2**.
- (ii) Adopts the Revised CIL Regulation 123 List as amended in **Appendix 3**.
- (iii) Recommends to Council that it adopts the proposed Revised Planning Obligations Supplementary Planning Document (**Appendix 4**).
- (iv) Subject to approval of Council, 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.
- (v) Consider proposals for the process for prioritisation of spending and future reviews of the Regulation 123 List by February 2017.

## **Reason for Proposals**

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

**Dr Carlton Brand**  
**Corporate Director**



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**Key Decision:** **Yes**

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### Purpose of Report

1. To:
  - (i) Update Cabinet on the response to the consultation on the Draft Revised Community Infrastructure Levy Regulation 123 List (February 2016), Draft Revised Planning Obligations Supplementary Planning Document (February 2016) and Draft Updated Infrastructure Delivery Plan (February 2016).
  - (ii) Recommend that the Revised Community Infrastructure Levy Regulation 123 List be adopted by Cabinet and the Revised Supplementary Planning Document be adopted by Council.

### Relevance to the Council's Business Plan

2. Maintaining an up to date Regulation 123 List will support the effective implementation of the Community Infrastructure Levy (CIL) within Wiltshire. CIL supports the Council's vision to create resilient communities by raising revenue from new development to help pay for infrastructure to support growth.

### Background

3. On 12 May 2015, Wiltshire Council adopted a 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. The List does not apply to the ring-fenced proportion of

CIL passed to town and parish councils for them to allocate to community infrastructure projects. It takes projects from the Infrastructure Delivery Plan (IDP), which supports the Wiltshire Core Strategy by identifying strategic infrastructure to support the delivery of planned growth.

5. Projects on the Regulation 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, included at **Appendix 1**, has been in operation since 18 May 2015. It has become 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. The existing List includes generic infrastructure types and the provision “*except where the requirement can be attributed to five or fewer developments*”. It also makes explicit reference to the exclusion of infrastructure projects associated with the development of strategic sites within the Wiltshire Core Strategy. The exclusions recognised that Section 106 agreements remain an appropriate infrastructure delivery mechanism subject to pooling restrictions set out in legislation.
9. CIL is 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.
10. A Draft Revised Regulation 123 List was prepared that took projects from the IDP (September 2013), which formed the infrastructure evidence for the CIL Charging Schedule, and had been updated to reflect the changing requirements of infrastructure service providers. As the revised List is based on evidence that supported the Charging Schedule the proposed amendments do not have a very significant impact on the viability evidence that supported its examination.
11. 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.

12. On 26 February, 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 would be finalised for consideration by Cabinet and, subject to the Cabinet resolution, the SPD be recommended to Council for adoption.
13. The delegated report stated that the process for prioritising spending on the Regulation 123 List should be considered by Cabinet alongside approval of the Revised List and the process for future reviews.

### **Main Considerations for the Council**

14. From 14 March until 25 April, 2016, the Council consulted for six weeks upon the Draft Revised Regulation 123 List and Draft Revised Planning Obligations SPD. A Draft Updated IDP was also available for comment. Further information can be found on the Council's website at:  
<http://www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy.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 documents have 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 Regulation 123 List*

- Concern there is no direct geographic relationship between where CIL is generated and where it is spent.
- Concern about the amount of developer contributions the Council is still seeking through planning obligations in addition to CIL.
- Concern how the proposed changes affect the viability evidence that supported the CIL Charging Schedule at examination.
- Concern about the perceived risk of 'double-dipping', i.e. whereby developers are charged twice for the same infrastructure.
- Queries over the inclusion of individual projects and how they are selected from the IDP.
- Requests for improved communication with the community over the content.
- Suggestions of individual projects to be included.

#### *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.

#### *Draft Updated Infrastructure Delivery Plan*

- Concerns that the consultation has not been authorised by the Cabinet Member in his delegated decision nor will the finalised IDP be considered by Cabinet.
- Concern about the inclusion of infrastructure requirements in relation to proposed strategic sites in Chippenham prior to the conclusion of the examination into the Chippenham Site Allocations Plan.
- Need for further updating of information, e.g. a query over the inclusion of proposals for a new secondary school in Salisbury, which was included in previous published versions of the IDP but is no longer seen as a potential solution to the provision of secondary school places as plans and requirements have since changed.
- Queries about the progress of related plans and strategies, e.g. the Green Infrastructure Strategy.
- Queries over the inclusion of individual projects and suggestions for further projects to be included.
- Comments on minor textual and formatting issues and how to improve the clarity.

17. Sections 4, 5 and 6 of **Appendix 2** presents more detail on the representations made and set out officer responses and proposed changes.
18. Proposed final versions of the Revised Regulation 123 List and Revised Planning Obligations SPD are set out in **Appendices 3** and **4** respectively. The Revised Regulation 123 List shows tracked changes from the draft put out for consultation and 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.
19. CIL will take time to accrue sufficiently to be directed towards infrastructure delivery and will not meet all requests for funding. Infrastructure providers and stakeholders in addition to Wiltshire Council are likely to seek CIL funding to help meet their needs or aspirations. The Council will need to develop its approach to prioritising funding to provide clarity and avoid raising expectation. This process for prioritisation and future reviews will be considered at a future Cabinet meeting.

#### **Next Steps**

20. Subject to Cabinet approval, the Revised Regulation 123 List will be finalised and published on the Council's website at:

<http://www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy.htm>.

21. While Cabinet can approve revisions to the 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.
22. The IDP is an evidence base document that is reviewed and updated periodically. Comments received through the consultation on the IDP will be taken into consideration prior to its publication on the Council's website.

### **Overview and scrutiny engagement**

23. There has been no engagement with the report.

### **Safeguarding Implications**

24. There are no safeguarding implications from this proposal.

### **Public Health Implications**

25. 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**

26. There are no direct procurement implications. Proposed procurements to deliver projects on the Regulation 123 List will comply with the Council's contract rules and any applicable Procurement Law.

### **Environmental and Climate Change Considerations**

27. CIL 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.
28. While preparing the Wiltshire Core Strategy, the Council agreed with Natural England that CIL would be directed towards projects relating to European protected sites. These comprise the Salisbury Plain and New Forest Protected Areas and the River Avon Special Area of Conservation. Provision is made within the Revised Regulation 123 List for these projects in order to meet the requirements of the Habitats Directive.

### **Equalities Impact of the Proposal**



29. The public consultation aimed to ensure all interested parties were able to comment on the Draft Revised Regulation 123 List and Draft Revised Planning Obligations SPD.

### **Risk Assessment**

30. To ensure effective implementation of CIL, revisions should be made to the existing Regulation 123 List to clarify what infrastructure may be funded by CIL.
31. The consultation may have raised expectations within local communities, who saw an opportunity to identify local infrastructure requirements rather than strategic requirements to support growth. During the consultation, three CIL information sessions were arranged for town and parish councils to reduce the risk of raising unrealistic expectations.

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

32. By retaining the existing List, the Council would continue to address perceived uncertainties over CIL 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**

33. Only limited changes are proposed to the Draft Revised Regulation 123 List. Communities may still be concerned that CIL generated in their area may not all be spent locally.
34. Formalising the process for updating the IDP and also, the approval of a transparent and open process for reviewing the List and for allocating CIL funds will further help promote understanding.

### **Financial Implications**

35. The financial implications of finalising the Revised Regulation 123 List and Revised Planning Obligations SPD will be met from the Economic Development and Planning budget. CIL is one of the funding mechanisms available for supporting the delivery of infrastructure to support growth. The projected income of CIL receipts over the Core Strategy Plan period to 2026 was estimated to be circa £48million<sup>1</sup>. Since the CIL scheme came into operation the Council has received CIL receipts of £835,585, of which £134,305 has been transferred to Town and Parish Councils and 5% (£41,827) retained by Wiltshire Council for the purpose of administering CIL consistent with legislation. The remaining £659,453 is the Wiltshire Council element of the levy and is available to fund projects on the 123 list.
36. In accordance with Regulations, Parish and Town Councils within which CIL receipts are raised receive 15% of CIL receipts (capped at £100 per registered council tax dwelling in any one financial year) from development in their area. This increases to 25% (uncapped) where neighbourhood plans

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<sup>1</sup> Paragraph 32, Cabinet Report of 11 May 2015, Adoption of CIL Charging Schedule Final 5-9-16 9.44

have been 'made'. The Town and Parish Councils must use their CIL receipts to support the development of the parish area or any part of it by funding "*the provision, improvement, replacement, operation or maintenance of infrastructure; or anything else that is concerned with addressing the demands that development places on an area*" (Regulation 59C, Community Infrastructure Levy (Amendment) Regulations 2013). Wiltshire Council, as Charging Authority, has the power to recover CIL passed to parish councils if it has not been spent in accordance within the Regulation 59C or it has not been spent within 5 years of receipt. Similar to the Charging Authority, Parish and Town Council's receiving CIL have a duty to publish reports on CIL to ensure that spending on the levy is open and transparent. With agreement of the Parish or Town Council concerned Wiltshire Council can spend the parish proportion of CIL on specified infrastructure on behalf of the local parish.

37. The Revised Regulation 123 List clarifies those strategic projects that may be funded through CIL and will be reviewed and updated periodically. Funding will be directed to meet the requirements of the Habitats Directive, as referred to in paragraph 28, to be secured before funding other projects. As set out in paragraph 34, the process for prioritising funding of projects on the Regulation 123 List will be brought to a subsequent meeting of Cabinet.

### **Legal Implications**

38. The Council is required by legislation to publish on its website a list of infrastructure it intends to fund, wholly or partly, through CIL. The purpose of this list, known as the 'Regulation 123 List', is to avoid developers being charged twice for the same infrastructure type or project. This means that Section 106 agreements cannot be used to fund the delivery of infrastructure on the Regulation 123 List. Inclusion of infrastructure on the List does not signify commitment from the Council to fund it (either wholly or partly) nor imply preference or priority. It is important the CIL List does not limit the Council's ability to negotiate Section 106 agreements where infrastructure is directly related to a development and specific infrastructure needed.
39. 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.

### **Options Considered**

40. In May 2015, the Council adopted the existing Regulation 123 List alongside the CIL Charging Schedule. They came into operation on 18 May 2015. It has become clear that development proposals would benefit from reviewing to clarify which infrastructure projects may be funded through CIL. The alternative would be to retain the existing List and continue to address

perceived uncertainties over CIL funding on an application-by-application basis. Alongside the revised 123 List, some changes are also necessary to the Planning Obligations SPD in the interest of clarity and accuracy and to recognise that the Regulation 123 List will be reviewed and updated periodically.

## **Conclusions**

41. Adopting the Revised CIL Regulation 123 List and Revised Planning Obligations SPD will assist the effective operation of CIL. 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: Wiltshire Community Infrastructure Levy Regulation 123 List (May 2015)
- Appendix 2: Wiltshire Community Infrastructure Levy - Consultation Report (August 2016)
- Appendix 3: Wiltshire Revised Community Infrastructure Levy Regulation 123 List (September 2015)
- Appendix 4: Revised Wiltshire Planning Obligations Supplementary Planning Document (September 2015)

## **Background Papers**

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

None