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ECONOMIC DEVELOPMENT AND PLANNING SERVICE

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COMMUNITY INFRASTRUCTURE LEVY REVISED REGULATION 123 LIST AND REVISED PLANNING OBLIGATIONS SUPPLEMENTARY PLANNING DOCUMENT

Purpose of Report

1. To seek approval for:
 - (i) Consultation to be undertaken on the 'Wiltshire Community Infrastructure Levy – Draft Revised Regulation 123 List, February 2016' (Revised Regulation 123 List) for six weeks together with the Revised Planning Obligations Supplementary Planning Document (SPD); and
 - (ii) The Revised Regulation 123 List to be finalised in the light of the consultation for consideration by Cabinet together with the Draft Revised Planning Obligations SPD and, in the case of the SPD for subsequent approval 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 delivery of the Council's vision to create resilient communities by raising revenue from new development to help pay for the provision of infrastructure to support growth.

Background

3. On 12 May 2015, Council adopted the Wiltshire CIL Charging Schedule and Planning Obligations SPD together with a CIL Instalments Policy and accompanying Regulation 123 List. Wiltshire Council became a CIL Charging Authority on 18 May 2015.
4. The purpose of the CIL Regulation 123 List is to support the Wiltshire CIL Charging Schedule. The List sets out the strategic infrastructure types or projects that Wiltshire Council may fund, in whole or in part, through CIL. It does not apply to the ring fenced proportion of CIL passed to town and parish councils for them to allocate to community infrastructure projects. The List take infrastructure projects from the Infrastructure Delivery Plan (IDP) that, in supporting the Wiltshire Core Strategy and its implementation focuses on the strategic infrastructure to support the overall level of growth planned for Wiltshire.
5. Projects that are proposed to be funded by CIL and feature on the Regulation List cannot be funded by Section 106 agreements. The Planning Obligations SPD supports the implementation of CIL and should be read in conjunction with the Regulation 123 List.

Main Considerations for the Council

6. The current 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 provide clarity over those infrastructure projects that may be funded through CIL in order to address perceived uncertainties.
7. The current List includes generic types of infrastructure 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 legal agreements are still appropriate for some infrastructure projects subject to the pooling restrictions set out in legislation.
8. It has always been the intention that CIL would be one of the mechanisms used to fund the infrastructure required to support Wiltshire’s growth. Core Policy 3 of the Wiltshire Core Strategy (adopted January 2015) and the Planning Obligations Supplementary Planning Document (adopted May 2015) support this approach. They set out how CIL would work alongside, rather than replace, Section 106 legal agreements. Section 106 agreements provide the mechanism to ensure infrastructure can be delivered where it is directly related and specific to a development. They are important to ensure that sustainable development can be achieved, with infrastructure delivered at the right time alongside development.
9. The Government’s Planning Practice Guidance (PPG) recognises that Regulation 123 Lists may need to be updated over the lifetime of the CIL Charging Schedule. It advises that where charging authorities wish to revise their regulation 123 list, they should ensure these changes are explained and subject to appropriate local consultation. It goes on to state that “*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*” (Planning Practice Guidance ref: 25-098-20140612).
10. The proposed ‘Draft Revised Regulation 123 List’ is set out in **Appendix 2**. The revised List takes projects from the ‘Infrastructure Delivery Plan (IDP) September 2013’. The IDP forms the infrastructure evidence that underpins the Wiltshire Core Strategy and CIL Charging Schedule. It has been developed in consultation with infrastructure service providers and has since been updated to reflect their changing requirements, including the removal of projects that are no longer needed. As the revised List is based on the evidence supporting the Charging Schedule it is not considered that the proposed amendments would have a very significant impact on the viability evidence that supported its examination.
11. Alongside the changes to Regulation 123 List, some changes are 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. These are set out as tracked changes to the adopted Planning Obligations SPD in **Appendix 3**.

Consultation Arrangements

12. Preparations will be made to consult on the Draft Revised CIL Regulation 123 List, Draft Revised Planning Obligations SPD and the draft updated Infrastructure Delivery Plan for a period of six weeks in accordance with the Council’s Statement of Community Involvement (SCI) that sets out consultation requirements for SPDs and legislative requirements. The Council’s SCI requires that consultation on SPDs will be undertaken for not less than four weeks. The consultation will start as soon as possible. It will include:

- (i) Letter or email to consultees on the Community Infrastructure Levy consultation Database, providing notification of the consultation;
 - (ii) Online publication on the Council's website including consultation portal;
 - (iii) Publication of advertisement in local newspapers to cover Wiltshire and the Parish/Town Council Newsletter;
 - (iv) Notification of consultation on 'Our Community Matters' websites.
 - (v) Consultation documents being made available for viewing at the Council's main office hubs (Chippenham, Salisbury and Trowbridge) and libraries, with the Infrastructure Delivery Plan being made available online only due to the size of the document.
13. During the consultation, three CIL workshops will be arranged for town and parish councils. As well as providing information about the consultation, these workshops will include an update on the implementation of CIL and explain their role in the process, as well as the consultation; in accordance with the commitment made by Cabinet on 11 May 2015 to support town and parish councils in developing their understand of CIL.

Next Steps

14. Following the close of the consultation, the comments received will be considered and the Revised Regulation 123 List finalised for approval by Cabinet. Revisions to the Regulation 123 List can be approved by Cabinet. As Council has 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.

Overview and Scrutiny Engagement

15. There has been no engagement in the preparation of the report.

Safeguarding Considerations

16. There are no safeguarding considerations arising as a direct result of the report.

Public Health Implications

17. CIL, alongside Section 106 agreements, will help fund infrastructure to support growth. Well planned development, including appropriate infrastructure, supports the health and wellbeing of local communities, for example through the provision of green infrastructure, sports facilities and infrastructure to encourage walking and cycling as a means of travel.

Procurement Implications

18. There are no procurement implications arising as a direct result of the report. Any proposed procurements to deliver the projects in the 123 List will be undertaken in compliance with the Council's Contract Rules and any applicable Procurement Law.

Equalities Impact of the Proposal

19. The public consultation process aims to ensure all stakeholders and interested parties have the opportunity to comment on the Draft Revised Regulation 123 List and Draft Revised Planning Obligations SPD.

Environmental and Climate Change Considerations

20. CIL alongside Section 106 agreements will help fund the infrastructure required to support sustainable development which may include sustainable transport, strategic open space and green infrastructure, flood mitigation measures, sustainable energy infrastructure and strategic habitat protection.
21. Through the preparation of the Wiltshire Core Strategy, the Council made a commitment to Natural England that in order to meet the requirements of the Habitats Directive CIL revenue would be directed towards projects relating to a number of European protected sites - 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 this.

Risk Assessment

22. In order to ensure the effective implementation of CIL, revisions should be made to the current Regulation 123 List to clarify what infrastructure may be funded by CIL.
23. The consultation may raise expectations within local communities, who could see it as an opportunity to identify their local infrastructure requirements rather than strategic requirements critical to support growth. As set out in paragraph 12, three workshops will be arranged for the town and parish councils as part of the consultation and this will help to reduce the risk of unrealistic expectations being raised.

Financial Implications

24. The financial implications of undertaking the consultation and finalising the Revised Regulation 123 List and Revisions to the Planning Obligations SPD will be met from the Economic Development and Planning budget.
25. The Revised Regulation 123 List will clarify those strategic projects that may be funded through CIL to support growth. This makes provision for directing funding towards Habitat Regulation mitigation strategies, as referred to in paragraph 20 above, which will need to be secured before spending on other projects on the List is considered. The process for prioritising spending on the Regulation 123 List should be considered by Cabinet alongside approval of the Revised Regulation 123 List and the process for future reviews.

Legal Implications

26. The Council is required by legislation to publish on its website a list of infrastructure that it intends to fund, wholly or in part, through CIL. The purpose of this list, known as the 'Regulation 123 List', is to avoid developers being charged twice for the same item, or type of infrastructure. This means that Section 106 agreements cannot be used to fund the delivery of infrastructure that is itemised on the Regulation 123 List. The inclusion of infrastructure on the list does not signify a commitment from the Council to fund (either in whole or part) it or imply any preference or priority. It is important that the CIL List does not limit the Council's ability to negotiate a Section 106 agreement where infrastructure is directly related to a proposals and specific infrastructure is needed.
27. Section 26(1) of the Planning and Compulsory Purchase Act 2004 allows for a Local Planning Authority to prepare revisions to Local Development Documents which include 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 a SPD (or revisions to one) it must undertake consultation 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 these issues have been addressed in the SPD.

Options Considered

28. In May 2015, Council adopted the current Regulation 123 List alongside the CIL Charging Schedule. They came into operation on 18 May 2015. It has become clear, as development proposals have come forward, that the List would benefit from reviewing to clarify those infrastructure projects that may be funded through CIL. The alternative would be to retain the current List and continue to address perceived uncertainties over CIL funding on an individual, application-by-application basis. Alongside the revised Regulation 123 List, some changes are also necessary in the interests of clarity and accuracy to the Planning Obligations SPD.

Reason for Proposal

29. These amendments will assist the effective operation of CIL and ensure appropriate infrastructure is secured as part of development proposals. To comply with the Government's Planning Practice Guidance, appropriate local consultation must be undertaken on the Draft Revised Regulation 123 List. As consultation is proposed to be undertaken on revisions to the Planning Obligations SPD at the same time, the arrangements will need to meet requirements relating to the preparation of an SPD, as set out in the Council's Statement of Community Involvement and in line with Legislative requirements relating to the preparation of SPD.

Proposal

30. That:
- (i) Consultation be undertaken on the 'Wiltshire Community Infrastructure Levy - Draft Revised Regulation 123 List (February 2016)' and the Draft Revisions to the Planning Obligations SPD for six weeks; and
 - (ii) The Revised Regulation 123 List and Draft Revisions to the Planning Obligations SPD be finalised in the light of the consultation for consideration by Cabinet and, in the case of the SPD, for subsequent approval by Council.

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

Updated Infrastructure Delivery Plan