

FAREHAM

BOROUGH COUNCIL

Report to the Executive for Decision 20 February 2018

Portfolio:	Planning and Development
Subject:	Community Infrastructure Levy Review – Amended Regulation 123 List
Report of:	Director of Planning and Regulation
Corporate Priority:	Providing housing choices Protect and enhance the environment Strong, safe, inclusive and healthy communities Maintain and extend prosperity Leisure opportunities for health and fun Dynamic, prudent and progressive Council

Purpose:

This report seeks Executive approval to amend the Council's Community Infrastructure Levy (CIL) Regulation 123 List.

Executive summary:

Under Regulation 123 of the Community Infrastructure Regulations 2010 (as amended) this Council has published a list of those projects or types of infrastructure that it intends to fund, or may fund, through the levy.

It is proposed to amend the Council's published Regulation 123 List by removing education facilities from it. This would enable financial contributions towards education facilities to be secured through Section 106 planning obligations, when the Education Authority has clearly demonstrated the need for such contributions and subject to them satisfying Regulations 122 and 123 of the Community Infrastructure Regulations 2010 (as amended).

Recommendation

It is recommended that the Executive approves the amended Regulation 123 List for publication, with effect from 1 March 2018.

Reason:

To ensure that specific infrastructure projects in connection with education facilities can be secured by way of planning obligations to make certain schemes acceptable in planning terms.

Cost of proposals:

The costs can be met within existing budgets.

Appendices: **A:** The Council's amended CIL Regulation 123 List.

Background papers: Community Infrastructure Levy Regulations 2010 (as amended)

Reference papers: None

FAREHAM

BOROUGH COUNCIL

Executive Briefing Paper

Date:	20 February 2018
Subject:	Community Infrastructure Levy – Amended Regulation 123 List (for consultation)
Briefing by:	Director of Planning and Regulation
Portfolio:	Planning and Development

INTRODUCTION

1. Last year, Hampshire County Council (in its capacity as the Education Authority), raised comments in respect of some large-scale planning applications outside the Welborne Plan boundary area and the need to ensure appropriate education infrastructure. As a result, Officers reviewed the CIL Regulation 123 List in late 2017 to ensure that it reflected the current need for infrastructure to be secured by way of a planning obligation to make certain schemes acceptable in planning terms.
2. Having undertaken that review, Officers considered that the current CIL Regulation 123 List should be amended by the removal of education facilities as highlighted in Appendix A. Officers have also taken the opportunity to remove some of the infrastructure projects/types on the Regulation 123 List which have already been completed.
3. On 13 December 2017, the Executive Member for Planning and Development approved consultation on the proposed changes to the amended CIL Regulation 123 List. That consultation ran from 4 January to 1 February 2018 and resulted in a total of seventeen representations being received.
4. The following report summarises the representations received in response to the consultation. Following this, Officers have considered the matters raised in the representations before making a recommendation

SUMMARY OF REPRESENTATIONS RECEIVED IN RESPONSE TO CONSULTATION

5. A total of seventeen representations were received in relation to the consultation. The large majority of these representations either raised no comments or made comments on the Regulation 123 List which was outside the scope of the consultation. The representations received are set out in greater detail below.
6. New Forest District Council, the Environment Agency, Historic England and the Equality and Human Rights Commission raised no comments on the proposed change.

7. The Woodland Trust, David Lock Associates (on behalf of Buckland Development Limited) and the Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups have requested changes to the Regulation 123 List which are beyond the scope of the consultation.
8. Six representations were received from residents. Of those six residents, one objected to the proposal but gave no reasons. One commented that the amendment is a device to provide a remedy for an anticipated shortfall in funding through flexing of Section 106 planning obligations and that CIL funding should be available through Council Taxation. Four representations received from residents supported the change.
9. The Fareham Society comments that the Officer report to the Executive Member for Planning and Development on 13 December 2017 did not set out any information on the advantages and disadvantages of the use of either CIL or S106 agreements and did not include any estimates of the likely level of contributions from either method. The report does not explain why the Regulation 123 List cannot be amended to exclude certain schools to enable S106 contributions to be sought, as well as CIL, as has been done in Winchester. The Society believes that information on the advantages and disadvantages of the use of either CIL or S106 agreements is essential before a fully informed response can be made to the consultation.
10. Barton Willmore (on behalf of Hallam Land Management) considers the change being proposed is fundamental. In their view, the proposal is in breach of the intention and general structure of the CIL Regulations and therefore there is a strong argument to suggest it would be unlawful.
11. Paragraph 98 of the Planning Practice Guidance (PPG) on CIL states that 'Charging authorities should not remove an item from the Regulation 123 list just so they can fund this item through a new section 106 agreement.' Barton Willmore considers the removal of education facilities from the Regulation 123 list would also have an effect on viability, which should be assessed prior to proceeding with the approach identified. The proposal would also, in their opinion, give the perception of 'double dipping'.
12. Persimmon Homes South Coast considers that there are principally two matters for consideration:
 - Firstly, the council has not set out a date for the adoption of the proposed changes nor has it provided any information on any transition arrangements. This creates uncertainty for schemes that are at the planning application phase or any land deals.
 - Secondly, the council is proposing financial contributions for education facilities in addition to the current CIL charge rate. This will in its view place an additional financial burden on development. This is a clear additional financial burden on development which is above and beyond the development costs assessed as part of the viability evidence which supported the current charging rate. As per the PPG, the council should therefore undertake a review of the CIL Charging Schedule in order to initiate this change to the current Regulation 123 List.
13. Persimmon Homes South Coast states that the rate of CIL was set at a level commensurate with identified infrastructure costs which included education

infrastructure. The removal of Education Facilities should therefore lead to a reduction in the CIL receipts required to fund the infrastructure identified and therefore the Council should undertake a review of CIL.

14. In its view, the preparation of the Fareham Local Plan 2036 provides the most justified and appropriate mechanism for reviewing the infrastructure required as a whole to support development and the accompanying level of CIL rate required in the context of new policy requirements and viability concerns cited in the Local Plan Viability Assessment supporting it.
15. Hampshire County Council supports the removal of education from the Regulation 123 List. This will allow the County Council to negotiate directly with developers to ensure that the impact of new housing on school places is appropriately mitigated and that funding is directly available to deliver additional school places when needed.
16. The County Council suggests other changes to the Regulation 123 list not subject of the consultation.

CONSIDERATION OF ISSUES

17. The representations made by Barton Wilmore and Persimmon Homes South Coast in response to the consultation are acknowledged and have been carefully considered by Officers.
18. This Authority is mindful of the advice contained within the National Planning Practice Guidance at Paragraph 98 in respect of amending the Regulation 123 List.
19. The guidance at paragraph 98 does not prohibit the removal of items from the Regulation 123 List. The guidance sets out that authorities may amend the Regulation 123 list without reviewing their charging schedule, subject to appropriate consultation. If any changes to the Regulation 123 list would have a very significant impact on the viability evidence that supported examination of the charging schedule, this should be made as part of a review of the charging schedule.
20. As set out in greater detail below, this Authority does not anticipate, (nor would it be appropriate), for the Education Authority to seek contributions from all new residential development.
21. The change proposed would not have implications for the level at which CIL is currently set, as there is a substantial continuing infrastructure need and a continuing funding gap (even with education removed from the Regulation 123 List).
22. The changes proposed to the Regulation 123 List would enable education facilities to be secured by way of Section 106 Planning Obligations to make certain schemes acceptable in planning terms.
23. If the Regulation 123 List is amended as proposed, Hampshire County Council (as the Education Authority) would be consulted on all planning applications for 10 dwellings or more. Hampshire County Council would then need to assess the impact of proposals upon existing education provision.
24. Any request for financial contributions would need to be justified by the County Council on a case by case basis. The justification from the County Council would need to show a clear link between the contribution sought and the development proposed and how the contribution would directly mitigate any impacts of the

proposed scheme. The County Council will therefore need to set out precisely the level of financial contribution they are seeking and where it would be spent. This Council will need to be satisfied that any obligation sought will comply with Regulations 122 and 123 of the Community Infrastructure Regulations 2010 (as amended).

25. Officers do not anticipate financial contributions being sought from every application for residential development. Furthermore, as stated above, Hampshire County Council will need to clearly demonstrate which schools' contributions are sought towards and why. The application of a 'tariff' based approach to contributions for all residential schemes of 10 units or more would not be appropriate, nor would it in the view of Officers represent proper justification.
26. Officers recognise that where Hampshire County Council seeks financial contributions towards education this could have implications for the viability of individual schemes. In these instances, it would be open to applicants to submit a viability assessment to demonstrate what level of contribution a site is able to withstand if they believed that viability would be unacceptably affected.
27. In some cases, the implications of making contributions towards education facilities may mean that the level of other contributions and/ or affordable housing provision is impacted. Where this is the case these matters will need to be weighed up by the decision maker in considering individual proposals. In many instances, the decision maker will be this Council's Planning Committee.
28. The request that a full review of CIL should take place alongside the progression of the draft local plan 2036 is also noted. As a result of the current number of planning applications for new residential development within the Borough, and the concerns raised in respect of education provision, Officers consider it appropriate to bring forward this change at this time. Officers are confident that the measures described above will ensure that development is not unreasonably delayed or stalled as a result of the need to fund this important infrastructure through Section 106 planning obligations.
29. The reference to 'double dipping' is also acknowledged. Even if the changes to the Regulation 123 List proposed are approved, it would still be open to this Council to provide funding for education facilities through CIL. Should funding towards education facilities be made from CIL, it is clear that CIL cannot be used to fund the same projects as those where contributions have been secured through Section 106 planning obligations.
30. Having carefully considered all the representations received, Officers are satisfied that the proposed changes accord with the relevant Regulations and guidance contained within the National Planning Practice Guidance, and recommend that the amended Regulation 123 List is approved and implemented with effect from 1 March 2018.

RISK ASSESSMENT

31. If the Council was not to amend the CIL 123 List, the Council would not be able to collect developer contributions separately towards education facilities; the Council would be entirely reliant on CIL receipts being sufficient to meet these education needs and to make development acceptable in planning terms.

32. The effect of removing the infrastructure type from the list does not preclude CIL receipts from being spent on educational facilities; it simply allows the Local Planning Authority to secure funding through planning obligations.

FINANCIAL IMPLICATIONS

33. The costs can be met within existing budgets, but part or all of which may be recovered in due course under the provision of the Community Infrastructure Levy arrangements.

CONCLUSION

34. It is recommended for the reasons set out in the above report that the CIL amended Regulation 123 List should be published and is effective from 1 March 2018.

Enquiries:

35. For further information on this report please contact Lee Smith, Head of Development Management on 01329 824427.