

**Caerphilly County Borough Council
Community Infrastructure Levy**

**Replacement Regulation 123 List of Infrastructure
November 2015**

Takes Effect From 18 November 2015

1 Introduction

- 1.1 Regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended) sets out the requirement for CIL Charging Authorities to publish a list of the infrastructure that can be funded through CIL. After 6 April 2015, or upon implementation of the council's CIL Charging Schedule (whichever is the earliest), all infrastructure not included within the council's published Regulation 123 List Of Infrastructure (Regulation 123 List) cannot be funded through CIL contributions, and can only be funded via Section 106 agreements, which will be subject to rigorous application of the statutory tests for obligations.

2 Preparation of The Replacement Regulation 123 List.

- 2.1 When charging authorities wish to revise their regulation 123 list, they should ensure that these changes are clearly explained and subject to appropriate consultation. In this context the Replacement Regulation 123 List was subject of appropriate consultation from 5 August 2015 to 9 September 2015 at which time the reasoned justification for the change to the list was outlined. The representations made to the consultation were considered by a full meeting of Council on 17 November 2015 and the proposed amendment to the 123 List was approved.

3 What will the Regulation 123 List Include?

- 3.1 The Replacement Regulation 123 List sets out the infrastructure that will be eligible to be funded through CIL. The Infrastructure can be generic types of infrastructure, e.g. strategic Highway improvements, or projects or specific infrastructure items, e.g. Park and Ride facility at Llanbradach. The Replacement Regulation 123 List draws heavily upon the infrastructure requirements set out in the Adopted Caerphilly Local Development Plan up to 2021 (LDP) and reflect the infrastructure requirements necessary to bring forward development identified in the LDP.
- 3.2 The Replacement Regulation 123 List also sets out those known, site-specific, matters where section 106 contributions are likely to be the funding mechanism. The principal purpose is to provide transparency on what the Council intends to fund through the levy, in whole or in part, and those matters where section 106 contributions will continue to be sought.

4 The Regulation 123 List

- 4.1 The list of infrastructure set out below defines the infrastructure types that are eligible to be funded through CIL, which then cannot be funded via planning obligations. It should also be noted that it is highly unlikely that CIL could ever realise sufficient levels to provide the entire range of infrastructure included in the List. Consequently, the fact that a specific infrastructure scheme falls within the infrastructure on the List does not mean that the infrastructure will be funded by CIL. The List sets out what is eligible for CIL funding and decisions on what infrastructure will be delivered through CIL rests with the council and will be influenced by its own priorities and the amount of CIL available.
- 4.2 The infrastructure listed below will be eligible to be funded through the Community Infrastructure Levy.

The Caerphilly County Borough Council Regulation 123 List of Infrastructure

Physical Infrastructure

- *Policy TR5 Transport Improvement Schemes- Northern Connections Corridor.*
- *Policy TR6 Transport Improvement Schemes – Caerphilly Basin.*
- *Policy TR9 Highway Corridor Safeguarding – Caerphilly South East Bypass.*
- *Policy TR8.1 Regeneration Led Highway Improvements – Heads of the Valleys Area.*
- *Strategic public transport infrastructure (excluding site-specific links to the strategic network, for example a short length of cyclepath to link a site to a local or national route, a new bus stop within a new development to make it accessible).*
- *Waste transfer / recycling bulking infrastructure.*
- *Upgrade of existing Civic Amenity Sites.*
- *Strategic Drainage Network.*
- *Air Quality Action Plan Schemes (excluding air monitoring stations).*
- *Network Connections – Superfast Broadband.*

Social Infrastructure

- *Off-Site Education Provision (Schools).*
- *Youth and Community Facility Provision & Upgrade to existing facilities.*
- *Cemetery Provision.*
- *Leisure Centre Provision & Upgrade to existing facilities.*

Green Infrastructure

- *Off-Site Formal Leisure Facilities (Playing pitches and associated changing facilities, Multi-use games areas, Neighbourhood Equipped Areas for Play)*

5 Relationship with S106 Developer Contributions

- 5.1 In order to ensure that planning obligations and the CIL can operate in a complementary way, the CIL Regulations scale-back the way planning obligations operate. Limitations are therefore placed on the use of planning obligations in three respects:

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- putting the policy tests on the use of planning obligations (set out in Wales in Circular 13/97, *Planning Obligations*) on a statutory basis for developments which are capable of being charged the CIL;
- ensuring the local use of the CIL and planning obligations do not overlap; and
- limiting pooled contributions from planning obligations towards infrastructure, which may be funded by the CIL.

5.2 The CIL regulations place into law the policy tests on the use of planning obligations. The statutory tests are intended to clarify the purpose of planning obligations in light of the CIL.

5.3 From 6 April 2010 Regulation 122 has made it unlawful for a planning obligation to be taken into account when determining a planning application for a development that is capable of being charged the levy, whether there is a local levy in operation or not, if the obligation does not meet all of the following tests:

- necessary to make the development acceptable in planning terms;
- directly related to the proposed development; and
- fairly and reasonably related in scale and kind to the development.

5.4 Conversely, the CIL is intended to provide infrastructure to support the development of an area, rather than to make individual planning applications acceptable in planning terms. As a result, there is likely to be site-specific impact mitigation requirements without which a development should not be granted planning permission. Some of these needs may be provided for through the CIL but others may not, particularly if they are very local in their impact. There is therefore still a legitimate role for development-specific planning obligations to enable the Council to be confident that the specific consequences of a development can be mitigated.

5.5 The Council will therefore continue to secure Planning Obligations where they are necessary to remove obstacles to planned development and are therefore critical to the delivery of the site, for example to provide direct site access, flood protection and wildlife protection measures and for on-site leisure provision such as open space, local areas for play (LAPs), local equipped areas for play (LEAPs) and on-site education provision (schools). Further, s106 contributions may still be sought for infrastructure, where:

- 1) it can meet the above tests; and
- 2) the Council has indicated that this type of infrastructure item will not be funded through CIL.

5.6 **Affordable housing** will continue to be funded through S106 Obligations. The Charging Schedule has set CIL at a level that has been assessed as viable with the provision of affordable housing and it is, therefore, expected that on-site provision of affordable housing will be achievable.

6 Implications on Development Plan Policy

6.1 It is envisaged that as a consequence of the introduction of CIL, the following policies in the Adopted Local Development Plan will need revision at the first review of the plan:

Planning Obligations

SP7 The Council will seek to secure Planning Obligations (S106 Agreements) where they are necessary to remove obstacles to planned development, meet local needs and make development more sustainable. Such obligations will include:

- A Infrastructure for walking, cycling, public transport, parking**
- B Schools and ancillary facilities**
- C Community Facilities**
- D Strategic highway improvements in the Northern and Southern Connections Corridors**
- E Flood defence measures required to mitigate the risk of flooding**
- F Formal and informal open and leisure space**
- G Affordable housing and**
- H Other facilities and services considered necessary**

(Key Components Met: 1, 3, 6 & 7)

- 1.66 New development has the potential to increase pressure on existing community infrastructure and facilities such as transportation networks, schools, lifelong learning facilities, open space and other facilities. The provision of adequate infrastructure and services are a prerequisite of development taking place, as it is crucial for the environmental, social and economic sustainability of the County Borough. Where appropriate, the Council will seek obligations to mitigate against the effect of development. In line with national guidance the Council will negotiate obligations where these are necessary, relevant to planning, directly related to the proposed development, fairly and reasonably related in scale and kind to the proposed development and reasonable in all other respects.
- 1.67 In the case of previously used land, the Council will take into consideration abnormal costs associated with the redevelopment of a site when negotiating the level of planning obligation to be sought. Where a developer considers that the level of obligation sought may affect the viability of a development proposal to an unacceptable degree the Council will require the developer to provide sufficient evidence to support this position as part of the planning obligation negotiation process.

Transport Improvement Schemes – Northern Connections Corridor

TR5 The following strategic network improvements have been identified in respect of a Northern Connections Corridor Obligation:

TR5.1 A467 Newbridge to Crosskeys

TR5.2 A467 Newbridge to Crumlin

TR5.3 A472 Ystrad Mynach to Nelson

TR5.4 Newbridge Interchange

TR5.5 A472 Crown Roundabout to Cwm Du Roundabout

3.107 The LDP will accommodate an increase in population during the Plan period and has allocated sites to cater for the housing, employment and other needs accordingly. This development will realise significant increases in traffic on the transport network of the County Borough, which will result in increased congestion. As a result general areas of improvement to the strategic network, which will seek to alleviate the cumulative impact of these developments, have been identified. Further work will be undertaken to consider the environmental, social and economic impacts of development in the area and appropriate schemes will be progressed as part of the development of a Northern Connections Corridor Obligation.

Transport Improvement Schemes – Caerphilly Basin

TR6 The following strategic network improvements have been identified in respect of the Caerphilly Basin Obligation:

TR6.1 Tafwys Walk

TR6.2 Trecenydd Roundabout

TR6.3 Pwllypant Roundabout

TR6.4 Bedwas Bridge Roundabout

TR6.5 Piccadilly Gyrotory

TR6.6 Penrhos to Pwllypant

TR6.7 Pwllypant to Bedwas

3.195 The LDP will accommodate an increase in population during the Plan period and has allocated sites to cater for the housing need accordingly. This housing development will lead to significant increases in traffic on the transport network of the County Borough, which will result in increased congestion. As a result, specific improvements to the strategic network in the Southern Connections Corridor have been identified, which will alleviate the cumulative impact of the housing development. These schemes will be realised through a planning obligation levied against all residential developments.