



## **REGENERATION AND ENVIRONMENT SCRUTINY COMMITTEE 27TH OCTOBER 2015**

**SUBJECT: PROPOSED CHANGE TO THE CAERPHILLY COUNTY BOROUGH  
COUNCIL CIL REGULATION 123 LIST OF INFRASTRUCTURE**

**REPORT BY: CORPORATE DIRECTOR - COMMUNITIES**

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### **1. PURPOSE OF REPORT**

- 1.1 To consider and note the findings of the of the public consultation exercise undertaken in August/September 2015 in respect of the proposed changes to the Regulation 123 List.
- 1.2 To recommend that the Replacement Regulation 123 List be referred to Cabinet and Council for consideration.
- 1.3 To recommend to Cabinet and thereafter Council that the Replacement Regulation 123 List be approved for publication in accordance with the implementation of CIL.

### **2. SUMMARY**

- 2.1 The Community Infrastructure Levy (CIL) is a system of charges that local authorities can choose to levy against new development in their areas. Different rates of charge are identified for different types of development, dependent upon how viable each type of development is. The revenue generated from CIL is then used to fund infrastructure that will support future planned development in the county borough. Once introduced it is a mandatory charge that is levied against all new qualifying development.
- 2.2 Regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended) sets out the requirement for the CIL Charging Authority to publish a list of the infrastructure that can be funded through CIL.
- 2.3 It is proposed that the approved Regulation 123 list be modified to amend the first social infrastructure item i.e. "Education Provision (Schools)" to read "off-site education provision (schools)". With a subsequent change to paragraph 5.5 to refer to "on-site education provision (schools)" The proposed change to the Regulation 123 list would enable school provision to be sought on-site in line with the aspirations of the adopted LDP.
- 2.4 It is considered that the proposed change to the Regulation 123 List will have a minimal impact on the viability evidence that was considered by the Examiner as it will only impact on two specific sites, namely HG1.57 Waterloo and HG1.60 Bedwas Colliery.
- 2.5 The Replacement Regulation 123 List was subject of appropriate consultation from 5 August 2015 to 9 September 2015 in line with guidance contained in Planning Practice Guidance (as amended June 2015) at which time the reasoned justification for the change to the list was outlined.

- 2.6 Two representations have been submitted for consideration, one from the Home Builders Federation and one from Savills (UK) Ltd, Chartered Surveyors, representing Machen Land Limited (MLL) i.e. the land-owner and promoter of the Waterloo Works site. Appendix 1 outlines a summary of the representations received together with an officer response to each of the points raised.
- 2.7 This Report invites elected members to: 1) consider and note the findings of the of the public consultation exercise undertaken in August/September 2015 in respect of the proposed changes to the Regulation 123 List; 2) recommend that the Replacement Regulation 123 List be referred to Cabinet and Council for consideration; and 3) recommend to Cabinet and thereafter Council that the Replacement Regulation 123 List be approved for publication in accordance with the implementation of CIL.

## **GLOSSARY OF ACRONYMS, ABBREVIATIONS AND TERMS**

<b>CIL</b> .....	Community Infrastructure Levy
<b>LDP</b> .....	Caerphilly County Borough Local Development Plan up to 2021
<b>s.106</b> .....	Section 106 of the Town and Country Planning Act 1990
<b>IAR</b> .....	Infrastructure Assessment Report
<b>Charging Schedule</b> .....	Caerphilly Community Infrastructure Levy Charging Schedule
<b>Regulation 123 List</b> ...	Regulation 123 List of Infrastructure, which sets out the infrastructure that CIL can be used to fund.

## **3. LINKS TO STRATEGY**

- 3.1 The CIL will directly assist in the delivery of the Council's land use objectives as set out in the Caerphilly County Borough Local Development Plan up to 2021 (LDP). CIL will expand upon LDP Policy SP7 Planning Obligations, which sets out the strategic policy basis for securing Planning Obligations (s.106 Obligations) where they are necessary to remove obstacles to planned development.
- 3.2 CIL will be one of the mechanisms for making direct contributions toward the provision of many of the allocations set out in the Adopted LDP. Overall CIL will be a significant tool for the delivery of the Council's aspirations in terms of infrastructure that cannot be funded through other means and for which no alternative funding mechanisms are available.
- 3.3 As such, CIL will also support the Council in achieving the aims of Caerphilly Delivers, the LSB Single Integrated Plan, particularly the Prosperous, Greener and Safer themes.

## **4. THE REPORT**

- 4.1 The Community Infrastructure Levy (CIL) is a system of charges that local authorities can choose to levy against new development in their areas. Different rates of charge are identified for different types of development, dependent upon how viable each type of development is. The revenue generated from CIL is then used to fund infrastructure that will support future planned development in the county borough. It is a mandatory charge that is levied against all new qualifying development.
- 4.2 Caerphilly County Borough Council resolved to approve the CIL Charging Schedule at a meeting of the Full Council held on 10 June 2014, with an implementation date of 1 July 2014.
- 4.3 Regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended) sets out the requirement for the CIL Charging Authority to publish a list of the infrastructure that can be funded through CIL. To this end, the Caerphilly County Borough Council Regulation 123 List of Infrastructure (the Regulation 123 List), was approved by Council in tandem with

the CIL Charging Schedule on the 10 June 2014.

4.4 Further to the implementation and monitoring of the CIL, officers are of the view that there is a need to amend the approved Regulation 123 List in respect of on-site education provision to allow s.106 funding to be sought. Where a site is sufficiently large to generate the need for on-site provision and this is identified in the adopted LDP, it is within the spirit of the legislation that such provision should properly be made through a s.106 obligation. In such cases the provision of this critical infrastructure clearly meets the statutory tests laid down for s.106 obligations in that it is:

- 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 in question.

#### **Relationship between s.106 Obligations and CIL**

4.5 There is a need therefore to amend the Regulation 123 List in order to ensure that planning obligations and the CIL can operate in a complementary way in this regard. Moreover it is important to ensure that the local use of the CIL and planning obligations do not overlap; and that there is no potential for a developer to pay twice for the same piece of infrastructure.

4.6 It is therefore proposed that the approved Regulation 123 List be modified to remove on-site education from the list so that this essential infrastructure can be funded via s.106 obligation where the provision can meet the statutory tests above. It is further proposed that off-site education provision continues to be funded through CIL in line with the approved Regulation 123 List. To this end it is proposed that the Regulation 123 list be modified to amend the first social infrastructure item i.e. "Education Provision (Schools)" to read "off-site education provision (schools)". With a subsequent change to paragraph 5.5 to refer to "on-site education provision (schools)"

#### **Site Specific Impact of Proposed Change**

4.7 Only three housing sites within the adopted LDP are required to make on-site provision for education, namely:

- HG1.33 Penallta Colliery (Cwm Calon) Ystrad Mynach - provision has been made via s.106 and the school is now developed.
- HG1.57 Waterloo Works, Waterloo - planning permission has been granted subject to the signing of a s.106, which includes the provision of a school. The s.106 was not signed prior to the introduction of CIL and is therefore no longer capable of implementation. A report outlining the current position is likely to be considered by Planning Committee later this year.
- HG1.60 Bedwas Colliery, Bedwas.- the site has not progressed to planning application stage.

#### **CIL Examination and Viability**

4.8 The proposed change to the Regulation 123 list would enable school provision to be sought on-site in line with the aspirations of the adopted LDP.

4.9 This approach would also be consistent with the evidence that was considered at the CIL Examination where the Infrastructure Assessment Report (IAR) assumed that in all of the above cases the on-site education provision would be delivered through a combination of the Council's Capital Budget and via s.106 obligations. The IAR assumed a developer contribution of circa £5m for on site-education provision for each of the sites in question.

- 4.10 The Economic Viability Study that was considered by the Examiner made no specific allowance for residual s.106 obligations relating to site-specific infrastructure; however he concluded that the CIL had been set appropriately to accommodate the variable s.106 element of development costs.
- 4.11 When charging authorities wish to revise their regulation 123 list, they should ensure that these changes are clearly explained and 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 examination of the charging schedule, this should be made as part of a review of the charging schedule.
- 4.12 It is considered that the proposed change to the Regulation 123 List will have a minimal impact on the viability evidence that was considered by the Examiner as it will only impact on two specific sites, namely HG1.57 Waterloo and HG1.60 Bedwas Colliery.
- 4.13 It is important to note in this context that site viability is very scheme and site specific. Further, viability is a material consideration in the determination of planning applications and detailed viability assessments are routinely submitted for consideration as part of the planning application process. If viability is shown to be marginal on a specific scheme, the Council has the ability to be flexible and negotiate with the applicant in terms of those contributions that are to be sought through s.106 obligations. Conversely, the CIL rates for a proposal are set and are non-negotiable.
- 4.14 The Replacement Regulation 123 List was subject of appropriate consultation from 5 August 2015 to 9 September 2015 in line with guidance contained in Planning Practice Guidance (as amended June 2015) at which time the reasoned justification for the change to the list was outlined. The consultation was targeted at: respondents that have previously expressed an interest in CIL, the development industry, County Borough Councillors, Community Councils, and neighbouring Local Planning Authorities. In addition, a notice was placed in the Caerphilly Observer on the 31 July and the 6 August 2015 and information was placed on the Council's web page in order to alert any other interested people of the consultation exercise.
- 4.15 Two representations have been submitted for consideration, one from the Home Builders Federation ( HBF ) and one from Savills (UK) Ltd, Chartered Surveyors, representing Machen Land Limited (MLL) i.e. the land-owner and promoter of the Waterloo Works site. Appendix 1 outlines a summary of the representations received together with an officer response to each of the points raised.
- 4.16 Officers consider that there is an immediate need to amend the Regulation 123 List to ensure that the provision of critical on-site education infrastructure that is necessary to make development acceptable in planning terms at both Waterloo and Bedwas Colliery can be sought through s.106 obligations.
- 4.17 Finally, members should be aware that as an integral part of the preparation of the Replacement Deposit Local Development Plan up to 2031, the viability evidence underpinning the CIL Charging Schedule and the affordable housing policy will need to be reviewed in full. This work is presently underway and the HBF and other key stakeholders are involved in the viability testing associated with this work. A new Charging Schedule and Regulation 123 List will be prepared in tandem with the Replacement Deposit LDP and will be subject to Council consideration and full public consultation in due course. On completion of this work all of the current CIL documentation will be superseded.

## **5. EQUALITIES IMPLICATIONS**

- 5.1 There are no direct implications associated with this report, however the consultation with the public was undertaken in line with the Council's Public Engagement Strategy and the Equalities Consultation and Monitoring Guidance, ensuring that all minority groups in the community had the opportunity to take part in the consultation exercise.

## **6. FINANCIAL IMPLICATIONS**

- 6.1 The proposed change to the Regulation 123 List will enable the Local Planning Authority to seek to negotiate s.106 obligations for the provision of on-site education, negating the need for the Education Authority to bear the cost of that total provision. Clearly this is subject to the Council prioritising on-site school provision over other types of development such as affordable housing.

## **7. PERSONNEL IMPLICATIONS**

- 7.1 There are no direct personnel implications as a consequence of this report

## **8. CONSULTATIONS**

- 8.1 All comments have been incorporated into the report

## **9. RECOMMENDATIONS**

- 9.1 To consider and note the findings of the of the public consultation exercise undertaken in August/September 2015 in respect of the proposed changes to the Regulation 123 List.
- 9.2 To recommend that the Replacement Regulation 123 List be referred to Cabinet and Council for consideration.
- 9.3 To recommend to Cabinet and thereafter Council that the Replacement Regulation 123 List be approved for publication in accordance with the implementation of CIL.

## **10. REASONS FOR THE RECOMMENDATIONS**

- 10.1 In order to consider the representations made to the public consultation exercise undertaken in August/September 2015 in respect of the proposed changes to the Regulation 123 List.
- 10.2 In order to assist in the implementation and understanding of the CIL charge.
- 10.3 In order to secure s106 obligations for on-site education provision to make planned development acceptable in planning terms.

## **11. STATUTORY POWER**

- 11.1 The council, as local planning authority, is empowered under the provisions of Part 11 of the Planning Act 2008 to undertake preparation and implementation of CIL

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Interim Head of Legal Services/Monitoring Officer  
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Background Papers: Community Infrastructure Levy (CIL) - Approval and Implementation of  
Caerphilly County Borough CIL Charging Schedule – Council Report 10 June 2014.

Appendices:

- Appendix 1 Comments received in respect of the Proposed Change to the Caerphilly County  
Borough Council CIL Regulation 123 List of Infrastructure
- Appendix 2 Caerphilly County Borough Council Community Infrastructure Levy Replacement  
Regulation 123 List of Infrastructure