

COMMENTS RECEIVED IN RESPECT OF THE PROPOSED CHANGE TO THE CAERPHILLY COUNTY BOROUGH COUNCIL CIL REGULATION 123 LIST OF INFRASTRUCTURE

Home Builders Federation - Representation 1

The Council notes in their consultation document that:

“Regulation 123 Lists are not subject to the same procedural requirements that have been set out for the CIL Charging Schedule. Currently Regulation 123 only requires that the Regulation 123 Lists be published. It does not convey any requirement for consultation or set out any formal procedures. Consequently the council may change its Regulation 123 List as it sees fit.”

The HBF would advise that guidance on changes to the Regulation 123 list was incorporated within the Planning Practice Guidance (PPG) on 12th June 2015. It states that:

“When charging authorities wish to revise their regulation 123 list, they should ensure that these changes are clearly explained and subject to appropriate consultation. Charging authorities should not remove an item from the regulation 123 list just so that they can fund this item through a new section 106 agreement. Authorities may amend the regulation 123 list without revising 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 examination of the charging schedule, this should be made as part of a review of the charging schedule”

The HBF note that the Council have consulted on the changes, however we are concerned (see comments below) about whether the Council have met the other criteria in the statement above. Accordingly the HBF would suggest that the Council need to evidence whether or not the proposed change does or doesn't have a 'significant impact on the viability evidence'.

Officer Response

The Council acknowledges and is aware of the changes to the Planning Practice Guidance introduced in June 2015 and has undertaken the appropriate consultation as required. Paragraph 2 of the Replacement Regulation 123 List will be amended accordingly.

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 and will not effect the wider viability evidence that was considered.

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 either of these specific schemes effected by the proposed change, 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.

Where a developer considers that the level of obligation sought may affect the viability of a development 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 in line with Policy SP7 of the adopted LDP.

Home Builders Federation - Representation 2

The Consultation document states the following:

“Planning Officers remain of the view that off-site education provision should be retained on the 123 List and thus funded through CIL. However the Assistant Director for Education remains of the view that education provision should be removed from the 123 List entirely and should be funded through s106 Obligations.”

The HBF suggest that further evidence is required to explain, based on this internal disagreement, why the decision has been made to amend the 123 List, and any such evidence should demonstrate why this is a good idea and what impact it has on viability.

Officer Response

There is a need to amend the approved Regulation 123 List in respect of on-site education provision to make the proposed development of Waterloo and Bedwas Colliery acceptable in planning terms. This change only effects two undeveloped housing sites both of which are sufficiently large to generate the need for on-site education 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 and that provision must meet the statutory tests laid down for a s.106 obligation 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.

In both cases the provision can meet the statutory tests.

It is also 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.

Off-site education provision is likely to be in the form of incremental extensions to existing schools (due to development increasing school place requirements over existing school capacities), whilst new on-site school provision is required to make the development acceptable in planning terms. Off-site education infrastructure requirements will have to vie for funding against other infrastructure in the Reg. 123 List, i.e. the CIL finance is not ring fenced for a specific use or a specific piece of infrastructure. Conversely the on-site s.106 contribution will be ring fenced for the reason they are sought, i.e. the s.106 revenue will be dedicated to providing the education infrastructure on site at Waterloo and Bedwas.

There is merit in continuing to include off-site education provision within CIL as its inclusion improves the predictability and certainty for developers as to what they will be asked to contribute towards in terms of planning obligations. It will also increase fairness by broadening the range of developments asked to contribute, allowing the cumulative impact of small developments, which can be significant in terms of local school provision, to be accounted for.

Home Builders Federation - Representation 3

The Consultation document further states the following:

The proposed change to the regulation 123 list is consistent with the evidence that was considered at the CIL Examination in that:

- the Infrastructure Assessment Report assumed on-site education provision to be made via s.106 obligations;
- the Economic Viability Study that was considered by the Examiner made no specific allowance for residual S.106 obligations relating to site specific infrastructure
- the Examiner concluded that there was sufficient headroom in the CIL rate setting to accommodate the variable s.106 element of development costs.

The HBF believe that this is misleading:

Firstly the Infrastructure Assessment Report was prepared in June 2012, prior to consultation on the Preliminary Draft Charging Schedule. At that stage only the following education provisions were due to be funded through CIL: Welsh Medium Secondary Education Provision.

As part of Savills representations, this was amended in the Draft Charging Schedule so that all Education was to be funded through CIL. The Examiner was aware of this as a result of the Draft Charging Schedule.

Secondly, whilst the second and third bullet points are correct, it was anticipated that on site provision of education would be funded through CIL, not S106 in accordance with the Draft Charging Schedule. The position therefore proposed in the Draft Regulation 123 list has now been changed to a significant extent in respect of sites requiring on-site education provision that it is unclear how CIL and Section 106 obligations will be operated in tandem and avoid the potential that developers will pay twice for education as part of the current CIL charge and as part of the proposed S106 charge. It also fundamentally undermines the viability evidence upon which the proposed CIL charging rates were established and tested at the Examination, which would suggest the need for a fuller review.

Officer Response

On site education provision is only likely to be sought on two sites, namely Waterloo and Bedwas Colliery. The proposed change to the Regulation 123 List will therefore have a minimal impact on the viability evidence that was considered by the Examiner and will not effect the wider viability evidence that was considered at Examination.

It is also 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.

Off-site education provision is likely to be in the form of incremental extensions to existing schools (due to development increasing school place requirements over existing school capacities), whilst new on-site school provision is required to make the development acceptable in planning terms. Off-site education infrastructure requirements will have to vie for funding against other infrastructure in the Reg. 123 List, i.e. the CIL finance is not ring fenced for a specific use or a specific piece of infrastructure. Conversely the on-site s.106 contribution will be ring fenced for the reason they are sought, i.e. the s.106 revenue will be dedicated to providing the education infrastructure on site at Waterloo and Bedwas.

Home Builders Federation - Representation 4

The HBF believe that for these larger or (strategic) sites where much greater provision of on-site or site specific mitigation is necessary (including the provision of schools), the Council should consider zero rating these specific sites (an approach generally supported by the HBF), as part of a full review of the charging schedule as set out in the guidance.

Officer Response

The Caerphilly County Borough Local Development Plan up to 2021 (LDP) does not identify strategic sites. However the Council is in the process of preparing a Replacement plan to supersede the LDP (the anticipated adoption date is 2017). As an integral part of the preparation of the Replacement Deposit Local Development Plan, the viability evidence underpinning the CIL Charging Schedule and the affordable housing policy will 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. Officers are presently of the view that the Strategic Sites identified within the Replacement LDP should be zero rated (subject to the viability assessment supporting this position). A new Charging Schedule and Regulation 123 List will be prepared in tandem with the Replacement Deposit LDP and this will be subject to Council consideration and full public consultation in due course.

Savills (UK) Ltd, Chartered Surveyors (representing Machen Land Limited (MLL). MLL is the land owner and promoter of the Waterloo Works site

Savills- Representation 1

The changes will have significant implications for the Waterloo Works site, as one of two allocated sites in the LDP which are expected to deliver schools on-site and do not have an extant planning permission (the other being Bedwas Colliery). Should the changes to the Regulation 123 List be adopted, the developers will still be required to pay CIL, in addition to the additional Section 106 payment to fund a primary school on site - and therefore significantly increasing the overall level of developer contributions required

For the Waterloo Works site, based on the scheme which benefits from a resolution to grant planning permission, the developer will be required to pay approximately **£2.6m more** in financial contributions as a result of the proposed changes to the Regulation 123 list. Given it is a brownfield site which requires considerable remediation (of which the land owner has already, and continues to, invest significant

money in such remediation works), and a site where viability is already recognised to be challenging, there is a concern that the ability to deliver a policy compliant Section 106 package will be jeopardised by the changes proposed

Officer Response

Planning application P/06/0037: Planning Committee resolved in June 2007 to grant permission in outline for 545 residential units and for a primary school at former Waterloo Works, Machen subject to the applicant entering into a s.106 agreement that required the following:

- £2,953,335 as a contribution towards strategic highway improvements in the Caerphilly Basin area;
- £2,500,000 for a primary school building, and to provide an agreed site totalling 2.5 acres on which the school would be constructed; and
- 16 affordable housing units

The s106 has not been signed, the decision has not been issued, and so the application has not been formally determined. Further the s.106 was not signed prior to the introduction of CIL and is no longer capable of implementation. The s106 will therefore have to be renegotiated and reported back to planning committee in due course.

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. Viability is extremely site and scheme specific and can vary considerably between greenfield and brownfield sites. If viability is shown to be marginal on Waterloo as a consequence of the proposed change, 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. However where necessary infrastructure is fundamental in terms of making a scheme acceptable in planning terms, its provision is essential to enable the development to proceed.

Where a developer considers that the level of obligation sought may affect the viability of a development 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 in line with Policy SP7 of the adopted LDP.

Savills - Representation 2

It is surprising that the proposed amendments are not supported by any viability evidence demonstrating the impact on viability of increasing Section 106 obligations on sites in the County Borough required to now provide contributions to on-site education, in addition to CIL: either at a County Borough wide nor site specific level. The changes proposed to the Regulation 123 List could potentially have a very significant impact on development viability – and therefore require careful consideration as part of this consultation process. On the wider basis, there is a risk that any changes at this stage could undermine the Examination process and the credibility of the evidence base upon which the CIL charging rates were formulated

Officer Response

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 and will not effect the wider viability evidence that was considered at Examination.

Savills - Representation 3

Whilst we appreciate the Assistant Director for Education's view that all education should be removed from the Regulation 123 list entirely, it is concerning that the report to Committee, indicates that Planning Officers are at odds with this view, and are pursuing the changes anyway regardless of this uncertainty. For the Waterloo Works site, the changes essentially indicate the Council's corporate objective and priority to deliver a new primary school on this site, irrespective of what this could mean for the overall delivery of other requirements on the site, in particular the amount of affordable housing that the development can support (in light of the LDP's target for 40% affordable housing). We would therefore reiterate that any decision to make this change is carefully considered with a clear understanding of the impact this will have on the overall package of developer contributions the affected developments can deliver when various requirements, including CIL payments, are considered cumulatively.

Officer Response

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. Viability is extremely site and scheme specific and can vary considerably between greenfield and brownfield sites. If viability is shown to be marginal on Waterloo as a consequence of the proposed change, 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 in order to meet the Council's corporate objectives. Notwithstanding this, where infrastructure is fundamental in terms of making a scheme acceptable in planning terms, its provision is essential to enable the development to proceed.