

EXECUTIVE

Leader: Cllr Jeremy Christophers

Portfolio Holder: Cllr Humphrey Clemens

DATE: 10th February 2016

REPORT OF: SIMON THORNLEY, BUSINESS MANAGER SPATIAL PLANNING AND DELIVERY

SUBJECT: PUBLICATION OF CLARIFIED REGULATION 123 LIST AND PUBLICATION OF REVISED SECTION 106 GUIDANCE.

PART I

RECOMMENDATIONS

Executive is recommended to;

- (a) Approve the publication of the clarified Regulation 123 List at Appendix A. This sets out items of infrastructure that may be partially or totally funded through CIL;
- (b) Approve the updated guidance on the use of Section 106 at Appendix B.
- (c) Agree the subsequent changes to the European Site payment for new dwellings in the Exe Estuary and Dawlish Warren zones as set out at Appendix D

1. PURPOSE

- 1.1. These documents support the application and implementation of the Community Infrastructure Levy (CIL) and the Council's wider infrastructure planning programme. They are not new, but are updated versions of those adopted alongside the CIL Charging Schedule in 2014.
- 1.2. The clarified Regulation 123 List sets out items of infrastructure that *cannot* be secured by way of Section 106 planning obligation. Items listed on the Regulation 123 list may be wholly or partly funded through CIL. The clarified Section 106 guidance sets out the types of planning obligation that may be secured. The Council's priorities for CIL funding are set out in the Infrastructure Delivery Plan.

2. BACKGROUND

- 2.1. Executive agreed a consultation on a revised CIL Regulation 123 List in June 2015. That consultation was held during July and August 2015. A further consultation took place between December 2015 and January 2016 on a revised version of the Regulation 123 List and Section 106 guidance, which was published following Portfolio Holder approval.

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- 2.2. The main purpose of the 'Regulation 123 List' (as set out in the CIL Regulations) is to prevent CIL expenditure and Section 106 planning obligations from overlapping, and hence prevent developers from being 'double charged' for the same items of infrastructure.
- 2.3. The Regulation 123 List sets out the infrastructure projects or types that the Council may fund wholly or partly through CIL and which cannot be delivered through a Section 106 agreement. If the Council does not publish a Regulation 123 List, the CIL Regulations assume that all infrastructure will be funded by CIL and that Section 106 obligations will not be used for any infrastructure.
- 2.4. The reason for reviewing the original 2014 Regulation 123 list was to more precisely set out and clarify what infrastructure may be CIL funded, including by removing unclear wording regarding 'on-site' and 'off-site'.
- 2.5. The Section 106 guidance note is intended to be helpful for developers in understanding likely Section 106 requirements, such as those relating to affordable housing or the mitigation of specific development impacts (such as drainage, provision of play space, etc). Specific Section 106 obligations will of course vary from site to site.

3. MAIN IMPLICATIONS

- 3.1. The amendments to the Regulation 123 list are in response to the two public consultations and Council officers' experiences of implementing the CIL and applying Section 106. It is important to note that the Regulation 123 list does not prevent the Council from spending CIL on other infrastructure priorities that may arise. The original 2014 version of the Regulation 123 is at Appendix C to allow for comparison.
- 3.2. The Section 106 guidance has been amended and simplified to provide clearer guidance on the rationale and likely role of Section 106 obligations.
- 3.3. The Regulation 123 more clearly sets out which items of the South East Devon European Sites Mitigation Strategy are considered to be infrastructure. Appendix D sets out the full list of mitigation measures in the Strategy and associated Section 106 per dwelling charges by zone (shown at Appendix F).

4. GROUPS CONSULTED

- 4.1. The Council carried out two public consultations for at least 6 weeks each, in line with best practice. Groups consulted included all statutory consultees and people or organisations who had previously commented on the CIL charging schedule that was examined in 2013.

5. TIME SCALE

- 5.1. If approved, the amended documents will be published on the Council's website and applied immediately to new planning permissions.

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6. JUSTIFICATION

- 6.1. The appended documents provide a framework for the charging of CIL and agreement of Section 106 planning obligations. They confirm that there will be no 'double charging' across the two mechanisms.

7. FINANCIAL IMPLICATIONS

- 7.1. The amended Regulation 123 List will allow the Council to continue agreeing Section 106 obligations (where justified in accordance with CIL Regulation 122). It is estimated that the CIL will raise approximately £50 - £60 million for infrastructure funding by 2033, of which 15% is guaranteed to go directly to the town and parish Councils where development takes place.
- 7.2. To date CIL demand notices for around £1.14 million. Owing to the Council's CIL installments policy, £18,400 has been received.
- 7.3. Proposed amendments to the European Site (HRA) Section 106 charges are as follows:
- Exe Estuary only zone - £96 per dwelling (was £103 per dwelling).
 - Exe Estuary and Dawlish Warren zone - £800 per dwelling (was £804 per dwelling).

8. DATE OF IMPLEMENTATION (CONFIRMATION OF DECISION SUBJECT TO CALL-IN)

10.00 a.m. on Wednesday, 17 February 2016

Simon Thornley,
Business Manager, Strategic Place

Wards affected	All in Teignbridge Planning Authority area.
Contact for more information	Spatial Planning & Delivery, 01626 215702
Background Papers (For Part I reports only)	A. Regulation 123 List B. Guidance on Section 106 implementation C. Consultation versions of Regulation 123 List D. Clarification of the Joint Approach HRA Contributions E. Summary of Consultation Responses and the Council's Response. F. European Sites and Contribution Zones
Key Decision	N
In Forward Plan	Y
In O&S Work Programme	N