

Cabinet Decision	
5th April 2016	
Report of: Director of Development and Renewal	Classification: Unrestricted
Revised Regulation 123 List and Planning Obligations Supplementary Planning Document (SPD)	

Lead Member	Councillor Rachel Blake, Cabinet Member for Strategic Development
Originating Officer(s)	Owen Whalley
Wards affected	All
Key Decision?	Yes
Community Plan Theme	A great place to live

1. **EXECUTIVE SUMMARY**

- 1.1 This document seeks authority to consult publicly on the revisions proposed for the draft Revised Regulation 123 List and Planning Obligations SPD.
- 1.2 The Revised Planning Obligations SPD sets out the Council's approach in securing S106 obligations and the difference between the CIL and S106 obligations and other relevant legal agreements.
- 1.3 The Regulation 123 List identifies categories of strategic infrastructure that can be paid for using the Community Infrastructure Levy (CIL). The current list was adopted in April 2015.
- 1.4 Revisions to both documents are required in order to clarify the interrelationship between these two different funding sources, following receipt of advice from external Counsel. The Infrastructure Planning team has also made a number of small editorial amendments for clarity following the public consultation undertaken in April/May 2015. These amendments do not change the substance of the document and are therefore not included in the proposed consultation from April-May 2016.
- 1.5 The documents relate only to the process for collecting contributions from development through CIL and Planning Obligations. They are not required or intended to include any detail regarding the process or arrangements for spend by the Council of those contributions collected.
- 1.6 The consultation period is 5 weeks and is likely to run from 25/04/2016 to 29/05/2016).

2. **RECOMMENDATIONS**

2.1 The Mayor in Cabinet is recommended to:-

1. Approve the proposals for the revisions to the Regulation 123 List and Planning Obligations SPD (as set out in Appendix A and B), for public consultation.
2. Delegate authority to the Corporate Director of Development and Renewal to approve further consultations on both documents should this prove necessary as a result of changes in law and policy.
3. Delegate authority to the Corporate Director of Development and Renewal, to make changes to the Revised Regulation 123 List and Planning Obligations SPD where necessary, prior to the beginning of the consultation period or any subsequent consultation.

3. **REASONS FOR THE DECISIONS**

3.1 The proposed documents set out the Council's approach to securing and spending CIL and S106 and the relationship between both types of funding. The Planning Obligations SPD explains the Council's approach to infrastructure provision in general and explains which mechanisms will be used to mitigate the impacts of development and to secure specific types of infrastructure.

3.2 Consultation allows the public the opportunity to make representations proposed to both documents. Following consultation, the adoption of the SPD and Regulation 123 List will provide clarity for applicants and the public on how infrastructure funding will be secured through S106 and CIL.

4. **ALTERNATIVE OPTIONS**

Do Nothing and Retain Current Planning Obligations SPD

4.1 Failure to proceed with a Revised Regulation 123 List and Planning Obligations SPD could mean that the Council does not have a sufficiently up to date foundation upon which to continue to apply S106 obligations within the limitations set out in the CIL Regulations.

4.2 Without a Revised Regulation 123 list and Planning Obligations SPD there would be a lack of clarity between the uses of CIL and S106 obligations.

4.3 The Council's capacity to secure S106 obligations which mitigate the impacts of a particular development, and defend planning appeals where this is an issue, will be more limited.

5. **BACKGROUND**

5.1 Regulation 123(2) of the CIL Regulations provides that:

“A planning obligation may not constitute a reason for granting planning permission for the development to the extent that the obligation provides for the funding of relevant infrastructure.”

5.2 “Relevant infrastructure” refers to the infrastructure included on the charging authority’s Regulation 123 List of infrastructure types or projects that it intends will be, or may be, wholly or partly funded by CIL. Local Planning Authorities (LPAs) adopting CIL are required to prepare and publish a list of those projects or types of infrastructure it intends to fund through CIL- known as a Regulation 123 list.

5.3 Regulation 122 states that planning obligations must be:

- (a) necessary to make the development acceptable in planning terms
- (b) directly related to the development;
- (c) fairly and reasonably related in scale and kind to the development

It is unlawful for S106 obligations to be taken into account when determining a planning application for a development, or any part of a development, that is capable of being charged CIL if the S106 obligation does not meet the three tests within Regulation 122.

5.4 The purpose of these provisions is to prevent ‘double dipping,’ whereby developers are required to pay twice for the same item of infrastructure through both CIL and S106 obligations. In practical terms, this means that if an infrastructure project or type of infrastructure is included in the Regulation 123 List, the LPA cannot secure S106 obligations in respect of that project or type.

5.5 CIL is still a relatively new system and has been amended many times by central Government. Therefore, it has been necessary to seek counsel advice to clarify the most appropriate way to implement the Council’s position.

6. **PROPOSAL**

The Mechanism for Securing and Use of CIL and S106 Obligations

6.1 The Revised Planning Obligations SPD went to Cabinet on 5th April 2015 for approval to go out to public consultation on certain amendments.

6.2 Following this consultation, the Council sought advice from external Counsel on its Regulation 123 List and its interrelationship with the Planning Obligations SPD. Amendments have been made to ensure clarity and consistency between the two documents and further clarify what can be secured under CIL and S106.

6.3 The consultation will focus on the following:

Regulation 123 List:

- Inclusion of the word 'strategic' to explain the types of infrastructure listed within the Council's Regulation 123 List along with the following definition of 'strategic':

For the purposes of the CIL Regulation 123 List, 'strategic' is defined as infrastructure that is designed to serve more than those residents or workers within one particular development by contributing to infrastructure improvements across the wider Borough.

Revised Planning Obligations SPD:

- Chapter 1:
 - Amendments to Chapter 1 omit any reference to 'site-specific' obligations and instead provide clarification of the restrictions arising from Regulation 123(2) as well as explanation that S106 obligations will only be sought in respect of those obligations which satisfy the requirements of Regulation 122 and are not contained within the Council's Regulation 123 List. Such clarification is pivotal to understanding the relationship between CIL and S106 obligations.
- Chapter 2:
 - Amendments to the table in 2.3 to omit reference to 'site-specific obligations' and better distinguish, in line with the restrictions of Regulation 123 and 122, those types of infrastructure subject to CIL and subject to S106.
- Chapter 5:
 - Omit reference to those obligations 'site-specific' in nature and provide further clarification around obligations which are necessary to make a particular development acceptable in planning terms and are not listed within the Council's Regulation 123 List.

6.4 Following the feedback from the public consultation, undertaken between April and May 2015, the Infrastructure Planning team has made a number of small editorial amendments to the SPD for clarity. These amendments do not change the substance of the document and are therefore not part of the proposed consultation for April-May 2016.

7. COMMENTS OF THE CHIEF FINANCIAL OFFICER

7.1 This report asks the Mayor in Cabinet to approve revisions to the Regulation 123 List and Planning Obligations SPD (as set out in Appendix A and B), for public consultation, to authorise the Corporate Director of Development and

Renewal to approve further consultations on both documents should this prove necessary as a result of changes in law and policy, and also to make changes to the Revised Regulation 123 List and Planning Obligations SPD where necessary, prior to the beginning of the consultation period or any subsequent consultation.

- 7.2 The Regulation 123 List identifies categories of strategic infrastructure that can be paid for using the Community Infrastructure Levy (CIL). CIL will replace elements of the current Section 106 planning process although site specific Section 106 agreements will continue to be negotiated where the impact is not covered through the CIL process.
- 7.3 The Authority currently generates substantial resources via the Section 106 system. Although CIL will now generate the more significant levels of funding, it is important that future Section 106 obligations are set at a realistic level that enable the generation of community resources in tandem with the delivery of viable developments. The Council will continue to use Section 106 legislation to ensure the delivery of Affordable Housing.
- 7.4 CIL and Section 106 resources must be used to finance specific separate infrastructure needs. It is essential that processes are put in place to ensure that detailed records are maintained to closely monitor the use of these resources.
- 7.5 The costs of the statutory consultation process will be met from within existing budgets.

8. LEGAL COMMENTS

- 8.1 Consultation in this context is regulated through regulations, planning guidance and common law principles.
- 8.2 In terms of consultation on a Supplementary Planning Document ('SPD'), the Development Plan Regulations 2012 require that prior to adoption the Local Authority must prepare a statement setting out who was consulted, the main issues raised and how those issues were addressed.
- 8.3 In terms of consultation on revision to a Regulation 123 List, the National Planning Policy Guidance advises (at paragraphs 096 and 098) that when charging authorities wish to revise their Regulation 123 List, they should ensure that these changes are clearly explained and subject to appropriate local consultation.
- 8.4 In terms of overriding legal principle, the consultation must:
- take place when the proposal is still at a formative stage;
 - include sufficient detail to allow for intelligent consideration and response;
 - allow adequate time for consideration and response; and
 - the decision maker must take the product of the consultation 'conscientiously' into account.

- 8.5 These proposals satisfy all of these requirements. It will though be important for the Council to give formal consideration to the outcome of the consultation before adopting the final version of the Regulation 123 List and Revised Planning Obligations SPD.

9. ONE TOWER HAMLETS CONSIDERATIONS

- 9.1 The Revised Regulations 123 List and Planning Obligations SPD will allow the Council to ensure that any negative impacts of development which cannot be avoided or mitigated through planning conditions will be mitigated to the fullest extent allowable through S106 obligations. Site mitigation secured through S106 agreements may include works that will contribute to the One Tower Hamlets objectives of reducing inequalities; ensuring community cohesion; and strengthening community leadership.
- 9.2 The Revised Planning Obligations SPD will set out how the Council will secure a local employment and enterprise benefit for local residents and businesses. Training initiatives provide local residents with valuable skills which enhance opportunities to enter the workforce. The Revised Planning Obligations SPD policy on Affordable Housing sets out the Council's approach to the delivery of affordable homes through S106 agreements. These elements of S106 obligations support the objectives of One Tower Hamlets.
- 9.3 The Council has undertaken an Equalities Analysis Screening to identify any impacts resultant from the proposed changes to the operation of S106 obligations which is appended to this report. The Revised Planning Obligations SPD is considered to have a neutral impact on equalities strands however, as the SPD is designed to mitigate negative impacts of development that are directly related to the development, the Revised Planning Obligations SPD has a positive impact upon all residents who may, in the absence of the SPD, experience negative impacts from development.

10. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 10.1 The Council's Regulation 123 List allows the Council to secure CIL contributions that can be used to support strategic energy and sustainability infrastructure. S106 obligations can also be used to support a greener environment and aid sustainable development to mitigate negative impacts caused specifically by the relevant development.
- 10.2 A Strategic Environmental Assessment Screening (SEA) outlining environmental impacts is appended to this report.

11. RISK MANAGEMENT IMPLICATIONS

- 11.1 The proposed Revised Regulation 123 List and Planning Obligations SPD clearly communicate the Council's approach to the funding and delivery of infrastructure. Developers will be able to refer to the Revised Planning

Obligations SPD to identify any financial considerations arising from their scheme and address these prior to the application stage. There is therefore a benefit of certainty and transparency by having an adopted Revised Regulation 123 List and Planning Obligations SPD alongside the CIL Charging Schedule as this reduces scope for developers failing to meet the expectations of the borough.

- 11.2 Unlike CIL, S106 obligations are negotiable. The risk associated with this is that in circumstances where an individual scheme cannot meet both the full CIL requirement and requirements of S106 obligations, for reasons of viability, the negotiable element of S106 obligations could be reduced. However the Council CIL Charging Schedule has been through Public Examination, where it was found that development could accommodate both CIL and S106 contributions.

12. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 12.1 The Revised Planning Obligations SPD seeks to ensure that any impacts directly related to the development are mitigated. Whilst not specifically intended to reduce crime and disorder, the SPD sets out the Council's approach to mitigating impacts of development. This may include works which are complementary to the reduction of crime and disorder.
- 12.2 The Regulation 123 List also includes infrastructure dedicated to public safety, such as CCTV coverage, which are also complementary to the reduction of crime and disorder.

13. EFFICIENCY STATEMENT

- 13.1 The operation of the Revised Planning Obligations SPD will place an administrative burden on the Council. The Council intends to charge developers a monitoring fee, proposed at £500 for each one of the Heads of Terms within the S106 agreement.

14. APPENDICES

Appendix A – Revised LBTH CIL Regulation 123 List (2016)
Appendix B – Revised Planning Obligations SPD (2016)
Appendix C – Revised Planning Obligations SPD Equalities Analysis (2016)
Appendix D – Revised Planning Obligations SPD Strategic Environmental Assessment Screening (2016).

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