

Cabinet Decision 6th September 2016	 TOWER HAMLETS
Report of: Director of Development and Renewal	Classification: Unrestricted
Adoption of 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

REASONS FOR URGENCY

Due to a failure of the Committee administrative software, the report was published five days in advance of the meeting but not five clear days. Therefore, as pursuant to Rule 6.1 of the Access to Information Procedure Rules before the item can be considered, the Mayor needs to be satisfied that by reasons of special circumstances the item should be considered as a matter of urgency.

The Mayor believes that it is necessary for this particular report to be considered on 6th September as any delay would have detrimental consequences on the Council's capacity to secure S106 obligations which mitigate the impact of a particular development. The special circumstances being in this instance that failure to proceed after 6th September without a revised Regulation 123 List and Planning Obligations SPD will mean that the Council not having an up to date foundation upon which to continue to apply S106 obligations within the limitations set out in the CIL Regulations.

1. EXECUTIVE SUMMARY

- 1.1 The Infrastructure Planning Team is seeking approval from Cabinet on 6th September 2016 on the revisions made to the Community Infrastructure Levy (CIL) Regulation 123 List and Planning Obligations SPD.
- 1.2 The Planning Obligations SPD (2016) is intended to replace the current Planning Obligation SPD (2012). The revised CIL Regulation 123 List will replace the current list (April 2015).
- 1.3 The revised Planning Obligations SPD sets out the Council's approach in securing Planning Contributions, outlining the restrictions of CIL Regulations

123 and 122 in order to understand the relationship and differences between CIL and Planning Obligations (also known as S106 obligations).

2. RECOMMENDATIONS

2.1 The Mayor in Cabinet is recommended to:-

1. Approve the adoption of the revised Regulation 123 List and Planning Obligations SPD (as set out in Appendix A and B).
2. Formally withdraw the previous Regulation 123 List adopted by the Council on 25th February 2015.
3. Formally revoke the Planning Obligations SPD adopted by the Council on 11th January 2012.

3. REASONS FOR THE DECISIONS

3.1 The proposed documents set out the Council's approach to securing and spending CIL and S106 resources 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 impact of development and to secure specific types of infrastructure.

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 the Council would continue operating under those already in place, however there would be a potential lack of clarity between the use of CIL and S106 obligations. The revised documents are considered to provide more certainty to the development industry which also benefits the Council in negotiations.
- 4.3 The Council's capacity to secure S106 obligations which mitigate the impact of a particular development, and defend planning appeals where this is an issue, would be more limited and negotiations would be more protracted.

5. BACKGROUND

5.1 Following Tower Hamlets' CIL Charging Schedule adoption on 1st April 2015, the use of S106 Obligations has been significantly scaled back and

CIL has become the principal mechanism for securing contributions from development towards much needed community infrastructure. The following paragraphs explain in detail the relationship between CIL and S106. Summarily, CIL is now the system for collecting contributions towards social, green and physical infrastructure needed to support development. The S106 system still exists, but its remit is severely restricted to a number of matters not considered as infrastructure.

- 5.2 Regulation 123(2) of the CIL Regulations provides, insofar as is relevant 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.”

- 5.3 “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. In practical terms, this means that those types of infrastructure included in the revised Regulation 123 List, cannot be the subject of a financial contribution through a S106 agreement. The purpose of this provision is to prevent ‘double dipping’, whereby developers are required to pay twice for the same item of infrastructure both through CIL and S106 obligations.

- 5.4 The Council is still able to negotiate S106 obligations, but only where the contribution is towards matters not included on the Regulation 123 List. This includes affordable housing and could also include other matters such as carbon offset measures and employment & training. S106 obligations can also still be used where infrastructure will serve only the development in question and is not therefore considered to be contributing to infrastructure improvements across the wider Borough.

- 5.5 Additionally, for a S106 obligation to be acceptable, it must accord with Government policy on the application and use of S106 obligations contained within the CIL Regulations 2010 (as amended) and the National Planning Policy Framework (NPPF). 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 if the S106 obligation does not meet all of the following tests:

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

6. PROPOSAL

The Mechanism for Securing and Use of CIL and S106 Obligations

- 6.1 The revised Planning Obligations SPD first went to Cabinet on the 10th April 2013 for approval to go out to public consultation alongside the CIL Revised Draft Charging Schedule, in October 2013.
- 6.2 Further amendments were made to the Planning Obligations SPD to ensure that developers, other stakeholders and local residents had a clear understanding of what contributions and obligations can be secured through CIL and S106. When adopting the CIL Charging Schedule it was recognised that further amendments to the Planning Obligations SPD were required. Therefore the SPD went to Cabinet again on 5th April 2015 for approval to go out to public consultation regarding amendments made.
- 6.3 Following consultation in April and May 2015 on the revised Planning Obligations SPD, the Council sought outside counsel advice on its Regulation 123 List and SPD. CIL is still a relatively new system and the intricate workings as set out in the relevant regulations have been amended many times by central Government. Therefore it was necessary to seek counsel advice to clarify the most appropriate way to implement the council's position. As a result of the advice received, small amendments have been made to the SPD to further clarify what infrastructure will be secured under CIL and that which will be secured under S106. The advice also required a number of small amendments to be made to the Regulation 123 List to ensure clarity.
- 6.4 A consultation on the revised documents was undertaken in May and June 2016 on the amendments required by counsel. 6 consultees responded making a total of 16 comments and resulting in 2 minor amendments correcting factual errors. These comments and the Council's response to them are set out in the Consultation Statement attached as Appendix E.
- 6.5 A minor amendment has also been made to the Regulation 123 List (not as a result of the consultation), amending the item "Health facilities" to read as "Health and social care facilities". It is not considered that this amendment makes a material change to the Regulation 123 List. Social care facilities were already covered in the list under the items "Health Facilities" and "Community facilities", the amendment simply clarifies this position by explicitly including the additional wording.

7. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 7.1 Following the completion of the public consultation process, this report asks the Mayor in Cabinet to formally approve the adoption of the revised Regulation 123 List and Planning Obligations Supplementary Planning Document (as set out in Appendices A and B).
- 7.2 The Regulation 123 List identifies categories of strategic infrastructure that can be paid for using the Community Infrastructure Levy (CIL). CIL has replaced elements of the previous 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 has historically realised 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 provision 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 records continue to be maintained to closely monitor the use of these resources.
- 7.5 The costs of the statutory consultation process were met from within existing budgets.
- 7.6 The Council's Capital Programme, which is currently approved annually, should include all proposed capital expenditure however financed including that financed either partly or fully by S106 & CIL resources. There is a need to both develop the Council's Capital Strategy so that it reflects Members' priority outcomes for capital expenditure which will in turn inform development of a strategic capital programme spanning a number of years. In this way Members will be able to see how projects which are supported by S106/ CIL are being planned to ensure that resources are used as effectively as possible and avoid a situation where resources could be at risk from expiry.
- 7.7 Alongside this there is also a need to ensure that the processes for developing capital schemes and including them in the programme, following Members approval, are as efficient as possible to allow schemes to be added over the course of the programme.

8. LEGAL COMMENTS

- 8.1 This report recommends that Cabinet adopt an amended Regulation 123 List and an updated Planning Obligations SPD.
- 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, known as a consultation statement. This statement is attached as appendix E.
- 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 The Council should therefore give formal consideration to the outcome of the consultation before adopting the final version of the Regulation 123 List and Revised Planning Obligations SPD.
- 8.5 In terms of the effect of the documents which Cabinet are recommended to adopt, Regulation 123 allows the Council as Charging Authority to publish a list of infrastructure projects or types of infrastructure that it intends will be, or may be wholly or partly funded by CIL (“relevant infrastructure”). Where such a list has been published 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 or provision of relevant infrastructure.
- 8.6 Supplementary Planning Documents (SPD) provide detail to support policy in higher level Development Plan Documents. Once the SPD is adopted it will be considered to be a material consideration to be taken into account in the development control process.
- 8.7 When considering whether to adopt the amended Regulation 123 List and Planning Obligations SPD, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don’t (the public sector equality duty). An equality analysis is required which is proportionate to the functions in question and the potential impacts and to this end an Equalities Impact Analysis is attached at Appendix C.

9. ONE TOWER HAMLETS CONSIDERATIONS

- 9.1 The revised Regulation 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 CIL and S106 obligations which is appended to this report. The revised Planning Obligations SPD and Regulation 123 List are 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: Planning Obligations SPD (September 2016)

Appendix B: Regulation 123 list (September 2016)

Appendix C: Equalities Impact Analysis

Appendix D: SEA Screening

Appendix E: Consultation Statement

Officer contact details for documents:

Matthew Pullen

Tel: 020 7364 6363