

## South Somerset District Council

### Community Infrastructure Levy – Examination

#### Additional Document 2 – Regulation 123 List (18<sup>th</sup> August 2016)

##### 1. Introduction

- 1.1. Further to the Examiner’s request for additional information in relation to the Council’s proposed Regulation 123 List, the Council has provided the following statement.

##### 2. Regulation 123 List

- 2.1. In considering the Council’s proposed Regulation 123 List, it is worth reflecting on the purpose of the list and its’ status; as well the implications surrounding having infrastructure identified on the list.
- 2.2. Regulation 123 of the Community Infrastructure Levy Regulations (2010) (as amended) sets out the definition of relevant infrastructure, and clarifies that this should be taken to mean:

*“...a list of infrastructure projects or types of infrastructure that it [the Council] intends will be, or may be, wholly or partly funded by CIL...”*
- 2.3. It is also worth considering how the list should be considered through the Examination process, with the Planning Practice Guidance (PPG) making it clear that the role of the list is to help provide evidence on the potential funding gap – it is not the purpose of the examination to challenge the list<sup>1</sup>.
- 2.4. The Council has sought to formulate a South Somerset version of the Regulation 123 List based upon a comprehensive Infrastructure Delivery Plan (IDP) (2016). The IDP sets out the impact of development on existing infrastructure, and defines the need for any new infrastructure. The IDP also clarifies the funding arrangements to deliver this infrastructure, the expected timescale for when the infrastructure is required, and the organisation likely to deliver the infrastructure.
- 2.5. As discussed at the Examination Hearing, the Council believes that the IDP (2016) provides a comprehensive review of the infrastructure needs of the district, and at no point during the consultation process into the proposed levy has the document been questioned in terms of form or content.
- 2.6. The IDP identifies a funding gap of £124.1 million. In order to demonstrate what infrastructure is more fundamental to achieving the number of homes and jobs planned in the district, the Council has broken down the range of infrastructure required in to “Priority 1”, “Priority 2”, and “Priority 3” categories. The Council believes this approach represents best practice and is common across studies of this type.

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<sup>1</sup> Planning Practice Guidance ID 25-018-20140612

- 2.7. During the Examination Hearing, the Council was concerned that it may have been interpreted that only the infrastructure identified as “Priority 1” was required; and/or that infrastructure identified as “Priority 2” and “Priority 3” would not look to be delivered by the Council. For the avoidance of doubt, this is not correct.
- 2.8. Ultimately, the Council does not see the categorisation defined in the IDP as having a significant bearing on the content of Regulation 123 List. It is the totality of the IDP’s evidence of infrastructure needs that provides the justification for the Regulation 123 List.
- 2.9. The distinctions between the three categories are linked to the scale and severity of the impacts generating the need for the infrastructure; along with the timescales involved in terms of when the impact of development will occur, and the timetable for the delivery of the infrastructure itself.
- 2.10. The IDP (2016) represents a snap-shot in time and will be regularly reviewed. Therefore, there will be changes to the categorisations over time, due to changes in the profile of development in the district, the speed at which development occurs, and the funding and delivery strategy for the items of infrastructure. This is recognised in the PPG, which states that there will be uncertainty in pinpointing other infrastructure funding sources, particularly beyond the short-term; and states that charging authorities should focus on providing evidence of an aggregate funding gap that demonstrates the need to put the levy in place<sup>2</sup>.
- 2.11. As an example – an item of infrastructure is currently identified as “Priority 2” due to the development profile in a given settlement showing that infrastructure investment is not required until 2020/21 – 2024/2025. The categorisation does not imply that the infrastructure is unimportant. What it does show, is that the Council has concluded that it cannot, at present, be categorised as “Priority 1” given that the development and infrastructure are not expected to happen or be required until approximately 10 years in to the future.
- 2.12. However, should development proceed quicker than expected in that given settlement, and the build-out rate be greater than expected, then the evidenced impacts will occur earlier than expected. In reviewing the IDP it is more than likely that the categorisation would change from “Priority 2” to “Priority 1”. The Council believes that this is a logical and evidence base-led approach, which allows infrastructural requirements to be understood from the point of view of scale of impact, time, and geography.
- 2.13. Therefore, the Council is of the view that it is entirely appropriate that infrastructure currently classified as “Priority 2” and/or “Priority 3” may be, and can be, delivered before any of the items currently listed as “Priority 1”. And, furthermore, it may be that items currently listed as “Priority 1” are no longer categorised as “Priority 1” in the future due to changes in circumstance.
- 2.14. The Council suggest that the example serves to highlight how the Regulation 123 List can and should include items which may not currently be identified as “Priority 1” in the IDP,

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<sup>2</sup> Planning Practice Guidance ID 25-016-20140612.

and that items which are currently categorised as either “Priority 2” or “Priority 3” can be included in the Regulation 123 List.

- 2.15. That being said, the Council does accept, where appropriate, that the “Priority 1” list of infrastructure items should feature strongly on the Regulation 123 List. When analysing the “Priority 1” items, it can be seen that the majority have a funding stream identified and are set to be delivered by specific developments, through the normal Section 106 obligation mechanism. The Council is confident that the residual infrastructure items set out in “Priority 1” list are captured in the Regulation 123 List. But again, and to reiterate, it would be incorrect to assume that the Regulation 123 List would *only* contain the “Priority 1” list of items.
- 2.16. Should any changes in circumstances for infrastructure delivery also warrant a revision of the Regulation 123 list, the Council is able to amend the list in the future, as long as these changes are clearly explained and subject to appropriate local consultation.<sup>3</sup>

### 3. Revised Regulation 123 List

- 3.1. Further to the discussion at the Examination, there are some minor clarifications that the Council wishes to make to its current Regulation 123 List. The Council’s overall position is that these do not affect the overall conclusion that a levy charge is required and justified by the infrastructure needing to be delivered in the district; but that as time and circumstances have changed, the list requires some amendment. The proposed final version that the Examiner is asked to endorse is set out in Table 3.1 below. An explanation of the changes made is documented in section 4.

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<sup>3</sup> Planning Practice Guidance ID 25-098-20140612.

**Table 3.1: Revised Draft Regulation 123 List**

Infrastructure type	Infrastructure that may be partly or wholly funded by CIL	Exclusions (funded by S106 or S278 payments or alternative measures)
<b>Transport</b>	Millfield Link Road, Chard.	Improvements or provision of highways or highways access works related to a specific development site.
	Link road from Oaklands Avenue to A358 Furnham Road, Chard.	
	Link road connecting A30 with Oaklands Avenue, Chard.	
	Improve Stop Line Way cycle route between Chard and Tatworth.	
	Yeovil Sustainable Transport Interchange	
	Chard Sustainable Transport Interchange	
<b>Flood risk management</b>	Off-site flood risk management works	Improvements or provision of flood risk management works related to a specific development site.
<b>Outdoor Play Space, Sports, Community and Cultural facilities</b>	<p>Arts and entertainment facilities and improvement in Yeovil</p> <p>Swimming pool improvements or provision in Yeovil, Primary and Local Market Towns</p> <p>Sports hall improvements or provision in Yeovil, Primary and Local Market Towns</p> <p>3G Artificial Grass Pitch improvements or provision in Primary and Local Market Towns</p> <p>Community hall improvements or provision</p> <p>New cemetery space to serve Yeovil</p>	Improvements or provision of outdoor play space, sports, community and cultural facilities or building related to a specific development site.
<b>Open Space and Public Realm</b>	Off-site open space and public realm	Improvement or provision of open space or public realm related to a specific development site.

#### 4. Justification for Revisions

- 4.1. As above, the Council does not believe the changes to the Regulation 123 List represent a significant issue. However, justification for each change is set out below:
- 4.2. **Removal of “playing pitch and changing room improvements or provision in Primary and Local Market Towns”** – the Council has looked again at the planned future provision of playing pitches and changing rooms in the district and has concluded on two important issues:
  - First, that the Council is awaiting the outcome of its emerging “Playing Pitch Strategy” and that at this moment in time there is insufficient certainty over what infrastructure projects are required. As suggested above, the Council is keen, wherever possible, to make the Regulation 123 List project-specific. Given the Council cannot do that presently, without the additional detail that will be in the emerging Playing Pitch Strategy, it is better to exclude this item from the Regulation 123 List; and
  - Second, there are some projects currently in progress, where the Council can be specific about delivery and is proactively working with landowners / developers to achieve the infrastructure improvements. As such, these are being secured, funded and delivered through the Section 106 obligation mechanism. Therefore, in order to avoid any problems linked to “double-dipping” the Council is proposing, at this moment in time, to exclude the items from the Regulation 123 List.
- 4.3. **Removal of “equipped play areas and youth facility improvements or provision in Primary and Local Market Towns”** –the Council has reviewed planned future provision of equipped play areas and youth facility in the district and has concluded that on-site provision is the most efficient mechanism to deliver such facilities. As such, it is felt that funding and delivery should continue through the existing Section 106 obligation route. In addition, and where it passes the revised tests laid out in Regulation 122, it is envisaged that there will be opportunities to deliver off-site provision through the existing Section 106 obligation mechanism, and thus removing the need for this item to be on the Regulation 123 List at present.
- 4.4. **Removal of “Birchfield Bike Park”** – this item was originally included as it represented a project where the Council had clearly defined what it required, and how it was going to be delivered. At time of submission however the clarity on the funding arrangements to realise the project were not clear. Since that time, it has emerged that the funding for this scheme can be achieved through Section 106 Agreements, linked to development, and therefore funding from the Community Infrastructure Levy is not required. The project needs to be removed to ensure there is no prospect of “double-dipping” and asking development to pay for this infrastructure twice.

- 4.5. **Amendment to “*refurbishment of Westlands Entertainment and Leisure Complex*”**– this item has now been re-named to become “*Arts and Entertainment facilities and improvements in Yeovil*” in order to make the item more generic and therefore cover a series of related infrastructure improvements to take place in Yeovil. This includes projects associated with the Council-led development to refurbish the former Westlands complex; and also the agreed Council-led project to upgrade facilities within the Octagon theatre. These infrastructure projects have evolved recently due to the Council undertaking feasibility work to define the projects required. As such, this represents an excellent example of where the “priority” listing set out in the IDP is always subject to change and that for a variety of reasons, the projects or infrastructure items may increase or decrease in priority.
- 4.6. **Addition of “*Community Hall improvements or provision*”** – this generic infrastructure item is identified in the IDP, and internal work within the Council has identified that it will not be possible through the Council’s revised approach to the Section 106 obligation mechanism to realise the delivery of community halls through that route (save for specific sites where obligations are already being secured). Therefore it is appropriate that it is added to the Regulation 123 List in order to ensure that place-making infrastructure of this nature (necessary to ensure sustainable communities) is delivered.