

	<p align="center"><b>London Borough of Hammersmith &amp; Fulham</b></p> <p align="center"><b>CABINET</b></p> <p align="center"><b>1 June 2015</b></p>
<p align="center"><b>APPROVAL OF HAMMERSMITH &amp; FULHAM COMMUNITY INFRASTRUCTURE LEVY REGULATION 123 LIST</b></p>	
<p align="center"><b>Report of the Cabinet Member for Economic Development and Regeneration : Councillor Andrew Jones</b></p>	
<p><b>Open Report</b></p>	
<p><b>Classification - For Decision</b></p> <p><b>Key Decision: Yes</b></p>	
<p><b>Wards Affected: All</b></p>	
<p><b>Accountable Executive Director:</b> Nigel Pallace, Chief Executive</p>	
<p><b>Report Author:</b> Siddhartha Jha, Senior Planning Policy Officer</p>	<p><b>Contact Details:</b>  Tel: 02087531466  Email - Siddhartha.jha@lbhf.gov.uk)</p>

## **1. EXECUTIVE SUMMARY**

- 1.1. The Community Infrastructure Levy ('CIL') is a discretionary levy that local authorities can charge on most new developments that create additional floor space. The council has decided to charge CIL in the borough. On 20 March 2015, following two stages of public consultation and a public examination, an independent examiner made a recommendation approving the council's proposed CIL charging schedule subject to minor modifications being made. The CIL charging schedule details the CIL rates to be charged for different land uses in the borough.
- 1.2. Full Council approval of the CIL charging schedule is required under statute in order for the CIL charging schedule to take effect and is being sought at Council's annual meeting on 20 May 2015.
- 1.3. The 'CIL regulation 123 list ('the r123 list') forms an important element in securing the infrastructure needed to support development in the borough by optimising the operation of CIL and the collection of S106 planning obligations.

- 1.4. The list sets out the items of physical infrastructure that could potentially be funded by CIL, although it is important to note that the council is free to use CIL to fund physical infrastructure items not on the list and that the list does not imply any priority in infrastructure funding. Cabinet can also revise the r123 list at any time subject to consultation.
- 1.5. The key restriction that the r123 list places is that S106 planning obligations cannot be sought for the types of infrastructure identified in the r123 list. This avoids developers having to pay twice for the same infrastructure, via both CIL and S106 planning obligations. S106 planning obligations can still be sought for items that are not included in the r123 list provided other statutory criteria are satisfied.<sup>1</sup> The proposed r123 list has therefore been drafted to enable the council to:
  - obtain CIL funding and negotiate S106 planning obligations for the provision of infrastructure needed to address any particular impacts of individual developments (subject to the statutory criteria being met); or
  - negotiate S106 obligations in areas where a nil CIL rate has been set (the White City East area and the Earls Court and West Kensington Opportunity Area).
- 1.6. If the r123 list is not approved and published, it will not be possible to secure any S106 planning obligations for physical infrastructure once CIL takes effect. This will have a significant adverse impact on infrastructure provision borough wide but particularly in the regeneration areas in White City East and the Earls Court and West Kensington Opportunity Area, where the council is relying on S106 planning obligations instead of CIL to provide necessary infrastructure.

## **2. RECOMMENDATIONS**

That approval be given to the Hammersmith & Fulham Community Infrastructure Levy regulation 123 list and resolves that it shall take effect on 1 September 2015, (subject to the approval of the CIL charging schedule by Full Council on 20 May 2015 and its resolution to take effect on 1 September 2015).

## **3. REASONS FOR DECISION**

- 3.1. For the reasons set out below, approving the r123 list is essential for the optimal operation of CIL and S106 planning obligations in terms of providing necessary physical infrastructure to support development in the borough.

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<sup>1</sup> The Community Infrastructure Regulations 2010 r122 and r123(2)

- The r123 list sets out the items of physical infrastructure that could potentially be funded by CIL. However, it is important to note that the council is free to use CIL to fund infrastructure items not on the r123 list and that the list does not imply any priority in infrastructure funding. Further, there is no obligation on the council to spend CIL on every item in the r123 list. Cabinet can also revise the r123 list at any time subject to consultation. In this regard, the r123 list imposes no restrictions on how CIL is to be spent;
- S106 planning obligations cannot be sought for specific items of physical infrastructure identified in an approved r123 list. This avoids developers potentially having to pay twice for the same infrastructure item, via both CIL and S106 planning obligations and ensures that CIL is only used to provide physical infrastructure for which there is a general borough-wide need. S106 planning obligations can still be sought for items that are not included in the r123 list provided other statutory criteria are satisfied.<sup>2</sup> Being able to distinguish between the borough-wide need for infrastructure and infrastructure needed to mitigate the particular impacts of individual developments will allow both CIL and S106 planning obligations to be collected, optimising infrastructure provision in the borough to support further development; and
- If the r123 list is not approved and published it will not be possible when CIL takes effect for the council to secure any S106 planning obligations from developers for physical infrastructure that could otherwise be secured to address the impacts of proposed developments. While the effects of this scenario will be felt borough wide, they will be particularly severe in the regeneration areas of White City East and the Earls Court and the West Kensington Opportunity Area, where the council has decided to apply a 'nil' CIL rate and instead rely on S106 planning obligations to secure developer contributions.

#### **4. INTRODUCTION AND BACKGROUND**

- 4.1. In September 2012, the Preliminary Draft CIL Charging Schedule and associated supporting documents were published for public consultation for a six-week period.<sup>3</sup> One of these supporting documents was the Infrastructure Plan, which outlined the council's initial position on what infrastructure items could be funded by CIL and therefore form part of a future r123 list.

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<sup>2</sup> The Community Infrastructure Regulations 2010 r122 (Planning obligations must be necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development).

<sup>3</sup> [http://www.lbhf.gov.uk/Images/12-09-07-%201%20PDCS%20FINAL\\_tcm21-175143.pdf](http://www.lbhf.gov.uk/Images/12-09-07-%201%20PDCS%20FINAL_tcm21-175143.pdf)

- 4.2. In August 2014, following Cabinet approval, the draft r123 list and Draft CIL Charging Schedule<sup>4</sup> were published for a final five-week public consultation,<sup>5</sup> before being submitted for examination by an independent examiner.<sup>6</sup>
- 4.3. Consideration of the r123 list was outside the scope of the CIL examination but formed the basis for outlining the council's proposed approach to seeking s106 planning obligations following the adoption of CIL.
- 4.4. On 20 March 2015, the independent examiner approved the council's proposed CIL charging schedule, subject to minor modifications being made (See **Appendix 1** for the Examiner's report and **Appendix 2** for the CIL charging schedule).
- 4.5. Full Council approval of the CIL charging schedule is the final necessary step required in order for the CIL charging schedule to take effect. Council approval of the CIL charging schedule is being sought at its meeting on 20 May 2015 (See **Appendix 3**).
- 4.6. As stated above, approving the r123 list is essential for the optimal operation of CIL and S106 planning obligations in terms of providing necessary physical infrastructure to support development in the borough.

## 5. PROPOSAL AND ISSUES

### A. The relationship between CIL and other types of developer contributions

- 5.1. CIL constitutes one of several ways in which contributions may be sought from developers. In addition to the CIL charge, local authorities will still be able to negotiate securing additional contributions from developers including:
  - S106 Planning Obligations,<sup>7</sup> which although reduced in scope since 6 April 2015, can be used to address any site-specific impacts of development in order to make particular schemes acceptable. S106 obligations can also be used to provide or fund affordable housing, and other non-infrastructure contributions such as employment and training schemes; and

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<sup>4</sup> [http://www.lbhf.gov.uk/Images/Appendix%208-Reps%20by%20Organisation\\_tcm21-190000.pdf](http://www.lbhf.gov.uk/Images/Appendix%208-Reps%20by%20Organisation_tcm21-190000.pdf)

<sup>5</sup> [http://www.lbhf.gov.uk/Images/30.7.2014%20DCS%20Consultation%20Document%20Appendix%20B%20new%20cover%20page\\_tcm21-189996.pdf](http://www.lbhf.gov.uk/Images/30.7.2014%20DCS%20Consultation%20Document%20Appendix%20B%20new%20cover%20page_tcm21-189996.pdf)

<sup>6</sup> [http://www.lbhf.gov.uk/Directory/Environment\\_and\\_Planning/Planning/Planning\\_policy/167822\\_Community\\_Infrastructure\\_Levy.asp](http://www.lbhf.gov.uk/Directory/Environment_and_Planning/Planning/Planning_policy/167822_Community_Infrastructure_Levy.asp)

<sup>7</sup> Town and Country Planning Act (as amended) s106

- S278 Highway Agreements,<sup>8</sup> which can be used to secure contributions from developers for any highway works for local roads that are needed to make schemes acceptable.

*B. The regulation 123 list and its relationship with CIL and S106 planning obligations*

- 5.2. When CIL takes effect, it can be used to provide physical infrastructure to support development across the borough, which is identified in a list called the 'regulation 123 list'. However, it is important to note that the council is free to use CIL to fund infrastructure items not on the r123 list and that the list does not imply any priority in infrastructure funding. Further, there is no obligation on the council to spend CIL on every item in the r123 list. Cabinet can also revise the r123 list at any time subject to consultation. In this regard, the r123 list imposes no restrictions on how CIL is to be spent.
- 5.3. In order to ensure that developers do not pay twice for the same types of infrastructure, S106 obligations can only be sought for any types or items of infrastructure not contained in the r123 list. Accordingly, the r123 list has been drafted in a manner that will enable the council to obtain CIL funding and negotiate S106 planning obligations (or in areas where a 'nil' rate applies to continue to negotiate S106 obligations) subject to the statutory criteria being met, for the provision of physical infrastructure needed to address any specific impacts of individual developments. While S278 agreements can continue to be made, once CIL is adopted the scope of S106 planning obligations will be scaled back and will only be able to provide for items needed to address the particular impacts of individual development schemes as follows:
- affordable housing or funding for affordable housing;
  - physical infrastructure which is not listed in the regulation 123 list (principally items needed to address the site specific impacts of individual development schemes); and
  - contributions for items that are not physical infrastructure such as employment and training contributions.
- 5.4. Additionally, as of 6 April 2015, further limits have come into effect on the extent to which contributions from S106 obligations can be pooled to provide particular items or types of physical infrastructure. From this date, S106 planning obligations cannot be used to provide a particular infrastructure project or type of infrastructure if five or more obligations to provide that same infrastructure project or that type of infrastructure have already been entered into in other S106 Agreements (including on any other site or planning permission) since April 2010.
- 5.5. CIL will not apply within the White City East area and the Earls Court and West Kensington Opportunity Area. The council has determined

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<sup>8</sup> The Highways Act 1980 s278

that S106 obligations will apply in these areas instead of a CIL rate for the following reasons:

- The considerable scale of site specific and local infrastructure that is needed to make developments in these areas acceptable;
  - There have already been substantial contributions (often to a pooled sum) from agreed S106 agreements;
  - The council considers that S106 obligations needed in this area can be provided in compliance with the pooling limit on planning obligations referred to above; and
  - The CIL Viability Study prepared to support the proposed CIL rates in the borough established that that development in these areas would not be sufficiently viable to pay both CIL and the substantial S106 planning obligations needed to make development acceptable.
- 5.6. This means that when CIL takes effect most developments will pay the fixed charge borough CIL (as well as Mayoral CIL) with some developments also being required to make S106 contributions for certain items. However, S106 planning obligations will be generally reduced in scope.

*C. The CIL r123 list*

- 5.7. The r123 list is set out in full below.

**CIL Regulation 123 List ('r123 list') prepared pursuant to Community Infrastructure Levy Regulations 2010**

**The r123 List**

The council intends that it will or may spend funds received via the Community Infrastructure Levy ('CIL') on part or all of the cost of provision, improvement, replacement, operation or maintenance of the following infrastructure facilities, as listed in the following r123 list, to support development in the borough. The list is alphabetical by category. Inclusion of items in the r123 list does not imply priority, or that the council will spend CIL on every item, or not spend CIL on other unlisted items.

Additionally, there are a number of exceptions to the r123 list where the council intends to negotiate S106 obligations to secure the provision of infrastructure.

Infrastructure Category & Sub-Category		Regulation 123 list ('r123 List')
ASC	Health	<ul style="list-style-type: none"> <li>• Primary healthcare and out of hospital care team facilities.</li> </ul>
CS	Early Years, Schools, Youth	<ul style="list-style-type: none"> <li>• Primary, secondary and special education and youth facilities.</li> </ul>
ELRS	Community Safety	<ul style="list-style-type: none"> <li>• Community safety facilities (including local policing facilities).</li> <li>• Public realm CCTV infrastructure.</li> </ul>
	Leisure & Parks	<ul style="list-style-type: none"> <li>• Public leisure facilities including parks and other public open space, outdoor sports pitches, courts and greens, play and other spaces for children and teenagers, swimming pools, gyms and indoor sports halls, allotments and Linford Christie Stadium.</li> </ul>
	Waste & Street Enforcement	<ul style="list-style-type: none"> <li>• Household and public waste recycling and waste management facilities.</li> </ul>
FCG	Community Investment	<ul style="list-style-type: none"> <li>• Community facilities including community centres, voluntary sector meeting places and centres, and public cultural facilities.</li> </ul>
HR	Economic Development, Adult Learning & Skills	<ul style="list-style-type: none"> <li>• Learning and training facilities, job shops, business hubs/incubators.</li> </ul>
LA	Libraries & Archives	<ul style="list-style-type: none"> <li>• Libraries and archives.</li> </ul>
TTS	Environmental Health	<ul style="list-style-type: none"> <li>• Air quality, noise and contaminated land monitoring infrastructure.</li> </ul>
	Drainage & Flooding	<ul style="list-style-type: none"> <li>• Flood mitigation and defences.</li> <li>• Borough Sustainable Urban Drainage Systems (SUDS).</li> </ul>
	Highways & Transport	<ul style="list-style-type: none"> <li>• Transportation infrastructure for walking, cycling, public transport and highways.</li> </ul>
	Environmental Improvements	<ul style="list-style-type: none"> <li>• Environmental improvements to enhance the appearance, safety and security of the public realm, especially in town centres.</li> </ul>

**Infrastructure which is excluded from the r123 List and for which provision will be made by means of S106 obligations or S278 agreements**

1. For development in **White City East**: the essential mitigation infrastructure listed in the White City Opportunity Area Planning Framework Supplementary Planning Document ('WCOAPF SPD') and the White City Development Infrastructure Funding Study ('WC DIFS') and any other infrastructure required to make development in the White City East area acceptable in accordance with the development plan.
2. For development in the **Earls Court & West Kensington Opportunity Area**: any infrastructure necessary to comply with the Phasing & S106 Strategy set out in the Earls Court & West Kensington Supplementary Planning Document ('ECWK SPD') or which is otherwise required to make a development acceptable in accordance with the development plan.

3. For development in the South Fulham Riverside Regeneration Area, the provision of the northern link road through the National Grid site as required by the South Fulham Riverside Supplementary Planning Document and any necessary other works to mitigate the development of that site including but not limited to any necessary works within Highways Package 2 as defined by the South Fulham Riverside Development Infrastructure Funding Study ('SFR DIFS').
4. An item of infrastructure (or the improvement, replacement, operation or maintenance of any infrastructure) that is specifically required to make a planning application acceptable (subject to there being no more than five planning obligations (already entered into since April 2010) for that item at the time).
5. Provision of on-site accommodation for infrastructure purposes where the cost of occupation is met from sources external to the development (e.g. occupation on commercial terms).
6. Replacement of any existing infrastructure facility that is proposed as part of a development proposal.
7. Provision of infrastructure which is required to ensure compliance by a development with a policy of the Development Plan and any relevant SPDs which specifically requires provision on the relevant site.

- 5.8. As stated in Section 3 above, approving the r123 list is essential for the optimal operation of CIL and S106 planning obligations in terms of providing necessary physical infrastructure to support development in the borough.
- 5.9. However, subject to the express exclusions in the r123 list, S106 planning obligations cannot be sought for infrastructure items identified in the r123 list in order to avoid developers paying twice for the same item of infrastructure by being charged CIL and a S106 planning obligation providing for the same infrastructure.
- 5.10. As such, the r123 list identifies broad types of infrastructure which may be funded by CIL. This means that in addition to CIL, S106 planning obligations can also be sought for specific infrastructure projects and types of infrastructure which are excluded from the list, subject to the statutory tests set out in regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010.
- 5.11. In effect, using this approach, the council can require major developments to provide both CIL and S106 planning obligations to mitigate the particular impacts of individual developments.

## **6. OPTIONS AND ANALYSIS OF OPTIONS**

- 6.1. Subject to the approval of the CIL charging schedule by Full Council on 20 May 2015, there are three possible options for Cabinet regarding the approval of the r123 list:
  - Approve the r123 list to take effect on 1 September 2015;
  - Delay the approval of the r123 list; or
  - Not approve the r123 list.



- 6.2. In order to maximise the financial benefit to the council and ensure the optimal operation of CIL, it is important that the r123 list is approved so that it takes effect on the same day as the CIL charging schedule which, subject to Council approval will occur on 1 September 2015.
- 6.3. If Cabinet decides to delay the approval of, or not approve the r123 list, it will not be possible for the council to secure any S106 planning obligations from developers for physical infrastructure that could otherwise be secured to address the impacts of proposed developments. While the effects of this action will be felt borough wide, they will be particularly severe in the White City East and the Earls Court and West Kensington Opportunity Areas, where the council has decided to apply a 'nil' CIL rate and secure developer contributions for infrastructure from S106 planning obligations.
- 6.4. As such, it is recommended that Cabinet approves the r123 list to take effect on the same day as the CIL charging schedule which subject to Council approval will occur on 1 September 2015.

## 7. CONSULTATION

- 7.1. The draft CIL charging schedule including the draft r123 list was subject to two statutorily prescribed stages of public consultation as follows:

Consultation dates	Stage of development of CIL
September 2012 – October 2012	1 <sup>st</sup> stage public consultation on the Preliminary Draft Charging Schedule (PDCS)
August 2014 - October 2014	2 <sup>nd</sup> stage public consultation: Draft Charging Schedule (DCS)

- 7.2. The CIL consultations received comments from a wide range of people including, the local community, businesses, neighbouring boroughs, the Mayor of London, developers and the property industry and infrastructure providers.<sup>9</sup>
- 7.3. Transport for London(TfL) made specific comments on the content and form of the draft r123 list at the second public consultation stage. A meeting was subsequently held with TfL staff which resolved TfL's concerns.

<sup>9</sup> [http://www.lbhf.gov.uk/Images/Appendix%208-Reps%20by%20Organisation\\_tcm21-190000.pdf](http://www.lbhf.gov.uk/Images/Appendix%208-Reps%20by%20Organisation_tcm21-190000.pdf) (CIL Reg 15 Preliminary Draft Charging Schedule representations) ; [http://www.lbhf.gov.uk/Images/19.01.15%20Council%20response%20to%20representations%20on%20CIL%20Draft%20Charging%20Schedule%20v2\\_tcm21-193212.pdf](http://www.lbhf.gov.uk/Images/19.01.15%20Council%20response%20to%20representations%20on%20CIL%20Draft%20Charging%20Schedule%20v2_tcm21-193212.pdf) (CIL Reg 16 Draft Charging Schedule representations)

## 8. EQUALITY IMPLICATIONS

- 8.1. An Equalities Impact Assessment (EqIA) was prepared and consulted on for both the first and second stages of public consultation (at the Preliminary Draft and the Draft stages of the CIL charging schedule). No comments were received on the EqIA during either of these stages. A final version of the EqIA has been prepared for this stage of the CIL approval process(see **Appendix 4**)
- 8.2 The protected characteristics considered in the EqIA include:
- Age
  - Disability
  - Gender reassignment
  - Marriage and civil partnership
  - Pregnancy and maternity
  - Race
  - Religion/belief (including non-belief)
  - Sex
  - Sexual orientation
- 8.3 The direct effect of the charges in the CIL charging schedule is considered to have a generally neutral effect on the protected characteristics. However, the potential investment in physical infrastructure to support development in the borough is considered to have a generally positive effect on the protected characteristics.

## 9. LEGAL IMPLICATIONS

- 9.1. The proposed infrastructure list is made pursuant to regulation 123 of the Community Infrastructure Levy Regulations 2011 (as amended). The legal implications are set out in the body of the report.

*Implications verified/completed by: Alex Russell, Senior Solicitor  
(Planning, Highways and Licensing), 0208 753 2771*

## 10. FINANCIAL AND RESOURCES IMPLICATIONS

- 10.1. The council received £10.2m in S106 contributions during the 2014-15 financial year. If the r123 list is approved the council could continue to secure S106 contributions allowing optimal operation of CIL. Financial benefit to the council will be maximised and assuming that future developments continues at the same level as in 2014-15 the council could continue to secure S106 income in the range of around £7m to £10m per year.

*Implications verified/completed by Gary Hannaway, Head of Finance  
(Transport & Technical Services) Tel: 02087536071.*

## **11. IMPLICATIONS FOR BUSINESS**

- 11.1. The Localism Bill CIL Impact Assessment considers that CIL will provide a number of benefits to businesses, developers and landowners, including:
- Simplicity and reducing risk and providing upfront certainty about liability;
  - Speeding up the development process; and
  - Ensuring that most developments contribute to the costs of providing infrastructure needed to support growth.
- 11.2. Both the CIL Regulations Explanatory Memorandum and the Localism Bill CIL Impact Assessment emphasise the provisions in the CIL Regulations which are partly intended to help small businesses, namely:
- The 100sqm threshold under which no CIL liability occurs to ensure small developments do not pay CIL;
  - The £50 CIL liability threshold under which CIL liability is deemed to be zero, to avoid administrative costs associated with paying small amounts of CIL; and
  - The ability for charging authorities to introduce discretionary instalments policies to help with any cash flow issues.
- 11.3. The council may decide at a later date to introduce a policy to allow instalments although that is not currently part of this particular decision-making process.

*Implications completed by Siddhartha Jha, Senior Policy Planner 0208 753 1466*

## **12. RISK MANAGEMENT**

- 12.1 The key risk relating to the recommendations in this report relate to delay or refusal to approve the r123 list and the financial implications arising for which the options have been analysed in section 6 of this report.

*Implications completed by Siddhartha Jha, Senior Policy Planner 0208 753 1466*

## **13. PROCUREMENT AND IT STRATEGY IMPLICATIONS**

- 13.1 There are no procurement related matters identified in the report.

*Implications verified/completed by: Alan Parry, Procurement Consultant. 020 8753 258*

**LOCAL GOVERNMENT ACT 2000**  
**LIST OF BACKGROUND PAPERS USED IN PREPARING THIS**  
**REPORT**

<b>No.</b>	<b>Description of Background Papers</b>	<b>Name/Ext of holder of file/copy</b>	<b>Department/ Location</b>
1.	N/A	N/A	N/A

**LIST OF APPENDICES:**

**APPENDIX 1** – CIL Examiner’s Report dated 20 March 2015

**APPENDIX 2** – CIL Charging Schedule

**APPENDIX 3** – Report to Full Council recommending the approval of the borough Community Infrastructure Levy

**APPENDIX 4** – Equalities Impact Assessment