

**Shepway District Council
Community Infrastructure Levy Examination**

Matters, Issues & Questions

Council response to:

MATTER D: Infrastructure Provision

ISSUE 1: Regulation 123 List

- a) Has the draft Regulation 123 list been drafted with sufficient precision to ensure that the boundary line between infrastructure funding through CIL and Infrastructure funding through other planning obligations (e.g. s106 TCPA 1990 (as amended)) is technically robust?

Question to the Council

- i. Please provide a statement setting out your response to the question above.

Council Response

The DCLG's CIL guidance states that developers may be asked to provide contributions for infrastructure in several ways, including CIL and planning obligations in the form of section 106 agreements, and section 278 highway agreements (under section 278 of the Highways Act 1980 as amended). Guidance also stresses that Local Authorities need to ensure that the combined total impact of such requests does not threaten the viability of the sites and scale of development identified in their development plan.

The Guidance goes on to say that where CIL is in place for an area, charging authorities should work proactively with developers to ensure they are clear about the authorities' infrastructure needs and what developers will be expected to pay for through which route. There should also be no actual or perceived 'double dipping' with developers paying twice for the same item of infrastructure.

If infrastructure funding is sought via a section 106 agreement, CIL Regulation 122 states that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:

- 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.

In order to ensure that planning obligations and CIL can operate in a complementary way, CIL Regulations 122 and 123, also limits the use of planning obligations in three respects:

- The three R122 tests are placed on a statutory basis, for developments that are capable of supporting both planning obligations and bearing a CIL charge.
- They ensure the local use of CIL and planning obligations does not overlap; and
- From April 2015, a limit of five pooled contributions is placed on planning obligations' contributions towards specified infrastructure projects.

The Council's approach set out by its draft Regulation 123 list is consistent with the CIL Regulations and DCLG guidance, in that it makes a clear distinction between the types of infrastructure CIL will be used to part fund, and the developments and related infrastructure projects that will be supported by section 106 agreements.

Further to this, the Council's CIL draft Charging Schedule zero rates strategic and key development sites, given the viability evidence used to inform the Charging Schedule. Therefore developers' funding contributions in respect of these sites, will only be secured through section 106 agreements. The Council's draft Regulation 123 list clearly states this.

A range of other potential development sites and development types are also proposed as zero rated for CIL in the draft Charging Schedule. Infrastructure contributions will subsequently only be secured through section 106 agreements in these circumstances, in accordance with CIL Regulation's 122's three tests.

For developments that are liable to pay CIL, section 106 agreements leading to a financial contribution for infrastructure, will only be sought in line with CIL Regulation 122's three tests. The Council's draft Regulation 123 list is clear in this distinction in that the CIL contribution will be used to support wider infrastructure types and needs across the district, with any s106 infrastructure contributions being project and site specific in nature. The CIL contribution from a development will therefore not be used to fund a development's infrastructure projects supported by section 106 agreements.

On balance and given the present level of information available in respect of development opportunities across the District and associated infrastructure needs, the draft Regulation 123 list has been drafted to enable a clear distinction to be made between infrastructure types funded by CIL and infrastructure projects funded by section 106 agreements. It is also the Council's intention to review its Regulation 123 list annually as part of the CIL Regulation's reporting and monitoring requirements, with any future proposed changes to the Regulation 123 list subject to the consultation requirements of the CIL Regulations.