

EXECUTIVE BOARD

1 February 2023

WITHDRAWAL OF THE COMMUNITY INFRASTRUCTURE LEVY 123 LIST

Relevant wards: All

Portfolio holder: Cllr A Powell, Planning, Infrastructure and Urban Design

Head of Service: Anne Brereton, Interim Director of Planning and Infrastructure

Contact officer: Andrew Ford, Senior Planning Officer

If you have any questions about this report, please contact the portfolio holder or the contact officer.

1. Purpose and summary

- 1.1 The purpose of this report is to seek a resolution to withdraw the Community Infrastructure Levy (CIL) Regulation 123 List, and accompaniment (Appendix A2) set out in the adopted 2017 Wychavon CIL Charging Schedule¹.
- 1.2 The changes introduced by the 2019 CIL Regulations replaced the CIL 123 List with the annual Infrastructure Funding Statement (IFS). The Regulations now require that projects and specific named infrastructure for CIL spending are identified in the IFS published in the December of each year since 2020.

2. Recommendations

- 2.1 That the Executive Board confirms that the CIL Regulation 123 List set out in the adopted 2017 Wychavon District CIL Charging Schedule (Appendix A1) and the Regulation 123 List Accompaniment (Appendix A2) is withdrawn and no longer provides the basis for seeking developer contributions and/or CIL spending in

1.1 _____

1.1 ¹ See Appendix A1; A2 of the 2017 Wychavon CIL Charging Schedule via link provided in Background Papers section of this report.

accordance with the changes introduced by the 2019 CIL Regulations and replaced by the annual Infrastructure Funding Statement.

2.2 That should section 106 developer contributions be sought towards Education related infrastructure this will not be replicated in any CIL payments unless specifically identified in the Infrastructure Funding Statement.

3. Background

3.1 The CIL Charging Schedule was adopted in April 2017 and the implementation of the CIL on specified types of new development commenced on 5 June 2017. The CIL Charging Schedule sets out the chargeable rate, how it was calculated, and the types of development to which it applies.

3.2 When the CIL Charging Schedule was prepared the regulations required that a Charging Schedule should include a list of the range of infrastructure and projects on which CIL would be spent. This is referred to as the CIL 123 List. The purpose of drawing up a list was to avoid the spending of CIL monies on the same projects or types of infrastructure what may be covered by a Section 106 contribution (in accordance with the Regulation 122 tests), referred to as 'double dipping' which at the time was contrary to the regulations. However, with the removal of the Regulation 123 list, authorities are no longer restricted in directing CIL payments for any specific purpose, but can re-direct such funds appropriately should the need arise.

3.3 The changes to the process introduced by the 2019 CIL Regulations removed the CIL 123 List from the Charging Schedule and instead require charging authorities to identify a list of projects on which CIL could be spent in the annual Infrastructure Funding Statement. The limitation of seeking S106 contributions and CIL on the same type of infrastructure was also removed.

3.4 These changes to the CIL process were subject to discussion at a recent planning appeal inquiry. Discussions on appropriate developer contributions via Section 106 led the appellant to argue that the county council's education contribution request should be met by CIL and not Section 106 contribution. This was principally on the basis that the district council had not formally rescinded the CIL 123 Test and that the list stated education provision would be met via CIL.

3.5 The district council countered that the CIL 123 Test had been rescinded in line with the above amendments introduced by the 2019 CIL Regulations and that the list no longer had any weight. Further as a statutory document it was unnecessary to seek a formal resolution from the council at the time. The appeal Inspector has yet to provide their decision on the matter. However, since the closure of the appeal, counsel advice on this area of discussion is that the district council should seek a formal resolution to withdraw the CIL 123 List to avoid any similar discussion at future planning appeals or hearings.

3.6 For the avoidance of doubt, the district council will continue to seek CIL contributions from permitted new development based on the tariff set in the 2017 Charging Schedule.

4. Implications and impact

4.1 What are the financial/resource implications?

None because of the change in regulations. Infrastructure for education provision will still be sought through s106 contributions.

4.2 What are the risks?

Lack of clarity over the status of the 123 list could result in a funding shortfall for the delivery of essential or necessary infrastructure arising from new development.

5. Outcomes of the impact assessment

5.1 Privacy

Not applicable in this instance.

5.2 Council priorities

Developer contributions help in provision of necessary infrastructure and in doing so helps meet the corporate priority of supporting people through for example the provision of education. Equalities

Not applicable in this instance.

Appendices

None.

Background papers

Wychavon District Council Community Infrastructure Levy Charging Schedule 2017

[AdoptedCILCSApril2017.pdf \(wychavon.gov.uk\)](#)

Wychavon District Council Infrastructure Funding Statement 2021-2022 (December 2022)

[Wychavon Infrastructure Funding Statement 2022.pdf](#)