

## **Additional footnote to the Council's adopted Community Infrastructure Levy Regulation 123 List**

### **Summary**

The Council adopted CiL in July 2014 and it came into effect from December 2014. The Regulation 123 list sets out the type of Infrastructure which will be funded or part funded through CiL. Shared Suitable Accessible Natural Greenspace (SANG) is included in the Regulation 123 list.

Changes to the Town and Country Planning (General Permitted Development) Order 2015 allows for the conversion of empty B1 Office use to residential under Permitted Development. If there is no increase in overall floor area then the development is not CiL liable. Further legislative changes may lead to other exemptions from CiL.

To ensure that residential units provided through CiL exempt development can be delivered and meet the obligations of the Habitats and Species Regulations (2010) there is a need to provide SANG. Whilst the provision of SANG is infrastructure, the management and maintenance of the SANG is not and therefore this element could be collected outside of CiL by use of an Unilateral Undertaking.

It is recommended that the Council should review the CiL charging schedule in respect of SANG. In the interim it is recommended that an additional footnote is added to the Council's Regulation 123 list to reflect that funding for SANG management and maintenance is sought from these permitted development schemes

### **Portfolio - Regulatory**

**Date Portfolio Holder signed off report: 13 July 2015**

### **Wards Affected**

All

### **Recommendation**

The Executive is advised to RESOLVE that

- (i) a review of the CiL charging schedule be undertaken to address the impact of recent and forthcoming legislative changes upon the Councils ability to collect funding for SANGs and thus ensure delivery of an adequate supply of housing for the Borough;
- (ii) an interim SANGs charge of £112.50 (Gross Internal Area) be levied to cover maintenance and management of SANGS for residential development from which CiL cannot be levied; and
- (iii) an additional footnote be added to the Regulation 123 List, as set out in Paragraph 4.2 below, to explain the interim charge and ensure that residential development provided can meet the requirements of the Conservation of Habitats and Species Regulations 2010 by contributing to the management and maintenance of SANG.

## **1. Resource Implications**

- 1.1 There are no resource implications beyond that provided for within the agreed budget for 2015/16. From December 2014 to March 2015 if schemes exercise these permitted development rights the Council stands to lose approximately £370,000 of SANG funding. If proposals for residential development under Permitted Development are unable to satisfy the Habitats Regulations this could also have an impact on the Council's ability to seek New Homes Bonus. Based on a £1200 average New Homes Bonus, this would equate to circa £55,000. In addition this will impact on the Council's ability to fund the future management and maintenance of SANGs.

## **2. Key Issues**

- 2.1 All development which provides additional residential units has to provide or contribute to avoidance measures to mitigate the impact of development on the Thames Basin Heaths Special Protection Area (SPA). This is to ensure that the Habitats and Species Regulations (2010) can be met. The avoidance measure is through the provision or contribution to Suitable Accessible Natural Greenspace (SANG) including the management and maintenance of SANG in perpetuity (at least 80 years)
- 2.2 The CiL regulations came into effect in April 2010. The regulations allow a charging authority (SHBC) to levy a charge on the owners of developers of land where development takes place so that they contribute to the costs of providing infrastructure needed to support the development. The Council adopted the Community Infrastructure Levy in July 2014 and the Regulation 123 list which sets out what type of infrastructure the CiL receipts will fund or part fund, this includes SANG provision.
- 2.3 Changes to the Town and Country Planning (General Permitted Development) Order 2015 allows for the conversion of empty B1 Office use to residential under Permitted Development. If there is no increase in overall floor area or the building has been in a continuous lawful use for six months in the last three years then the development may not be CiL liable. Therefore the Council will not be able to seek contributions to SANG from these types of change of use.
- 2.4 The Council, as the Competent Authority, would have to conclude that applications for change of use from B1 to offices could not meet the Habitats Regulations Assessment.
- 2.6 It is therefore recommended that the Council seeks a contribution towards the non- infrastructure management and maintenance elements of SANG.

### **3. Options**

#### **3.1 The Options are as follows:**

- (i) That a review of the CiL charging schedule be undertaken to address the impact of recent and forthcoming legislative changes upon the Councils ability to collect funding for SANGs and thus ensure delivery of an adequate supply of housing for the Borough;
- (ii) That in addition to (i) an interim SANGs charge of £112.50 be levied to cover maintenance and management of SANGS for residential development from which CiL cannot be levied;
- (iii) That in addition to (i) and (ii) an additional footnote be added to the Regulation 123 List to explain the interim charge and ensure that residential development provided can meet the requirements of the Conservation of Habitats and Species Regulations 2010 by contributing to the management and maintenance of SANG;
- (iv) That none of the above options be followed.

### **4. Proposals**

4.1 That Option (iii) be followed and that the Executive agree to a review of CiL to allow the Council to take on board changes to legislation that impact on the ability to collect funding for the management and maintenance of SANGs, without which delivery of new homes will be prevented as they cannot meet the requirements of the Conservation of Habitats and Species Regulations 2010. That in the intervening period a management and maintenance charge be levied against residential development coming forward through permitted development which is not CiL liable.

4.2 That an additional footnote be added to the Regulation 123 list to read as follows;

*To enable the delivery of new residential through the permitted development rights as set out in the (General Permitted Development) (England) Order 2015 (or as subsequently amended) or other anticipated changes to legislation, to meet the requirements of the Conservation of Habitats and Species Regulations, the Council will require such development to contribute toward the cost of the ongoing management and maintenance of SANG through a Unilateral Undertaking.*

*The Council will levy a contribution of £112.50 per square metre for the new residential (Use Class C3) floorspace created.*

4.3 It should be noted that the footnote refers to changes of legislation. This is because other permitted development rights to allow changes of use to residential are being mooted by government as is taking

Starter Homes out of CiL thus the wording seeks to address these possible future changes to legislation.

## **5. Supporting Information**

- 5.1 A copy of the Regulation 123 List is appended to this Report.
- 5.2 Infrastructure is that element necessary to provide the physical structure required. Maintenance and management is not infrastructure and this is why the Strategic Access Management and Monitoring (SAMM) payments are not caught by CiL. The suggested interim approach to SANGS payments for developments excluded from CiL replicates this approach and sum identified excludes the land costs.
- 5.3 As the Council is seeking a management and maintenance contribution this will not be impacted by the limitations imposed on Section 106 contributions as these limitations refer to infrastructure provision.

## **6. Corporate Objectives And Key Priorities**

- 6.1 Underpins Objective 1 to make Surrey Heath an even better place where people are happy to live.
- 6.2 Underpins Objective 2 to sustain and promote the local economy so that our people can work and do business across Surrey Heath by promoting improvements to local transport and infrastructure.

## **7. Policy Framework**

- 7.1 The ability to set a CiL charge is set out in the Planning Act 2008 (as amended) and Community Infrastructure Levy Regulations 2010 (as amended). A CiL Charging Schedule sits alongside the Local Plan, although it does not form part of the statutory development plan.
- 7.2 It is likely however that there will be further changes to this policy framework following those already set out in the Queen's Speech.

## **8. Legal Issues**

- 8.1 The change of use of B1 offices to Residential under the GPDO is currently time limited to May 2016. Whilst the government did not take the opportunity to extend this in the most recent change to the GPDO, that remains an option and legislation which will include removing starter homes from CiL has been announced in the Queens Speech.

## **9. Risk Management**

- 9.1 There are some risks to the Council in the event that the Council as Competent Authority cannot be satisfied that appropriate mitigation is in place, then planning permission may have to be refused.

- 9.2 This in turn would lead to a decline in CiL receipts which are required to discharge repayments under the LEP funded scheme whereby the Council acquired land.
- 9.3 There could also be legal challenges in relation to the Habitats Regulations.
- 9.4 There may well also be a loss of housing to meet identified needs in the most sustainable locations

<b>Annexes</b>	Annex A - Regulation 123 List as amended Annex B - Technical Paper on CiL and Permitted Development
<b>Background Papers</b>	
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#### **Consultations, Implications and Issues Addressed**

<b>Resources</b>	<b>Required</b>	<b>Consulted</b>
Revenue	✓	<u>28/05/2015</u> <u>15/06/2015</u>
Capital	✓	<u>28/05/2015</u> <u>15/06/2015</u>
Human Resources		
Asset Management	✓	<u>28/05/2015</u> <u>15/06/2015</u>
IT		
<b>Other Issues</b>	<b>Required</b>	<b>Consulted</b>
Corporate Objectives & Key Priorities	✓	
Policy Framework		
Legal	✓	<u>28/05/2015</u> <u>15/06/2015</u>
Governance		
Sustainability		
Risk Management		
Equalities Impact Assessment		
Community Safety		
Human Rights		
Consultation		
P R & Marketing		
Development Management	✓	<u>15/06/2015</u>
Business	✓	<u>15/06/2015</u>

## Annex A

### Surrey Heath Borough Council Community Infrastructure Levy: Regulation 123 List



The following list of infrastructure projects may be funded or part funded through the Community Infrastructure Levy (unless otherwise stated).

- 1) Shared Suitable Accessible Natural Greenspace (SANG) – Shared SANG includes SANG provided for development which cannot secure its own SANG solution<sup>1</sup>
- 2) Open Space (with the exception of Shared or On-Site SANG) which is not directly related to a development<sup>2</sup>
- 3) Local Transport Projects and Pedestrian Safety Improvements which are not directly related to a development<sup>2</sup>.
- 4) Play Areas & Equipped Playing Space which are not directly related to a development<sup>2</sup>.
- 5) Indoor Sports & Leisure Facilities which are not directly related to a development<sup>2</sup>.
- 6) Community Facilities not directly related to a development<sup>2</sup>.
- 7) Waste & Recycling not directly related to a development<sup>2</sup>
- 8) Strategic Transport Projects<sup>2</sup>
- 9) Flood Defence & Drainage Improvements which are not directly related to a development<sup>2</sup>

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<sup>1</sup> Development sites which cannot provide their own SANG solution will contribute to shared SANG solutions by way of a CIL payment. Development which is required to provide its own bespoke SANG solution will continue to be secured by S106 obligations in line with CIL Regulations 122 & 123. Nothing in this footnote overrides the Borough Council's obligations as the competent authority for the purposes of its duties under the Conservation of Habitats & Species Regulations (2010).

<sup>2</sup> Provision, improvement, replacement, operation or maintenance to reduce the incremental impact of development on off-site infrastructure which is not provided or required as avoidance/mitigation on or near individual development sites. This Regulation 123 List excludes projects for infrastructure which are directly related to an individual site i.e. on or near site infrastructure to avoid/mitigate impact arising from that site. The Borough Council may apply CIL, continue to seek S106 obligations, or a mix of S106 and CIL, toward on or near site infrastructure in line with the Infrastructure Delivery SPD and in accordance with Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010 (as amended).

**NOTE:** To enable the delivery of new residential through the permitted development rights as set out in the (General Permitted Development) (England) Order 2015 (or as subsequently amended) or other anticipated changes to legislation, to meet the requirements of the Conservation of Habitats and Species Regulations, the Council will require such development to contribute toward the cost of the ongoing management and maintenance of SANG through a Unilateral Undertaking.

The Council will levy a contribution of £112.50 per square metre for the new residential (Use Class C3) floorspace created.