

Annex B - Technical Background Note to CiL and the Town and Country (General Permitted Development)(England) Order 2015

- 1.1 All development within the Borough, which provides additional residential units, has to provide or contribute to avoidance measures to mitigate the impact of such development on the Thames Basin Heaths SPA. This is to ensure that requirements of the Habitats Regulations 2010 for such development to demonstrate no likely significant effect upon the SPA can be met. The avoidance measure is through the provision or contribution to SANG, including the management and maintenance of SANG in perpetuity, which, for the purpose of the funding calculation only, is deemed to be at least 80 years.
- 1.2 The CiL Regulations allow a charging authority 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. The accompanying Regulation 123 List sets out the types of infrastructure that CiL receipts will fund or part fund.
- 1.3 The provision of SANG, by virtue of the inclusion of the element of the land acquisition cost, is considered to be infrastructure (see paragraph 5.2 below) and as such it is included in the Council's Regulation 123 List. The Council's adopted CiL Charging Schedule, which sets out the contribution per sq metre required from residential development, includes the cost of the full funding of SANG.
- 1.4 However, the government has begun to remove from certain types of development the obligation to fund CiL. Most recently, changes to the GPDO in 2013, as now set out in the Town and Country (General Permitted Development) (England) Order 2015, allow for the conversion of empty B1 Office use to residential under Permitted Development and in certain cases this is now exempt from CiL. The government has suggested that this freedom to change to residential should be extended to other uses and the Queen's Speech has indicated an intention to introduce other legislation and this is likely to include exempting starter homes from CiL. Therefore, the Council will not be able to seek contributions to SANG through CiL from these types of development. The extent of the exemption is such that there is now a risk that the Council will be unable to collect sufficient funds for the management and maintenance of SANGs in the Borough in perpetuity.
- 1.5 The Council, as the Competent Authority, would have to conclude that such development could not meet the Habitats Regulations Assessment thus preventing the delivery of new homes to meet the Borough's Housing need and in particular lower cost homes that would benefit first time buyers.
- 1.6 In respect of the prior approval process, this issue is further complicated by the fact that the GPDO does not refer to the European sites legislation or the UK regulations. Developers therefore need to address that issue through a separate process for which there is currently no express legal mechanism.

Payments for SANGs are incorporated in CiL, any S106 for SANGs outside of CiL is caught by the limit on numbers of such agreements that can now contribute to a single item of infrastructure, thus any development outside of CiL cannot be implemented. The separation of the SANG contribution into infrastructure and a management and maintenance element allows the latter element to continue to be collected and so ensure new development is addressing likely significant effect to the SPA by contributing toward SANGs.

- 1.7 A breakdown of the SANG contribution under CiL shows that less than 9% relates to the actual infrastructure element and thus what can be collected through management and maintenance ensures that the cost of delivering SANGs can still be met pending the full review of CiL.