

Appendix 2 – Background information on the Regulation 123 List

Introduction

1. Regulation 123 of the Community Infrastructure Levy (CIL) Regulations provides for a CIL charging authority to publish a list of infrastructure that will be, or may be, wholly or partly funded by CIL.
2. CIL Regulation 123 restricts the use of Section 106 Planning Obligations for infrastructure that will be funded in whole or in part by the CIL. This is to ensure no duplication or double charging towards the same infrastructure project.

Infrastructure needs

3. CIL can be used to fund the provision, improvement, replacement, operation or maintenance of infrastructure to support the development of the charging authority's area. It cannot be used to remedy existing deficiencies in infrastructure provision except to the extent that they will be made more severe by additional new development.
4. The City Council worked with the County Council and other infrastructure providers to prepare a detailed list of infrastructure projects in its background evidence to support the CIL Charging Schedule. That list identified projects up to 2026 to align with the period covered by the Oxford Core Strategy. The Inspector who conducted the Oxford CIL examination noted that these projects *“represent an accurate, up-to-date assessment of a range of needs which have generally been informed by service providers”*.
5. A total of 99 projects were identified in that initial infrastructure list. Approximately 70% of the projects by cost were transport-related, with education, public realm and community services/facilities also being important areas of potential expenditure. An aggregate funding gap of some £198m was identified in the period up to 2021, rising to £415m by 2026, albeit this latter figure included an aspirational proposal for a rapid transit system in the longer term. On the other hand, the initial list did not ascribe a cost to the Oxford Flood Defence Scheme; the Environment Agency has now provided an estimated cost range of £138-£163m for this project.

CIL receipts

6. CIL is payable within 60 days of commencement of development and income is therefore reliant on development proceeding. On certain larger developments, payments will also be phased (as set out in Annex 4 of the Charging Schedule). This means that there is likely to be a significant time lag between the introduction of CIL in October 2013 and the actual receipt of payments. Very little CIL receipts can be expected before the end of the

2013/14 financial year, and it may well be well into the 2014/15 financial year before significant funds start to accumulate.

7. Within the total income received, 15% of receipts in parished areas has to be passed directly to the relevant Parish Council. In unparished areas, this 15% would be held by the City Council and spent in accordance with the wishes of the community. The neighbourhood proportion would rise to 25% in areas covered by adopted neighbourhood plans.
8. CIL incomes and expenditure will be monitored and reported quarterly in line with the City Council's Capital Programme. Once CIL has been brought into effect for a few months, and we see the impact of various factors such as the charitable relief provisions, we should be in a position to make informed forecasts about expected incomes.

Process for preparing and changing the Regulation 123 List

9. The purpose of introducing CIL is to help deliver new and improved infrastructure to meet the needs of a growing population and economy. Infrastructure is provided and managed by a number of partner organisations as well as the City Council, but it is the City Council's responsibility as the charging authority to ensure that the funds raised are allocated to bring maximum benefit and value to local residents and businesses. CIL will not be able to fund the necessary infrastructure on its own. Effective and creative partnership working will therefore be required to identify additional funding sources in order to deliver infrastructure projects in a timely manner.
10. The most important relationship in the effective delivery of infrastructure will be that between Oxford City Council and Oxfordshire County Council. The two councils have agreed a protocol at officer level with the aim of working collaboratively to ensure that the relevant requirements of the CIL Regulations are complied with, that the necessary information flows are managed efficiently and that infrastructure projects and plans are identified to support growth in Oxford.
11. As charging authority, the City Council is responsible for preparing the Regulation 123 list, and for the subsequent prioritisation of projects on the list for actual expenditure. However, the City Council will seek the County Council's views on a regular basis to help inform decision-making. Standard pro-forma will be used to help assess bids for the use of CIL funds against jointly agreed criteria. Other infrastructure providers will also be able to seek inclusion of their projects on the Regulation 123 list, and subsequently the allocation of CIL monies towards their projects.
12. The list will be kept under review at least twice a year to ensure that it remains up-to-date and relevant to the needs of the city. Projects and priorities are likely to change because of the links with development or because new opportunities arise. It may be necessary to review the list at short notice if a particularly urgent infrastructure requirement arises.

13. The Government carried out consultation on various reforms to CIL earlier in the year, and amongst the draft proposals was that charging authorities should carry out proportionate consultation if they wish to bring forward a replacement Regulation 123 list in future. The Government stated that it did not intend to prescribe how such consultation should be carried out, adding that for minor changes it could be very light touch. Any future national requirement for consultation will of course be reflected in the procedures adopted by the City Council for changes to the Regulation 123 list.

Project prioritisation

14. It is important to recognise that infrastructure spending under CIL will be a two-stage process. The inclusion of a specific project or type of infrastructure project on the Regulation 123 list does not constitute a commitment on behalf of the City Council to fund the project, either in whole or in part. There will then follow a project prioritisation process whereby the projects on the Regulation 123 list will be reviewed in the light of known and projected CIL receipts.

15. Each year the City Council will produce a four-year rolling plan of CIL expenditure. Council will be asked to agree the following year's detailed expenditure, with an indicative plan for the next three years. This report will be included in or alongside the Capital Programme Report. As such, Members will have control over actual expenditure as the report will be approved as part of the annual budget discussions.

Relationship to Planning Obligations

16. The main legal implication of the Regulation 123 list is in its relationship to planning obligations. The CIL Regulations make clear that planning obligations may not constitute a reason for granting planning permission to the extent that the obligation provides for the funding or provision of 'relevant infrastructure'. The term 'relevant infrastructure' is defined as the infrastructure set out in the CIL Regulation 123 list.

17. This means that Section 106 contributions cannot be collected towards specific projects or generic types of infrastructure identified on the Regulation 123 list. If no such list were published, then the limitation on the use of planning obligations would apply to any infrastructure.

18. In addition, the CIL Regulations limit the pooling of Section 106 contributions so that no more than five obligations may contribute to the same infrastructure project. This limitation comes into effect when CIL is implemented or from 6th April 2014, whichever is sooner, and applies to planning obligations entered into on or after 6th April 2010.

19. As a result of the CIL Regulations and accompanying guidance, planning obligations will be scaled back to cover the provision of affordable housing and site specific measures required to mitigate the impact of development. In addition, there may be circumstances where a development proposal directly results in the loss of an existing facility or site feature, and the City Council may require the replacement of that facility/feature either directly by the developer or through a financial contribution that would be set out in a planning obligation. Further guidance is set out in the City Council's Affordable Housing and Planning Obligations SPD, adopted in September 2013.