

Cabinet Member Delegated Decision 4 June 2018

Report title: Approval of Proposed Amendments to the Regulation 123 List

Wards: All

Portfolio: Councillor Matthew Bennett, Cabinet Member for Planning and Investment

Report Authorised by: Sue Foster: Strategic Director for Neighbourhoods and Growth

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Report summary

This report provides a summary of the results of the public consultation that was held between 8 January and 5 February 2018 on proposed amendments to the Regulation 123 List. Following the public consultation, the recommendation is to amend the Regulation 123 list as proposed in the public consultation.

Finance summary

There are no direct financial implications from this report.

Recommendations

1. To amend Lambeth's Regulation 123 List as proposed in the public consultation as included in Appendix 4 to come into effect on the 1st July 2018.

1. Context

- 1.1 On 14 December 2017, a Cabinet Member Delegated Decision was taken to authorise the holding of a public consultation on proposed amendments to Lambeth's Regulation 123 List. The report explained the purpose of the list in that the regulation restricts the use of Section 106 (S106) agreements, and the reasons for the proposed amendments.
- 1.2 The list is a requirement under Regulation 123 of the Community Infrastructure Levy (CIL) Regulations 2010 as amended. The Community Infrastructure Levy (CIL) is a levy charge on new developments which allows the Council to raise funds to pay for infrastructure such as transport, schools, health facilities, and parks which are needed to support new developments. The Regulation 123 list sets out those types of infrastructure projects that the Council intends will be, or may be, wholly or part funded by CIL. It does not prioritise infrastructure funding. In setting this list, the Council is stating that it will not be seeking S106 planning obligations for any infrastructure or types of infrastructure included in the list. Regulation 123(2) prevents a S106 being a reason for granting planning permission to the extent that it provides for something on the Regulation 123 list.
- 1.3 The public consultation on proposed amendments to the Regulation 123 List was held from 8 January to 5 February 2018. The consultation methods were as follows:
 - (a) The Revised Draft Amended Regulation 123 List and supporting documents were published on the Lambeth website and in social media.
 - (b) Emails were sent to all statutory and non-statutory consultees setting out the Revised Draft Amended Regulation 123 List and supporting documents.
 - (c) Where email was unavailable, letters were sent out to statutory and non-statutory consultees setting out the Revised Draft Amended Regulation 123 List and supporting documents.
 - (d) A copy of the Revised Draft Amended Regulation 123 List and supporting documents was made available for inspection at the Council's offices in Phoenix House and in all of the libraries in Lambeth.
- 1.4 The email launching the public consultation on proposed amendments to the Regulation 123 List was sent to 1,505 email addresses from statutory and non-statutory consultees via the Council's NationBuilder database, which includes the Planning Policy Database. Of these emails, 1,471 were successfully delivered and 500 were confirmed to have been opened.
- 1.5 The consultation page on the Council's website for the proposed amendments to the Regulation 123 List registered 366 unique page views. A unique page view aggregates all page views generated by the same user during the same session.
- 1.6 An online snap survey was included in the consultation webpage for the Regulation 123 List. A summary of their responses are set out in Appendix 1. The results show that among those who took the time to answer the survey, there was on balance more support for amending the 123 list and for the amendments that were proposed.
- 1.7 Two tweets were sent out to promote the public consultation on proposed amendments to the Regulation 123 List. The first tweet was seen by 790 people with 16 people recorded to have engaged with the post. The second tweet was seen by 844 people and 15 people were recorded to have engaged with the post. The engagement rate for the two tweets is considered very good, being twice as high as the average for most tweets over the two days.
- 1.8 In all, there were five full consultation responses received by email. A summary of the consultation responses received is set out in Appendix 2. Of the five responses, only one was critical and not in

favour of the proposed amendments. Two of the responses did not make a comment. The other two responses made comments but were not critical of the proposed amendments.

2. Proposal and Reasons

- 2.1 Having held the public consultation, the decision to amend or not to amend the Regulation 123 List can be taken by the Cabinet Member for Planning and Investment via Cabinet Member Delegated Decision. The government's Planning Practice Guidance makes it clear that local planning authorities are able to amend the list so long as they have consulted the public.
- 2.2 It is recommended that the amendments to the Regulation 123 List are approved in their entirety as proposed. The proposed amendments are set out in Appendix 3 which sets out the existing Regulation 123 list with track changes of the amendments being proposed.
- 2.3 Other than the deletion of unnecessary wording to provide better clarity, the structure and main content of the existing 123 list will be kept largely intact. The main change comes from inserting the following clause which states when a type of infrastructure may be sought under a S106 agreement:
- “Unless the need for specific infrastructure contributions arises directly from:
- (a) fewer than five developments, where Section 106 planning obligations arrangements may continue to apply if the infrastructure is required to make the development acceptable in planning terms; or
- (b) a need for highways alterations, reinstatement or other works necessary to make a development acceptable in planning terms, where Section 278 Highways Agreements will continue to apply.”
- 2.4 Inserting this clause will enable Section 106 or Section 278 agreements to provide site-specific related mitigation, including the provision of infrastructure that is included in the Regulation 123 list but is necessary to make development acceptable in planning terms where otherwise this would be unacceptable. This is in accord with Policies D3 and D4 of the Local Plan 2015.

3. Finance

- 3.1 There are no direct financial implications from this report.

4. Legal and Democracy

- 4.1 A Regulation 123 List is a list prepared in accordance with the Community Infrastructure Levy Regulations 2010. This report proposes amendments to the existing Regulation 123 list. There is no prescribed procedure for amending the list but government guidance recommends that public consultation should take place on any proposed amendments before adoption. This report sets out the responses to the consultation which has taken place and officers' advice on those responses. The decision maker must have regard to the responses to consultation when deciding whether to agree with officers' recommendation to approve the suggested amendments to the Regulation 123 List.
- 4.2 This proposed key decision was entered in the Forward Plan on 13 April 2018 and the necessary 28 clear days' notice has been given. In addition, the Council's Constitution requires the report to be published on the website for five clear days before the proposed decision is approved by the Cabinet Member. Any representations received during this period must be considered by the decision-maker before the decision is taken. A further period of five clear days - the call-in period – must then elapse

before the decision is enacted. If the decision is called-in during this period, it cannot be enacted until the call-in has been considered and resolved.

5. Consultation and co-production

- 5.1 This report follows through on a public consultation authorised by the Cabinet Member for Planning, Regeneration and Jobs on proposed amendments to the Regulation 123 List. The public consultation was held from 8 January to 5 February 2018 and was based on a consultation plan in accordance with the policies set out by Lambeth's Statement of Community Involvement adopted in September 2015. The consultation methods were as follows:
- (a) The Revised Draft Amended Regulation 123 List and supporting documents was published on the Lambeth website and in social media.
 - (b) Emails were sent to all statutory and non-statutory consultees setting out the Revised Draft Amended Regulation 123 List and supporting documents.
 - (c) Where email was unavailable, letters were sent out to statutory and non-statutory consultees setting out the Revised Draft Amended Regulation 123 List and supporting documents.
 - (d) A copy of the Revised Draft Amended Regulation 123 List and supporting documents was made available for inspection at the Council's offices in Phoenix House and in all of the libraries in Lambeth.

6. Risk management

- 6.1 There are no potential risks associated with the proposed measure to amend the Regulation 123 List.

7. Equalities impact assessment

- 7.1 The full Equalities Impact Assessment carried out in 2013 for the adoption of Lambeth's CIL Charging Schedule and other supporting documents, including the Regulation 123 List, continues to be relevant and accurate. That report states: "The infrastructure and services that CIL will provide (for example schools, medical and community facilities, improvements to green open spaces, and transport) will enhance accessibility and liveability of all sectors of society, including all equality groups."

8. Community safety

- 8.1 Both CIL and S106 provide for infrastructure and measures that contribute towards the safety of the local population in Lambeth.

9. Organisational implications

9.1 Environmental

Both CIL and S106 provide for a range of environmental improvements that will benefit the local population in Lambeth.

9.2 Staffing and accommodation

None.

9.3 Procurement

Not applicable.

9.4 Health

Lambeth's Regulation 123 List includes the provision of healthcare facilities that may be funded, wholly or partly, from CIL

10. Timetable for implementation

10.1 Following Cabinet Member approval of this report and its recommendation, the new Regulation 123 List will be uploaded to the Council's website and an email will be sent to all Planning officers informing them of this development. It will take effect from the 1 July 2018.

Audit Trail

Consultation				
Name/Position	Lambeth directorate / department or partner	Date Sent	Date Received	Comments in paragraph:
Councillor Matthew Bennett	Cabinet Member for Planning and Investment	20.03.18	22.03.18	
Sue Foster	Strategic Director for Neighbourhoods and Growth	20.03.18	22.03.18	
Sandra Roebuck	Director of Growth, Planning & Employment - Neighbourhoods & Growth	26/02/2018	28/02/2018	throughout
Andrew Ramsden	Assistant Director of Finance - Neighbourhoods & Growth, Corporate Resources	22/02/2018		
Paul Badiani	Group Manager - Major Capital Projects (Investment & Growth, Planning), Corporate Resources	22/02/2018	26/02/2018	3
Peter Flockhart	Senior Planning Lawyer - Legal Services, Corporate Resources	22/02/2018	26/02/2018	4.1
Maria Burton	Democratic Services Officer - Corporate Affairs, Corporate Resources	22/02/2018	28/02/2018	4.2
Michael Munnelly	Capital Programme Manager – Investment & Growth, Neighbourhoods & Growth	22/02/2018	23/02/2018	throughout
Rob Bristow	Assistant Director of Planning – Growth, Planning & Employment	22/02/2018	23/02/2018	

Report History

Original discussion with Cabinet Member	November 2017
Part II Exempt from Disclosure/confidential accompanying report?	No
Key decision report	Yes
Date first appeared on forward plan	13.04.18
Key decision reasons	Meets community impact test
Background information	The CIL Regulations 2010 as amended Communities and Local Government Planning Practice Guidance - 12 June 2014 Lambeth Local Plan 2015 Lambeth CIL Charging Schedule Examination Documents Cabinet Member Delegated Decision Report - Amendment to Lambeth's Regulation 123 List - 14 December 2017
Appendices	Appendix 1 – <i>Summary of Snap Survey Results</i> Appendix 2 – <i>Summary of Consultation Responses</i>

	<p>Appendix 3 – <i>Lambeth’s Current Regulation 123 List - 1 October 2014 (with proposed track changes)</i></p> <p>Appendix 4 – <i>Lambeth’s Revised Draft Regulation 123 List (clean version)</i></p>
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APPROVAL BY CABINET MEMBER IN ACCORDANCE WITH SCHEME OF DELEGATION

I confirm I have consulted Finance, Legal, Democratic Services and the Procurement Board and taken account of their advice and comments in completing the report for approval:

Signature: _____ **Date:** _____

Benny Clutario, Strategic and Local Investment Lead, Growth, Planning and Employment

I confirm I have consulted the relevant Cabinet Members, including the Leader of the Council (if required), and approve the above recommendations:



Signature:

Date: 4 June 2018

Matthew Bennett, Cabinet Member for Planning and Investment

Any declarations of interest (or exemptions granted):

Any conflicts of interest:

Any dispensations:

Appendix 1
Summary of Results of Snap Survey on
Proposed Amendments to the Regulation 123 List

1. **To what extent do you agree with the type of infrastructure we intend to fund fully or in part by CIL:**

	Agree/ Strongly agree	Disagree/ Strongly disagree	Neither agree nor disagree
Education facilities	14	2	5
Healthcare facilities	12	5	4
Library facilities	17	2	2
Sports and leisure	14	5	2
Cultural facilities	11	5	5
Recycling facilities	14	3	4
Youth facilities	14	4	3
Public realm	14	2	5
Cycling and walking	10	5	6
Air quality	15	4	2
Public transport	7	8	6
Highway initiatives	7	8	6

2. **To what extent do you agree that Lambeth's Regulation 123 List should be amended?**

Agree/ Strongly agree	Disagree/ Strongly disagree	Neither agree nor disagree
10	3	8

3. **To what extent do you agree that we will not seek Section 106 planning obligations for Regulation 123 List infrastructure unless the need for specific infrastructure contributions arises directly from:**

	Agree/ Strongly agree	Disagree/ Strongly disagree	Neither agree nor disagree
Fewer than five developments, where Section 106 planning obligations arrangements may continue to apply if the infrastructure is required to make the development acceptable in planning terms	8	7	6
A need for highways alterations, reinstatement or other works necessary to make a development acceptable in planning terms, where Section 278 Highways Agreements will continue to apply	6	8	7

4. **To what extent do you agree that the proposed amendments to Lambeth's Regulation 123 List will provide clarity on what will be funded by CIL and what will be negotiated via S106?**

Agree/ Strongly agree	Disagree/ Strongly disagree	Neither agree nor disagree
10	3	8

Appendix 2

Summary of Responses – Consultation on Amendments to Lambeth’s Regulation 123 List

Organisation	Theme	Comment	Lambeth Response
London Parks and Gardens Trust	Public open space, parks and green space	<p>LPGT believes the Borough should agree the following principles:</p> <ul style="list-style-type: none"> • development which benefits from its proximity to a public open space should contribute to its ongoing maintenance, • all development should contribute to the environmental quality of the borough, including the restoration and ongoing maintenance of parks and green spaces. • All development should take into account the levels of access afforded to existing green space and provide new space to compensate for the impact of increased densities, particularly where there is already a deficit. <p>Funding mechanisms should ensure:</p> <p>a) Development close to or adjacent to a greenspace should contribute to:</p> <ul style="list-style-type: none"> • additional maintenance costs arising from increased footfall • additional facilities to cater for the additional users e.g. play space, seating, planting • landscape improvements to mitigate adverse impacts on the park arising from the development. <p>b) In areas of change, all development should contribute to the wider green infrastructure of that neighbourhood.</p> <p>c) Assets of Borough, London or National importance such as parks and gardens on the national register or which are locally listed as having special historic interest should be a priority to receive funding for investment.</p>	The amendments to the Regulation 123 list will allow these considerations to be made on a site by site basis.

Appendix 2

Summary of Responses – Consultation on Amendments to Lambeth’s Regulation 123 List

Organisation	Theme	Comment	Lambeth Response
Highways England	Strategic road network (SRN)	Within the area covered by Lambeth, there is no SRN. We have no comments on the amendments to Lambeth’s Regulation 123 List as there would be no consequential impacts on the SRN.	Noted.
Port of London Authority	Thames River as strategic transport corridor	I have now had the opportunity to review the proposed amendments and have no comments to make.	Noted.
U and I Group PLC	Inclusion of ‘Fire and emergency services’ in 123 List	<p>We therefore write to request that the delivery of the new Lambeth Fire Station is similarly viewed as supportable by inclusion of ‘Fire and emergency services’ as an additional bullet point line in the section entitled ‘Community Facilities’ in the proposed new Regulation 123 List.</p> <p>This would allow LB Lambeth to make a later decision as to whether collected CIL contributions could be allocated to support the intended re-provision or, conceivably, whether delivery in kind could be taken into account in respect of any likely CIL payment from an acceptable mixed-use development.</p>	<p>The Council can allocate CIL towards delivery of a new Lambeth Fire Station even if "Fire and emergency services" is not included in the Regulation 123 List, if appropriate and when considered in the context of local plan policies and priorities. What the Regulation 123 List does is to prevent the Council from negotiating S106 agreements with developers to the extent that it provides for something that is included in the list.</p> <p>As "Fire and emergency services" is not included in the Regulation 123 List, the Council can negotiate with developers to contribute towards a new Lambeth Fire Station if this is necessary to make development acceptable in planning terms.</p>

Appendix 2

Summary of Responses – Consultation on Amendments to Lambeth’s Regulation 123 List

Organisation	Theme	Comment	Lambeth Response
Guy’s and St Thomas’ Charity	Community facilities	<p>In our view the deletion of the various words as set out is now more ambiguous. The existing wording is clear that the levy can be used on new and existing community facilities for a range of purposes. However, the proposed amended wording is less clear and could be interpreted in a number of ways. For example, does the Council propose the levy to be used on new facilities only or could it also be used for funding the improvement and re-provision of existing facilities?</p> <p>In line with Local Plan policy ED11 the Council wishes to promote, safeguard and improve leisure, recreation, arts and cultural facilities in the borough where they meet local and wider needs, especially in the Central Activities Zone, Vauxhall and Waterloo London Plan Opportunity Areas and in town centres.</p> <p>We support this aim and it is our view that the provision of cultural facilities is a key component to maintaining Lambeth’s rich diversity of uses and facilities and the creation of mixed and balanced communities. However, we suggest that part of this richness comes through the continued support for the improvement and expansion of existing community/cultural facilities as well as the ambition to deliver new ones. As such, we are unclear as to why the Council feel the revised wording, which we consider adds additional ambiguity, improves the ability for the Council to meet its challenges in delivering mixed and balanced communities.</p> <p>On this basis we consider that the existing wording is fit for purpose and we therefore raise concern with the proposed amendment.</p>	<p>The proposed amendments to the Regulation 123 List included the deletion of the words "new and existing" in respect to education and community facilities because the words "new and existing" were considered unnecessary. If the amendments were approved, CIL can still be spent on education and community facilities, whether new or existing.</p> <p>In the past, there have been a few instances of confusion over the meaning of certain wording in the existing Regulation 123 List - particularly in relation to what constitutes an "area-based public realm scheme" or what "site-specific transport interchange schemes" mean or what are "programmed highway and traffic management improvements." The Council believes that greater clarity can be achieved by removing unnecessary wording from the list.</p> <p>Cultural facilities will remain an item under the 123 list and this does not change with the proposed amendments. The structure and main content of the 123 list will essentially remain intact as before. The only change from the amendments is that the Council will be in a stronger position to negotiate S106 agreements with developers to provide for infrastructure where this is necessary to make development acceptable in planning terms.</p>

Appendix 3
Lambeth's Current Regulation 123 List – 1 October 2014
(with proposed amendments)

Community Infrastructure Levy (CIL) Regulation 123 List

The list below sets out those types of infrastructure projects that Lambeth Council intends will be, or may be, wholly or part funded by CIL.

In setting this list Lambeth Council will not seek planning obligations for infrastructure or types of infrastructure, included in the list.

Types of infrastructure to be funded in whole or part by CIL

Education Facilities: The provision ~~and~~, improvement, ~~replacement, operation or maintenance of new and existing~~ public education facilities (excluding, identified primary school site provision to be secured through planning obligations *).

Community facilities: The provision ~~and~~, improvement, ~~replacement, operation or maintenance of new and existing~~ community facilities including:

- Health Care Facilities
- Library Facilities
- Indoor Sport & Leisure Facilities ~~(defined as publically owned or controlled leisure centres, sports halls and game courts, swimming pools)~~
- Cultural Facilities ~~(defined as publically owned or controlled theatres, cultural /arts centres, including the Southbank Centre)~~
- Recycling facilities
- Community or Youth facilities.

Public Realm Improvements: ~~The provision and improvement of the public realm, including streetscape and parks. The provision, improvement, replacement, operation or maintenance of specific public realm projects in Town Centre or area based public realm streetscape schemes/programmes, and improvements and maintenance of existing parks and public open space.~~

Transport: ~~Cycling and walking initiatives, air quality initiatives, public transport initiatives and Lambeth-led highway initiatives. The provision, improvement, replacement, operation or maintenance of strategic public transport initiatives (excluding site specific transport interchange schemes), programmed highway and traffic management improvements (Lambeth and TFL), sustainable transport initiatives including cycling and pedestrian routes.~~

Unless the need for specific infrastructure contributions arises directly from:

- a) fewer than five developments, where Section 106 planning obligations arrangements may continue to apply if the infrastructure is required to make the development acceptable in planning terms; or
- b) a need for highways alterations, reinstatement or other works necessary to make a development acceptable in planning terms, where Section 278 Highways Agreements will continue to apply.

(* specific primary school site identified being New Park Road, Clapham Park, and new Vauxhall Primary school, Keybridge House site)

Appendix 4 Lambeth's Revised Draft Regulation 123 List

Community Infrastructure Levy (CIL) Regulation 123 List

The list below sets out those types of infrastructure projects that Lambeth Council intends will be, or may be, wholly or part funded by CIL.

In setting this list Lambeth Council will not seek planning obligations for infrastructure or types of infrastructure, included in the list.

Types of infrastructure to be funded in whole or part by CIL
<p>Education Facilities: The provision and improvement of public education facilities (excluding, identified primary school site provision to be secured through planning obligations*).</p> <p>Community facilities: The provision and improvement of community facilities including:</p> <ul style="list-style-type: none">• Health Care Facilities• Library Facilities• Indoor Sport & Leisure Facilities• Cultural Facilities• Recycling facilities• Community or Youth facilities <p>Public Realm: The provision and improvement of the public realm, including streetscape and parks.</p> <p>Transport: Cycling and walking initiatives, air quality initiatives, public transport initiatives and Lambeth led highway initiatives.</p>

Unless the need for specific infrastructure contributions arises directly from:

- a) fewer than five developments, where Section 106 planning obligations arrangements may continue to apply if the infrastructure is required to make the development acceptable in planning terms; or
- b) a need for highways alterations, reinstatement or other works necessary to make a development acceptable in planning terms, where Section 278 Highways Agreements will continue to apply.

(*specific primary school site identified being New Park Road, Clapham Park, and new Vauxhall Primary school, Keybridge House site)