

Merthyr Tydfil County Borough Council

Draft Regulation 123 List of Infrastructure

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Miss J Jones
Head of Town Planning
Merthyr Tydfil CBC
Unit 5
Pentrebach
Merthyr Tydfil
CF48 4TQ

Introduction

Regulation 123 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) sets out the requirement for CIL Charging Authorities to publish a list of the infrastructure that can be funded through CIL. After 6 April 2014, or upon implementation of the council's CIL Charging Schedule (whichever is the earliest), any infrastructure not included within the council's published Regulation 123 List Of Infrastructure Regulation 123 List) cannot be funded through CIL contributions, and can only be funded via Section 106 agreements, which will be subject to rigorous application of the three statutory tests for obligations:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

Preparation of the Regulation 123 List

Regulation 123 lists are not subject to the same procedural requirements that have been set out for the CIL Charging Schedule. Currently the Regulations only require that regulation 123 lists be published, without the need for consultation or formal procedures. Future changes to the Regulations may introduce a requirement for consultation, but at the current time this is not the case. A council may change a regulation 123 list as it sees fit, with the only requirement being that a list cannot be introduced within 28 days of the implementation of the previous List.

In order to engender debate and consideration of what infrastructure should be CIL funded, the council has chosen to publish this Draft Regulation 123 List for comments alongside the Draft CIL Charging Schedule, although it must be stressed that comments on the Regulation 123 List will not form part of the Charging Schedule consultation. The council, however, welcomes comments on the Regulation 123 List and these will be taken into account in preparing the Regulation 123 List that will be presented at the examination of the CIL Charging Schedule.

What will the list include?

A regulation 123 list sets out the infrastructure that will be eligible to be funded through CIL. The Infrastructure can be generic types of infrastructure or more project/item specific. The Draft Regulation 123 List draws heavily upon the infrastructure requirements set out in the Adopted Merthyr Tydfil Local Development Plan up to 2021 (LDP) and reflects the infrastructure requirements necessary to bring forward development identified in the LDP.

A regulation 123 list should also set out those known, site-specific, matters where section 106 contributions are likely to be the funding mechanism. The principal purpose is to provide transparency on what the Council intends to fund in whole or part through the levy and those known matters where section 106 contributions will continue to be sought.

Regulation 123 List

The list of infrastructure set out below defines the infrastructure types that are eligible to be funded through CIL. Please note that the list is not a definitive list of what will be funded and provided. More it ring fences the types of infrastructure that CIL can fund, subject to council priorities and the levels of available CIL funding. The infrastructure listed below will be eligible to be funded through the Community Infrastructure Levy.

**THE MERTHYR TYDFIL COUNTY BOROUGH COUNCIL REGULATION 123 LIST OF
INFRASTRUCTURE**

INFRASTRUCTURE PROJECT	TYPE
Core Highway Network Improvements (as identified in Policy AS10 of LDP, and Appendix 1 of the Infrastructure Report)	PHYSICAL
Strategic Drainage Network	PHYSICAL
Education Provision (schools)	SOCIAL
Upgrade/new Civic Amenity sites	PHYSICAL
Upgrade existing Leisure facilities provision	SOCIAL
Off-site formal leisure facilities (eg Sports pitches and changing facilities, Multi-use games areas, Neighbourhood equipped area for play)	GREEN
Strategic Public Transport Infrastructure (does not include site specific links to strategic network such as new bus stop within a development to improve accessibility, or short length of cycleway to link a site to national or local route)	PHYSICAL

Relationship between CIL and S106 Contributions

In order to ensure that planning obligations and the CIL can operate in a complementary way, the CIL Regulations scale-back the way planning obligations operate. Limitations are therefore placed on the use of planning obligations in three respects:

- putting the policy tests on the use of planning obligations (set out in Wales in Circular 13/97, *Planning Obligations*) on a statutory basis for developments which are capable of being charged the CIL;
- ensuring the local use of the CIL and planning obligations do not overlap; and
- limiting pooled contributions from planning obligations towards infrastructure which may be funded by the CIL.

The CIL regulations enforce the policy tests on the use of planning obligations. The statutory tests are intended to clarify the purpose of planning obligations in light of the CIL.

From 6 April 2010 it has been unlawful for a planning obligation to be taken into account when determining a planning application for a development that is capable of being charged the levy, whether there is a local levy in operation or not, if the obligation does not meet all of the following tests:

- necessary to make the development acceptable in planning terms;
- directly related to the proposed development; and
- fairly and reasonably related in scale and kind to the development.

Conversely, the CIL is intended to provide infrastructure to support the development of an area, rather than to make individual planning applications acceptable in planning terms. As a result, there is likely to be site-specific impact mitigation requirements without which a development should not be granted planning permission. Some of these needs may be provided for through the CIL but others may not, particularly if they are very local in their impact. There is therefore still a legitimate role for development-specific planning obligations to enable the Council to be confident that the specific consequences of a development can be mitigated.

The Council will therefore continue to secure Planning Obligations where they are necessary to remove obstacles to planned development and are therefore critical to the delivery of the site, for example to provide direct site access, flood protection and wildlife protection measures and for on-site leisure provision such as open space, Local areas for play (LAPs) and Local equipped areas for play (LEAPs).

Further, s106 contributions may still be sought for infrastructure, where:

- it can meet the above tests; and
- the Council has indicated that this type of infrastructure item will not be funded through CIL. (ie it does not appear on the Reg 123 list)

Affordable housing will continue to be funded through S106 obligations. The proposed levels of CIL have been set at a level that has been assessed as viable with the provision of affordable housing, and it is therefore expected that on-site provision of affordable housing will be achieved.

Implications on Local Development Plan Policy

It is anticipated that a consequence of the implementation of CIL will be that, at first review of the Local Development Plan, several policies will require revision. At this time, these are identified as:

- Policy BW17: Securing Community Infrastructure Benefits;
- Policy AS10: Core Highway Network Improvements;
- Policy AS11: Public Transport – Rail;
- Policy AS12: Public Transport – Road.