

Representations received to the Consultation on Revisions to the CIL Regulation 123 List post Examination (13 February 2017 to 27 March 2017)

Rep ID	Consultee	Position	Representation	South Worcestershire Councils Response
001	Andrew Morgan Place Partnership Limited on behalf of Warwickshire Police (WP), West Mercia Police (WMP) and Hereford & Worcester Fire and Rescue Service (HWFRS)	Strategic Planning Manager - Place Partnership Limited	<p>Support the inclusion of the emergency services within Appendix A1. This resolves the point made in previous representations that the emergency services should be recognised as a legitimate infrastructure type that can receive developer contributions via Section 106 and the Community Infrastructure Levy (CIL).</p> <p>However WP, WMP and HWFRS request that the delivery mechanism for all emergency services rows in Appendix A2 be confirmed as Section 106, rather than CIL.</p> <p>This request is made because listing the emergency services as recipients of South Worcestershire CIL monies is, unfortunately, at best superfluous and at worst counter-productive. The reasons for this are as follows:</p> <p>Firstly, the Hearing Statement of the South Worcestershire Councils submitted to the CIL public examination stated that the 'key infrastructure' funding gap is £205.45m, with 'key infrastructure' defined as transport, education and sport & recreation. Given the same Hearing Statement confirmed that CIL is only expected to raise £5.8m (2.8% of the funding gap) and be spent on the aforementioned infrastructure types, why is CIL cited in Appendix A2 as a delivery mechanism for emergency services infrastructure?</p>	<p>Emergency services are included in the Regulation 123 list as specifically itemised infrastructure where this is part of a SWDP policy (e.g. police posts at the urban extensions), which are to be funded through Section 106, as will all other CIL compliant site specific infrastructure. All other strategic infrastructure requirements are covered by CIL.</p> <p>No changes required.</p>

Rep ID	Consultee	Position	Representation	South Worcestershire Councils Response
			<p>The Section 106 system will remain the most significant mechanism by which funding to enable emergency services infrastructure to support development growth in South Worcestershire is provided. It is a comparatively open, accountable and legally secure mechanism to secure funds for large items of essential emergency services infrastructure that is critical for key sites and growth locations. Furthermore, the contributions secured by it are directly tied to the development concerned, with clear contractual responsibilities on the parties involved to deliver the infrastructure specified. The South Worcestershire CIL will not offer this to WP, WMP and HWFRS.</p> <p>Secondly, there is already a history in South Worcestershire of developers making inadequate contributions towards providing the additional police and fire & rescue infrastructure that is required as a result of growth. The inclusion of the emergency services on the Regulation 123 list as, ostensibly, receiving CIL receipts will not rectify this. In fact it is likely to be the reverse, with the real possibility created that some may try to use the inclusion to help justify arguments that they should not make Section 106 contributions, as to do so would constitute 'double dipping' by the emergency services.</p> <p>The above problem would be exacerbated by the fact that once the South Worcestershire Councils have published the Regulation 123 list, it will have to keep being re-issued to overcome the</p>	

Rep ID	Consultee	Position	Representation	South Worcestershire Councils Response
			<p>inevitable blurring of boundaries over time between the realm of CIL governed by Regulation 123 and that of Section 106 governed by Regulation 122. For the 'key infrastructure' types, this will be difficult enough to navigate. For the emergency services that do not benefit from this categorisation, such blurring and the attendant conflict that will result with developers would almost certainly be fatal for infrastructure delivery. This is a problem replicated nationally according to the report produced by the Government's CIL Review Panel.</p> <p>Finally, the first paragraph of page 2 of the consultation document confirms that inclusion in Appendix A1 only means that the infrastructure type specified could receive CIL monies, not that they will. Furthermore, the South Worcestershire Developer Contributions SPD (adopted October 2016) states that emergency services infrastructure will not be relevant to many planning applications. WP, WMP and HWFRS do not agree with this, but if the Councils indeed consider this to be the case, then Section 106 agreements by default are the appropriate mechanism for securing contributions where they are required rather than CIL.</p> <p>Therefore, the aforementioned written references and the other problems outlined in these representations generate the requirement for Appendix A2 to confirm that Section 106 is the</p>	

Rep ID	Consultee	Position	Representation	South Worcestershire Councils Response
			sole delivery mechanism for emergency services infrastructure.	
002	Nigel Hudson – Worcestershire County Council	Head of Strategic Infrastructure and Economy	<p>WCC would like to express its support for the revisions proposed to the South Worcestershire Community Infrastructure Levy Draft Charging Schedule Regulation 123 List.</p> <p>Thorough consultation and collaborative working has taken place between the South Worcestershire Authorities and the County Council throughout the preparation of the charging schedule. The County is content with the charging schedule and the regulation 123 list. We believe it to be fully compliant with relevant legal requirements and soundness tests.</p> <p>WCC will continue to work with the South Worcestershire Authorities throughout the adoption, implementation and governance of the charging schedule.</p>	Comments and support noted. No changes required.
003	Tessa Jones – Environment Agency	Senior Planning Advisor	<p>We commented on the draft Charging Schedule on 16 May 2016 (letter reference SV/2010/104076/SD-02/PO1-L01). Furthermore, we commented on the CIL (Submission Draft) and the statement of modifications to the CIL Draft Charging Schedule, in our letter dated 25 July 2016 (letter reference SV/2010/104076/SD-04/SB1-L01).</p> <p>Based on our previous responses and the proposed modifications to the Regulation 123 List, we have no further comments to make</p>	Comments noted. No changes required.

Rep ID	Consultee	Position	Representation	South Worcestershire Councils Response
			at this time.	
004	Gillian Driver – Natural England	Lead Adviser Sustainable development	<p>Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.</p> <p>Natural England is not a service provider, nor do we have detailed knowledge of infrastructure requirements of the area concerned. However, NPPF (Para 114) says “Local planning authorities should set out a strategic approach in their Local Plans, planning positively for the creation, protection, enhancement and management of networks of biodiversity and green infrastructure.” CIL can play an important role in delivering such a strategic approach.</p> <p>The following should be considered for inclusion:</p> <ul style="list-style-type: none"> • Access to natural greenspace. • Allotment provision. • Infrastructure identified in the local Rights of Way Improvement Plan. • Infrastructure identified by any Local Nature Partnerships or other biodiversity related projects • Infrastructure identified by any AONB management plans. • Infrastructure identified by any Green infrastructure strategies. • Other community aspirations or other green 	Comments noted. No changes required.

Rep ID	Consultee	Position	Representation	South Worcestershire Councils Response
			<p>infrastructure projects (e.g. street tree planting).</p> <ul style="list-style-type: none"> • Infrastructure identified to deliver climate change mitigation and adaptation. • Any infrastructure requirements needed to ensure that the Local Plan is Habitats Regulation Assessment compliant. <p>We would be happy to comment further should the need arise but if in the meantime you have any queries please do not hesitate to contact us.</p>	
005	Matthew Fox RPS on behalf of Gleeson Developments Ltd and Welbeck Strategic Land LLP	Associate Director	<p>We object to two specific proposed revisions to Appendix A2 of the Regulation 123 List:</p> <p style="text-align: center;"><u>Education</u></p> <p>The education requirement for the Malvern North East Urban Extension (SWDP56) states “1X1FE Expansion” and relates to an off-site financial contribution for a school “directly related to site”. Whilst this reflects the type of obligation presently being discussed by the stakeholders and the Applicants we request that further clarity be provided in Appendix A2, firstly, to specifically confirm that the expansion is for primary school infrastructure and, secondly, to name the specific school which will be expanded; Somers Park Primary School. This specific contribution has been requested by Worcestershire County Council in their consultation response for the site application (ref. 15/01625/OUT) dated 26 February 2016.</p> <p>As a result of this objection, we would request that the text</p>	<p style="text-align: center;"><u>Education</u></p> <p>This amendment is agreed, and is supported by Worcestershire County Council. The Regulation 123 List (Appendix A2 of the Charging Schedule) will be changed to “<u>1 X 1FE Primary Expansion of Somers Park Primary School</u>” for the Malvern North East Urban Extension (SWDP 56).</p> <p style="text-align: center;">Change Required.</p> <p style="text-align: center;"><u>Directly-related Health Obligations</u></p> <p style="text-align: center;">The infrastructure set out in the</p>

Rep ID	Consultee	Position	Representation	South Worcestershire Councils Response
			<p>under “Specific Requirements” be reworded as follows; “1 X 1FE Primary Expansion of Somers Park Primary School”.</p> <p style="text-align: center;"><u>Directly-related Health Obligations</u></p> <p>Under “Health Facilities” an entirely new infrastructure requirement has been listed which relates to “directly related health provision and related infrastructure to meet the needs of development, carried out in consultation with the CCG for South Worcestershire” and which is proposed to be delivered through S106 planning obligations. Hitherto, the Regulation 123 list would have secured health-related infrastructure purely through CIL contributions but this proposed revision now means that all developments will potentially be liable for financial contributions through planning obligations to deliver “directly-related” health infrastructure.</p> <p style="text-align: center;"><u>Risk of “double-dipping” and no reference to Health in Developer Contributions SPD</u></p> <p>There is no definition or explanation as to what “directly-related health provision” includes, and how it differs from “strategic” provision, meaning that there is a clear risk of “double-dipping” occurring on sites which are liable for CIL. Furthermore, this requirement is wholly unjustified and unsound because there is no reference to health contributions being delivered through planning obligations within the South Worcestershire Developer Contributions SPD which was adopted in October 2016. This document provides detailed justification</p>	<p>Regulation 123 list does not commit a planning application to supplying that infrastructure. The contributions will be negotiated on a site by site basis with consideration given to the most up to date evidence at the time of discussion. No changes required.</p> <p><u>Risk of “double-dipping” and no reference to Health in Developer Contributions SPD</u></p> <p>The list of ‘other planning obligations’ in the Developer Contributions SPD is not exhaustive. Indeed, policy SWDP7 states “Development will be required to provide or contribute towards the provision of infrastructure needed to support it. Developers will also need to contribute towards community benefits related to the</p>

Rep ID	Consultee	Position	Representation	South Worcestershire Councils Response
			<p>and requirements for planning obligations relating to open space, transport, education and flood risk but there is not a single reference to health, even under the section entitled “Other Planning Obligations” which lists specific types of other potential obligations.</p> <p>This document serves to provide clarity to developers over the relationship between obligations and CIL (para. 1.2.3) but the proposed additional health provision in the Regulation 123 List will conflict with it as there is potential for an overlap between the two sources of funding in relation to health infrastructure. The CCG would have been consulted on the draft SPD but the adopted version doesn’t include any provision for health infrastructure through planning obligations, so one can only assume that the CCG didn’t submit any representations to this document. It is quite clear that the intention has always been for health infrastructure to be funded through CIL and, indeed, this is the basis upon which the CIL examination was undertaken, as described below.</p> <p style="text-align: center;"><u>CIL Evidence Base and Examination</u></p> <p>Section B) of the SWDP Infrastructure Delivery Plan (July 2016) concerns “Health and Public Health” and para. 5.92 states that the impact of growth from the site allocations has been assessed by NHS England and a specific list of locations are identified as requiring “additional infrastructure” with specific financial contributions stated. These relate to Wider Worcester, Kempsey and “Unspecified Development Sites” in Malvern Hills and</p>	<p><i>development.”</i></p> <p>The infrastructure set out in the Regulation 123 list does not commit a planning application to supplying that infrastructure. The contributions will be negotiated on a site by site basis with consideration given to the most up to date evidence at the time of discussion. No changes required.</p> <p style="text-align: center;"><u>CIL Evidence Base and Examination and Request for Health contributions at North East Malvern (SWDP56)</u></p> <p>“Unspecified Development Sites” in Malvern Hills could be applicable to the Malvern North East Urban Extension.</p> <p>This request from South Worcestershire CCG is to be negotiated as part of the planning application at Malvern North East.</p>

Rep ID	Consultee	Position	Representation	South Worcestershire Councils Response
			<p>Wychavon Districts namely the reuse of empty homes, home releases and windfall allowances. NHS England had not, therefore, anticipated any “directly related” health needs arising from any of the proposed strategic allocations, and the viability evidence underpinning the CIL Charging Schedule did not allow for any directly related health infrastructure contributions. Indeed, the viability appraisals for the strategic allocations and “generic” urban modelled sites did not allow for any health infrastructure contributions and yet they were still shown to be unviable when a CIL charge was imposed.</p> <p>As such, there is no evidence to justify an additional provision within the Regulation 123 list.</p> <p style="text-align: center;"><u>Request for Health contributions at North East Malvern (SWDP56)</u></p> <p>Despite the above evidence indicating that contributions would only be sought through obligations from a select range of “unspecified” developments, Gleeson and Welbeck (as the Applicants for the North East Malvern Urban Extension) received a request from the South Worcestershire CCG on 02 March 2017 for a significant financial contribution (£173,619) relating to the extension of two GP surgeries in Malvern.</p> <p>This request has coincided with the revision to the Regulation 123 List and has been made 16 months after the planning application was submitted, during which time detailed work has already been undertaken, and discussions held, in relation to development viability (including the appointment of surveyors). Aside from this request being made very late in the application</p>	<p>No changes required.</p>

Rep ID	Consultee	Position	Representation	South Worcestershire Councils Response
			<p>process, the letter provides no detailed evidence or explanation of the existing position relating to capacity within existing GP surgeries to justify the contribution and both surgeries are below the average patient list size per FTE GP in the NHS South Worcestershire Clinical Commissioning Group area (1,814 patients). This late request indicates that the CCG have failed to properly engage with the Developer Contributions SPD and CIL consultation and examination processes and are now trying to secure contributions to health infrastructure through planning obligations in a retrospective manner.</p> <p>It can be concluded that the proposed additional health requirement would conflict with the Developer Contributions SPD and is at odds with the evidence presented to the Inspector appointed to examine the CIL Charging Schedule. It does not qualify as a minor revision/amendment as it will lead to requests for developer contributions which could potentially threaten the viability of specific developments. It is not founded upon robust evidence and it is totally unreasonable to seek to include it at such a late stage in the examination process. We respectfully request that it be omitted from the Regulation 123 List. Should the authorities wish to retain the revision it will be necessary to reopen the CIL examination.</p>	
006	Megan Pashley – Gladman Developments	Senior Policy Researcher	<p>Gladman has been unable to find any evidence from the South Worcestershire Councils that considers the effect that the proposed changes would have on the viability evidence that was prepared and examined as part of the introduction of CIL. Without this evidence, it is not possible to determine the impact that any proposed changes would have on viability. Any decision</p>	<p>The updates to the Regulation 123 list are based on information that is part of the South Worcestershire Infrastructure Delivery Plan (July 2016) and the</p>

Rep ID	Consultee	Position	Representation	South Worcestershire Councils Response
			to alter the CIL 123 List should be supported by evidence to determine the significance of those changes on the viability of development in the area.	<p>Viability Study (January 2016).</p> <p>The updates to the Regulation 123 list will not affect the proposed CIL rates. Any relevant S106 planning obligations will be negotiated on a site by site basis. The Regulation 123 list does not commit planning applications to providing the S106 listed infrastructure. No changes required.</p>
007	Jane Hennell - The Canal & River Trust	Area Planner South	Thank you for your consultation on the Revised CIL Regulation 123 list following the CIL Examination. The Canal & River Trust have considered the content of the document and have no comments to make in this case.	Comments Noted.
008	Nicholas Freer - David Lock Associates Limited on behalf of Hallam Land Management	Business Partner	<p><u>Appendix 1: Regulation 123 List</u></p> <p>There are no material changes to the Regulation 123 list itself proposed in the consultation exercise. Hallam Land Management agrees that the Regulation 123 list should include the funding of transport, education, green infrastructure, community facilities</p>	<p><u>Education</u></p> <p>Education – agree with your interpretation regarding Land off Abbey Road in terms of an</p>

Rep ID	Consultee	Position	Representation	South Worcestershire Councils Response
			<p>etc. through the CIL.</p> <p>It was on this basis that the Charging Schedule was prepared and signed off by the Examiner. Hallam notes that there are exceptions that will be funded through section 106 contributions but considers that any such exceptions will be limited to the strategic sites within the South Worcestershire Development Plan which the Council proposed, and the CIL examiner noted, should not be subject to a CIL charge because of the substantial infrastructure costs to support them. On this matter, Appendix 2 (the Accompaniment), sets out the Council’s expectations of what may need to be funded through the section 106 mechanism on those specific strategic sites.</p> <p>Hallam makes no further comment on the validity of such contributions for specific sites at this stage of the CIL process. The point is at this stage that the infrastructure listed in the regulation 123 list should be funded by CIL and not by section 106 payments save in relation to the strategic sites listed (and subject to any such contributions meeting the wider Regulation 122 and 123) tests of obligations and viability.</p> <p><u>Appendix 2: Regulation 123 List Accompaniment</u></p> <p>In respect of non-strategic sites allocated in the Development Plan, it is clear from the Examination into the CIL Charging</p>	<p>education contribution but there is no need to amend the wording in the Regulation 123 list as scenarios will differ across the three districts. For example, there may be allocated SWDP sites within Worcester City (that are of a sufficient number of dwellings) that would be subject to a zero CIL rate and therefore able to seek an education contribution.</p> <p>No changes required.</p> <p><u>Transport</u></p> <p>Correct that ‘wider’ transport infrastructure contributions will not be sought on sites with a CIL charge (unless they are off-site directly related), but site specific transport infrastructure requirements may be required.</p> <p>No changes required.</p> <p><u>Other elements</u></p> <p>Wording that relates to “site</p>

Rep ID	Consultee	Position	Representation	South Worcestershire Councils Response
			<p>Schedule that where a CIL Charge of £40 per sq. metres for residential uses was to be applied, then this was on the basis of all principal infrastructure elements - education, transport, sports and recreation etc. being funded not by section 106 contributions but by the CIL mechanism.</p> <p>As was made clear in the Councils evidence to the CIL Examination - (CIL/EX/17) - the Councils could not ask for section 106 contributions for education, transport, cycling, police, sports facilities etc. and seek a CIL rate of £40 per sq. metres. If such elements were to be funded through the section 106 then, the Council indicated that a zero CIL rate would need to apply.</p> <p>The Draft Charging Schedule - following the Examination - retains the £40 per sq metre residential CIL rate - including for the allocated (non-strategic) sites at Evesham. The Regulation 123 list (and its accompaniment) therefore must reflect this outcome from the examination.</p> <p style="text-align: center;"><u>Education</u></p> <p>Hallam Land note that Appendix 2 proposes to secure section 106 contributions towards education, for "<i>housing sites of a sufficient number of dwellings which in themselves generate the need for either a new school or expansion to an existing school by 0.5xFE or greater</i>". Clearly, given the evidence of the Council in relation to land at Abbey Road and in other locations, it is not appropriate</p>	<p>specific projects and off site directly related green infrastructure projects..." is required for scenarios where on-site Green Infrastructure is not feasible (e.g. a site within Worcester City) resulting in an off site contribution being required that is still of direct relation to the scheme. No changes required.</p> <p>Non-strategic sites (both allocated and non-allocated) that are subject to a CIL charge may still be applicable for negotiation of infrastructure through site specific section 106 agreements, provided that those agreements are CIL compliant. No changes required.</p>

Rep ID	Consultee	Position	Representation	South Worcestershire Councils Response
			<p>to seek an education contribution in that instance as well as the CIL charge (which will now be made). Hallam presume that that is not the intent as the recent WCC response to the present Abbey Road application is that the development would generate just 6 to 7 pupils per year group.</p> <p>It is presumed that a 0.5 form entry requirement would be some 105 additional primary school pupils or 105 additional secondary school pupils. On this basis the Land of Abbey Road would not, as must be the case, be caught by the additional provision set out above in relation to education contributions.</p> <p>If Hallam has misunderstood the effect of the suggested change in the Reg 123 Accompaniment in relation to Education and there was any risk of the Land off Abbey Road incurring a section 106 obligation then the wording of the Councils suggested change would have to be amended to ensure that no section 106 contribution were sought in addition to the CIL charge.</p> <p>In any event Hallam is unclear as to the need for this additional provision in the accompaniment as the requirements of larger sites are spelt out individually. It seems improbable that any development presently allocated in the Plan (other than the strategic sites with a zero chare rate) would generate a need for a section 106 education contribution. Therefore it would seem to Hallam that this additional suggested wording by the Council was either unnecessary or should specifically be related to unallocated sites that, for whatever reason, may come forward in the plan period in a manner which can't be anticipated at</p>	

Rep ID	Consultee	Position	Representation	South Worcestershire Councils Response
			<p>present. If therefore the suggestion i2 retained it should be modified as follows "housing sites <i>not allocated in the South Worcestershire Local Development Plan</i>, and which are of a sufficient number of dwellings which in themselves generate the need for either a new school..."</p> <p style="text-align: center;"><u>Transport</u></p> <p>Similarly, the evidence at the CIL examination in relation to Land at Abbey Road (and elsewhere) was that wider transport section 106 requirements should not be sought alongside a CIL contribution. Hallam expects that this will be faithfully replicated in discussions on the section 106 in relation to the Land at Abbey Road.</p> <p>For clarity, however, it is proposed that the wording of the accompaniment be further amended as follows such that there is explicit recognition that wider SWDP transport contributions are not appropriate where CIL is charged but also to draw boundaries about "off site" infrastructure provision which will not normally be appropriate.</p> <p>Suggested wording: "site specific projects and off-site directly related transport projects) designed to mitigate for specific transport infrastructure and services required to make development acceptable in planning terms (e.g. site specific highway works, including localised safety improvement, reinstatement of highways and site specific =works to amenity land, access roads for the specific development. <i>This excludes</i></p>	

Rep ID	Consultee	Position	Representation	South Worcestershire Councils Response
			<p><i>wider SWDP Transport contributions.</i></p> <p><u>Other elements</u></p> <p>For similar reasons, the following additional amendments are suggested in respect of the Accompaniment:</p> <p>“site specific projects and off-site directly related green infrastructure projects and small areas of open space or on-site play provision...”</p> <p>“Site specific projects and off-site directly related provision of playing fields...”</p> <p>“Site specific community and cultural requirements associated with the development to be delivered on an appropriate site (e.g. village hall).</p> <p>Hallam also consider that there is no need for the additional requirement for health provision in relation to those sites in the development plan (that are not the subject of strategic or specific policies). If this is intended to catch unallocated sites - then this should be explicitly set out in the wording as follows: “On unallocated sites, directly related health provision...”</p>	
009	James Morris - Sport England	Planning Manager	The revisions do not relate to the Sport and Recreation Facilities section and Sport England have no comments to add to our previous consultation response.	Comments Noted. No changes required.

Rep ID	Consultee	Position	Representation	South Worcestershire Councils Response
010	Kezia Taylerson - Historic England	Historic Environment Planning Adviser (West Midlands)	We have no comments to raise on the proposed post Examination in Public modifications for the South Worcestershire Community Infrastructure Levy.	Noted. No changes required.