**Regulation 123 of the Community Infrastructure Levy (CIL) Regulations (2010) (as amended) – Note on Compliance of Planning Obligations Sought by Oxfordshire County Council**

**Location:** Part Land On The North East Side Of Gavray Drive Bicester

**Planning Ref:** 15/00837/OUT

**Appeal Ref:** APP/C3105/W/17/3189611

**Proposal:** OUTLINE - Residential development of up to 180 dwellings to include affordable housing, public open space, localised land remodelling, compensatory flood storage and structural planting

**Date:** 18/06/18

1. Legislative Background
	1. Regulation 123 of the above regulations (as amended in 2014) states that :

*“(1) This regulation applies where a relevant determination is made which results in planning permission being granted for development.*

*(2) A planning obligation may not constitute a reason for granting planning permission for the development to the extent that the obligation provides for the funding or provision of relevant infrastructure (including, subject to paragraph (2B), through requiring a highway agreement to be entered into)*

*(2A) Subject to paragraph (2B) a condition falling within either of the following descriptions may not be imposed on the grant of planning permission—*

*(a) a condition that requires a highway agreement for the funding or provision of relevant infrastructure to be entered into;*

*(b) a condition that prevents or restricts the carrying out of development until a highway agreement for the funding or provision of relevant infrastructure has been entered into.*

*(2B) Paragraphs (2) and (2A) do not apply in relation to highway agreements to be entered into with—*

*(a) the Minister, for the purposes of section 1(1) of the 1980 Act(a); or*

*(b) Transport for London.”;*

*(3) Other than through requiring a highway agreement to be entered into, a planning obligation (“obligation A”) may not constitute a reason for granting planning permission to the extent that—*

*(a) obligation A provides for the funding or provision of an infrastructure project provides for the funding or provision of a or type of infrastructure; and*

*(b) five or more separate planning obligations that—*

*(i) relate to planning permissions granted for development within the area of the charging authority; and*

*(ii) which provide for the funding or provision of that project, or provide for the funding or provision of that type of infrastructure, have been entered into on or after 6th April 2010.”*

* 1. This means in practice that :
* A grant of permission cannot be dependent on a S106 obligation for infrastructure on the Regulation 123 list
* Limitations on pooling for infrastructure begins from all obligations collected since 6th April 2010
* There is no limitation on pooling for S278 agreements
1. Implications

Cherwell District Council (CDC) does not yet have an approved CIL Charging Schedule though it is progressing. Therefore any obligations which require tariff type contributions towards CIL liable infrastructure or projects are limited to a total of 5 such obligations, taking into account all relevant obligations collected since April 2010.

1. The following sets out the list of obligations sought by Oxfordshire County Council in the s106 agreement/UU and whether the 5 obligation limit has been met:

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| **Obligation** | **Compliance with Regulation 123 of the CIL Regulations 2010** |
| Primary School Contribution | Towards the expansion of Longfields Primary School Bicester Oxfordshire County Council has checked its records and is satisfied that there are less than 5 planning obligations in respect of this project entered into on or after 6th April 2010. Therefore it is the County’s view that this contribution is compliant with regulation 123. |
| Secondary School Contribution | Towards the cost of providing the first 600 secondary education places at NW Bicester Oxfordshire County Council has checked its records and is satisfied that there are less than 5 planning obligations in respect of this project entered into on or after 6th April 2010. Therefore it is the County’s view that this contribution is compliant with regulation 123. |
| Special Educational Needs Contribution | Towards the phase 2 expansion of Bardwell School Oxfordshire County Council has checked its records and is satisfied that there are less than 5 planning obligations in respect of this project entered into on or after 6th April 2010. Therefore it is the County’s view that this contribution is compliant with regulation 123. |
| Bus Service Contribution | Towards the cost of new or improved local bus services increasing the frequency and hours of operation of bus services serving the Development from the A4421 This requirement is not ‘infrastructure’ as defined in S.216 of the Planning Act 2008 and therefore does not fall under the pooling limit in Regulation 123. |
| Bus Infrastructure Contribution | Towards the costs of new bus stop infrastructure on the A4421 (Wretchwick Way) Bicester Oxfordshire County Council has checked its records and is satisfied that there are less than 5 planning obligations in respect of this project entered into on or after 6th April 2010. Therefore it is the County’s view that this contribution is compliant with regulation 123. |
| Highways Infrastructure Contribution | Towards the upgrading of the A4421 Charbridge Lane from Gavray Drive to the Bicester Road roundaboutOxfordshire County Council has checked its records and is satisfied that there are less than 5 planning obligations in respect of this project entered into on or after 6th April 2010. Therefore it is the County’s view that this contribution is compliant with regulation 123. |
| Travel Plan Monitoring Contribution | Towards the costs of monitoring the travel plan submitted and approved pursuant to the Planning Permission This requirement is not ‘infrastructure’ as defined in S.216 of the Planning Act 2008 and therefore does not fall under the pooling limit in Regulation 123. |
| Junction Improvement Contribution | Towards safety improvements at the priority junction of Wretchwick Way and Peregrine Way Bicester Oxfordshire County Council has checked its records and is satisfied that there are less than 5 planning obligations in respect of this project entered into on or after 6th April 2010. Therefore it is the County’s view that this contribution is compliant with regulation 123. |

1. Further background to the County Council related contributions is set out in OCC’s R122 statement submitted to the appeal.