

Christchurch and East Dorset Core Strategy – Examination in Public

Matter 10 –Environmental Issues

Statement on behalf of
Meyrick Estate Management Ltd (360382)
Bodorgan Environmental Management Ltd
(663249)

Prepared by Jackson Planning (521508)

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Matter 10- Environment

1. This statement is made jointly on behalf of Meyrick Estate Management Ltd (MEM) (360382) and Bodorgan Environmental Management Ltd (663249) in response to the questions issues on **Matter 10** to augment representations and evidence provided in previous statements. MEM deal mostly with general management matters for the Meyrick family and its land holdings; BEM has a more focussed biodiversity and environmental management role in relation to Meyrick family land holdings, hence their involvement in this CS process. Both parties made representations at the pre submission CS and proposed modifications stage.

Question 1 - Does Policy ME1 provide a robust framework for safeguarding biodiversity and geodiversity?

2. Concerns expressed below regarding the adequacy of policy ME2 are in part reflected in policy ME1 as this is the overarching policy for habitat protection within the plan. The policy refers to the provision of Suitable Alternative Natural Green Space (SANG) but does not specifically include the protection of heathland, as this is in part included in policy ME2. However, as ME2 is not a sound policy as drafted, policy ME1 does not provide a robust framework for the protection of the Dorset Heaths.
3. Furthermore Policy ME1, as revised, does not insist on mitigation being provided and includes the phrase 'or as a last resort compensation' if harm is identified and cannot be mitigated. Allowing 'pay-offs' is not consistent with a robust and rigorous framework to protect biodiversity and would be inconsistent with the imposition of CIL, which must identify mitigation projects on the Regulation 123 list.

Question 2 - Does Policy ME2 provide a robust basis for the protection of the Dorset Heathlands?

4. MEM and BEM have consistently challenged/ questioned the efficacy of the Dorset Heaths' European Sites protection policies and particularly the adequacy of mitigation to prevent the harmful urban effects likely as a result of additional residential development. Representations have been made to the various consultations on the Heathland SPD and the Heathland DPD

and CIL draft charging schedule (attached as appendix 1, 2, 3 to this report) as well as representations to policies at the various stages of this plan.

5. MEM and BEM maintain that the plan has not been **positively prepared**, is **not effective, not justified** and is **not consistent with national policy** as a failure to deliver adequate compensation or mitigation measures in terms of the European sites has the following potential consequences. If development is carried and occupied out without measures having been put in place (because ME2 is ineffective) that ensure no significant effect, alone or cumulatively, on a protected site that would be in breach of the Habitats Directive as well as the Habitats Regulations. The alternative is that development would be delivered as set out in the plan as the required appropriate assessment required under regulation 61 would prevent development.
6. As currently drafted ME2 of the plan does not expressly preclude development that is likely to have a significant effect on a European site. The emerging Heathlands DPD is more explicit on this. Indeed ME2 states that in the majority of cases the mitigation measures will be secured through CIL, which is a concern given the potential difficulties over CIL in this context (as explored below).
7. ME2 assumes that the mitigation measures will be effective. That is not appropriate; development must be prevented until it is certain that mitigation will be effective. A suggested modification of the policy wording is included below at paragraph 32. This is a stronger worded policy that requires development that is likely to have a significant effect on the ecological integrity of the European site to demonstrate that adequate mitigation is put in place, and is the approach that has been adopted in other plans within the Thames Basin Heath SPA.
8. There is a significant degree of doubt regarding this whole approach; the original authors of the IPF the forerunner to the Heathland SPD and DPD confirmed this that the Dorset-wide heathland mitigation programme is indeed an experiment. Natural England, the main arbiters, cannot be certain that mitigation will be effective, monitoring will be required to

ensure that mitigation projects are effective as possible in providing a diversion to the additional trips that would otherwise be made to the Dorset Heaths.

9. If the policy is not clear about the requirements from the outset, the plan does not provide an effective framework for the delivery of housing development and its mitigation and the plan is therefore not effective and cannot be considered sound.

10. As registered in previous representations to consultations, the plan has also not expressly identified the alternative strategy for mitigation. Policy ME2 does not list the SANGs necessary to ensure heathland mitigation is effective for the delivery of the development planned as a whole and how existing and proposed Green Infrastructure supports this. ME2 must be more explicit and include the list of SANG sites that make up the mitigation programme. The individual SANGs are included in the housing allocations policies, but their effective delivery for heathland mitigation must be within the heathlands policy, as it is this policy that is the vehicle for ensuring compliance with the Habitats Directive and Habitats Regulations if revised as suggested below. Furthermore, it will also be necessary to assist with the double counting of CIL where physical SANG provision is made which is discussed below.

11. The plan cannot be **justified** because an alternative more appropriate strategy put forward below would be a sound basis for the delivery of development and mitigation in compliance with the Habitats Directive and Regulations.

12. Another major flaw of policy ME2 is that it is not in itself effective. The current draft wording relies on the Dorset Heathlands DPD and the interim SPD. Whilst it is acknowledged the Heathlands DPD is part of the LDF, there is no formal status at present as its progress has been significantly delayed due to significant objection (including MEM's) to the lack of rigour in the heathland mitigation process.

13. A significant concern of the draft Heathland DPD was that it relegated the list of mitigation projects to an SPD that therefore would not be scrutinised for soundness at examination. MEM are of the firm opinion that the critical mitigation projects need to be subject to examination, and therefore should be part of the DPD. Regulation 5 and 6 of 2012 Local Planning Regulations limits the contents of SPD, and Regulation 5 (1) (a) (i) and (ii) provides that any document dealing with (i) the development and use of land which the local planning authority wish to encourage during any specified period; (ii) the allocation of sites for a particular type of development or use is a DPD and not an SPD.

14. The allocation of land as a SANG, which is an integral part of ensuring that a plan is Habitats Directive compliant, should be properly scrutinised and be within a DPD to be compliant with the regulations above. This casts considerable doubt on reliance of the SPD at this CS stage, and renders the plan inconsistent with national policy.

15. There are also significant difficulties with the Habitats Regulations Assessment (HRA). It relies on conclusions that cannot be drawn from the current wording of policy ME2. The HRA relies on ME2 as having a requirement for SANG for each allocation (see also paragraph 10 above). There is a disconnect between the positive conclusion of the HRA assessment and the certainty required that the mitigation will be implemented and effective. There is also no substantive consideration in the HRA of the efficacy of policy ME2 and the downgrading of ME3 to an appendix in the plan.

16. For allocation CNI there is good progress on a SANG solution, as explained in the SOCG between the SANG provider (in this case MEM) and Natural England. There are alternative options at this stage as a result of the confirmation of the minerals allocation in the Hampshire Waste and Minerals Local Plan. However, on other allocated residential sites in the plan the SANGs are less advanced. If the SANGs had been fixed and finalised, the more certain way to deliver them would to have allocated the SANGs on the proposals map; at present they are merely symbols on a key diagram and have no geographic expression.

17. Given the significant doubts cast over the efficacy of the HRA in relation to the paragraph 14 above, there must also be significant doubts about the adequacy of the plan, particularly in the absence of an adopted Heathland DPD, to secure the necessary heathland mitigation to allow residential development to proceed as set out in the plan, and therefore the Habitats Directive and Regulations are not met. This is inconsistent with national policy and European legislation.

Question 3 - Is there a strategy to avoid double counting SANG/ mitigation and payment of CIL (ME2)?

18. CIL payments and SANG provision are a serious concern. MEM have already made representations on this matter to the Council in response to the proposed Community Infrastructure Levy (CIL) Preliminary Draft Charging Schedule Consultation. (Appendix 3 to this statement).
19. Although this examination is not here to consider CIL in detail, at this CS stage it is necessary to understand the limitations of any CIL regime in respect of ensuring the measures necessary for mitigation are secured to comply with the Habitats Regulations. Given in particular that ME2 states that heathland mitigation measures will be secured through CIL in the majority of cases, this is a relevant matter to this examination. I say this because with reference to paragraph 28 of Examination Report on the Poole Draft CIL Charging Schedule (Appendix 4 to this statement) where it was clearly stated the issue was not for that examination but it noted that the direct link between s106 payment and heathland mitigation was lost by the introduction of CIL.
20. It must therefore be for this plan to ensure the delivery of appropriate mitigation whilst avoiding double charging. In the absence of the adopted Heathlands DPD and the reliance on an inferior SPD this CS plan must find a solution to this problem as the allocations policies (for example CNI) require the physical provision of SANG, as they should, but the plan also makes various references to CIL, in particular in the Infrastructure Delivery

Programme (IDP). You cannot have both CIL and SANG as envisaged in the draft charging schedule for fear of double charging with regard to heathland mitigation, a point acknowledged by policy officer Richard Henshaw in his email of 30 July 2013 (Appendix 5 to this statement).

21. However, to make the CS effective in practice and in particular to ensure housing is delivered in accordance with paragraphs 47-55 of the NPPF, which is seeking to boost the supply of housing, it is essential that the Heathlands DPD and the CIL Charging Schedule effectively provide the framework to ensure that Habitats compatible development is delivered, without this the plan would be inconsistent with national policy and could not be found sound.
22. The other significant problem with CIL and heathland mitigation is affordable housing, which is not required to make CIL payments. This issue was highlighted in response to the proposed Community Infrastructure Levy (CIL) Preliminary Draft Charging Schedule Consultation. (Appendix 3 to this statement).
23. A solution to this may be to draw up a list of infrastructure projects in relation to the measures required in accordance with the Habitats Regulations. Those projects not included (for example the SANG at Roeshot for policy CNI) would not therefore be subject to a charge – as stated in the CIL Guidance:

86. Regulation 123 of the Community Infrastructure Levy Regulations provides for charging authorities to set out a list of those projects or types of infrastructure that it intends to fund through the levy. This list should be based on the draft list that the charging authority prepared for the examination of their draft charging schedule.

87. When a charging authority introduces the Community Infrastructure Levy, section 106 requirements should be scaled back to those matters that are directly related to a specific site, and are not set out in a regulation 123 list. For transparency, charging authorities should have set out at examination how their section 106 policies will be varied, and the extent to which they have met their section 106 targets. Relevant local policy changes should be implemented at the same time that the charging schedule is introduced, and integrated as soon as practical into the relevant Plan.

24. Given that the CIL regulations require change to local policy to reflect the implementation of CIL, it is possible to pre-empt this with changes to this plan. The list of what would be the Regulation 123 projects could be included in more detail in the IDP, and expressed spatially on the proposals map. This way the projects will be subject the examination and avoid the issues highlighted in paragraph 13 above.
25. Another opportunity to overcome the double counting problem would be the potential for CIL reductions based on payments in kind. This however will only be applicable where the SANG or heathland mitigation project is acquired from the person liable to CIL by the charging authority. This is problematic for SANG providers who wish the land to remain in private ownership.

Question 4 -Should Policy ME2 clarify that payment of CIL would be a trigger which would allow development to commence?

26. A trigger for the payment of CIL in policy ME2 without any qualification could lead to development that is in breach of the Habitats Regulations and Directive. CIL payment should only be a trigger to development where the mechanism, or some other adequate mechanism, is already in place to prevent harm to a European site. If, as suggested in representations (appendix 3), that sites CN1 and CN2 became CIL free zones there would be no such trigger, and this may cause delay of implementation. In addition some physical works to provide SANGs may take longer than the development of the first residential units on a site and this would mean that SANG was not ready to mitigate heathland impacts on first occupation of the site. The trigger for development will be the confirmation that the development is not in breach of the Habitats Regulations and Directive.

Question 5 - Do Policies ME4 and ME5 set local requirements in a way which is consistent with paragraph 95 of the NPPF?

Question 6 - Is Policy ME8 consistent with ME1 with regard to impacts on biodiversity and ecological impact?

27. A response on these questions is made separately by New Forest Energy (720405) a Renewable Energy Provider who operates within the Meyrick Estate.

Question 7. Do the SANG guidelines:

Provide clear and adequate guidance regarding the location and accessibility of SANG?

Provide clarity regarding the quality and characteristics of SANG?

Provide sufficient flexibility to allow for site-specific circumstances?

28. The SANG guidelines at 5.2 require the SANG to be more attractive to visitors than the Dorset Heathlands. This is impractical given the mature beauty, wildness and cultural history of the heaths. Acceptable SANGs in the Thames Basin Heaths do not provide more attractive space than the heaths themselves. The clue is in the title: they are 'alternative'. They need to be more convenient for the purposes that trips are normally made to the heaths, and in that way 'more convenient' rather than 'more attractive' is the appropriate descriptor.
29. Given that the plan has removed Appendix 5 from the previous policy ME3 and entitled them as guidelines this implies they have less fixed requirements and have more flexibility.

What modifications are required so the plan can be found sound?

30. Policy ME1 needs to be revised to cover heathland protection, and prevent inappropriate compensation payments. Policy ME2 needs to be significantly altered as set out below to be compliant with the Habitats Regulations and Habitats Directive. It needs to firmly state that residential development proposals must demonstrate that adequate measures are put in place to avoid or mitigate any potential adverse affects.
31. By including the specific SANG requirements in the plan under policy ME2 with the express requirement to take opportunities to link this with existing or proposed green infrastructure (including the opportunities offered by the coast in Christchurch) is the sound approach since:
- (i) It avoids the uncertainties over the Heathlands DPD and the difficulties with relying upon CIL.

(ii) This should be paralleled by an approach of listing the specific Habitats infrastructure that will be funded through CIL on the regulation 123 list and in detail in the IDP, consistent with the CIL Guidance and making it clear other such projects will not be funded by CIL thus avoiding the issue of double counting.

32. Alternatively those sites that provide a physical SANG could have a nil rated CIL tariff to avoid double counting.

Suggested Revised Policy ME2

33. The following wording is suggested to make ME2 effective and clear, additions shown in red text, deletions shown with strikethrough:

ME2 - Protection of the Dorset Heathlands

In accordance with the advice from Natural England, no residential development will be permitted within 400m of protected European and internationally protected heathlands.

Any new residential development within 400m and 5km of these areas that is likely to have a significant effect on the ecological integrity of the Dorset Heaths SPA will be required to demonstrate that adequate measures are put in place to avoid or mitigate any potential adverse effects.

Where required mitigation will be provided through:-

- **Provision of on-site alternative natural greenspace (provided in accordance with the general guidelines set out Appendix 5 and the site specific allocation policies in this Plan); and/or**
- **Contributions to off-site greenspace or recreation projects.**

These two measures/forms of mitigation are set out in the Dorset Heathlands Joint Development Plan Document and the Dorset Heathlands Joint Supplementary Planning Document which sets out guidance in the intervening period prior to the adoption of the Development Plan Document, including:-

The avoidance or mitigation measures are to be delivered in advance of the developments being occupied and must provide for mitigation in perpetuity. For allocated development sites (NB Add specific list of all allocated new and large existing sites where SANG is to be provided in accordance with the allocation policies of this Plan: CNI, CN2 etc.) Suitable Alternative Natural Greenspaces (SANGs) will be secured by way of a legal agreement between the developer and the relevant council. To maximise effectiveness all SANGs will link to existing and proposed green infrastructure and other heathland

mitigation projects to form a network.

On other small sites where SANG is not directly provided Heathland mitigation measures will be secured through CIL ~~in the majority of cases.~~ The authority will ensure that mitigation measures to avoid harm are given priority as required by this policy **by including all projects on the Regulation 123 list and the Infrastructure Delivery Plan.**

~~On development proposals of approximately 50 dwellings, where adequate mitigation measures cannot be provided on-site as part of the development, a financial contribution to the Councils will be required.~~

(Note above paragraph and that below revised as not CIL compliant)

The Dorset Heathlands Joint Development Plan Document will set out the type of development circumstances, a list of projects **(repeated in the Regulation 123 List)** which will be funded by ~~developer contributions CIL and the calculated contribution amounts as they apply to different types of development.~~ Projects delivered through the Development Plan Document will include Suitable Alternative Natural Greenspace (SANG), heathland access and visitor management, wardening, education, habitat re-creation and other appropriate avoidance measures. **They will link to existing and proposed green infrastructure and SANGS to form a network.**

The combination of the 400m exclusion zone, **the SANGS listed above alongside** with the heathland mitigation measures set out ~~and in the regulation 123 list, existing and proposed green infrastructure and Heathland DPD~~ **above** function together as an effective package avoiding the harmful effects of additional residential development on the European and internationally designated heathlands.

Appendix 1- Response by MEM to Heathland SPD – March 2012

Appendix 2 –Response by MEM to Heathland DPD – March 2013

Appendix 3- Letter 11 March 2013 MEM Response to Proposed Community Infrastructure Levy (CIL)

Preliminary Draft Charging Schedule

Appendix 4 – Report of Examination Poole CIL Draft Charging Schedule

Appendix 5 – Email 30 July 2013 Richard Henshaw EDDC to Lisa Jackson, Jackson Planning