



Christchurch and East Dorset Community Infrastructure Levy

Regulation 123 list

Responses to the Consultation on the revised list



Prepared by Christchurch Borough Council and

East Dorset District Council

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1 Introduction

1.1 Christchurch and East Dorset Councils prepared Community Infrastructure Levy (CIL) Charging Schedules which were adopted on the 5th and 6th September 2016 respectively. CIL was subsequently introduced in Christchurch and East Dorset on the 3rd January 2017. The councils also jointly produced a CIL Regulation 123 list which was prepared alongside the CIL Charging Schedules and also published in September 2016.

1.2 The Government's CIL guidance stipulates that the CIL 123 list can be updated as a stand alone document, without the need for Examination. The CIL Guidance also states that updates to the 123 List should be subject to appropriate consultation. In this respect, the Christchurch and East Dorset CIL 123 list was updated and subject to public consultation from the 23rd February to the 23rd March 2017. Those consulted on the 123 List update included all those who were engaged in the preparation of the Christchurch and East Dorset CIL Charging Schedules which includes the development industry, commercial agents, parish and town councils and the wider community. Consultation documents have been available on the Councils' website and were deposited at the Council offices in Christchurch and East Dorset.

1.3 Amendments have been made to the Councils' Regulation 123 list with regard to the Heathland Mitigation, Transport and Education infrastructure categories. These changes have been made in order to provide clarification within these infrastructure categories for where CIL and S106 monies can be used including infrastructure that may be secured through S106 / S278 for sites not paying CIL. A full explanation of the proposed changes is included within the Regulation 123 list table.

1.4 The Councils received two responses to the consultation on the updated CIL 123 list. These responses are set out in full below with officer responses.

2 Draft Regulation 123 List Response Schedule

Contact Details	Consultation Response	Officer Comments
<p>Meyrick Estate Management LTD</p> <p>Lisa Jackson, Jackson Planning LTD.</p>	<p>CIL and the Habitats Directive</p> <p>MEM maintains serious concerns regarding the relationship between the imposition of CIL and the ability of the local plan to achieve its aims in relation to the Habitats Directive. These concerns have been raised in responses before to the CIL consultations and Core Strategy and they have not been adequately addressed in the changes proposed now in the Regulation 123 list.</p> <p>The rationale for the change currently proposed by the Council in relation to heathland mitigation is as follows: “2015 Heathland Planning Framework has now been adopted and heathland mitigation projects which are not site specific will be delivered through CIL”.</p> <p>Whilst this appears an appropriate solution, the SPD requires the mitigation projects to be delivered prior to occupation of dwellings. There is no prospect of SPD-compliant delivery of mitigation in Christchurch as the only heathland project creating genuine additional SANG capacity for Christchurch Borough is the delivery of SANG at Chewton Common. This project is within the control of MEM’s clients and is at an early stage of development. MEM’s clients remain keen to bring Chewton Common and other SANG sites forward and has asked that these are identified in the Local Plan Review.</p>	<p>These comments relate to the delivery of heathland infrastructure projects in Christchurch which is not a matter for this consultation on the revised CIL 123 list. These comments relate to matters that were considered through the preparation of the Heathland SPD and the Core Strategy.</p>
	<p>Charging Schedule Rates</p> <p>There should not be a change to the Regulation 123 list as proposed without a parallel examination of the Charging Schedule rates. We say this because the CIL Guidance (at paragraph 020 PPG 12.6.14 ID: 25-020-20140612) is</p>	

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	<p>clear that when Charging Authorities set out their rates, they should include the costs and implications of other planning policies or obligations. In this regard:</p> <ul style="list-style-type: none"> • Taking additional sites out of CIL where they have their own SANG is welcomed by MEM. • However, the evidence of costs and the implications with regard to the mitigation of urban populations on the heathland has not been set out. • If developments are no longer paying into CIL, this reduces the overall availability of funds for heathland projects. This balance has not been examined. <p>NPPG advises: "Charging authorities should not remove an item from the regulation 123 list just so that they can fund this item through a new section 106 agreement. Authorities may amend the regulation 123 list without revising their charging schedule, subject to appropriate consultation. However, where a change to the regulation 123 list would have a very significant impact on the viability evidence that supported examination of the charging schedule, this should be made as part of a review of the charging schedule." Paragraph: 098 Reference ID: 25-098-20140612</p> <p>The implications for viability are unknown and no evidence has been provided with this consultation draft to demonstrate the significance of the impact of this change on viability evidence and there is no justification that the proposed change will not also require a change to the Charging Schedule in addition to the items in the Regulation 123 list.</p>	<p>heathland mitigation, transport and education. This does not involve additional policy infrastructure requirements on CIL paying development that would affect the viability evidence and the calculation of the CIL rates. Therefore, there is no need to review the CIL Charging Schedules.</p> <p>The delivery of heathland infrastructure projects in Christchurch is not a matter for this consultation on the revised CIL 123 list.</p>
	<p>Strategic Access Monitoring and Maintenance (SAMM)</p>	<p>It was established through the Christchurch and East Dorset CIL Examination that Strategic Access</p>

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	<p>MEM believe that strategic maintenance and access management of the heathland mitigation projects can be included in CIL funding. The CIL legislation allows for the improvement, maintenance, replacement and operation of infrastructure (s.216 of the Planning Act 2008 and Regulation 59(1), both as amended in 2012). This position was supported by Inspector Sue Turner (Christchurch Core Strategy Examination) at paragraph 121 of her report where she suggests management and maintenance can be funded from CIL. It is, therefore, incorrect to place this element in the s.106 column in the draft regulation 123 list. MEM seek a change to the Regulation 123 list to include the SAMM payment within CIL rather than collecting it as a separate charge.</p> <p>Indeed it would appear that at present there is potential double charging as the access and monitoring projects that are listed in the Heathland SPD are not projects for site-wardening, education and measures to control harmful activities on the heathland, but are more akin to Heathland Infrastructure projects. This issue would be capable of proper scrutiny if a more recent breakdown of CIL spending and Heathland IPF spending was made available.</p> <p>By combining both the contribution to Heathland Mitigation Projects and SAMM within CIL there can be no risk of double charging.</p>	<p>Management and Monitoring SAMM is not considered as infrastructure to be delivered through CIL. This is reflected in the adopted Heathland SPD where SAMM is delivered through S106 for Christchurch, East Dorset, Bournemouth and Poole.</p> <p>Delivering SAMM through S106 meets the tests of CIL Regulation 122 in terms of the fact that the contribution is necessary, directly related and reasonable related in scale and kind to the development. The use of SAMM is not constrained by the pooling restrictions as it is not infrastructure as identified in S216 of the Planning Act 2008. T</p> <p>The provision of SAMMs including a project co-ordinator, education officer and warden service does not fall within the CIL Regulation 123 definitions. The Hart Council Legal opinion confirms that SAMM is not subject to the pooling restrictions and can be charged through S106. Regulation 123 of the CIL Regulations refers to obligations 'which provide for the funding or provision of that project, or type of infrastructure'. Although provision is used, the regulation does not include the</p>

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		<p>remainder of the list in S216 of the 2008 Act namely 'provision, improvement, replacement, operation or maintenance'. Moreover funding is defined in relation to the funding of that infrastructure as meaning the provision of that infrastructure by way of funding.</p>
	<p>CIL Exempt Developments As previously set out in earlier representations, MEM firmly believes there is a serious danger that the required mitigation for urban effects on the Dorset heaths cannot be secured for certain developments through CIL as currently set out for Affordable Housing and Self-build housing as these are exempt from CIL.</p>	<p>The delivery of heathland infrastructure projects in Christchurch is not a matter for this consultation on the revised CIL 123 list.</p>
	<p>Affordable Housing and CIL for Heathland Mitigation Affordable housing does not pay the CIL tariff, so therefore cannot mitigate harmful urban effects on the heath, unless provided directly. From the Poole CIL Examination report (para. 29) it was concluded: "Affordable housing is not liable for CIL and some conversions from houses to flats may not need to pay CIL if there is no net increase in floorspace. Thus, as soon as CIL is in operation these types of development will not contribute directly to HR mitigation." As the Council have now identified that all heathland mitigation will be funded by CIL, apart from sites where SANG is provided, it is clear that as units of affordable housing (on sites less than 40 units) are not CIL rated, there will be no direct link between their impact and mitigation. Previously, affordable housing developments paid the Interim Planning Framework tariff, which</p>	<p>The delivery of heathland infrastructure projects in Christchurch is not a matter for this consultation on the revised CIL 123 list.</p>

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	<p>directly contributed to heathland mitigation. Given that a third of the dwellings coming forward in the local plan are anticipated as affordable houses in the two Councils over the plan period, this must be addressed in the CIL charging regime with costs anticipated for mitigation of the affordable housing being covered by the differentiated CIL rates. To fail to do so would mean that there is a serious risk that the requirements Habitats Regulations would not be met.</p>	
	<p>Securing Mitigation in Proportion to dwelling occupation MEM believes that in order to satisfy the Habitats Directive and Regulations, it is necessary to set out in detail:</p> <ol style="list-style-type: none"> 1. costed evidence of heathland mitigation projects; and 2. the capacity of such projects to mitigate development <p>because it is necessary to ensure that CIL receipts and mitigation provided by those receipts keeps pace with occupation of new dwellings. If mitigation capacity is not available, development should not be occupied until it is in place. This is the case in Hart District Council who are refusing applications for dwellings due to a lack of capacity in the current SANGs. This is the only way to ensure development is compliant with the Habitats Directive.</p>	<p>The delivery of heathland infrastructure projects in Christchurch is not a matter for this consultation on the revised CIL 123 list.</p>
	<p>CIL and Education</p> <p>MEM objects to the proposed new wording in relation to education provision related to Site CN1. It is too prescriptive given the lack of consistency in DCC's thinking on this subject and the obvious potential for a further change in thinking over the life of this project. Consequently, MEM proposes that the following wording is deployed:</p>	<p>The proposed wording is not appropriate as the approach to financial contributions for the Policy CN1 site has been agreed with DCC and in the preparation of this revised 123 list.</p>

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	<p>“(CN1) Christchurch Urban Extension: a proportionate contribution towards education where there is no on-site educational facility as agreed by the Local Education Authority and the Planning Authority which may include:</p> <ul style="list-style-type: none"> • Proportionate financial contribution towards expansion of Somerford Primary (expansion to 3FE) • Proportionate financial contribution towards expansion of Grange School (Expansion by 1FE)” 	
	<p>Process MEM would welcome clarification from the Council as to how the Council proposes to:</p> <ol style="list-style-type: none"> 1. take due account of the representations set out in this letter; and 2. generally satisfy the requirements of due process given that there will be no independent examination. <p>For example, is the Council proposing to meet with those making representations?</p>	Noted.
	<p>Conclusion MEM remains very concerned that significant issues around heathland mitigation remain completely unresolved, despite this issue being raised repeatedly including at the preliminary draft charging consultation, the CIL examination and at the Core Strategy consultation and examination.</p> <p>I would be grateful for receipt of these representations and confirmation of how these will be considered in the final Regulation 123 list that the Council propose to adopt.</p>	The delivery of heathland infrastructure projects in Christchurch is not a matter for this consultation on the revised CIL 123 list.

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<p>Pro Vision James Iles</p>	<p>Thank you for providing the opportunity to comment on the Councils' proposed amendments to the Community Infrastructure Levy (CIL). This representation is made by Pro Vision.</p> <p>We write to outline our concerns in respect of the proposed changes to the draft Regulation 123 List (the draft List).</p> <p>In summary, our concerns are that:</p> <p>a) The Councils have not explained nor justified the proposed amendment to heathland mitigation in the draft List and</p> <p>b) The proposed amendments are not consistent with adopted policy or adopted policy guidance.</p>	
	<p>a) Lack of explanation of the proposed amendment</p> <p>The Councils are proposing to amend the draft List with the effect that "Sites of 40 or more dwellings which are required to delivery SANGs (but don't pay CIL) will be required to do so through S106".</p> <p>At paragraph 1.4 of the draft Regulation 123 List, it is stated that "A full explanation of the proposed changes is included within the Regulation 123 list table". There is no other supporting evidence published with this consultation. There is in fact, therefore, no satisfactory explanation of why the Councils are proposing to make this change to the draft List, and consequently we are concerned that amendment is not justified.</p> <p>b) Adopted policy and supplementary guidance</p>	<p>The adopted CIL Charging Schedules set out a zero rate for residential on sites of 40 or more dwellings where on site SANG</p>

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	<p>The Councils' Charging Schedules (adopted September 2016), has a rate of £zero for residential developments on sites of more than 40 dwellings that are required to provide SANG. However, at page 15, the Charging Schedule states that "The Core Strategy will continue to set the policy framework for where SANGs are required, informed by discussion between the Local Planning Authority and Natural England".</p> <p>The Christchurch and East Dorset Local Plan Part 1 – Core Strategy (adopted April 2014) indicates that only development schemes of "approximately 50 dwellings and above" will be expected to provide SANG as part of their site-specific infrastructure provision (paragraph 13.21; supporting text to Policy ME2 – Protection of the Dorset Heathlands).</p> <p>The Dorset Heathlands Planning Framework 2015-2020 SPD (the SPD), adopted by the Councils in January 2016, states that Heathland Infrastructure Projects (HIPs) should form part of the overall infrastructure provision of the development site "For large sites of approximately 50 or more dwellings" (paragraph 5.5).</p> <p>The proposed revisions to the Regulation 123 List are therefore not in accordance with the adopted Core Strategy or the adopted SPD, and are at risk of leading to confusion in the interpretation of adopted planning policy.</p> <p>Paragraph 5.4 of the SPD clarifies that HIPs will be delivered by either a) the local authorities from contributions collected through CIL payments and/or b) directly by developers through on-site provision. As drafted, the draft List will leave an area of uncertainty: schemes of more than 40 but less than 50</p>	<p>is required by the local authority. Therefore, where a SANG is required on these non CIL paying sites it must be secured through S106 and this must be reflected in the 123 list.</p> <p>The Core Strategy does not contain a site threshold within a policy. The reasoned justification text for Policy ME2 refers to large sites of 'approximately 50 dwellings'. The heathland SPD also refers to sites of 'approximately 50 dwellings'. Therefore, SANGs may be required on sites of under 50 and Natural England have confirmed that this includes sites of 40 and above and Policy ME2 of the Core Strategy is applied in this way. In this respect the approach set out in the 123 list is consistent with the adopted Core Strategy, Heathland SPD and CIL Charging Schedules.</p>

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	<p>dwelling would have a £zero rate under CIL but be expected to pay a contribution to SANG under S106 even though not required to do so by adopted policy.</p> <p>To remedy this anomaly, page 2 of the draft List should be amended in respect of the third column (Infrastructure and other items to be funded through S106 Obligations; S278 of the Highways Act; other legislation or through Planning Condition). It is appropriate that there is clear cross-reference to adopted policy ME2 in the draft List, as this is the policy that determines the requirement for SANG (not the Regulation 123 List nor the adopted Charging Schedule).</p> <p>If the Councils are seeking to reduce the adopted threshold for the provision of SANG, then this would require an amendment to the adopted Core Strategy and the adopted SPD, which would entail the statutory plan making process.</p> <p>The same point of clarification is also relevant in respect of the Councils' proposed amendments to the Education section of the draft List (page 12), which makes references to schemes of more than 40 dwellings providing SANG.</p> <p>We trust that these comments will be given due consideration prior to any amendments to the draft List being confirmed.</p>	