

By email

24 December 2014

Planning Policy

Christchurch Borough Council

Civic Offices

Bridge Street

CHRISTCHURCH

BH23 1AZ



Dear Sir or Madam:

Submission to the Examiner by Meyrick Estate Management Ltd (MEM Ltd) in respect of the proposed Community Infrastructure Levy (CIL) Charging Schedule for Christchurch Borough and East Dorset Councils

MEM Ltd wish to be heard at examination, given that they act for the landowners and have interests on both the strategic sites in Christchurch CNI at Roeshot and CN2 at Burton.

MEM Ltd are working closely with Taylor Wimpey Ltd who have a legal interest in site CNI but also have separate and related interests with regard to SANG provision for site CNI and they represent the landowner of site CN2, and in this respect the request to be heard in relation to the Charging Schedule alongside Taylor Wimpey's representative in respect of site CNI.

The following table sets out the responses to the modifications, indicating the modification proposed, the position of MEM Ltd and commentary on those points where modifications requested have not been made.

Whilst MEM Ltd support the modifications to the headline residential CIL rate and the zero rating for strategic sites they remain concerned that many other issues raised have not been addressed in the modifications. Furthermore the lack of a formal consultation, given the substantive changes proposed in the modifications, and the very limited time to consider the changes prior to making representations to the examiner of only four weeks including over the Christmas and New Year period has meant that it has not been possible to fully examine and report on the Updated Viability modeling produced in support of the modifications by Peter Brett Associates (December 2014).

MEM Ltd reserves the right to comment further on the update viability modeling at the examination.

Ref	Page / paragraph reference	Modification Made	MEM Ltd position on modification/ lack of modification	Evidence to support position	Requested Action by the Examiner
SM3	2.2	Change to draft instalment policy	SUPPORT and welcome change to instalment policy	In line with consultation request to consider cash flow issues	CONFIRM modification
SM5	4.6	Updated Viability Report	SUPPORT the updated viability, however, there are still assumptions made in the revised PBA report that are not supported by evidence RESERVE the right to comment further on the updated viability report at examination	Under preparation	TBC
	Page 5-6 2.11-2.16	No discretionary relief allowed (no modification proposed)	OBJECT to lack of modification on this point.	There is no substantive evidence from the Councils as to why discretionary relief is excluded at this point. The very basis is discretionary, and it would be practical to allow for this should the circumstances of a particular development justify it. Just because the circumstance may be 'rare' is no reason to exclude it entirely.	MODIFY to allow discretionary relief
SM8	4.13	Residential CIL rate change and nil CIL rates for strategic sites	SUPPORT the reduced rate of £70sqm for residential and £0 sqm for strategic sites	Refer to June 2014 consultation response by MEM. This serves to differentiate sites where SANG is provided and to avoid double charging under CIL.	CONFIRM modification
SM10	5.2	Residential CIL rate change and nil CIL rates for strategic sites	SUPPORT the reduced rate of £70sqm for residential and £0sqm for strategic sites	Refer to June 2014 consultation response by MEM. This serves to differentiate sites where SANG is provided and to avoid double charging under CIL.	CONFIRM modification
AM1	Page 21 Appendix A	Change to draft Reg 123 list	SUPPORT Strategic SANGs to be secured through s106	Refer to June 2014 consultation response by MEM. This serves to differentiate sites where SANG is provided and to avoid double charging under CIL.	CONFIRM modification
AM2	Page 21 Appendix A	Replacement allotments to be secured through s106 (previously CIL)	SUPPORT replacement allotment provision secured through s106	The replacement of Roeshot allotments is a direct consequence of the proposed redevelopment, so that it is the correct approach to replacement is secured through s106 agreement.	CONFIRM modification

Ref	Page / paragraph reference	Modification Made	MEM Ltd position on modification/ lack of modification	Evidence to support position	Requested Action by the Examiner
AM3	Page 21/22 Appendix A	A35 junction improvements moved from CIL to s106 list	OBJECT to entirety of A35 junction improvements being identified in s106 list	The A35 is a strategic route with significant on-going junction capacity issues. The development of site CN1 and CN2 cannot sustain all A35 junction improvements as they will not be all be reasonably and fairly related to the development. This division also suggests that no CIL receipts will be spent on the A35 junction improvements, which is an unsatisfactory solution as many smaller developments within Christchurch will have a cumulative impact on A35 junctions.	AMEND modification to identify A35 junction improvements will be funded by a mixture of CIL receipts and s106 contributions fairly and reasonably related to impacts from sites CN1 and CN2
	Page 23 -24 Appendix A	Changes to Regulation 123 list not made as requested	OBJECT to lack of modification on this point.	Items have been included that should not be funded by CIL as indicated on regulation 123 list; this includes strategic renewable energy infrastructure (although it is not specified what this is) and the provision of cemeteries. These latter items are no longer provided under local government monopoly and are commercial business enterprises. They are not infrastructure for the purposes of CIL. (See in particular s.216(2) of the Planning Act 2008).	REMOVE the provision of strategic renewable energy infrastructure and provision of cemeteries.
AM5 +	Page 25 Appendix B	Change to draft CIL instalment	SUPPORT and welcome change to instalment policy	In line with consultation request to consider cash flow issues	CONFIRM modification

AM6		policy			
Ref	Page / paragraph reference	Modification Made	MEM Ltd position on modification/ lack of modification	Evidence to support position	Requested Action by the Examiner
AM12	Page 36	Arrangements for collection of Heathland Mitigation	OBJECT to Dorset Heathland Planning Framework SPD 2015 SAAM payments being excluded from CIL on Regulation 123 list	<p>MEM Ltd believes that strategic maintenance and access management of the heathland mitigation projects can be included in CIL funding. The legislation allows for the improvement, maintenance, replacement and operation of infrastructure (s.216 of the Planning Act 2008 regulation 59(1), both as amended in 2012).</p> <p>The Core Strategy Inspector Sue Turner supported this position 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.</p>	<p>MODIFY the securing of SAMM through CIL not s106. Not appropriate to pool more than five projects under SAMM.</p>

Ref	Page / paragraph reference	Modification Made	MEM Ltd position on modification/ lack of modification	Evidence to support position	Requested Action by the Examiner
	Appendix C Page 26	Changes to Benefit in Kind policy not made as requested	<p>OBJECT to Benefit in Kind policy as it does not reflect the CIL regulations.</p> <p>There are errors in the 'benefit in kind' policy as currently drafted in that it does not fully reflect the CIL Regulations.</p> <ul style="list-style-type: none"> a. Infrastructure is not valued at cost (as the Payment in Kind Policy suggests at para. 8), it is rather its value: Regulation 73A(3). b. The policy fails to note the two restrictions in reg 73(7)(b) and 73A (7)(b)(ii). (See below) c. The restriction on meaning of land at para 9: the definition is badly expressed because it should state that the land should be not be encumbered in a way that prevents the land being used for a relevant purpose – see reg. 73(5)) It should be recognised and made clear that the definition of land under Regulation 73(4) includes “existing buildings and other structure, land covered with water, and any estate, interest, easement, servitude or right in or over land”. 	<p>As noted in point b. above any infrastructure provision required as necessary to make the planning application acceptable cannot be provided as a benefit in kind as this is restricted by Regulations 73(7)(b) and 73A (7)(b)(ii). This is a sensible precaution in the Regulations, introduced through amendments, to prevent developers reducing their CIL liability by discounting it with infrastructure they need to provide anyway. This has a particular effect on SANG and heathland mitigation. This means that any site providing SANG cannot transfer the land or infrastructure payments by way of a planning obligation to the charging authority as a benefit in kind as it is specifically precluded by CIL Regulation 2010 reg73(7)(b) and CIL Amendment 2014 reg 73A (7)(b)(ii).</p>	<p>MODIFY to clarify the limitations of the benefit in kind policy.</p>

CIL and Heathland Mitigation

In addition to the response to the modifications above, the response below sets out a series of more fundamental problems with the operation of CIL as set out in the Draft Charging Schedule in relation to the mitigation of the urban effects on the Dorset Heaths.

These objections reiterate concerns raised at the preliminary draft charging schedule consultation and in relation to the examination of the Core Strategy with regard to policy ME2 and again in response to draft CIL charging consultation

Whilst the double charging issue has been addressed there are related issues that raise serious concerns in relation to the compliance of the delivery of development with the Habitats Directive and therefore the ability to deliver the planned development in the adopted Core Strategy. A solution must be found to this through an appropriate CIL charging regime to ensure the plan is delivered.

The Core Strategy Inspector recorded (at para. 120 of her Report) that the Councils stated that Heathland mitigation would be the first priority on the CIL Regulation 123 list. This reflects the importance that should be given to ensuring compliance with the Habitats Regulations but also ensuring that the necessary development is delivered by the CIL supporting and incentivising that. However, MEM Ltd 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 envisaged and evidenced by the draft charging schedule and modifications. There are three development scenarios where the proposed CIL regime does not appear to work.

- 1. Affordable Housing**
- 2. Self-build housing**
- 3. Conversions of existing floorspace**

1. 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 new heathland mitigation under the Heathland SPD 2015 will be funded by CIL in the regulation 123 list it is clear that units of affordable housing are not CIL rated and there will be no direct link between their impact and mitigation. Previously affordable housing developments paid the Interim Planning Framework tariff, which 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 CIL rates. To fail to do so would mean that there is a serious risk that the Habitats Regulations would not be complied with.

2. Self Build Housing

As with affordable housing, self-build housing is no longer liable for CIL. This type of development will not directly mitigate for heathland impact unless a specific regime is put in place to ensure that other forms of

development will fund a sufficient area-wide mitigation package. This is a recent change to the CIL regulations and the implications have not been considered in relation to the Habitat Regulations.

3. Conversions of existing floorspace

Where an existing use is converted to residential use the proposal will avoid CIL but will potentially generate harmful urban effects on the heaths.

Other Heathland Mitigation Issues Neighbourhood Top Slice

CIL amendment Regulations issued in February 2014 have identified the proportions of CIL receipts that will be available to the community; where neighbourhood plans are in place it is 25%, otherwise 15%. It is not clear with the community top slice how the Local Authority will continue to secure heathland mitigation. How can there be certainty that heathland mitigation will be provided if local communities do not wish to spend their CIL share on such projects? This issue needs to be addressed as part of the overall solution to heathland mitigation.

Securing Mitigation in Proportion to Dwelling Occupation

MEM Ltd believes that in order to satisfy the Habitat Regulations it is necessary to set out in detail costed evidence of heathland mitigation projects and their capacity to mitigate development 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 the Thames Basin Heaths. This is the only way to ensure development is compliant with the Habitats Directive. This is a particular concern given the significantly reduced overall anticipated CIL receipt, the lack of contribution from affordable housing, self-build, and conversions of existing floorspace.

Conclusion

MEM Ltd remains very concerned that significant issues around heathland mitigation have not been resolved, despite this issue being raised at the stakeholder workshop, at the preliminary draft charging consultation and at the Core Strategy examination and consultation and in response to the draft charging schedule, as well as in discussions with Natural England.

MEM Ltd remain of the view that further modifications to the CIL charging schedule and CIL implementation policy can be made by the Examiner to achieve a regulation compliant and satisfactory outcome for the participants who have made substantive responses to this process.

Yours sincerely

Lisa Jackson MA BSc MRTPI