

The Dorset Heathlands DPD Preferred Options Consultation

Meyrick Estate Management Ltd

March 2013

JACKSON  **PLANNING**

Dorset Heathlands DPD Consultation

JPL Ref:

MEM 2013/005DH

Date of Issue:

28 March 2013

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Executive Summary

This is a short summary of the main points made in this representation.

MEM Ltd question the validity of heathland mitigation as proposed in the DPD on the basis that the Habitats Directive is in effect a “super law” that places a duty on the competent authority to establish confidently that any proposal that is granted planning permission will not have a significant adverse effect on the integrity of the designated European sites either alone or in combination.

The heathland mitigation scheme, which has been designed to provide that mitigation, is in itself experimental. There is only limited monitoring data available and this is not yet conclusive. This places the validity of the Dorset heathland mitigation scheme in doubt, and could lead to challenge.

There are serious practical issues with delivery of heathland mitigation that the draft DPD does not adequately address. It does not provide a proper spatial plan for delivery of projects as it is too high level, and has not assessed whether the combined projects will deliver the required mitigation. There is no clear link in the DPD to the findings of the monitoring projects. It is not clear at present that the draft DPD demonstrates that the necessary overall level of mitigation across the Dorset Heaths has or will be achieved. The DPD has the correct intentions, but no power to deliver them.

MEM Ltd believe there should be a policy setting out the complete suite of proposals that the Councils jointly agree should be taken forward to ensure necessary mitigation for all European sites from all the proposed development. Reserve SANG sites and their capacity need to be identified in addition to those confirmed or well developed sites related to proposed development.

The DPD is not consistent with the NPPF and does not add anything to the existing policies in the constituent local authorities, it is therefore not effective at delivery of the required mitigation over the period of the plan and would fail the test of soundness at examination.

MEM Ltd firmly believes there is a serious danger that the required mitigation for urban effects on the Dorset heaths cannot be secured through CIL. There are four technical issues within the CIL regulations that impact upon the ability to secure heathland mitigation within a CIL regime, these include double charging, securing heathland mitigation in perpetuity, affordable housing not liable for CIL, neighbourhood ‘Top Slice’

The monitoring of the effectiveness of heathland mitigation is at an early stage and is not sufficiently robust to prove that the mitigation projects are working in all cases and indeed working together to achieve the area-wide mitigation required.

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I. Introduction

- I.1 This statement has been prepared in response to the consultation on the Dorset Heathlands DPD on behalf of Meyrick Estate Management Ltd (MEM).
- I.2 MEM manages 22,500 acres of land in Hampshire, Dorset and Anglesey. This land includes commercial farmland, large tracts of land of recognised environmental importance and 2,300 acres of woodland.
- I.3 The land holdings encompass significant urban fringe areas within Christchurch and urban sites within Bournemouth with significant potential for new housing.
- I.4 MEM have worked closely with Natural England to understand heathland mitigation potential within its clients land holdings and more widely within the region. MEM are closely involved with heathland mitigation and are proposing the following:
 - MEM will provide SANG for mitigation of the new neighbourhood at North Christchurch, which is agreed in principle with Natural England and the LPA
 - MEM's clients own Chewton Common which has been identified as having potential for SANG
 - MEM's client have purchased land in East Dorset District (next to Slop Bog) with the express purpose of providing SANG
 - MEM are preferred bidders in a consortium with Dorset Wildlife Trust for the acquisition of the Canford Estate for SANG
 - MEM's clients have other significant landholdings that could provide SANG and are actively exploring the acquisition of additional land with SANG potential.
- I.5 MEM welcomes the opportunity to comment on the preferred options document as they have legitimate interests to ensure that the policy framework for the heathlands is robust. This response builds upon earlier responses that have questioned the validity of the approach to mitigation with the IPF and subsequent SPD.

2. Heathland Mitigation

Basis of mitigation

- 2.1 MEM believe that in order to set out a policy framework for the protection of the Dorset Heaths, by securing mitigation with new residential development it is necessary to understand the legal basis of the mitigation.
- 2.2 A test set out in section 61 of the Habitats Regulations 2010 dictates the legal position in relation to impact on the protected Heath: if a plan or project is permitted which is likely to undermine the integrity of one part of the Dorset Heathlands, the integrity of the heathlands as a whole must suffer some impact; and that mitigation measures would be necessary to enable this proposal to meet the requirements of the Habitats Regulations.
- 2.3 In order for residential development to proceed, it must be established confidently, beyond reasonable scientific doubt, that the proposal will not have a significant adverse effect on the integrity of the designated European sites, either in its own right or in combination with other plans or projects having regard to the mitigation measures proposed.

3. Issues with the ‘preferred options’ DPD

- 3.1 MEM believes the DPD as drafted is too high level and not practical and cannot deliver and secure heathland mitigation in itself, and as a policy document it should perform that function, as drafted it merely underpins it as a theory. It cannot as drafted provide a consistent basis for decision makers to protect the European sites on the basis of the area-wide mitigation programme as it does not contain that spatial area-wide programme. In addition the plan is not well drafted is inconsistent with the National Planning Policy Framework (NPPF). These issues are explored in more detail below.

Policy DH1

- 3.2 This is not a policy in the sense of a formal development plan document and is inconsistent with the NPPF paragraph 154, as it does not comply with the requirement that: “Only policies that provide a clear indication of how a decision maker will react to a development proposal should be included in the plan.” On this basis the only ‘policy’ in this draft is DH2

Policy DH2

- 3.3 MEM understood that the IPF and its successor adopted SPD act to deal with the mitigation collectively for those small-scale projects that cannot deliver mitigation in isolation. However, this consultation DPD is part of a two-stage process for mitigation and the second part of this process is not yet developed. The supporting proposed SPD with project details is yet to be produced. MEM believes that until the SPD is developed it is not possible to show the necessary link between development and mitigation. It is not clear at present that the draft DPD demonstrates that the necessary overall level of mitigation across the Dorset Heaths has or will be achieved. The DPD has the correct intentions, but no power to deliver them.
- 3.4 Policy DH4 identifies the route to allow development in South East Dorset in the last sentence of the policy by setting out that all listed development types in the policy located between 400m and 5Km of the European sites will be required to mitigate adverse effects through measures implemented across the site area. It does not go on to describe or set out that mitigation in detail sufficient to ensure that across the area mitigation delivered is of suitable quality and quantity. In addition the suggestion that on-site measures can mitigate effects in policy DH2 is not sufficiently explained, this lies open to challenge.
- 3.5 In order to comply with the terms of the Directive and Habitat Regulations it is essential that the proposed mitigation of the harm that development may cause is tested thoroughly. Given the precautionary nature of the legal control the consequences of the inability to demonstrate effective mitigation are severe: new residential development without SANG cannot lawfully proceed, this is because it has been established that the only identified means of achieving effective mitigation is through the provision of a SANG which would attract away from the relevant site

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sufficient numbers of visitors to avoid any net increase arising from a development on the European site.

- 3.6 Without the details in the forthcoming SPD there is nothing in the plan to link the acceptability of the residential developments proposed in the plan with the delivery of mitigating SANGS. The details proposed for the SPD is necessary now in conjunction with the DPD to stop all the residential allocations being permitted and no mitigation actually being delivered, as there is no detail of how and where the mitigation will be secured.
- 3.7 The divorcing of the policy framework and the delivery mechanism is unworkable; both strands should be part of the DPD. Without the details of the projects there is insufficient clarity in the plan as to how mitigation can be met. It would appear that each individual residential proposal might need to undertake a Habitat Regulations Assessment as the DPD is not providing this overview of mitigation. This would place a considerable burden on individual applicants and be very difficult to achieve in terms of evidence and assessment, and is clearly not the intention of the DPD.
- 3.8 The disconnect between what the DPD assumes to be delivered and what the SPD proposes in terms of measures to deliver mitigation needs to be overcome. The DPD should somehow quantify in broad terms the scale, type, location, and relationship to the scale and location of residential development of the new or improved open spaces (SANGS) that would complete the necessary suite of mitigation, within the context of other mitigation and management measures already taking place.

Policy DH3 –CIL

- 3.9 Commentary on this policy is included in section 4.

Policy DH4 SANGs

- 3.10 Draft Policy DH4 suggests a spatial approach to SANGS is shown on the proposals map. This is not a spatial plan it is too small a plan (at a very large scale) to link it to proposed development and it is too vague and general to know that when combined that these proposed SANG sites and SANG areas of search will deliver the required mitigation collectively. It is patently not a proposals map as it does not contain proposals that are recognisable as such. The test of a proposals map is that the proposals can be implemented on the basis of being identified on the map. This is not the case with the proposals map included in the document.
- 3.11 Moreover this plan is not a spatial plan it does not identify where the priorities for mitigation are required, based on either development proposed or user patterns. It lacks spatial vision and should be more closely allied to the draft Dorset Green Infrastructure (GI) strategy, which does contain a spatial vision. SANG is part of GI and should reflect the needs both of the Dorset GI strategy and the needs from proposed development, at present the policy does neither. The vision in the draft

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Dorset GI strategy contains some strong themes that complement SANG and heathland mitigation and these should be recognised as part of the spatial strategy. The draft Dorset GI strategy has not been used as part of the evidence base listed in appendix A.

- 3.12 The policy as worded implies that SANGS are shown on the proposals map under part 'B. Safeguarding'. This is not workable as some SANGS on the proposals maps are identified on private land (some of which is under MEM's control) where it has not yet been confirmed as SANG, in addition it includes areas of search that cannot be safeguarded in their entirety. This policy is unworkable and could not be found sound as currently drafted.
- 3.13 There will need to be evidence that what is required by way of SANGS mitigation is actually deliverable and the provision of SANGS needs to be sufficiently clear to know that adequate mitigation has or will be secured to enable the planned scale of development in south east Dorset to proceed. This is the basis on which development can legally proceed it is therefore not appropriate to leave this to a supplementary planning document. The Thames Basin Heath approach is more rigorous in this regard and has calculated capacity of development based on SANG delivery. The link within Dorset is not established and opens the plan to challenge.
- 3.14 The DPD needs to be crystal clear in its delivery of SANG mitigation and to this end a separate policy should set out the complete suite of proposals that the Councils jointly agree should be taken forward to ensure necessary mitigation for all European sites from all the proposed development. This has an implication for timing and certainty; the Heathland DPD must anticipate the level of development in each constituent authority. This is complicated by the lack of certainty on final development figures where Local Plans are not adopted, and would suggest that there should be additional capacity/ contingency with the mitigation package to accommodate the possibility of higher residential development figures. Reserve SANG sites and their capacity need to be identified in addition to those confirmed or well developed sites related to proposed development.
- 3.15 The disconnect between policy and mitigation is further complicated by the introduction of CIL, this is addressed in the section 4 of this response.

Consistency with the National Planning Framework

- 3.16 The DPD will be subject to independent examination and must meet the tests of the NPPF to be found sound. This is an early stage of the plan, but as currently drafted it would not meet the necessary tests. The key failure is the 'Effective' test, as explained above, on its own the DPD cannot secure the delivery of the area-wide mitigation, and this plan does not add anything to the existing policies in the constituent local authorities, it is therefore not effective at delivery of the required mitigation over the period of the plan and would fail the test of soundness at examination.

4. CIL and Heathland Mitigation

- 4.1 The legality of the DPD and CIL as a mechanism that will replace the current heathland tax arrangements is questionable. In paragraph 8.15 the DPD clearly states that the direct link between the development and the impact that development has in terms of infrastructure provision is lost with the introduction of CIL. This was also noted by the Inspector considering the Poole CIL charging schedule (see paragraph 3.5 below). The draft DPD does not cite the Poole CIL regime in the evidence base, this is a serious omission.

CIL and Heathland Mitigation

- 4.2 MEM Ltd firmly believes there is a serious danger that the required mitigation for urban effects on the Dorset heaths cannot be secured through CIL. There are four technical issues within the CIL regulations that impact upon the ability to secure heathland mitigation within a CIL regime. The issues are as follows:

- Double Charging
- Securing heathland mitigation in perpetuity
- Affordable Housing not liable for CIL
- Neighbourhood 'Top Slice'

Double Charging

- 4.3 In new neighbourhoods where SANG is provided as part of the development package there will be potential for double charging for heathland mitigation, this is precluded in the CIL regulations as planning authorities cannot charge for the same items through s106 and CIL.
- 4.4 Not all the constituent councils have produced the Regulation 123 list of projects that CIL would fund. In Poole Borough they specify the priority projects in their regulation 123 list that they will fund wholly or partly through CIL receipts. For heathland mitigation they specify two items: Upton Farm SANG and Other SPA mitigation not linked to a specific site.
- 4.5 It was noted at the Poole Examination report into the CIL charging schedule: "At present each development contributes directly to Habitats Regulations (HR) mitigation through a Section 106 agreement. When CIL is adopted this direct link will be severed. The DPIDPD proposes that HR mitigation will be funded through CIL, but its inclusion on the CIL Regulation 123 list will mean that it can no longer be funded through Section 106 agreements."
- 4.6 The Inspector examining the Poole CIL tariff concluded that it was not for her to deal with this issue. MEM believes this issue must therefore be tackled by this DPD. The

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avoidance of double charging where a site still to be subject to s106 payments directly related to the development is problematic.

- 4.7 As it currently stands, if a site within Poole Borough had its own SANG and was also charged CIL it would be paying for further heathland mitigation in the Borough, where it is not provided on site specific basis. SANG by its very nature cannot be open only to the residents of specific new dwellings, so new SANG will potentially benefit the whole Borough and beyond. This is its intention of the DPD as an area-wide solution to an area-wide problem, so it must follow that a SANG has the same effects for mitigation as non-site specific projects that create SANG for smaller developments, for example the SANG at Upton Farm. Therefore, if SANG is provided physically through a s106 agreement as part of a development to mitigate potential harm to a European site, this is also part of the area-wide solution, which would also be charged through CIL. This would therefore be charging twice and not be in compliance with the regulations.

Securing Mitigation in Perpetuity

- 4.8 In considering the approach to CIL and Heathland mitigation in the Thames Basin Heaths, Natural England raised concerns regarding the compliance of the approach with the Habitats Regulations, in a similar example in Surrey Heath Borough. The lack of legal obligation on the local authority to deliver sufficient SANG in perpetuity is a major concern. Natural England believe that without a mechanism in place which ensures adequate funds are spent on SANG, doubt could remain as to the long term funding of SANG. This is further complicated by the recent draft regulations with regard to top slicing of CIL receipts for local communities (see below).
- 4.9 Elsewhere in the Thames Basin Heath Authorities Natural England have asked to see evidence within the CIL charging schedule that Councils will still be able to collect the relevant amount of funding to maintain the SANGs to the required size and quality and in perpetuity and to mitigate the impacts of the housing development. They have suggested that where there is no evidence of any future CIL schedule or plan with the range of mitigation set out this could lead to a likely significant effect on the SPA, and therefore that a full Habitats Regulations Assessment must be carried out. As the draft Heathlands DPD has removed the project list it is difficult to know if the proposed combined mitigation will meet the Habitats regulations.
- 4.10 MEM Ltd believes that in order to satisfy the Habitats Regulations it is necessary to set out in detail costed evidence of heathland mitigation projects in a development plan document, so they can be assessed in combination for their mitigation. The priority spending and details of the key projects in the Regulation 123 list of each constituent authority also needs to be secured in order to ensure that CIL receipts are spent on heathland mitigation.

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- 4.11 It is not clear under the CIL regulations that spending can be ring-fenced, therefore the legality of collective heathland mitigation paid for by CIL is questionable. The DPD should set out how this legal problem can be overcome satisfactorily to meet the habitat regulations.

Affordable Housing and CIL for Heathland Mitigation

- 4.12 Affordable housing is exempt from the CIL tariff, so therefore cannot mitigate harmful urban effects on the heath, unless provided directly as part of an affordable housing scheme. This is not an acceptable position for any authority within Dorset.
- 4.13 From the Poole CIL Examination report 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."
- 4.14 Once CIL is in place, affordable housing does not mitigate its heathland impacts as it is exempt from CIL, and therefore cannot be developed. The DPD must address this issue and devise a mechanism to ensure that affordable housing has appropriate mitigation.

Neighbourhood Top Slice

- 4.15 Draft CIL amendment Regulations issued in February 2013 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 neighbourhood top slice how the Local Authorities 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 within the DPD.

Other CIL related Issues

Land Purchase Costs

- 4.16 The provision of mitigation projects must consider land purchase costs. This may have implications for the requirement from CIL; the overall budget for the appropriate mitigation may need to be revised upwards to include land costs.
- 4.17 The acquisition of land in order to bring forward projects is a legitimate; indeed some of the projects already completed have involved the purchase of land to secure the capacity and diversion from the protected heaths. It is important, therefore, when identifying projects that are on private land acquisition costs are included in the overall project budget. Realistic budget assumptions must be made based on formal valuations.

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Variable CIL rates across Constituent Authorities

- 4.18 Of the five constituent authorities as yet only Poole has implemented a CIL regime. The other authorities are at different stages in the process, but must introduce CIL to collect funds for heathland mitigation prior to April 2014. There are dangers within and between authorities that with a variable CIL rate there may be limitations to spending on heathland mitigation. The DPD must ensure that despite intra and inter authority CIL charging variations the overall availability of funds keeps pace with residential development that is deemed to have potential adverse effect. The effect of the threshold on CIL payments below 100sqm, means that some authorities may deliver very little CIL receipts despite considerable additional pressure on the heaths.

Benefits in Kind

- 4.19 The CIL regulations allow for the reduction of CIL payments in exchange for benefits in kind. It would seem appropriate that the heathland DPD could offer the opportunity for payment in kind if it can deliver mitigation appropriate to the scale of development. This may not always be of SANG quality because of scale issues, but in combination with other projects could provide an important strand of a heathland diversion project. There may also be occasions when part payment/ part physical provision is appropriate. The CIL charging regimes of the constituent authorities need to reflect this.

Transitional Arrangements from SPD to DPD

- 4.20 The transitional arrangements when the SPD will no longer apply and CIL will be implemented by each authority needs to be addressed. Given that the SPD cannot operate post April 2014 the arrangements for transition should be made clear now, including cut off dates and payment arrangements. This is particularly important as the resolution of legal agreements through s106 agreements can be protracted.

5. Mitigation Projects and Monitoring

- 5.1 The delivery of the Heathland Mitigation programme should be made clear in the DPD, all the projects and SANG sites need to be properly identified at a constituent authority scale, on a proposals map no less than 1: 25,000 scale.
- 5.2 The mechanism engaged by the constituent authorities in procuring the mitigation projects should be set out in detail, especially now that CIL cuts the direct link between development paying for mitigation. Each constituent authority must demonstrate how the mitigation will be protected given other competing political measures. MEM believes that project delivery can be effectively delivered through the private sector in addition to the local authorities and this should be set out in the DPD.
- 5.3 It is understood that monitoring has taken place on both the affected heaths and on the mitigation projects. This monitoring is at an early stage and is not sufficiently robust to prove that the mitigation is working in all cases and indeed working together to achieve the area-wide mitigation required. The 2011/2012 Monitoring Report authored by Footprint Ecology concludes the following:

“It is the longevity of the data collection that will prove valuable and enable us to look at longer term levels of visitor access and use of the heathland and non heathland sites. This report simply summarises the data that are available rather than presenting detailed analysis that interlink the ecological and visitor data.”

- 5.4 It is understood that further research work led by Natural England is planned for 2013. However, it would be best to describe present data as patchy, and inconclusive. This does not appear as yet to give sufficient evidence to underpin the validity of heathland mitigation projects in combination, especially against a background of increasing visitor trips to the countryside and the stability of the protected bird populations as recorded in the latest survey.

6. Conclusion

- 6.1 The solution to effective mitigation of development from potential urban effects on the Dorset Heaths remains experimental, and open to challenge. In this regard MEM believe the DPD needs to be a much more robust framework for delivery of Heathland mitigation, it is hoped that the objections and the recommendations in this report are considered carefully in finalising the DPD

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ANNEX I: 'ENVIRONMENTAL' LAND HOLDINGS

Environmental designations

RAMSAR – wetlands/water meadows of the River Avon valley

SAC – on duneland in Anglesey

SPA - for the wetland birds found on the River Avon

SSSIs:

- nine separate sites covering more than 674 acres in the New Forest; from the acid heathlands of Burton and Poors Common to water meadows on the Avon
- five sites in Anglesey covering more than 6,000 acres of sand dunes and wetland

SINC - on land at Somerford, Cranemoor & Shears Brook

National Park – much of the Hinton and Bisterne Estate is within the New Forest National Park

AONB – much of the Bodorgan Estate is within the Anglesey AONB

Green Belt – much of the Hinton Admiral Estate is in the South East Dorset Green Belt

Agri-Environment Schemes

HLS – 5 contracts cover nearly all the SSSI sites owned by our clients in the New Forest. In several cases these followed older WES agreements as part of long standing management arrangements

ELS – the commercial farms operated by our clients at Hinton and Bisterne have entered ELS for more than 3,100 acres including one whole farm scheme for 2,134 acres. Farm tenants have been encouraged to enter similar ELS contracts.

Tir Gofal – large parts of the Bodorgan Estate have been entered into the Tir Gofal scheme administered by the Welsh Assembly Government.

Forestry Schemes

EWGS – for the last 20 years 3,000 acres have been managed with the support of FC contracts. Long Term Management Plans for the next 20 years have been presented this year to the FC for the next generation of EWGS. These woods include PAWS, SINCS and SSSIs within these forested areas. A key element of this approach in the last 10 years has been the de-forestation of circa 700 acres of acid heathland.

Use of external environmental consultants

- Bird surveys carried out in the Avon Valley by Hants Wildlife Trust and in Anglesey by Catherine Bickmore Associates and the BTO
- Reptiles – regular surveys by Dorset Herpetological Society
- Drafting and delivery of HLS contracts and annual management – Jane Nordstrom as consultant ecologist (England) and Catherine Bickmore Associates (Wales) Our staff are encouraged to participate in local groups such as:
 - Deputy land agent member of the Local Deer Initiative in the New Forest
 - The Anglesey Estate manager sits on the Joint Advisory Committee for the AONB
 - Our clients support with practical work the Red Squirrel's re-introduction to the Bodorgan Estate in Anglesey.