

March 11, 2013
Planning Policy
Christchurch Borough Council
Civic Offices
Bridge Street
CHRISTCHURCH
BH23 1AZ



Dear Sir or Madam:

Representations by Meyrick Estate Management Ltd (MEM Ltd) in response to proposed Community Infrastructure Levy (CIL) Preliminary Draft Charging Schedule

Your consultation paper has posed a series of questions with regard to viability, to which the responses are made below. The responses are made with regard to the proposed residential CIL rate only.

In addition in response to Question 5 is set out a series of more fundamental problems with the operation of CIL in relation to the mitigation for urban effects on the Dorset Heaths, and the potential for double charging with the urban extension sites where mitigation is provided directly under policy ME3.

Question 1

Are the proposed rates informed by the evidence on economic viability provided in the report by Peter Brett Associates?

It is clear that the methodology to determine the proposed CIL rates by Peter Brett Associates have considered evidence of revenues, costs and profits and therefore this has informed viability. However there are flaws with the methodology that skew the results significantly within Christchurch. The viability testing will only be valid if the inputs are correct. The response to question 2 below explores this in more detail.

Question 2

Do you believe the evidence on viability is correct? If not, please set out alternative evidence to support your view.

This response relates specifically to the Roeshot (CN1), but the principles are also applicable to Burton (CN2). There are three problems with evidence assumptions in relation to revenue, costs and profit in the viability for Roeshot.

The revenue expectations have been calculated based on a borough-wide average, however where a site is within a lower revenue area this will over estimate expected revenue from the site and impact significantly upon viability. The Roeshot site, as evidenced by the CIL report, falls within a lowest revenue area of the Borough as it is in the catchment for The Grange Secondary School, which negatively impacts on house prices. Furthermore, the revenue rates are significantly higher than conclusions reached in the Whiteleaf report. Using the Borough average is therefore not correct for this site, as it artificially inflates the revenue expectations. This is especially important given the scale of site CN1.

With costs, although the Whiteleaf assessment has allowed for some development costs, and in particular abnormal costs, it has no allowance for unknown costs. A degree of contingency is required to cover unknowns such as drainage (SUDS), utilities, noise mitigation, archaeology and ground conditions . These elements have the potential to seriously affect the eventual scheme viability

On the profits issue the Peter Brett study has envisaged a two-stage process at Roeshot to provide a serviced site. The first element relies on land sales derived from assumptions on viability based on unknown costs. The second stage element, where an infrastructure provider services the site, has insufficient profit incentive to make this scenario achievable bearing in mind unknown costs, costs of finance and attitude to risk. It is simply not possible to fix these assumptions at this stage with so much evidence yet to be finalised.

MEM Ltd believe that given the importance of Roeshot, as the largest strategic site within Christchurch, that delivers a third of all housing needs in the plan period to 2028, it is critical that if CIL is applied at a single rate across the Borough must be viable for this site. In addition with the aspiration for affordable housing at 50% on site CN2 it is clear that the proposed CIL rate cannot deliver this level of affordable housing and the development as planned. The CIL rate as currently proposed places a serious risk of achieving the overall development of the area as none of the strategic greenfield sites within Christchurch can be delivered with the CIL rate as proposed and we believe on this basis the rate is likely to be rejected by the examiner.

Question 3

Do you think the rates proposed strike an appropriate balance between the desirability of funding infrastructure through CIL and the potential effects of imposing a CIL on the Borough and District?

MEM Ltd do not support the imposition of CIL charging through a single flat rate for the Christchurch urban extension site policy CN1 and land south of Burton policy CN2. The imposition of the flat rate will lead to inevitable double charging (see below) for heathland mitigation measures on both the above sites. The intention is to directly provide SANG to the appropriate standard to mitigate the potential for urban effects on the European site in each case.

MEM Ltd believe the only way to overcome potential double charging is to introduce CIL free zones for the new neighbourhoods where SANG provision is met, and secure contributions through s106 agreements. It is not possible to have a variable rate to exclude heathland mitigation as this is based on a policy variation and is not allowed for within the regulations.

Question 4

Do you think the Borough and District should introduce an installments policy for CIL as set out in Section 2 of this document?

Both CIL rates and section106 costs must be phased to allow the cash-flow for the development to work and need to be phased to reflect receipts from sales. Payment triggers can be built into the s106 agreement.

Question 5

Any other comments.

CIL and Heathland Mitigation

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 draft charging schedule. The four issues are:

1. Double Charging
2. Securing heathland mitigation in perpetuity
3. Affordable Housing not liable for CIL
4. Neighbourhood Top Slice

Double Charging

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.

The Council has not yet produced the Regulation 123 list of projects that CIL would fund. In Poole Borough, where heathland mitigation issues also affect development, 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.

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.”

The Inspector examining the Poole CIL tariff concluded that it was not for her to deal with this issue. MEM Ltd disagree with this stance as exemptions do cut across this issue, if a nil rate was introduced when SANG is provided this would potentially allow for sites to avoid double charging with the site still to be subject to s106 payments directly related to the development.

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 SANGs will potentially benefit the whole Borough and beyond. This is its intention 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 heathland, this is also part of the area-wide solution, which you are proposing is also charged through CIL. This would therefore be charging twice and not be in compliance with the regulations.

Securing Mitigation in Perpetuity

In considering the approach to CIL and Heathland mitigation in the Thames Basin Heaths it should be noted that Natural England raised concerns regarding the compliance of your proposed 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).

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.

MEM Ltd believes that in order to satisfy the HR it is necessary to set out in detail costed evidence of heathland mitigation projects in a development plan document.

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 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."

In Surrey Heath Borough in their draft CIL charging schedule, which is an area affected by the HR mitigation for the Thames Basin Heaths, they have addressed the issue of affordable housing not paying CIL and therefore not providing heathland mitigation funds by adjusting the rate to deal with this.

At present there appears to be no mechanism in your draft CIL schedule to deal with affordable housing providing heathland mitigation.

Neighbourhood Top Slice

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 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.

Regulation 123 List

The draft charging schedule needs to be examined in the light of the proposed spending priorities in the Regulation 123 list, this list should be included in the consultation.

Conclusion

MEM Ltd remains concerned that issues around heathland mitigation have not been resolved, despite this issue being raised at the stakeholder workshop.

In addition, as currently drafted, MEM Ltd believe the flat CIL rate for residential development across the Borough has the potential to negatively affect viability of the largest proposed development site and this places a serious risk on the ability to achieve the overall development strategy of the plan.

MEM Ltd suggest that it may be appropriate to resolve the issues raised in this response, through a meeting with your consultants as there has not been a meeting between the parties to resolve these issues.

If you need any further explanation of our response on this matter please contact me.

Yours sincerely

Lisa Jackson MA BSc MRTPI