Planning Policy

From: Jonathan Kamm <kammjp@aol.com>
Sent: 02 January 2015 15:41
To: Planning Policy
Subject: Examination of the C&ED CIL Charging Schedules
Attachments: CIL Consultation Response Form Signed - 18 06 14.pdf

CHRISTCHURCH AND EAST DORSET COMMUNITY INFRASTRUCTURE LEVY - EXAMINATION OF THE CHARGING SCHEDULE

Clemdell Ltd wishes to be heard by the examiner as its objections to the Charging Schedules remain following publication of the proposed Modifications by the Councils. Generally the proposed modified rates remain flawed. Government advice has moved on since the close of consultations on the Draft Charging Schedule but this is not reflected in the Modifications.

Schedule of Clemdell's objections to the Modifications (additional to objections submitted with the Response Form):

Ref Modification Objection

SM8 CIL payable by all developers. National Planning Practice Guidance states no 'tariff' payments or affordable housing contributions should be charged on residential sites up to 10 units. This is not reflected in the Modifications. s.106 infrastructure is included in the s.123 list with a disproportionately large effect upon small sites. This negates Government Guidance.
SM10

SM11 Christchurch and East Dorset CIL Rates The proposed rates put forward are still too high and are discriminatory. They continue to penalise the vitality of Town Centres, small sites (against Government advice) and target those developments aimed at providing specialist accommodation for vulnerable people. It is unreasonable that Hotel developments pay nothing whilst Care Homes are targeted. Contrary to other Dorset local authorities, the proposed CIL does nothing to support the viability of Town Centres.
AM1 Infrastructure to be funded wholly or partly by CIL Residential development sites that are not listed as being specifically excluded will be liable for the full CIL payment whether or not such sites are either liable due to their location or deliver their own SANG. This will lead to both double counting and contributions that would be unlawful under the s.106 system.

For the avoidance of doubt, Clemdell's objections contained in its Response Form (attached hereto) are not repeated but remain outstanding. As identified in its response to Question 1 of that Response Form, Clemdell does wish to be heard in support of its representations at the Public Examination of the Draft Charging Schedule.

<>

Regards

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Christchurch and East Dorset Community Infrastructure Levy

Draft Charging Schedules for Christchurch and East Dorset

RESPONSE FORM

	Your Details	Agent's Details
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Question 1: Do you wish to be heard in support of your representations at the Public Examination of the Draft Charging Schedule?

Please note that the Inspector will decide if a public hearing session is required as part of the examination process. You may choose to request to appear at a public hearing to clarify your comments, but you must communicate this to the Council before the close of the consultation. If you do not wish to be heard at the examination, your written representations will carry the same weight as those made by respondents who appear and are heard in support of their representations.

No, I do not wish to participate at the oral examination:	☐
Yes, I wish to participate at the oral examination:	✓

Question 2: Do you agree or disagree with the proposed rates contained in the Draft Charging Schedule?

Agree:	☐
Disagree:	✓

Further comments on Question 2:

DCLG Guidance para 23 states: "*Charging authorities should use an area-based approach".* The area based approach has not been applied in the Draft Charging Schedule ("DCS") (see responses below)

Further the DCS proposed by the Councils is too great a blunt instrument effectively to ensure that planning policy objectives are not impeded and that the CIL will not deter the implementation of development ie the Councils have failed to strike an appropriate balance. So, in short, the charging schedule is wrong.

Question 3: Do you think that the proposed CIL rates 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?

Residential: The across-the-board rate of £100 per m^2 in both districts fails to accommodate the differences in the scale, location, development costs and economic viability of sites. All are treated as though they have the same characteristics - the PBR CIL Viability Assessment confirms this to be the case. There is the opportunity for a more elegant solution under the regulations. Options include. lower rates for town centre development and proposals in rural areas by including a zoning dimension to the Schedules.

CIL is a tax and should be progressive in order that it is both fair and creative, or at least neutral, in its effect. The proposed DCS approach is likely to discourage development on previously developed land and may discourage small local developments by small to medium local developers, contrary to national and local planning policies.

Question 4: Do you believe the evidence on viability is correct? If not, please set out alternative evidence to support your view?

The Peter Brett Report ("PBR") evidence is inadequate in its analysis of possible outcomes at the small scale. It fails adequately to analyse the impact on small developments. Residential schemes are liable at any scale, Small schemes are particularly vulnerable because they make up a high proportion of brownfield schemes. Although retail development below 100 m^2 are exempt those just above the threshold are premises most vulnerable to being made non-viable by the CIL rate. Again these are premises that are at the lower level operated by small businesses and charities and are relied upon by local communities.

DCS para 2.17 states: "*CIL is intended to provide infrastructure to support the development of the area.*" This is not adopted by the PBR where it appears that the level of CIL is to be driven by an assumed viability of development unrelated to the "need" for, or deliverability of, infrastructure in the IDP.

Although many costs of infrastructure are marked TBC in the first iteration of the IDP, that draft and the PBR are able to set the levels of CIL which have not changed in line with the plan process, the revised IDP, and are repeated in the DCS.

There does not appear to be

a. any justification for the figures in the IDP & restated in the DCS

b. there is no guide as to what % of project costs are to be funded by CIL & the % from other sources

Absent basic information on these points there is no opportunity for the public to express an informed view on the correctness or otherwise of the figures in the DCS.

The PBR appears to work on the simplistic view of stripping out any profit of a development above 20%. Yet the DCS states that it will not offer relief to social housing sold at 80% of Market Value (DCS paras 2.12 and 2.13) therefore expecting developments to come forward that promote the plan policies when upon PBR and LPA figures they are not viable.

Viability for common scenarios affecting small, difficult, sites has not been tested and therefore it is not the case that "*alternative*" evidence is required as the charging authorities have yet to undertake the initial work.

Question 5: Do you agree or disagree with the Councils' approach to discretionary relief?

Agree:	☐
Disagree:	✓

Further comments on Question 5:

To decide not to make relief available because instances where it might occur are rare is illogical. If they are rare then such cases should be considered if and when they occur. The PBR appears to work on the simplistic view of stripping out any profit of a development above 20%. Yet the DCS states that it will not offer relief to social housing sold at 80% of Market Value (DCS paras 2.12 and 2.13) therefore expecting developments to come forward that promote the plan policies when upon its own figures they are not viable. The conclusion in para 2.13, that such development at 80% of MV are viable, is perverse.

Question 6: Do you have any comments on the draft Regulation 123 list which sets out the infrastructure to be funded by CIL and where the Councils will continue to seek S106/S278 contributions?

1.1 The DCS, at para 2.5. confirms that Christchurch and East Dorset will each be a separate charging authority and that a Charging Schedule (co-incidentally the same for each LPA) has been prepared for each charging authority. But there is not a separate Regulation 123 list. There should be such a list. It is clear from the combined 123 list that it contains items that are specifically Christchurch or specifically East Dorset, as well as items that are regional in purpose.

1.2 For example when looking in further detail at the upgrading of the A31(T) the IDP states it is "*A31 Trunk Road dualling Ameysford to Merley*". That clearly is in East Dorset and not Christchurch and that item, which is in the 123 list as "*strategic network upgrading of the A31(T)*", includes a regional function.

2.1 The majority of items (in money terms) in the Regulation 123 list are to be delivered by an agency outside the control of the charging authorities. The DCS does not give any guidance as to the relative percentages to be provided from the agencies promoting and delivering the infrastructure, from other areas benefitting by the infrastructure, and from CIL. Without that basic information it is not possible to identify a funding gap or properly comment on the Regulation 123 list.

2.2 An example of this lack of clarity is the "*strategic network upgrading of the A31(T)*" which at £140M is 41% of the total cost of infrastructure sought in the DCS. It appears to be the case that the Highways Agency, the agency responsible for delivering the scheme, have a nil funding commitment to it; nor is there any cross reference to the amounts to be contributed by other LPA's (Poole has this scheme in its adopted Regulation 123 list).

2.3 When looking in further detail at what this particular scheme involves the IDP states it is "*A31 Trunk Road dualling Ameysford to Merley*". That clearly is in East Dorset and not Christchurch and is not "area based".

3.1 The majority of items (in money terms) in the Regulation 123 list are to be delivered by an agency outside the control of the charging authorities. The amended IDP states without evidence that "*If the scheme cannot be delivered as originally intended, it will most likely be due to a lack of funding."*

3.2 If the agency promoting and delivering the scheme considers the scheme no longer relevant, or to be provided beyond the plan period, that is outside the control of the charging authorities. The generic statement in the amended IDP that "*Therefore, either the scheme will be redesigned or scaled back in order to deliver a reduced, more cost effective scheme, or another alternative will have to be sought"* is flawed. All schemes the LPA's promoted through the Core Strategy should be cost-effective in any event. But where these LPA's are not the delivering agency the IDP statement is otiose.

3.3 An example from the amended IDP is the "*A31 Trunk Road dualling Ameysford to Merley*" referred to in the Regulation 123 list as *"strategic network upgrading of the A31(T)*" which the IDP states is a "*Contingency: The Councils in south east Dorset are already collecting for transport from planning applications, thus showing commitment to this proposal".* The LPA's commitment is immaterial they have no locus to carry out works on the Trunk Road Network, there is no delivery date for this scheme, and no apparent commitment by the Highway Agency that the scheme is a priority.

4.1 There is no explanation in the DCS of the disparity in the costings in that document to identify the Funding Gap, and the costings in the IDP for the same scheme. For example the IDP (as amended December 2013) identifies some £20M of Education Costs (of which £19M is in East Dorset) whilst the Charging Schedule states the IDP figure as c.£63M

Question 7: Do you agree or disagree with the draft CIL instalments policy?

Agree:	☐
Disagree:	✓

Further comments on Question 7:

Payment in instalments where a development is identified as phased is no longer limited to outline planning permissions (DCLG Guide para 2.3.10). That Guide at 2.3.9 also emphasises that

*"Few **if any** developments generate value until they are complete either in whole or in phases. Willingness to allow an instalments policy can be a material consideration in assessing the viability of proposed levy rates." (*my emphasis)

An instalments policy should be designed to help those most in need of it, with the objective of ensuring development is not either delayed or obstructed because of the financial impact of making a substantial 'up-front' payment. The proposed system, with its very high threshold, will assist only large developments at the expense of smaller local schemes by small builders on small sites. In order that this unintended consequence is mitigated to some degree instalments should be able to start at a lower level and targeted at smaller schemes..

Question 8: Do you agree or disagree with the draft 'payment in kind' policy?

Agree:	✓
Disagree:	☐

Further comments on Question 8:

Question 9: Any other comments

1.1 There is a lack of transparency to the figures put forward in the DCS to establish a "funding gap". Indeed the DCS figures appear unrelated to those in the IDP (for example for Transport and Education). Absent any appendix providing that basic analysis and reconciliation there is no opportunity for informed responses or examination on the Funding Gap or the level of CIL.

2.1 CIL Regulations (Regulation 13) allows the charging authority to introduce charge variations by geographical zone in its area, by use of buildings, or both. And on 12 June 2014 the PPG updated the advice on variability:

"The regulations allow charging authorities to apply differential rates in a flexible way, to help ensure the viability of development is not put at risk."

2.2 This opportunity should be grasped and the proposals modified to ensure that the most vulnerable developments are not jeopardised through the inelegance of the across-the-board application of a fixed levy. A schedule of rates that includes a zoned approach using the Core Strategy area designations (Town and District centres, rural settlements with local facilities etc.) could be effective whilst being simple to administer. Such an approach has been approved for other (including neighbouring) charging authorities. The PBR dismisses the examination of this approved approach and therefore is flawed ab initio.

3 DCS para 2.10 requiring CIL on an extension would appear to be incorrect as to residential extensions.

4 The DCS does not contain an identified amount (or percentage) for each charging authority that the LPA considers necessary to raise from CIL funding to bring forward the infrastructure included in the IDP for each area. Nor does it show how this compares to the projection given in the DCS Table "Projected CIL Income". For example, is the projected income twice as much as is necessary to deliver the infrastructure based upon likely other sources of income?. It is not at all clear or transparent.

Please indicate if you wish to be notified of any of the following:

That the Draft Charging Schedules have been submitted to the examiner in accordance with Section 212 of the Planning Act 2008	✓
The publication of the recommendations of the examiner and the reasons for those recommendations	✓
The approval of the Charging Schedules by the charging authorities	✓