

MATTERS, ISSUES & QUESTIONS

Version 1: Issued 30 October 2015

Examiner – Rynd Smith LLB MA MRTPI FRSA

Examination
by way of

WRITTEN REPRESENTATIONS

This paper should be read in conjunction with the Examiner's Briefing Note 1. Deadlines for responses to questions are set out in the examination programme, available on the CIL web pages.

<https://www.folkestone-hythe.gov.uk/planning/community-infrastructure-levy>

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Introductory Notes

No representors have requested to be heard by the Examiner. It follows that all matters, issues and questions identified in this paper should be responded to in writing.

The Council is invited to provide an individual written representation on every issue and to respond to all questions directed to them.

Representors may provide individual written representations in respect of those issues that are relevant to their original representation. However, they are not bound to do so and may rely on their original representation if they consider that it sets out their case and that no additional explanation is necessary to address the matters, issues and questions identified in this paper. If a question is directly relevant to an individual representor, they are requested to respond to it.

The Council is invited to respond to all written submissions and may propose changes to the submitted draft schedule.

Briefing Note 1 provides detailed guidance on the drafting of written statements in response to this paper, including word limits. Please ensure that all submitted material complies with this guidance. The examination programme sets dates on which responses are required. Material that is submitted in breach of the briefing note guidance or the examination programme may be returned to its author.

MATTER A: Formal Compliance

ISSUE 1: Legislative Compliance

- a) Has the charging authority complied with the relevant procedural requirements of the Planning Act 2008 (as amended)?

Question to the Council

- i. Please provide a statement setting out your position on legislative compliance.

Question to Representors

- ii. Do you consider that there are there any instances of legislative non-compliance? If so, please list these. You may provide a more detailed response, targeted to your individual representations as part of your response to Matter F below.

ISSUE 2: The CIL Regulations

- a) Has the charging authority complied with the relevant procedural requirements of the CIL Regulations 2010 (as amended)?

Questions to the Council

- i. Please provide a statement setting out your position on regulatory compliance.
- ii. Please confirm the location(s) at which a hard copy of all Regulation 19 documents can be inspected.
- iii. Correspondence from the Examiner on 12 October 2015 [PD004-2-1] has identified that the CIL Maps 1, 2 and 3 may not comply with Regulation 12(2) of the CIL Regulations 2010 (as amended). Please continue to respond to the questions raised in that letter by Deadline II.

Questions to Representors

- iv. Do you consider that there are there any instances of regulatory non-compliance (other than the matter recorded in correspondence from the Examiner on 12 October 2015 [PD004-2-1])? If so, please list these. You may provide a more detailed response, targeted to your individual representations as part of your response to Matter F below.
 - v. Do you have any comments to make on the correspondence from the Examiner about the CIL maps on 12 October 2015 [PD004-2-1] or the Council's response to it [PD004-2-2]?
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MATTER B: Retail, Strategic & Non-residential Developments

ISSUE 1: Retail Developments (A1-A5) (Table 2)

- a) Is the zone distinction shown in Table 2 (Folkestone Town Centre Area (Map: Appendix 3) and the rest of the district) for retail and related uses justified by appropriate available evidence, or should there be different zones/boundaries, and if so, why?
- b) Particularly, why is a £0 / sqm rate justified in the Folkestone Town Centre Area (Map: Appendix 3)?
- c) Is the rate distinction between supermarkets, superstores and retail warehousing over 280 sqm (£100); other large scale development akin to retail over 280 sqm (£100) and other retail development and development akin to retail up to 280 sqm (£0) in the rest of the district uses justified by appropriate available evidence?
- d) Are the definitions of retail and related development sufficiently clear?
- e) Overall, do the retail provisions strike an appropriate balance between helping to fund the new infrastructure required and ensuring the viability of needed retail and related development?

Questions to the Council

- i. Please provide a statement setting out your responses to the questions above.

Questions to Interested Representors

Within the framework provided by questions a) – f) above, please address the following as relevant to your circumstances and interests.

- ii. With regard to the Council's submitted evidence, is there any justification for a different retail zone or zones than that proposed?
- iii. With regard to the Council's submitted evidence, is there any justification for a different classification of retail and related development types than that proposed?
- iv. With regard to the Council's submitted evidence, is there any justification for a different retail and related development floor area threshold than the proposed up to 280 sq m / over 280 sq m provision?
- v. If you are requesting a special provision for a particular type of retail or related development, please make clear the points of distinction between it and other retail and related development and provided evidence to support your view.

**ISSUE 2: Strategic and Key Development Sites
(SS6, SS7, CSD8 & CSD9) (Table 3)**

- a) A £0 / sqm rate is proposed to be charged within defined strategic and key development sites. What infrastructure contributions are currently considered to be required to service development in these sites and indicatively what is the likely cost / sqm of infrastructure within these sites?
- b) Taking the s106 infrastructure contributions pool cap into account, is it likely that development within these sites will be able to be made subject to planning obligations that will recover a fair contribution of their infrastructure service costs?
- c) Is there any potential for the proposed £0 / sqm rate to act as a geographical economic support for these particular areas?
- d) What implementation measures (eg %age of site under development, %age of site occupied) would indicate a need to review the proposed £0/ sqm rate?

Questions to the Council

- i. Please provide a statement setting out your responses to the questions above.

Questions to Interested Representors

Within the framework provided by questions a) – d) above, please address the following as relevant to your circumstances and interests.

- ii. Is there any reason for the application of a rate other than £0 / sqm to any strategic and key development sites and if so, to what site(s) should it apply, what should it be and why?
- iii. Is there a case to be made for any of the strategic and key development sites to be subject to the relevant provisions of Tables 1, 2 or 4?

ISSUE 3: Other Developments (B, C1, C2 & D) (Table 4)

- a) A £0 / sqm rate is proposed to be charged district wide for all other non-retail or residential developments.
- b) What infrastructure contributions are currently considered to be required to service these development types and, having regard to the pool cap, is it considered that these can be met using s106 planning obligations?
- c) Is there any basis for a rate other than £0 / sqm for these types of developments either in the borough as a whole, in any of the proposed zones or on any other use or geographical basis and what effect would such a rate have on viability?

Questions to the Council

- i. Please provide a statement setting out your responses to the questions above.

Questions to Interested Representors

Within the framework provided by questions a) – c) above, please address the following as relevant to your circumstances and interests.

- ii. Is there any reason for the application of a rate other than £0 / sqm to B, C1, C2 and D development types and if so, to what zone(s) or development types should it apply, what should it be and why?

MATTER C: Residential Developments

ISSUE1: Residential Levy Rates

- a) Are the 4 local levy rates for residential development (A, B, C & D) justified by appropriate available evidence?
- b) Are the boundaries for the four zones (A, B, C & D) justified by appropriate available evidence?
- c) Is there a case for any different rates and/or different boundaries between zones, and if so, why and where?
- d) Overall do the proposed residential rates and boundaries strike an appropriate balance between helping to fund new infrastructure and the potential effects on economic viability?

Questions to the Council

- i. Please provide a statement setting out your responses to the questions above.
- ii. Does the charging area merit the pattern of residential charging zones proposed which does have a higher than typical level of complexity?
- iii. There are individual geographical areas where high charge and low charge or zero rated zones are closely adjoining one another and the rationale for the proposed zone boundary is not immediately clear from the physical condition of development on the ground. These include:
 - In Appendix 1, the boundary between zones B (£50 / sqm) and D (£125 / sqm) to the north west of Hawkinge; and
 - In Appendices 1 and 2, the boundary between zones A (£0 / sqm) in the Folkestone Inset and and D (£125 / sqm) to the north and west of the Eurotunnel terminal.

Please set out the justification for these small area differences.

- iv. Is there a clear basis for the application of Appendix 2 Folkestone Inset Zone A (£0 / sqm) to residential areas in the historic town centre?

Questions to Interested Representors

Within the framework provided by questions a) – d) above, please address the following as relevant to your circumstances and interests.

- v. Does the charging area merit the complex pattern of residential charging zones proposed?
- vi. It should be noted that the Council accepts the need to map the existing proposed residential charging zone boundaries with greater clarity. There is no need to repeat responses provided to Matter A Issue 1 questions (iii) and (v) on the consistency of the zone mapping with CIL Regulation 12(2). However, any request and reasons for proposed substantive changes to the zone boundaries should be set out.
- vii. Any request and reasons for changes to the zone rates should be set out.

MATTER D: Infrastructure Provision

ISSUE 1: Regulation 123 List

- a) Has the draft Regulation 123 list been drafted with sufficient precision to ensure that the boundary line between infrastructure funding through CIL and infrastructure funding through other planning obligations (eg s106 TCPA 1990 (as amended)) is technically robust?

Questions to the Council

- i. Please provide a statement setting out your responses to the question above.

Questions to Interested Representatives

- ii. Please provide a statement setting out your responses to the question above.

ISSUE 2: County & Policing Services

- a) Does the CIL as proposed provide sufficiently for infrastructure needs and costs identified by the County Council or Kent Police?

Questions to the Council

- i. Please provide a statement setting out your responses to the question above.

Questions to Interested Representatives

Within the framework provided by question a) above, please address the following as relevant to your circumstances and interests.

- ii. Other recent CIL examinations have considered representations from Police services. Are there any general principles that appear to be applicable arising from CIL Examination reports of which you are aware that should be brought to bear in this examination?

ISSUE 3: Funding Gap

- a) Does the CIL as proposed draw sufficient income, bearing in mind the substantial infrastructure funding gap suggested in the Council's evidence?
- b) Is there any scope to raise more infrastructure funding and narrow the funding gap without adversely affecting development viability?

Questions to the Council

- i. Please provide a statement setting out your responses to the question above.

Questions to Interested Representatives

- ii. Please provide a statement setting out your responses to the question above.
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MATTER E: Monitoring & Review

ISSUE 1: Monitoring & Review

- a) Is there a need to add a section to the draft schedule describing the review process applicable to it?

Questions to the Council

- i. Please provide a statement setting out your responses to the question above.

Questions to Interested Representatives

- ii. Please provide a statement setting out your responses to the question above.
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MATTER F: General Questions

ISSUE 1: General Questions to be Responded to on all Matters

- a) In respect of any Matter from B to D above on which they provide a response, representors are requested to append responses to the following general questions set out in Briefing Note 1 at Deadline I. If more than one Matter is responded to, the questions should be responded to separately for each, as it may be that the responses could differ.
- b) Justification should be provided for all responses to all matters, taking the following into account:
- legislative and regulatory requirements for CIL;
 - national policy and guidance for CIL;
 - the local economic context and effect of the CIL upon it;
 - the identified infrastructure needs of the area and the effects of the CIL on delivery; and
 - the effects of the CIL on the Council's adopted planning policies.

Questions to Representors

- i. In relation to the Matter in respect of which you are responding, what particular part of the schedule is unviable, unrealistic and/or unreasonable?
- ii. Which test(s) does it fail? (Identify specific legislative, regulatory or policy requirements.)
- iii. Why does it fail?
- iv. In respect of this Matter, how could the schedule be made viable, realistic and/or reasonable?
- v. What is the precise change sought? (Proposed amendments to wording are welcome.)

Questions to the Council

- vi. The Council is requested to consider the responses to the general questions provided by representors and to provide a written response to each at Deadline II.
- vii. If the Council is minded to accept the reasoning for any of the changes sought, it is requested to set out the modification(s) (if any) that it would propose in response.