From Terrence Kemmann-Lane JP DipTP FRTPI MCMI, Examiner
Folkestone & Hythe District Council Community Infrastructure Levy Draft Charging Schedule
c/o Penny O'Shea Consulting

3 January 2023

Dear Mr Hammond

Examiner's Questions (EQ1)

In advance of being provided with the outcome of the consultation on the modified Draft Charging Schedule (which I do not anticipate will raise much that relates to the terms of my examination), I have now undertaken my initial reading and appraisal of the documentation that you were kind enough to send via the Programme Officer. At this stage, I have a number of requests to make.

1. Please supply me with a copy of the full first Charging Schedule that came into effect in August 2016 – I have not been able to find this in the CIL area of your website: I have the extract from the schedule Year 5 , 1 January to 31 December 2021 which is the Tables of Rates for that year, and I have found the same on the website for Year 6, 1 January to 31 December 2022. Of course, the CIL library for the initial examination includes the Draft Charging Schedule submitted for examination, but I would like a copy of the schedule that came into force.

2. Please supply a copy of the Charging Schedule that you intend to bring into effect on the assumption that my examination concludes that there is no need for any amendment (this is not to be taken as any indication of the outcome of my examination, of course). I would like to see the exact form that you anticipate, including the maps of the Zone areas, once the extraneous material supporting the consultation is removed.

3. In addition, I would like you to address a matter that relates to what is reported in Document CIL 1.5, the Gerald Eve 'Community Infrastructure Levy Review'. This specifically relates to typology 'Senior Living', referred to as Care Homes Use Class C2 in paragraphs 6.34 and 6.35 on page 40, and also referred to as C3 in paragraph 6.36. This is picked up again on page 56, at paragraph 8.7 in Table 21, where the typology is referred to (sixth entry) as C3/C4 – Extra Care (Senior Living), although C4 is in fact 'housing in multiple occupation'. My first concern is to know exactly what form of housing is being referred to. As I understand it, Senior Living can simply refer to housing for over 55-year-olds (for example the main product of McCarthy Stone and Churchill Retirement Living, among others), but is also applied to some forms of care homes.

4. Whilst any clarification on the use being referred to would be helpful, the main point of my concern arises in the following paragraphs of CIL 1.5:

   "*6.34. Review of the Dixon Searle assessment highlighted that Care Homes (C2) had been included as a commercial asset, with nil CIL rates applied. Discussions with the Council have indicated that they wish to promote the delivery of assets that would be considered to benefit the local community, such as Care Homes. Whereas a product such as Senior Living is modelled for private revenue, a Care Home typology would be considered as a potential contribution to the local area, of which should not inhibit delivery.*

6.35. As such, it has been agreed with the Council that Care Homes (C2) would maintain their current nil CIL rate and would therefore not be included within the area-wide CIL review."

5. I am puzzled by this on the basis that a Senior Living development and a care home are both C Class residential uses, and on the face of it are not nil rated – there are no exclusions in the Residential CIL rate table.

6. Nevertheless, from the paragraphs quoted in paragraph 4 above, it appears to me that the decision not to include the Senior Living residential use typology is for reasons of policy and not for reasons of viability. I reach this possible conclusion because the above quoted text is preceded in paragraph 6.32 by the following: *"In terms of value, a C3 senior living product would generally achieve a 5-15% premium in comparison to private residential products, following general residential assumptions. Therefore, it would be anticipated that the added premium may result in greater levels of potential return to developer and therefore, could be assessed on a separate basis to standard residential (C3) typologies. In doing so, there may be scope for a separate CIL rate for Senior Living".*

7. You may know that I have undertaken CIL Examinations as a Planning Inspectorate Inspector. PINS advice was, and I have no reason to think that it has changed, that "differential rates must be supported by viability evidence alone and should not be used as a means to deliver policy objectives". I am not entirely clear about where in government guidance this explicit dictum can be found, but I know that it has been long-standing advice to Inspectors.

8. The matter is again picked up on page 92 of CIL 1.5, at paragraphs 14.11 to 14.13. The point is made in 14.13 that: *"…. we anticipate that the application of an exclusive premium for Senior Living, as part of Residential C3 use, would be challenging to implement. The concept would require legal consideration and further research into the supply/demand implications and alignment with the Council's vision".*

9. I am sufficiently uncomfortable with the possibility that viability analysis of Senior Living schemes indicates that they could absorb an additional 10% premium (on top of the 10% buffer), and that this additional contribution to the provision of necessary infrastructure is not being pursued for policy reasons. For this reason, I would like some commentary on this element of the viability review and the statements made therein that I have quoted.

10. Finally, at this point, I wish to ask about the heading in the Rates Table for Retail development. This is headed Class E – Commercial, Business and Service, which of course is the recently changed Use Class that includes retail development. However, this charge does not relate to Class E uses, but only to the retail element. It therefore seems to me that the reference to Class E is potentially confusing, and in any event it would be more straightforward with the heading 'Retail Development'. There is no need for, or gain from, a reference to Class E, and the table itself clearly identifies the forms of retail development to which the charges apply. I would appreciate your comments on this.

Season's greetings,

Terrence Kemmann-Lane