

### **Background**

- 1.1 In November 2014, the Minister of State for Housing and Planning issued a Written Ministerial Statement (WMS) setting out changes to national planning policy. The WMS stated that financial contributions towards affordable housing should no longer be sought on sites of 10 units or less and which have a maximum combined gross floor area of 1,000 sqm. National Planning Practice Guidance (NPPG) was amended to reflect this. However on 31<sup>st</sup> July 2015 the High Court held (*West Berkshire Council v SSCLG [2015]*) that the policy expressed through the WMS was unlawful and the NPPG was changed to reflect this. On 11<sup>th</sup> May 2016 the Court of Appeal reversed the High Court decision. The NPPG was subsequently amended to reflect the WMS on 19<sup>th</sup> May 2016.
- 1.2 In light of the above, between November 2014 and 1st September 2017 the Council gave greater weight to the WMS policy and associated NPPG guidance in it than to adopted Policy CP4 of its Core Strategy in respect of development proposals for 10 dwellings or less and which had a maximum combined gross floor area of 1000 sq metres. However, having undertaken an analysis during that period of up to date evidence of housing needs (**The Needs Analysis**), officers advised that when considering the weight to be given to the WMS in the context of breaches of the adopted development plan policy, the local evidence of housing need contained in the Needs Analysis should generally be given greater weight. On 1<sup>st</sup> September 2017 the Council resolved to have regard to the Needs Analysis as a consideration of significant weight when considering the relationship between Policy CP4 and the WMS for the purposes of Section 70(2) Town and Country Planning Act 1990 and Section 38(6) Planning and Compulsory Purchase Act 2004 in respect of development proposals of 10 dwellings or less.
- 1.3 On 24<sup>th</sup> July 2018 a new version of the National Planning Policy Framework (the Framework) was published with immediate effect for development management purposes. Paragraph 63 of the Framework advises that *“Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer).”* Annex 2 of the NPPF defines *“major development”* as *“for housing, development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more.”*
- 1.4 The Council's current affordable housing policy is set out in Policy CP4 of the Core Strategy (adopted in October 2011) and establishes that :
  - a) “...All new development resulting in a net gain of one or more dwellings will be expected to contribute to the provision of affordable housing.”
  - e) “In most cases require affordable housing provision to be made on site, but in relation to small sites delivering between one and nine dwellings, consider the use

of commuted payments towards provision off site. Such payments will be broadly equivalent in value to on-site provision but may vary depending on site circumstances and viability.”

- 1.5 The supporting text to Policy CP4 summarises the justification for it:
- Average house prices in Three Rivers are some of the highest in the country outside of London. As a result, many local people have difficulty accessing housing on the open market.
  - A Housing Needs Study estimated that 429 affordable dwellings would be needed each year to satisfy need. Such provision would exceed the total number of all housing types provided in the District in any year.
  - The 2010 Strategic Market Housing Assessment (SMHA) found that the requirement for affordable housing in and around the Three Rivers area remains exceptionally high.
  - In order to completely satisfy affordable housing requirements, all future housing in the district to 2021 would need to be affordable.
- 1.6 This policy remains the legal starting point for the consideration of planning applications under Section 38(6) PCPA 2004, which requires that the Council determines applications in accordance with the adopted development plan unless material considerations indicate otherwise. Revised NPPF 63 is a material consideration. The weight to be given to it is a matter for the decision maker when determining each planning application. This note explains the advice from the Head of Planning Policy & Projects and Head of Regulatory Services on the weight that they recommend should be given to NPPF 63 for these purposes in light of the Needs Analysis.
- 1.7 Since the adoption of its Core Strategy in 2011, Three Rivers has received small site affordable housing contributions amounting to over £1.5million. Utilising those monies, development is currently underway which will deliver 21 units of affordable housing, with the remaining monies to be utilised as a contribution towards the delivery of a further 17 affordable dwellings. It is clear that Three Rivers’ policy has delivered a significant contribution towards the delivery of much needed affordable housing in the district.
- 1.8 Current evidence of housing need in the District is noted below at 2.4 to 2.11. It confirms that the needs underlying the adopted development plan policy remain pressing.
- 1.9 Policy CP4 makes it clear that a requirement for a scheme to contribute towards the provision of affordable housing is subject to viability considerations and is therefore consistent with paragraph 122 of the Framework.

### **Importance of Small Sites to Three Rivers**

- 1.10 It is important to acknowledge the percentage of residential development schemes which tend to come forward in the District which propose the delivery of less than 10

dwellings: between 1<sup>st</sup> May 2016 and 12<sup>th</sup> April 2017 for instance, seventy nine planning applications for residential development involving a net gain of dwellings were determined by the Council. Of those, forty seven applications (60%) were for schemes which proposed a net gain of 1-9 units. Having a large number of small sites is an inevitable consequence of the District being contained within the Metropolitan Green Belt. The contribution to both market housing supply and affordable housing supply are therefore both material to overall identified needs and adopted development plan objectives.

- 1.11 If the weight to be given to the Framework is greater than the adopted development plan, this large proportion of Three Rivers' expected new housing delivery will contribute nothing towards affordable housing. This would compromise Three Rivers' ability to deliver its objectively assessed need for affordable housing.

## 2 Development Plan Policies and the WMS

- 2.1 The content of the Framework is a material consideration in any planning decision, and one which the decision making authority must weigh against the development plan as the starting point under section 38(6) of the 2004 Planning and Compulsory Purchase Act. The correct approach is to:

- Consider the starting point under the development plan policies
- Have regard to the Framework and its objectives if those development plan policies would be breached – it is officers' view that the Framework should be given considerable weight as a statement of national policy post-dating the Core Strategy
- Consider up to date evidence on housing needs
- Consider whether the Framework should outweigh the weight to be given to the local evidence of affordable housing need and the breach of the adopted development plan policy.

- 2.2 This approach reflects the Court of Appeal's judgment in West Berkshire, which held that whilst the government, whether central or local, could state policy "rules" absolutely, decision makers must consider them without treating them as absolute: their discretion to weigh material considerations in the balance and do something different cannot be fettered by policy:

***"the exercise of public discretionary power requires the decision maker to bring his mind to bear on every case; they cannot blindly follow a pre-existing policy without considering anything said to persuade him that the case in hand is an exception"***

- 2.3 At paragraph 26 of the judgment, the court cited statements made to the High Court on behalf of the Secretary of State, describing those as being "no more than a conventional description of the law's treatment of the Secretary of State's policy in the decision making process":

***“As a matter of law the new national policy is only one of the matters which has to be considered under sec 70(2) and sec 38(6) when determining planning applications... in the determination of planning applications the effect of the new national policy is that although it would normally be inappropriate to require any affordable housing or social infrastructure contributions on sites below the threshold stated, local circumstances may justify lower (or no) thresholds as an exception to the national policy. It would then be a matter for the decision maker to decide how much weight to give to lower thresholds justified by local circumstances as compared with the new national policy”***

As confirmed by the Court of Appeal decision in the West Berkshire case, whilst the WMS, and now the Framework, is clear with regard to the Government’s intentions on planning obligations in relation to small sites, the weight to attach to a development plan policy is a matter of discretion for the decision taker. Policies should not be applied rigidly or exclusively when material considerations may indicate an exception may be necessary.

In determining an appeal in Elmbridge, Surrey in August 2016 (appeal reference: APP/K3605/W/16/3146699) the Inspector found that *“whilst the WMS carries considerable weight, I do not consider it outweighs the development plan in this instance given the acute and substantial need for affordable housing in the Borough and the importance of delivering through small sites towards this.”* The existence of evidence of housing need is important in this context. That general principle has not been changed by the Revised NPPF.

2.4 Officers advise that whilst the Framework is a material consideration, breaches of Policy CP4 should not, in light of ongoing evidence of housing need in the Needs Analysis, be treated as outweighed by the Framework. This conclusion has been reached having had regard to the following relevant factors:

- General House Price Affordability in Three Rivers
- Affordable Housing Supply Requirements in Three Rivers
- Affordable Housing Provision in Three Rivers
- Extent of residential development schemes proposed which are for sites delivering net gain of less than 10 dwellings
- The contribution towards the provision of affordable housing Policy CP4(e) has historically made in respect of small sites
- Relevant Appeal Decisions
- The fact that the adopted development plan policy does not impose burdens where they would render schemes unviable.

#### **General House Price Affordability in Three Rivers**

2.5 Due to the District’s close proximity to London, Three Rivers has traditionally been situated within a high house price area. According to data published by the Office of

National Statistics (ONS) in the third quarter of 2016<sup>1</sup>, the lowest quartile house price in Three Rivers in 2016, representing the cheapest properties in the District was £325,000.00, making it the **seventh** most expensive local authority area in England and Wales (excluding London), out of a total of three hundred and fifty local authority areas (see table 1 below).

Number	Local Authority Name	Lowest Quartile House Prices
1	Elmbridge	£375,000.00
2	South Bucks	£370,000.00
3	St Albans	£355,000.00
4	Windsor and Maidenhead	£345,000.00
5	Chiltern	£335,000.00
6	Herstmere	£330,000.00
<b>7</b>	<b>Three Rivers</b>	<b>£325,000.00</b>
8	Epsom and Ewell	£324,000.00
9	Cambridge	£320,000.00
10	Mole Valley	£320,000.00

**Table 1.**

Since the publication of the above ONS data in 2016, the general house price affordability position has grown worse. According to data published by the Office of National Statistics (ONS) in the third quarter of 2017, the lowest quartile house price in Three Rivers as of September 2017 was £355,000.00, making it now the **sixth** most expensive local authority area in England and Wales (excluding London), out of a total of three hundred and fifty local authority areas (see table 2 below).

Number	Local Authority Name	Lowest Quartile House Prices
1	Elmbridge	£390,000.00
2	South Bucks	£386,000.00
3	St Albans	£355,000.00
4	Chiltern	£375,000.00
5	Windsor and Maidenhead	£373,000.00
<b>6</b>	<b>Three Rivers</b>	<b>£355,000.00</b>
<b>7</b>	<b>Mole Valley</b>	<b>£349,950.00</b>
<b>8</b>	<b>Epsom and Ewell</b>	<b>£340,000.00</b>
9	Cambridge	£338,000.00
10	Epping Forest	£330,000.00

**Table 2.**

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<https://www.ons.gov.uk/peoplepopulationandcommunity/housing/datasets/ratioofhousepricetoresidencebasedearningslowerquartileandmedian>

Lowest quartile earnings in Three Rivers in 2016 were £24,518.00<sup>1</sup> and £24,657.00 in 2017, 13.3 times worsening to 14.4 below the lowest quartile house prices (ratio of lower quartile house prices to lower quartile gross annual, residence based earnings). In a mortgage market where lenders are traditionally willing to lend 3.5 times a person's income, clearly a lending requirement in excess of 14 times such an income means that most first time buyers are simply unable to purchase a dwelling in the District. Such a lending ratio would have required a first time buyer in 2016 to have a deposit of £239,694.00, or (without such a deposit) to earn £92,857.00 per annum to get onto the lowest/cheapest rung of the property ladder. An additional £6,250.00 Stamp Duty payment would also have been due.

When one considers the median affordability ratio for Three Rivers compared to the rest of England and Wales, the position is even more serious: the median quartile income to median quartile house price affordability ratio is 13.82, the fifth worst affordability ratio in England and Wales, as set out in table 3 below, again when compared against 350 local authorities.

Number	Local Authority Name	Median quartile house price affordability ratio <sup>1</sup>
1	South Bucks	14.55
2	Hertsmere	14.16
3	Mole Valley	14.0
4	Chiltern	13.92
<b>5</b>	<b>Three Rivers</b>	<b>13.82</b>
6	Elmbridge	13.82
7	Cambridge	13.45
8	Epsom and Ewell	12.99
9	Oxford	12.58
10	Christchurch	12.47

**Table 3.**

Looking at the ratio of lower quartile house prices to lower quartile to gross annual, residence based earnings, in 2016 the ratio was 14.30. By September 2017 that had risen to 14.84.

It is clear from the above that the affordability of housing in Three Rivers is getting worse with time.

### **Affordable Housing Requirements in Three Rivers**

- 2.6 The South West Hertfordshire Strategic Housing Market Assessment January 2016 (SHMA) found that at that time there were approximately 658 households within Three Rivers that were situated in unsuitable housing. Unsuitability is based on the number of households shown to be overcrowded in the 2011 Census (updated to a 2013 base

for the purposes of the SHMA). 59.4% of these households were unable to afford market housing, which meant the revised gross need was reduced to 391 households.<sup>2</sup>

- 2.7 The SHMA also looked into newly-arising (projected future) need within the District, which was accepted as arising from newly forming households and existing households falling into this need. In South West Herts, the SHMA estimated a need totalling 2,760 new households per annum from 2013-2036. 15% of this need falls within Three Rivers, which equates to an estimated level of affordable housing need in the District from newly forming households of 419 per annum.
- 2.8 With these figures in mind, the SHMA calculated the net affordable housing need within the five local authority areas of the South West Herts area as being 54,997 units over the 23 year period from 2013 to 2036. This is 2,391 units per annum.<sup>3</sup> The net need within Three Rivers was calculated as being 617 units per annum or 14,191 units over the same 23 year period.

### **Affordable Housing Provision in Three Rivers**

- 2.9 Core Strategy CP4 requires around 45% of all new housing in the District to be affordable. As stated previously, prior to the WMS, all new developments that had a net gain of one or more dwellings would, subject to viability, be expected to contribute towards this.
- 2.10 Since the start of the plan period from 1 April 2001 to 31st March 2017 (the latest date where the most recent completion figures are available), 3,736 gross dwellings were completed. From this, 843 were secured as affordable housing, a total of 22.6%. This percentage is significantly below the Core Strategy target of 45% which means there was a shortfall of 836 affordable housing units or 22.4% in order to fulfil the 45% affordable housing requirement up to 31 March 2017. This shortfall only exacerbates the already pressing need for small sites to contribute towards the provision of affordable housing
- 2.11 During the 2015/16 monitoring period, there were a total of 243 gross dwelling completions within the District, of which 35% were affordable (85 dwellings). However the 85 affordable dwellings were completed on two sites, totalling four separate planning permissions. There were a further 11 planning permissions within this period totalling 30 dwellings that had a net gain of one or more dwellings, but fell below the nine dwellings threshold for on site provision of affordable housing outlined in criterion (e) of Policy CP4.

### **Extent of residential development schemes proposed which are for for sites delivering a net gain of less than 10 dwellings**

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<sup>2</sup> Table 33: Estimated Current Need, South West Hertfordshire Housing Market Assessment (January 2016).

<sup>3</sup> Table 38: South West Hertfordshire Housing Market Assessment (January 2016). Net need = Current Need + Need from Newly-Forming Households + Existing Households falling into Need – Supply of Affordable Housing.

- 2.12 As set out at para 1.10 above, between 1st May 2016 and 12th April 2017, seventy nine planning applications for residential development involving a net gain of dwellings were determined by the Council. Of those, forty seven applications (60%) were for schemes which proposed a net gain of 1-9 units. This demonstrates the importance of small sites to the overall delivery of housing in the district. Having a large number of small sites is an inevitable consequence of the District being contained within the Metropolitan Green Belt.
- 2.13 During the latest 2016/2017 monitoring period, there were a total of 164 gross dwelling completions within the District, of which 0% were affordable. All of those completions related to planning permissions granted for 10 or less dwellings with a combined floorspace of less than 1000 sq metres. The above data emphasises the importance of small sites to the delivery of housing within Three Rivers.

#### **Contributions towards the provision of affordable housing Policy CP4(e) has made in respect of small sites**

- 2.14 As set out at paragraph 1.7 above, the commuted payments to be spent on the provision of affordable housing which have been collected by the Council have made a direct contribution towards the identified affordable housing shortfall in the district: providing some 37 units of additional affordable housing. Those monies (£2.1 million) and the purpose they have been put toward show the importance of CP4(e) in the overall delivery of affordable housing.

#### **Relevant Appeal Decisions**

- 2.15 There have been a number of appeal decisions since the WMS was upheld by the High Court in May 2016. As an example, the Planning Inspectorate has dismissed appeals that were submitted against the decisions made by Elmbridge Borough Council (appeal no: 3146699), Reading Borough Council (appeal ref: 315661), South Cambridgeshire District Council (appeal ref: 3142834) and Islington Borough Council (3154751, 3164313, 3174582, 3177927 and 3182729). These were for small scale housing schemes where those Councils had attached greater weight to their affordable housing policy than to the WMS as a consequence of local evidence of substantial affordable housing need. Copies of these three appeals are attached to Appendix 1. The Council considers these appeal decisions to be of continuing relevance post the new Framework.
- 2.16 The Inspectors appointed to determine these appeals stated that the WMS needed to be addressed alongside existing Local Plan policy. Within each case, the Inspectors found that there was substantial evidence of a pressing need for affordable housing within these three local authority areas. On this basis, it was considered that local policy had significant weight and there was strong evidence to suggest that these issues would outweigh the WMS within these three cases.
- 2.17 In March 2017 the Planning Inspectorate issued a response to a letter from Richmond and Wandsworth Councils regarding the perceived inconsistency of approach by the

inspectorate in relation to a further five appeal decisions made in 2016, regarding the weight that was made to the WMS. A copy of this letter is attached to Appendix 2.

- 2.18 Out of these five decisions, the Planning Inspectorate considered that three appeal decisions were reasonable, and fairly reflected the Court of Appeal's decision that although great weight should be attached to the WMS as a material circumstance; planning applications must be decided in accordance with the development plan, unless material considerations indicate otherwise.
- 2.19 However, the Planning Inspectorate considered that the decision taken on the two remaining appeals which stated that lesser weight was afforded to local policies because they were now, in part, inconsistent with national policy, was not appropriate. The seventh paragraph in the response from the Inspectorate, summarised the approach that the Inspectorate acknowledges should be taken:

*"...an Inspector to start with the development plan and any evidence presented by the LPA supporting the need for an affordable housing contribution, establish whether the proposal is in conflict with those policies if no contribution is provided for, and, if there is conflict, only then go on to address the weight to be attached to the WMS as a national policy that post-dates the development plan policies."*<sup>4</sup>

- 2.20 It is clear therefore that the Planning Inspectorate considered that although the WMS (and now the Framework) was a material consideration, this should be balanced against the policies within a plan along with any further evidence that supports a Local Planning Authority's application of the policy.

## **Conclusion**

- 2.21 Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. Having regard to the Framework as a material consideration of significant weight, officers' view is that the local evidence of affordable housing need continues to deserve significant weight in deciding whether, for the purposes of Section 38(6), the revised Framework policies weigh sufficiently against the Core Strategy Policy CP4. Having undertaken this assessment in 2017 and further reviewed it post the new NPPF with regard to more up to date evidence, where available, officers are of the view that the Framework does not outweigh the weight to be attached to the local evidence of affordable housing need. That evidence shows that the need for affordable housing in Three Rivers is great and the contribution that small sites have made has been significant. Furthermore comparisons between 2016 and 2017 ONS data shows that the affordability of housing in Three Rivers is deteriorating year on year and the need for affordable housing is growing. As such proposals for the residential development of sites of 10 dwellings or less (not "major development") will currently be expected to contribute towards the provision of affordable housing in accordance with Policy CP4 as a condition of grant. The Council will keep this evidence under review.

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<sup>4</sup> Paragraph 7, Planning Inspectorate Letter, March 2017.

**Appendix 1: Appeal Decisions 3146699 (Elmbridge Borough Council), 315661 (Reading Borough Council), 3142834 (South Cambridgeshire District Council) and Islington Borough Council (3154751, 3164313, 3174582, 3177927 and 3182729)**

**Appendix 2: Letter from the Planning Inspectorate to Richmond and Wandsworth Councils, March 2017**

**Sources Used:**

1. Core Strategy (October 2011)  
<http://www.threerivers.gov.uk/egcl-page/core-strategy>
2. Annual Monitoring Report 2015/2016 (December 2016)  
<http://www.threerivers.gov.uk/egcl-page/annual-monitoring-report>
3. Affordable Housing Supplementary Planning Document (June 2011)  
<http://www.threerivers.gov.uk/egcl-page/supplementary-planning-documents>
4. South West Hertfordshire Strategic Housing Market Assessment (January 2016)  
<http://www.threerivers.gov.uk/egcl-page/shma-and-economic-study-for-future-review-of-local-plan>
5. Office of National Statistics Housing Data 2002-17  
<https://www.ons.gov.uk/peoplepopulationandcommunity/housing/datasets/ratioofhousepriceperresidencebasedearningslowerquartileandmedian>