

## PLANNING COMMITTEE – 15 JULY 2021

### PART I - DELEGATED

**7. 21/1064/FUL - Demolition of existing dwelling and erection of five detached dwellings with associated access and landscaping at 78 GALLOWS HILL LANE, ABBOTS LANGLEY, WD5 OBY (DCES)**

Parish: Abbots Langley Parish Council  
Expiry of Statutory Period: 13.07.2021

Ward: Gade Valley  
Case Officer: Scott Volker

Recommendation: That Planning Permission be Refused.

Reason for consideration by the Committee: This application is brought before the Committee as it has been called-in by three Members of the Planning Committee for reasons relating to inappropriate backland development, concerns with overlooking of existing homes and loss of trees within the site.

#### **1 Relevant Planning History**

- 1.1 8/143/90 - Two storey extension and workshop - Withdrawn

#### **2 Description of Application Site**

- 2.1 The application site is roughly rectangular in shape with a splayed rear boundary located on a southern side of Gallows Hill Lane in Abbots Langley. The plot measures approximately 25 metres in width and a depth ranging between 76-91 metres. The site contains an Arts and Crafts inspired two storey detached house with accommodation contained within the roofspace which is served by a central gable with a window in the front elevation. An off-centred two storey front forward projection is located within the principal elevation. The building has a pebble dashed rendered exterior with a tiled roof which is gabled along the west flank and hipped to the east. The dwelling is set back approximately 24 metres from the highway. There is a detached garage/annexe building situated along the east boundary of the site and a further outbuilding located within the garden along the west boundary.
- 2.2 To the rear the application site backs onto the private gardens of 16-22 Broomfield Rise. The properties along Broomfield Rise are generally uniform in shape and size measuring approximately 8 metres in width and 36 metres in depth.
- 2.3 To the east is 80 Gallows Hill Lane which is another two storey detached dwelling which is positioned further forward than the host dwelling and therefore closer to the highway. To the west is Little Orchard Close, a small cul-de-sac comprising of 7 detached dwellings of which 1-6 back onto the application site. These plots are also relatively uniform in depth at approximately 32 metres but widths range between 12-19 metres with the largest plot being 1 Little Orchard Close due to its corner location.

#### **3 Description of Proposed Development**

- 3.1 Planning permission is sought for the demolition of the existing dwelling and the erection of five detached dwellings accessed by a new service road.
- 3.2 Plots 1 and 2 would be located to the front with the dwellings facing towards Gallows Hill Lane. The service road would be located between Plot 2 and the west boundary of the site. Plots 3 and 4 would be located behind Plot 1 and would face in a west direction. Plot 5 would be located to the south-west of Plot 4 and would face north, with views back down the service road.

- 3.3 The dwellings would generally have the same appearance (yellow facing brick with grey tiled roof tiles) with some elements of variation. The dwellings would be two storey buildings with accommodation contained in the roofspace with two storey front gable projections. Plots 1, 2 and 5 also have rear gable projections. Building widths would range between 8-11 metres and depths would range between 9-12.5 metres. Ridge heights would be uniform measuring 9-9.5 metres in height sloping down to eaves height of 6 metres. The accommodation with the roofspace would be served by front and/or rear dormers and rooflights. Each of the dwellings would benefit from three off-street parking spaces; in the form of private driveways providing two spaces and either an integral garage (Plots 1, 2 and 5) or a separate garage (Plots 3 and 4). Each of the plots would benefit from a private amenity space ranging between 100-200sq.metres with their own bin store, with the garden areas enclosed by a combination of 1.8 metres fencing and brick walls.
- 3.4 The detached garage located within Plot 4 would measure 3.2 metres in width and 6 metres in depth. It would have a pitched roof form with a ridge height of 4.8 metres sloping down to an eaves height of 2.4 metres at the front and rear. The garage would be located along the east boundary of the site adjacent to the dwelling contained within Plot 5. The garage would be constructed in the same materials as the dwellings.
- 3.5 Plots 1 and 2 would contain 4-bed dwellings, Plot 3 and 4 would be 5-bed dwellings and Plot 6 would be a 6-bed dwelling.
- 3.6 Two visitor spaces would be provided along the service road and turning spaces would be located at the end of the service road adjacent to both Plots 4 and 5.
- 3.7 Amended plans were received during the course of the application process to include widening of the existing access serving the site by 2.1 metres.

## **4 Consultation**

### **4.1 Statutory Consultation**

#### **4.1.1 Abbots Langley Parish Council: [Comments received]**

*Members appreciate that the house is not listed or in the conservation area. However, they are concerned that a characterful, original building within Abbots Langley might be lost. They feel the design is an overdevelopment of the site and is contrived. They are concerned that the site layout does not meet Herts Highways requirements. The design shows that Plots 3 and 4 overlook a neighbouring property's garden. The site will also create extra traffic to a busy main road.*

#### **4.1.2 Hertfordshire County Council – Highway Authority: [Initial comments]**

*The proposal is for the demolition of existing dwelling and erection of five detached dwellings with associated access and landscaping at 78 Gallows Hill Lane, Abbots Langley. This is an interim response owing to the need for some clarification concerning the widened access. It is understood by HCC Highways that the existing dropped kerb will be utilised for the 5 new dwellings but will be widened to accommodate two way access. HCC Highways would only allow a dropped kerb in this instance to be a maximum of 7.2 metres as per HCC Highways design guide section 4. The existing dropped kerb is already quite large and therefore I would like clarification as to the existing size of the dropped kerb and the proposed size of the widened dropped kerb as shown in drawing number PL01. Once this has been provided and it is shown to be below 7.2 metres then HCC Highways will be able to make an informed recommendation.*

*An additional concern is the width of the internal route at its narrowest. For a large fire appliance to access the site it must not be below 3.7 metres in width. To clearly illustrate*

*that a fire appliance can access the site and turn on site, a swept path would be needed to ensure fire safety in case of an emergency.*

*Once, these two points have been clarified, HCC Highways cannot make an informed recommendation.*

Officer Comment / Further Consultation: Following receipt of the above comments an updated Site Location & Site Layout Plan numbered PL01 REV-P2 and a Swept Path Analysis Plan were provided. The Highway Officer were re-consulted and provided the following additional comments:

*Notice is given under article 18 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 that the Hertfordshire County Council as Highway Authority does not wish to restrict the grant of permission subject to the following conditions:*

*1) Existing Access – Widened or Improved*

*Prior to the first use hereby permitted the vehicular access improvements, as indicated on drawing number PL01 P2, shall be completed and thereafter retained in accordance with details/specifications to be submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority.*

*Reason: To ensure construction of a satisfactory access and in the interests of highway safety, traffic movement and amenity in accordance with Policy 5 of Hertfordshire's Local Transport Plan (adopted 2018).*

*2) Provision of Visibility Splays – Dimensioned in Condition*

*Prior to the first use of the development hereby permitted a visibility splay measuring 2.4 x 43 metres shall be provided to each side of the access where it meets the highway and such splays shall thereafter be retained at all times free from any obstruction between 600mm and 2m above the level of the adjacent highway carriageway.*

*Reason: To ensure that the level of visibility for pedestrians, cyclists and vehicles is satisfactory in the interests of highway safety in accordance with Policy 5 of Hertfordshire's Local Transport Plan (adopted 2018).*

**Highway Informatives**

*HCC as Highway Authority recommends inclusion of the following Advisory Note (AN) / highway informative to ensure that any works within the highway are carried out in accordance with the provisions of the Highway Act 1980:*

*AN 1) New or amended vehicle crossover access (section 184): Where works are required within the public highway to facilitate a new or amended vehicular access, the Highway Authority require the construction of such works to be undertaken to their satisfaction and specification, and by a contractor who is authorised to work in the public highway. If any of the works associated with the construction of the access affects or requires the removal and/or the relocation of any equipment, apparatus or structures (e.g. street name plates, bus stop signs or shelters, statutory authority equipment etc.) the applicant will be required to bear the cost of such removal or alteration. Before works commence the applicant will need to apply to the Highway Authority to obtain their permission, requirements and for the work to be carried out on the applicant's behalf. Further information is available via the County Council website at: <https://www.hertfordshire.gov.uk/services/highways-roads-and-pavements/changes-to-your-road/dropped-kerbs/dropped-kerbs.aspx> or by telephoning 0300 1234047.*

*AN 2) Storage of materials: The applicant is advised that the storage of materials associated with the construction of this development should be provided within the site on land which*

is not public highway, and the use of such areas must not interfere with the public highway. If this is not possible, authorisation should be sought from the Highway Authority before construction works commence. Further information is available via the County Council website at: <https://www.hertfordshire.gov.uk/services/highways-roads-and-pavements/business-and-developer-information/business-licences/business-licences.aspx> or by telephoning 0300 1234047.

AN 2) Obstruction of highway: It is an offence under section 137 of the Highways Act 1980 for any person, without lawful authority or excuse, in any way to wilfully obstruct the free passage along a highway or public right of way. If this development is likely to result in the public highway or public right of way network becoming routinely blocked (fully or partly) the applicant must contact the Highway Authority to obtain their permission and requirements before construction works commence. Further information is available via the County Council website at: <https://www.hertfordshire.gov.uk/services/highways-roads-and-pavements/business-and-developer-information/business-licences/business-licences.aspx> or by telephoning 0300 1234047.

AN 4) Debris and deposits on the highway: It is an offence under section 148 of the Highways Act 1980 to deposit compost, dung or other material for dressing land, or any rubbish on a made up carriageway, or any or other debris on a highway to the interruption of any highway user. Section 149 of the same Act gives the Highway Authority powers to remove such material at the expense of the party responsible. Therefore, best practical means shall be taken at all times to ensure that all vehicles leaving the site during construction of the development and use thereafter are in a condition such as not to emit dust or deposit mud, slurry or other debris on the highway. Further information is available by telephoning 0300 1234047.

### **Comments**

The proposal is regarding amendments for the demolition of the existing dwelling and erection of five detached dwellings with associated access and landscaping at 78 Gallows Hill Lane, Abbots Langley. Gallows Hill Lane is a 30 mph classified C local access route that is highway maintainable at public expense. HCC Highways previously had concerns in relation to the width of the internal route network to accommodate a fire appliance and the new width of the extended dropped kerb.

### **Vehicle Access**

The site has an existing dropped kerb. This dropped kerb is to be widened to 4.8 metres to accommodate two way traffic. This is deemed acceptable for this site owing to the improved safety benefits of two way traffic compared to that of single way movement on the existing dropped kerb. Dropped kerbs are deemed suitable for up to 5 dwellings as is proposed within this application. The dropped kerb will accommodate an internal route network which will be 3.7 metres wide as shown in drawing number PL01 P2. Both cars and a fire appliance are able to turn on site to enter and exit the highway network in forward gear.

### **Drainage**

The proposed new driveway would need to make adequate provision for drainage on site to ensure that surface water does not discharge onto the highway. Surface water from the new driveway would need to be collected and disposed of on site.

### **Refuse / Waste Collection**

Provision would need to be made for an on-site bin-refuse store within 30m of each dwelling and within 25m of the kerbside/bin collection point. The collection method must be confirmed as acceptable by TRDC waste management.

### **Emergency Vehicle Access**

The proposed dwellings are within the recommended emergency vehicle access of 45 metres from the internal route network to all parts of the buildings. This is in accordance

with the guidance in 'MfS', 'Roads in Hertfordshire; A Design Guide' and 'Building Regulations 2010: Fire Safety Approved Document B Vol 1 – Dwellinghouses'. Drawing 300198-D01 illustrates that a fire appliance can turn on site to enter and exit the highway network in forward gear.

### **Conclusion**

HCC has no objections or further comments on highway grounds to the proposed development, subject to the inclusion of the above highway informatives and condition.

4.1.3 Affinity Water: No comments received.

4.1.4 Thames Water: [Comments received]

#### Waste Comments:

Thames Water recognises this catchment is subject to high infiltration flows during certain groundwater conditions. The scale of the proposed development doesn't materially affect the sewer network and as such we have no objection, however care needs to be taken when designing new networks to ensure they don't surcharge and cause flooding. In the longer term Thames Water, along with other partners, are working on a strategy to reduce groundwater entering the sewer networks.

Thames Water recognises this catchment is subject to high infiltration flows during certain groundwater conditions. The developer should liaise with the LLFA to agree an appropriate sustainable surface water strategy following the sequential approach before considering connection to the public sewer network. The scale of the proposed development doesn't materially affect the sewer network and as such we have no objection, however care needs to be taken when designing new networks to ensure they don't surcharge and cause flooding. In the longer term Thames Water, along with other partners, are working on a strategy to reduce groundwater entering the sewer network.

With regard to SURFACE WATER drainage, Thames Water would advise that if the developer follows the sequential approach to the disposal of surface water we would have no objection. Management of surface water from new developments should follow Policy SI 13 Sustainable drainage of the London Plan 2021. Where the developer proposes to discharge to a public sewer, prior approval from Thames Water Developer Services will be required. Should you require further information please refer to our website. <https://developers.thameswater.co.uk/Developing-a-large-site/Apply-and-pay-for-services/Wastewater-services>.

Thames Water would advise that with regard to WASTE WATER NETWORK and SEWAGE TREATMENT WORKS infrastructure capacity, we would not have any objection to the above planning application, based on the information provided.

#### Water Comments:

With regard to water supply, this comes within the area covered by the Affinity Water Company. For your information the address to write to is - Affinity Water Company The Hub, Tamblin Way, Hatfield, Herts, AL10 9EZ - Tel - 0845 782 3333.

4.1.5 Landscape Officer: No comments received.

4.1.6 Herts Ecology: No comments received.

4.1.7 Herts & Middlesex Wildlife Trust: [No objection, subject to condition]

The supporting bat survey provides an acceptable mitigation strategy. Therefore the following condition adapted from BS 42020 should be applied to the decision:

*Works shall not in any circumstances commence unless the local planning authority has been provided with a copy of the licence issued by [the relevant licensing body] pursuant to Regulation 53 of The Conservation of Habitats and Species Regulations 2017 (as amended) authorising the specified activity/development to go ahead. Development shall then proceed in accordance with that licence and in accordance with the approved ecological report (BSG April 2021). All mitigation and compensation measures shall be fully installed before occupation and retained as such thereafter.*

*Reason: To ensure compliance with the Conservation of Habitats and Species Regulations 2017 (as amended) and to ensure biodiversity is conserved and enhanced in accordance with NPPF.*

#### 4.1.8 Historic England: [Comments received]

##### *Context*

*Historic England has received an application asking us to consider listing 78 Gallows Hill Lane, Abbots Langley, Hertfordshire. An application was first received in October 2020. At the time the application did not appear to meet Historic England's validation criteria as it was not under a planning threat, it was not part of a strategic project, and it did not display evident significance. Recently, we have been asked to reconsider as a planning application (reference 21/1064/FUL) has been submitted to Three Rivers District Council. Permission is being sought for the demolition of the existing house and redevelopment of the site for 5 new detached homes, with roads, sewers and all ancillary works. This has a determination date of 13 July 2021.*

*The building is not in a conservation area.*

##### *History and Details:*

*Little is known about the origins of 78 Gallows Hill Lane. It is understood to have been built by John Inett Ward (1833-1921) who occupied the Manor House in Abbots Langley from 1892 to 1921, and whose daughter Nellie Faulconer is said to have lived in no. 78 since 1921. 78 Gallows Hill Lane first appears on the Ordnance Survey map of 1924 1: 2500 edition, but is not on earlier editions, so a construction date shortly prior to 1921 is likely.*

*The Arts and Crafts inspired house has a rectangular planform. The tiled roof is gabled to the west elevation and hipped at the east elevation, and has two large chimney stacks. The walls are rendered, and may be pebble-dashed, although photographs are not close enough to confirm this. The building has two storeys and an attic dominated by a central gable with a window on the front elevation. Below is a two-storey porch. The fenestration is irregular but mainly consists of timber mullion windows with leaded lights. No information has been provided about the interior of the building, or of any features of interest that are believed to have existed.*

##### *Criteria/Assessment:*

*The Principles of Selection for Listed Buildings (November 2018) sets out how the Secretary of State determines whether a building or structure is of special interest and merits listing. Also relevant is the Historic England Listing Selection Guide for Suburban and Country Houses (December 2017) which states that such houses survive in large numbers and need to be carefully assessed for listing against the normal selection criteria: age and rarity, intactness, quality of design, materials, craftsmanship, and historic associations. Houses surviving from 1700-1840 without substantial alteration will probably warrant listing, although some discretion may be necessary for later, more standard designs. For houses built after 1850, due to the large numbers of buildings surviving, progressively greater selectivity is necessary.*

*On the basis of the evidence to hand, 78 Gallows Hill Lane is not recommended for listing for the following principal reasons:*

*Level of Architectural interest:*

- *although this seems to be a bespoke design in an Arts and Crafts style, the building is not distinguished – in terms of significant architectural quality or fine craftsmanship – from the large number of buildings surviving of this type and period;*
- *no information regarding the internal fixtures and fittings has been provided but, based on the typical design of the exterior, any surviving decorative features or joinery are likely to be of a similar standard.*

*Level of Historic interest:*

- *John Inett Ward and Nellie Faulconer are figures of local, rather than national, interest.*

*Conclusion:*

*Whilst 78 Gallows Hill Lane contributes to the local street scene, it does not meet the criteria for listing in a national context.*

4.1.9 Conservation Officer: [Comments received]

*Thanks for the photos and for forwarding over Historic England's decision on the listing application. The findings in their report are along the lines I was thinking – I didn't think it was of list-able quality. However, they have acknowledged it is of some local interest, which I agree with.*

*In terms of the Three Rivers criteria for local listing, I think it could meet architectural interest, historic interest (connection with local figures as noted in the Historic England report) and streetscape quality. So it would be considered a non-designated heritage asset under the NPPF and paragraph 197 would apply to any decision to demolish.*

## **4.2 Public/Neighbour Consultation**

4.2.1 Number consulted: 15

4.2.2 No of responses received: 23 objections, 0 letters of support

4.2.3 Site Notice: None. Press notice: None.

4.2.4 Summary of Responses:

- Overdevelopment
- Overshadowing
- Overlooking / Loss of privacy
- Loss of biodiversity / natural habitats
- Increase noise
- Increase traffic
- Increase pollution
- Out of place with rest of surrounding area
- Loss of light
- Impact on highway safety with two access points in close proximity of one another
- Increase in parking in surrounding streets
- Too close to the boundary
- Loss of trees on site
- Development would set precedent
- Development will lead to village becoming overcrowded, unattractive and undesirable place to live
- Dwellings would appear prominent within the plots
- Impact on usability of neighbouring gardens

- Garages too small to house private cars
- Access road is too narrow
- Existing building is of architectural significance in Abbots Langley with original features
- Development provides neither social or affordable housing
- Impacts on security of properties along Little Orchard Close
- Adversely affects Conservation Area (**Officer Comment:** Site is not located within a Conservation Area)

## 5 Reason for Delay

5.1 Committee Cycle.

## 6 Relevant Planning Policy, Guidance and Legislation

### 6.1 National Planning Policy Framework and National Planning Practice Guidance

In 2019 the new National Planning Policy Framework was published. This is read alongside the National Planning Practice Guidance (NPPG). The determination of planning applications is made mindful of Central Government advice and the Local Plan for the area. It is recognised that Local Planning Authorities must determine applications in accordance with the statutory Development Plan, unless material considerations indicate otherwise, and that the planning system does not exist to protect the private interests of one person against another. The NPPF is clear that “existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework”.

The NPPF states that ‘good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities’. The NPPF retains a presumption in favour of sustainable development. This applies unless any adverse impacts of a development would ‘significantly and demonstrably’ outweigh the benefits.

### 6.2 The Three Rivers Local Development Plan

The application has been considered against the policies of the Local Plan, including the Core Strategy (adopted October 2011), the Development Management Policies Local Development Document (adopted July 2013) and the Site Allocations Local Development Document (adopted November 2014) as well as government guidance. The policies of Three Rivers District Council reflect the content of the NPPF.

The Core Strategy was adopted on 17 October 2011 having been through a full public participation process and Examination in Public. Relevant policies include Policies PSP2, CP1, CP2, CP3, CP4, CP8, CP9, CP10 and CP12.

The Development Management Policies Local Development Document (DMLDD) was adopted on 26 July 2013 after the Inspector concluded that it was sound following Examination in Public which took place in March 2013. Relevant policies include DM1, DM3, DM4, DM6, DM7, DM8, DM10, DM13, Appendices 2 and 5.

The Site Allocations Local Development Document (SALDD) was adopted on 25 November 2014 having been through a full public participation process and Examination in Public. Policy SA1 is relevant.

### 6.3 Other

Affordable Housing Supplementary Planning Document (adopted June 2011).



The Community Infrastructure Levy (CIL) Charging Schedule (adopted February 2015). The Localism Act received Royal Assent on 15 November 2011. The growth and Infrastructure Act achieved Royal Assent on 25 April 2013.

The Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010, the Natural Environment and Rural Communities Act 2006 and the Habitat Regulations 1994 may also be relevant.

## **7 Planning Analysis**

### **7.1 Principle of Demolition**

7.1.1 The application site does not lie within a conservation area and the building is not a Listed or a Locally Important Building. Concerns were received during the application process that the original dwelling is one of the last remaining Arts & Crafts buildings and is of architectural merit, therefore of significance to the area's character. The Local Planning Authority were notified that an application to list the building had been made to Historic England by a local resident. During the course of the application process Historic England informed officers that they consider that although the building appears to be a bespoke design in an Arts and Crafts style, the building is not distinguished – in terms of significant architectural quality or fine craftsmanship – from the large number of buildings surviving of this type and period. In addition, no information regarding the internal fixtures and fittings had been provided but, based on the typical design of the exterior, any surviving decorative features or joinery are likely to be of a similar standard. Historic England subsequently concluded that whilst 78 Gallows Hill Lane contributes to the local street scene, it does not meet the criteria for listing in a national context. Notwithstanding this, Paragraph 40 of the NPPG (Reference ID: 18a-040-20190723) states that in some cases, local planning authorities may also identify non-designated heritage assets as part of the decision-making process on planning applications. As such, discussions internally are underway to consider whether there is any merit to add the dwelling to the Council's list of Locally Important Buildings. With this in mind, Officers are content that the host dwelling can be considered a non-designated heritage asset given its identified degree of heritage significance and thus the application would need to satisfy paragraph 197 of the NPPF.

7.1.2 Paragraph 197 states that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. This report will assess the merits of the application and weigh those up against the loss of the non-designated asset.

### **7.2 Principle of Development**

7.2.1 The proposed development would result in a net gain of four dwellings. The site is not identified as a housing site in the adopted Site Allocations document. However, as advised in this document, where a site is not identified for development, it may still come forward through the planning application process where it will be tested in accordance with relevant national and local policies.

7.2.2 Core Strategy Policy CP2 advises that in assessing applications for development not identified as part of the District's housing land supply including windfall sites, applications will be considered on a case by case basis having regard to:

- i. The location of the proposed development, taking into account the Spatial Strategy
- ii. The sustainability of the development and its contribution to meeting local housing needs
- iii. Infrastructure requirements and the impact on the delivery of allocated housing sites

iv. Monitoring information relating to housing supply and the Three Rivers housing targets.

7.2.3 The application site is within Abbots Langley which is identified as a Key Centre in the Core Strategy. The Spatial Strategy of the Core Strategy advises that new development will be directed towards appropriate infilling opportunities within the urban areas of Key Centres. Policy PSP2 advises that Key Centres will provide approximately 60% of the District's housing requirements over the plan period.

7.2.4 Paragraph 117 of the NPPF sets out that planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land. It should be noted that Annex 2: Glossary of the NPPF defines that 'previously developed land' excludes 'land in built-up areas such as residential gardens'.

7.2.5 The proposed dwellings would be on garden land, which is not considered to be previously developed however it is also recognised that the NPPF does not include a presumption against development on or within private residential gardens, with each application to be assessed on its individual merits. However, it gives the following advice at paragraph 70; *"Plans should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area"*.

7.2.6 There is no in principle objection to residential development of the application site in relation to Policy CP2; however, this is subject to consideration against other material considerations as discussed below.

### 7.3 Housing Mix

7.3.1 Policy CP3 of the Core Strategy states that the Council requires housing proposals to take into account the District's range of housing needs, in terms of the size and type of dwellings as identified by the Strategic Housing Market Assessment (SHMA) (2016). The most recent SHMA was published in January 2016 and has identified the indicative targets for market sector dwelling size within the Three Rivers District, as follows:

1 bedroom 7.7% of dwellings  
2 bedrooms 27.8% of dwellings  
3 bedrooms 41.5% of dwellings  
4+ bedrooms 23.0% of dwellings

7.3.2 The proposed development would provide 40% 4-bed units, 60% 4+bed units. Whilst the proposed mix would not strictly accord with Policy CP3, it is not considered that a development of this form would prejudice the ability of the Council to deliver overall housing targets and the development is therefore considered acceptable in accordance with Policy CP3 of the Core Strategy (adopted October 2011).

### 7.4 Affordable Housing

7.4.1 **Appendix A** of this report sets out the position of the Council and evidence relating to the application of the affordable housing threshold in Core Strategy Policy CP4: Affordable Housing.

7.4.2 As there would be a net gain of four units, the proposed development would be liable for a commuted sum payment towards affordable housing. The proposed development would result in a requirement for a commuted sum of £408,375 towards affordable housing based on a habitable floorspace of 544.5sq. metres multiplied by £750 per sq. metres which is the required amount in 'The Langleys' market area.

7.4.3 The application is supported by a draft Section 106 Agreement, however this has not been completed during the application timeframe. Therefore the development would not contribute to the provision of affordable housing in Three Rivers and therefore fails to meet the requirements of Policy CP4 of the Core Strategy (adopted October 2011) and the Affordable Housing Supplementary Planning Document (approved June 2011).

## 7.5 Design, impact on character, street scene

7.5.1 Policy CP1 of the Core Strategy (adopted October 2011) seeks to promote buildings of a high enduring design quality that respect local distinctiveness and Policy CP12 of the Core Strategy (adopted October 2011) relates to design and states that in seeking a high standard of design the Council will expect development proposals to 'have regard to the local context and conserve or enhance the character, amenities and quality of an area'. Development should make efficient use of land but should also respect the 'distinctiveness of the surrounding area in terms of density, character, layout and spacing, amenity, scale, height, massing and use of materials'; 'have regard to the local context and conserve or enhance the character, amenities and quality of an area' and 'incorporate visually attractive frontages to adjoining streets and public spaces'.

7.5.2 In terms of new residential development, Policy DM1 of the DMLDD advises that the Council will protect the character and residential amenity of existing areas of housing from forms of 'backland', 'infill' or other forms of new residential development which are inappropriate for the area. Development will only be supported where it can be demonstrated that the proposal will not result in:

- i. Tandem development;
- ii. Servicing by an awkward access drive which cannot easily be used by service vehicles;
- iii. The generation of excessive levels of traffic;
- iv. Loss of residential amenity;
- v. Layouts unable to maintain the particular character of the area in the vicinity of the application site in terms of plot size, plot depth, building footprint, plot frontage width, frontage building line, height, gaps between buildings and streetscape features (e.g. hedges, walls, grass verges etc.)

7.5.3 The dwellings would be served by utilising the existing access point from Gallows Hill Lane which would be widened to enable two way traffic to access the site. The assessment of the access arrangements to the new development will be addressed later in this report however whilst it is noted that the construction of five dwellings would intensify the use of the site in comparison to existing, it is not considered that it would generate excessive levels of traffic to the detriment of the area.

7.5.4 The Design Criteria at Appendix 2 of the Development Management Policies document sets out that new development should not be excessively prominent in relation to the general street scene and should respect the character of the street scene, particularly with regard to the spacing of properties, roof form, positioning and style of windows and doors and materials. Development at first floor level should be set in from flank boundaries by a minimum of 1.2 metres.

7.5.5 The proposed redevelopment of the site to erect five new detached dwellings in the layout proposed would constitute tandem development which Policy DM1 seeks to avoid where it is inappropriate for the area. Gallows Hill Lane is generally characterised by traditional detached and semi-detached dwellings directly facing the highway with private gardens located to the rear. Travelling east from the application site there is distinct change in character between the detached dwellings (and those semi-detached on the other side of the road) with the modern developments to the west. It is noted that redevelopment of 76 Gallows Hill Lane to create Little Orchard Close and the earlier development of Ash Close situated further west are examples where the density of development has increased and

does not follow the general pattern of development in the area; however, they mostly retain rectangular shaped plots with gardens to the rear of the properties and still retain plot depths of around 30 metres or more. In contrast, the plots within the proposed development would be relatively irregular in shape measuring 21-26 metres in depth with splayed boundaries so as to accommodate the meandering access road and gardens to the side (Plots 3 and 4) to accommodate the number of units proposed. The size of the plots would therefore be out of character to the locality and the proposed development would represent overdevelopment of the site which would erode the character of the locality and create a piecemeal arrangement of houses which would appear incongruous within the area. The proposed dwellings to the rear of the property would be visible from Gallows Hill Lane as a result of the widened access road.

7.5.6 Furthermore, it is considered that the proposed size and scale of the proposed dwellings in addition to the layout of the site would further highlight the cramped nature of development and the dwellings would appear disproportionate and represent overdevelopment of individual plots and inadequate spacing is provided between buildings and respective boundaries. This is particularly evident at Plots 1 and 2 whereby there is only a separation distance of 1 metre between opposing flank walls and also between the outside flank wall of Plot 1 and its adjacent east boundary. To the rear, whilst there is considered to be sufficient spacing between the dwellings within Plots 4 and 5 their relationship would appear awkward and as previously mentioned above they would be visible from Gallows Hill Lane. Due to the siting of Plots 1 and 2 at the front of the site the limited spacing would be particularly evident, emphasising the cramped nature of the development which would be out of character when viewed against the more spacious arrangements with some of the older properties in street, particularly to the east.

7.5.7 Whilst it is noted that there is a degree of variation in the built form within the vicinity, the density of the proposed development fails to accord with the distinct character to the east of the application site resulting in the development appearing contrived. The dwellings would generally have the same appearance with some element of variation but they would all have square shaped footprints which are considered to be oversized especially in comparison to the width of the plots. This is particularly the case for Plots 1 and 2 where the coverage of the plots in respect of width is approximately 88%. The design of the buildings also results in substantial elevated bulk and mass due to their gabled roof forms that have high and wide ridges and the inclusion of two storey front and rear gable projections. In conjunction with their siting within relatively small plots the cramped and elevational bulk of the road frontage dwellings create an unacceptable impact on the visual amenity of the street scene and the backland dwellings also have a harmful impact on the character of the area by virtue of their design and layout. Therefore, it is considered that the proposed development by reason of its poor layout, small plots and the siting, scale, design and proximity to boundaries of the proposed dwellings would result in a cramped, contrived and unduly prominent form of development which would result in harm to the character and appearance of the area. The development would therefore be contrary to Policies CP1, CP3 and CP12 of the Core Strategy (adopted October 2011) and Policies DM1 and Appendix 2 of the Development Management Policies LDD (adopted July 2013).

## 7.6 Impact on amenity of neighbours

7.6.1 Policy CP12 of the Core Strategy states that development proposals should protect residential amenities by taking into account the need for adequate levels and disposition of privacy, prospect, amenity and garden space.

7.6.2 Policy DM1 and Appendix 2 of the DMP LDD set out that residential development should not result in loss of light to the windows of neighbouring properties nor allow overlooking, and should not be excessively prominent in relation to adjacent properties. To ensure that loss of light would not occur to the habitable rooms of neighbouring dwellings as a result of new development, the Design Criteria at Appendix 2 of the Development Management Policies document advise that two storey development should not intrude into a 45 degree

spay line across the rear garden from a point on the joint boundary, level with the rear wall of the adjacent property. This principle is dependent on the spacing and relative positions of properties and consideration will be given to the juxtaposition of properties, land levels and the position of windows and development on neighbouring properties.

- 7.6.3 In addition, with regards to privacy and overlooking the Design Guidelines states distances between buildings should be sufficient so as to prevent overlooking, particularly from upper floors. As an indicative figure, 28 metres should be achieved between the faces of single or two storey buildings backing onto each other or in other circumstances where privacy needs to be achieved. Distances should be greater between buildings in excess of two storeys (especially dwellings/flats) with elevations which directly face one another or in situations where there are site level differences involved. Mitigating circumstances such as careful layout and orientation, screening and window positions may allow a reduction of distances between elevations.
- 7.6.4 In respect of 80 Gallows Hill Lane, the existing host dwelling is set back further into the plot when compared with this neighbour and given its siting and design it has little impact upon this neighbour. In contrast the proposed development would result in three new dwellings being built along the common boundary and would introduce new two-storey built form closer to the boundary. The submitted site plan indicates that the dwellings contained within Plots 1 and 3 would be set off the common boundary by 1 metre with this distance increasing to 1.5 metres in respect of the dwelling within Plot 4. The proposed heights, design and positioning of these new dwellings in close proximity to the boundary of 80 Gallows Hill Lane would result in an overbearing and unneighbourly form of development, and in the case of Plot 3 would also result in unacceptable levels of overshadowing of the garden to the detriment of the residential amenities of 80 Gallows Hill Lane. The dwelling within Plot 1 projects forward of the principal elevation of 80 Gallows Hill Lane by approximately 2.5 metres however this neighbour has an integral garage adjacent to the boundary. Whilst it is noted that a dormer exists within the cat-slide roof above the garage, given the relationship between this neighbour to the east and spacing it is not considered that the proposed dwelling in Plot 1 would result in demonstrable harm through loss of light or appear overbearing and is considered acceptable.
- 7.6.5 In respect of overlooking, there would be flank glazing proposed at both ground and first floor level which would face towards 80 Gallows Hill Lane. The submitted site plan indicates that a close boarded 1.8 metre high timber fence would be situated along the common boundary which would provide adequate screening to mitigate against any direct overlooking from the ground floor windows. The submitted elevation drawings show that the windows at first floor and above would be fitted with obscured glazing and would be serving bathrooms or stairwells/landing area which are not considered to be habitable rooms. Whilst there would be no actual overlooking from these windows it is considered that these windows would result in a degree of perceived overlooking particularly from Plot 3 given their elevated height and proximity to the common boundary.
- 7.6.6 In assessing the impact of the proposed development towards the residential amenities of those properties situated along Broomfield Rise which back onto the application site, Plots 4 and 5 would be set off from their respective rear boundaries by 11-12 metres. The common boundaries between these two plots and those of Broomfield Rise are splayed resulting in these neighbouring properties to the rear being angled away from the application site. The properties along Broomfield Rise are at least 20 metres away from the rear boundary and as a result of this distance it is not considered that the dwellings in Plots 4 or 5 would result in loss of light or appear overbearing. There is glazing contained at ground and first floor level within the rear elevation of Plot 5 facing these properties to the rear which serve both habitable and non-habitable rooms and given the relatively short garden depth there is potential for actual and perceived overlooking of the private gardens of these neighbours. Whilst there is similar glazing to rear elevation of Plot 4, this dwelling is set further back and angled away and is not therefore considered result in harmful overlooking.

- 7.6.7 Finally, in respect of the impact on the dwellings along Little Orchard Close, these dwellings are positioned on a slightly lower land level in comparison to the application site. The proposed new access would be adjacent to the rear boundaries of plots on Little Orchard Close which would separate Plots 2, 3 and 4 from these neighbouring properties and therefore reduces the proposed building's prominence and potential impact in regards to loss of light. In addition, the glazing contained within the flank wall of Plot 2 at first floor level and above would be conditioned to be obscured and non-opening to prevent any overlooking towards these neighbouring properties. The dwelling in Plot 3 would face towards those properties of Little Orchard Close however there would be a separation distance of approximately 30 metres which is considered sufficient to mitigate against any direct overlooking. Furthermore, some trees would be retained along this common boundary which, whilst they cannot be solely relied upon, would provide some screening.
- 7.6.8 With regards to Plot 4, this dwelling also faces towards the rear gardens of properties along Little Orchard Close. This dwelling is positioned slightly further forward and closer to the east boundary than Plot 3 however there is still a distance of approximately 29 metres and 33 metres between the principal elevation of Plot 4 (notably the gable projection) and the rear elevations of Nos. 4 and 5 Little Orchard Close. Whilst there is no screening along the eastern boundary it is considered that the separation distance, which accords with the guidance in Appendix 2 of the DMP LDD, mitigates against any significant overlooking and as such it is not considered that there would be any demonstrable loss of privacy to these properties along Little Orchard Close.
- 7.6.9 The dwelling in Plot 5 would be situated closest to the western boundary of the site and to those properties on Little Orchard Close which are sited at a lower land level, particularly Nos. 5 and 6. The dwelling within plot 5 would be set off the boundary by approximately 2 metres. Due to the close proximity of this new dwelling, its elevated height due to the differing land levels, design including gabled roof and the short distances between the flank elevation of proposed dwelling and the rear elevations of this neighbouring plots it is considered that the dwelling in Plot 5 would appear overbearing to the detriment of these neighbouring properties. The submitted plans indicate that glazing is proposed at ground, first and upper floor levels facing towards these neighbouring properties. The plans detail that the ground floor window would be serving a study and the windows above would be serving non-habitable rooms. Sufficient screening would be provided along the common boundary in the form of a 1.8 metre high close boarded fencing to prevent any overlooking from the ground floor window.
- 7.6.10 Concerns were received during the application process that the proposed positioning of the access would result in harm to the residential amenities of those properties along Little Orchard Close through additional noise and disruption. Whilst these comments are noted it is not considered that the proposed development would result in high level of traffic movements such that would cause unacceptable levels of noise nuisance to the detriment of these neighbouring properties.
- 7.6.11 Therefore, it is considered that the proposed development would result in an unneighbourly form of development which would also result in actual and perceived levels of overlooking to the detriment of the residential amenities of 80 Gallows Hill Lane, 16-22 Broomfield Rise and 5 and 6 Little Orchard Close contrary to Policy CP12 of the Core Strategy (adopted October 2011) and Policy DM1 and Appendix 2 of the Development Management Policies LDD.
- 7.7 Quality of accommodation for future occupants
- 7.7.1 The Design Criteria at Appendix 2 provides indicative levels of amenity space which should be attained as individual gardens. A four bedroom dwelling should provide 105sq. metres of amenity space with an additional 21sq. metres per additional bedroom. The submitted plan details that Plots 1 & 2 (4-bed units) would benefit from 100sq. metres of amenity space each; Plots 3 & 4 (5-bed units) would benefit 130-150sq. metres of space and Plot 5 (6-bed)

would benefit from private amenity measuring 200sq.metres in size and are therefore considered acceptable. Notwithstanding the acceptability of the provision this does not overcome the objections to the development with regards to the cramped layout of the proposed development.

- 7.7.2 The dwellings contained within Plots 1 and 2 would hold uniform front and rear building lines and as a result would not intrude their respective 45 degree splay lines such to cause loss of light or appear overbearing. Plot 3 would be located behind Plot 1 with a separation distance of approximately 14 metres between the main opposing two storey elevations. Given this separation distance and that both Plot 3 and Plot 1 would be sited on the same land level it is not considered that Plot 3 would result in unacceptable harm with regards to loss of light or appearing overbearing. Aside from a high level window contained within the gable end serving a dressing/hobby room, there would be no flank glazing facing towards Plot 1. The high level window is shown on the plans to be obscured which would prevent any direct overlooking. This relationship is repeated between Plots 3 and 4 where a separation distance of 14 metres exists between the two properties created by the private garden of Plot 3. A condition would also be attached to ensure the high level window within the flank wall of Plot 4 is obscured to prevent any overlooking towards the private garden of Plot 3.
- 7.7.3 Plots 4 and 5 would have a staggered relationship with the principal elevation of Plot 5 being relatively in line with the rear wall of Plot 4. This would notably result in an intrusion of the 45 degree splay line the driveway and detached garage associated with Plot 4 would separate the two properties and there would be distance of approximately 5 metres between Plot 5 and the rear elevation of Plot 4. Whilst there is an intrusion it is not considered that the dwelling within Plot 5 would cause any unacceptable loss of light or become an overbearing form of development to the detriment of the residential amenities of the future occupiers of Plot 4.
- 7.7.4 As such, it is not considered that the proposed development would result in unacceptable levels of overlooking or loss of privacy to the residential amenities of future occupiers of the proposed dwellings and the development is acceptable in accordance with Policy CP12 of the Core Strategy (adopted October 2011) and Policy DM1 and Appendix 2 of the Development Management Policies LDD.

## 7.8 Wildlife and Biodiversity

- 7.8.1 Section 40 of the Natural Environment and Rural Communities Act 2006 requires Local Planning Authorities to have regard to the purpose of conserving biodiversity. This is further emphasised by regulation 3(4) of the Habitat Regulations 1994 which state that Councils must have regard to the strict protection for certain species required by the EC Habitats Directive.
- 7.8.2 The protection of biodiversity and protected species is a material planning consideration in the assessment of applications in accordance with Policy CP9 of the Core Strategy (adopted October 2011) and Policy DM6 of the DMLDD. National Planning Policy requires Local Authorities to ensure that a protected species survey is undertaken for applications that may be affected prior to determination of a planning application.
- 7.8.3 The site is not in or located adjacent to a designated wildlife site. The application has been submitted with a Biodiversity Checklist, a Preliminary Ecological Assessment and an Outline Bat Mitigation Strategy. The Local Planning Authority is not aware of any records of protected species within the immediate area that would necessitate further surveying work being undertaken. Both Herts Ecology and Herts & Middlesex Wildlife Trust ("HMWT") were consulted on the application. HMWT provided comments and considered that the supporting bat survey provides an acceptable mitigation strategy. As such they raised no objection to the proposed development subject to condition.

## 7.9 Trees and Landscaping

7.9.1 Policy CP12 of the Core Strategy expects development proposals to 'have regard to the character, amenities and quality of an area', to 'conserve and enhance natural and heritage assets' and to 'ensure the development is adequately landscaped and is designed to retain, enhance or improve important existing natural features' and Core Strategy Policy CP9 seeks a net gain in the quality and quantity of Green Infrastructure through the protection and enhancement of assets and the provision of new green spaces.

7.9.2 Policy DM6 of the Development Management Policies document sets out requirements in relation to trees, woodlands and landscaping and sets out that:

- i) Proposals for new development should be submitted with landscaping proposals which seek to retain trees and other important landscape and nature conservation features. Landscaping proposals should also include new trees and other planting to enhance the landscape of the site and its surroundings as appropriate.
- ii) Development proposals on sites which contain existing trees and hedgerows will be expected to retain as many trees and hedgerows as possible, particularly those of local amenity or nature conservation value or hedgerows considered to meet the Hedgerow Regulations 1997.
- iii) Development proposals should demonstrate that existing trees, hedgerows and woodlands will be safeguarded and managed during and after development in accordance with the relevant standards
- iv) Development should be designed in such a way as to allow trees and hedgerows to grow to maturity without causing undue problems of visibility, shading or damage. Development likely to result in future requests for significant topping, lopping or felling will be refused
- v) Planning permission will be refused for any development resulting in the loss of deterioration to protected woodland (including ancient woodland), protected trees (including aged or veteran trees) and hedgerows.

7.9.3 There are a number of trees within the site however they are not protected by a Tree Preservation Order. The application is supported by a Tree Impact report prepared by John Cromar's Arboricultural Company Ltd. referenced S458-J1-IA-1 which includes a Tree Value Assessment Plan and Tree Retention & Tree Protection Measures plans for site preparation phase and also construction phase. The submitted details indicate that 12 trees would be removed to facilitate the development of which all them have been classified as Low Value 'C' or 'U' trees. The trees which are of moderate value would be retained and protected during the course of the development. It is proposed to plant new trees within the application site and this could be secured by condition should there be a grant of planning permission. The Landscape Officer was consulted on the application however no comments have been received at this time. A verbal update will be provided at the committee meeting.

## 7.10 Highways, Access and Parking

7.10.1 Policy CP10 of the Core Strategy requires development to demonstrate that it will provide a safe and adequate means of access. Core Strategy Policy CP1 states that development should provide opportunities for recycling wherever possible. Policy DM10 of the Development Management Policies document sets out that adequate provision for the storage and recycling of waste should be incorporated into proposals and that new development will only be supported where the siting or design of waste/recycling areas would not result in any adverse impact to residential or workplace amenities, where waste/recycling areas can be easily accessed (and moved) by occupiers and waste



operatives and where there would be no obstruction to pedestrian, cyclist or driver sight lines.

7.10.2 Policy DM13 of the DMP LDD requires development to make provision for parking in accordance with the parking standards set out at Appendix 5 of the same document. Appendix 5 sets the parking requirement for dwellings as follows:

- 1 bedroom dwellings – 1.75 spaces (1 assigned)
- 2 bedroom dwellings – 2 spaces (1 assigned)
- 3 bedroom dwellings – 2.25 spaces (2 assigned)
- 4 or more bedroom dwellings – 3 spaces (3 assigned)

7.10.3 Based on the above requirements the development should provide 15 car parking spaces (15 assigned).

7.10.4 The submitted site plan details that each of the proposed dwellings would benefit from a garage and all plots would be served by a driveway providing two parking spaces resulting in each of the dwellings benefitting from three off street parking spaces which would accord with the standards detailed above. A condition would be attached to any consent removing permitted development rights under Class A to ensure that the garages are retained for the purposes of storing private cars and not to be converted into habitable accommodation. Two areas for additional visitor parking along the access road is also provided which is considered adequate and acceptable. The total number of spaces provided across the site would be 17 comprised of 5 x 3 private space and 2 x visitor spaces and this total exceeds the standards detailed above.

7.10.5 The Highway Authority were consulted on the application and provided initial comments requiring further details in respect of the width of the access point to ensure that it could accommodate two-way access. In addition, they required the submission of a swept path analysis to clearly illustrate that a fire appliance can access the site and turn on site. An updated Site Layout Plan referenced PL01 REV-P2 and a Swept Path Analysis Plan referenced 300198-001 DB32 were provided. The Highway Officer was re-consulted on the additional plans and considered them to be satisfactory and overcome initial concerns and therefore raised no objection subject to conditions in the event of an approval.

## 7.11 Sustainability

7.11.1 Paragraph 93 of the NPPF states that “Planning plays a key role in helping to shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy and associated infrastructure”.

7.11.2 Policy CP1 of the Core Strategy requires the submission of an Energy and Sustainability Statement demonstrating the extent to which sustainability principles have been incorporated into the location, design, construction and future use of proposals and the expected carbon emissions.

7.11.3 Policy DM4 of the DMLDD requires applicants to demonstrate that development will produce 5% less carbon dioxide emissions than Building Regulations Part L (2013) requirements having regard to feasibility and viability. This may be achieved through a combination of energy efficiency measures, incorporation of on-site low carbon and renewable technologies, connection to a local, decentralised, renewable or low carbon energy supply. The policy states that from 2016, applicants will be required to demonstrate that new residential development will be zero carbon. However, the Government has announced that it is not pursuing zero carbon and the standard remains that development should produce 5% less carbon dioxide emissions than Building Regulations Part L (2013) requirements having regard to feasibility and viability.

7.11.4 The application has been accompanied by an Energy Statement prepared by SAPeasy Ltd. which sets out that the development would result in a reduction of an average of 5.97% in carbon emissions. The Energy Statement are considered to meet the requirements of Policy DM4.

## 7.12 Refuse and Recycling

7.12.1 Policy DM10 (Waste Management) of the DMLDD advises that the Council will ensure that there is adequate provision for the storage and recycling of waste and that these facilities are fully integrated into design proposals. New developments will only be supported where:

- i) The siting or design of waste/recycling areas would not result in any adverse impact to residential or work place amenity
- ii) Waste/recycling areas can be easily accessed (and moved) by occupiers and by local authority/private waste providers
- iii) There would be no obstruction of pedestrian, cyclists or driver site lines

7.12.2 The submitted Site Layout Plan indicates that bins would be stored within the private gardens or alongside passageways and would be placed kerbside for collection on refuse days which is considered acceptable. The layout of the development and the access includes a turning circle. The swept path analysis details that refuse vehicles could enter and exit the site in forward gear. The proposed development therefore accords with Policy DM10 of the Development Management Policies LDD and is acceptable.

7.12.3 The site is not in or located adjacent to a designated wildlife site. The application has been submitted with a Biodiversity Checklist, a Preliminary Ecological Assessment and an Outline Bat Mitigation Strategy. The Local Planning Authority is not aware of any records of protected species within the immediate area that would necessitate further surveying work being undertaken. Both Herts Ecology and Herts & Middlesex Wildlife Trust ("HMWT") were consulted on the application. HMWT provided comments and considered that the supporting bat survey provides an acceptable mitigation strategy. As such they raised no objection to the proposed development subject to condition.

## 7.13 'Planning Balance'

7.13.1 As previously mentioned in section 7.1 officers consider that the existing dwelling can be considered a non-designated heritage asset given its identified degree of heritage significance and thus the application would need to satisfy paragraph 197 of the NPPF.

7.13.2 Paragraph 197 states that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

7.13.3 The proposed development would result in the total loss of the existing non-designated heritage asset on site. Whilst the application would result in the provision of new housing there are limited number of other benefits. This report identifies that there are number of material planning considerations which the proposal is found to be unacceptable and thus the benefits of the scheme do not outweigh the demolition of the original building on site.

## 7.14 'Tilted Balance'

7.14.1 The LPA cannot currently demonstrate a 5 year housing land supply, and therefore paragraph 11 of the NPPF (2019) is engaged. Paragraph 11 and footnote 7 clarifies that in the context of decision-taking "the policies which are most important for determining the application are out-of-date when the LPA cannot demonstrate a five year supply of deliverable housing sites". The most important policies for determining a housing

application are considered to be Policies CP2 (Housing Supply) and Policy CP3 (Housing Mix and Density). Paragraph 11 continues, "Plans and decisions should apply a presumption in favour of sustainable development...where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless: a) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or b) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole."

- 7.14.2 The NPPF identifies that there are 3 dimensions to sustainable development: social, economic and environmental. Whilst the development would make a limited contribution towards making up the shortfall in housing in the district, no affordable housing has been secured which conflicts with local policy. In addition, the proposed size and scale of the proposed dwellings would result in prominent features to the detriment of the character of the area and would result in detrimental harm to neighbouring amenity through actual and perceived overlooking and an adverse visual impact. The development would therefore fail to provide environmental or social benefits. Having regard to the limited benefits of the scheme it is considered that the adverse impacts significantly and demonstrably outweigh the benefits of the development and thus the tilted balance does not come into effect.

## **8 Recommendation**

- 8.1 That PLANNING PERMISSION BE REFUSED for the following reasons:

- R1 The existing dwelling is considered to contribute positivity to the streetscene given its architectural and historical interest and therefore has been identified during the planning application as a non-designated heritage asset. The proposed development would result in the existing dwelling's total loss. It is not considered that the development as proposed when considered in its entirety (given the harm identified) would justify the loss of its significance through its demolition. The development would therefore be contrary to CP10 of the Core Strategy (adopted October 2011), Policy DM3 of the Development Management Policies LDD (adopted July 2013) and paragraph 197 of the NPPF (2019).
- R2 The development by reason of its layout, siting, scale and design, proximity to boundaries would cumulatively result in a cramped and contrived overdevelopment of the site which would have a significant and detrimental adverse impact on the character and appearance of the street scene and wider area. The development would therefore be contrary to Policies CP1, CP3 and CP12 of the Core Strategy (adopted October 2011) and Policies DM1 and Appendix 2 of the Development Management Policies LDD (adopted July 2013).
- R3 The proposed development by virtue of its siting and glazing contained within the rear elevations of Plots 3 and 5 would result in actual and perceived overlooking to the detriment of the residential amenities of existing neighbouring occupiers of 80 Gallows Hill Lane and 16-22 Broomfield Rise. The development would therefore be detrimental to residential amenity and would not accord with Policy CP12 of the Core Strategy (adopted October 2011) and Policy DM1 and Appendix 2 of the Development Management Policies LDD (adopted July 2013).
- R4 The proposed development by virtue of the size, height, bulk and massing and siting, of the proposed dwelling within Plot 3 would result in an overbearing form of development which would cause overshadowing to the detriment of the residential amenities of existing neighbouring occupiers of 80 Gallows Hill Lane. The development would therefore be detrimental to residential amenity and would not accord with Policy CP12 of the Core Strategy (adopted October 2011) and Policy DM1 and Appendix 2 of the Development Management Policies LDD (adopted July 2013).

- R5 The proposed development by virtue of the size, height, bulk and massing and siting of the proposed dwelling within Plot 5 would result in an overbearing form of development to the detriment of the residential amenities of existing neighbouring occupiers of 5 and 6 Little Orchard Close. The development would therefore be detrimental to residential amenity and would not accord with Policy CP12 of the Core Strategy (adopted October 2011) and Policy DM1 and Appendix 2 of the Development Management Policies LDD (adopted July 2013).
- R6 In the absence of an agreement under the provisions of Section 106 of Town and Country Planning Act 1990, the development would not contribute to the provision of affordable housing. The proposed development therefore fails to meet the requirements of Policy CP4 of the Core Strategy (adopted October 2011) and the Affordable Housing Supplementary Planning Document (approved June 2011).

## 8.2 **Informatives:**

- I1 The Local Planning Authority has been positive and proactive in considering this planning application in line with the requirements of the National Planning Policy Framework and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015. The Local Planning Authority encourages applicants to have pre-application discussions as advocated in the NPPF. The applicant and/or their agent did not have formal pre-application discussions with the Local Planning Authority and the proposed development fails to comply with the requirements of the Development Plan and does not maintain/improve the economic, social and environmental conditions of the District.

**APPENDIX A: Evidence Relating to the  
Application of the Affordable Housing  
Threshold in Core Strategy Policy CP4:  
Affordable Housing**

## Evidence Relating to the Application of the Affordable Housing Threshold in Core Strategy Policy CP4: Affordable Housing

### 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 1,000sqm. 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 developments, between November 2014 and August 2015 and May 2016 and 1<sup>st</sup> 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 of up to date evidence of housing needs (**The Needs Analysis**), officers advised in 2017 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<sup>1</sup> (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:

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<sup>1</sup> The revised National Planning Policy Framework was updated in February 2019 and retains the policies as stated in Paragraph 1.3 of this document.

- 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 **£2.1 million**. Utilising those monies, development is currently underway which will deliver 21 units of affordable housing, with the remaining monies utilised as a contribution towards the delivery of a further 17 affordable dwellings. It is clear that Three Rivers' policy has already delivered a significant contribution towards the delivery of much needed affordable housing in the district.

1.8 In addition to the £2.1 million already received, small scale (1-9 unit) schemes have secured to date a further **£2.5million to £3.8million<sup>2</sup>** of affordable housing contributions in respect of unimplemented but current planning permissions. All of those schemes were agreed to be viable with those sums secured. The Council has several large scale future residential developments planned which will aim to deliver substantial quantities of further affordable housing in the District in the medium term future, utilising those additional affordable housing contributions as and when they are received.

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. The application of CP4, which includes this in built viability allowance, cannot properly be said to be a barrier to delivery. Indeed between 1 October 2011 and 31 March 2020 226 planning permissions were granted for minor residential developments which contribute a net dwelling gain. Of those only 21 have been permitted to lapse which is only 9% of all such schemes.

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<sup>2</sup> The sums payable secured by Sec 106 will be subject to indexation, in most cases from June 2011 which will not be calculable until the date of payment. The quoted upper limit includes a policy compliant contribution of £1,341,250.00 which relates to a minor development PP subject to a late stage viability review mechanism. The AHC, whilst capped at this figure, will only be known once viability is re-run at occupation when actual build costs and realised sales values are understood. The contribution paid could therefore be substantially less than the policy compliant sum referred to above, hence the range specified.

- 1.10 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.

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

- 1.11 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: from 1 April 2017 to 31 March 2020, 177 planning applications for residential development involving a net gain of dwellings were determined<sup>3</sup> by the Council. Of these, 158 applications (89%) 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. This is dealt with in more detail below.
- 1.12 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":

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<sup>3</sup> Includes refused and approved applications. Excludes prior approval developments.



***“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>4</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 six local authority areas (see table 1 below).

Number	Local Authority Name	Lowest Quartile House Prices (2016)
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<sup>4</sup> ONS (2020) *Dataset: House price to residence-based earnings ratio Table 6a*  
<https://www.ons.gov.uk/peoplepopulationandcommunity/housing/datasets/ratioofhousepricetoresidencebasedearningslowerquartileandmedian>

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
7	<b>Three Rivers</b>	<b>£325,000.00</b>

**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), the lowest quartile house price in Three Rivers in September 2019 was £347,000<sup>5</sup>. The lowest quartile house price of £347,000 continues to place Three Rivers as the **seventh** most expensive local authority area in England and Wales (excluding London), out of a total of three hundred and six local authority areas (see table 2 below). Whilst Three Rivers' position as the seventh most expensive local authority area remains consistent, the lowest quartile house price has risen by £22,000 from 2016 to 2019.

Number	Local Authority Name	Lowest Quartile House Prices (2019)
1	South Bucks	£410,000
2	Elmbridge	£400,500
3	St Albans	£385,000
4	Chiltern	£370,000
5	Epsom and Ewell	£357,000
6	Windsor and Maidenhead	£355,667
7	<b>Three Rivers</b>	<b>£347,000</b>

**Table 2.**

Lowest quartile earnings in Three Rivers in 2016 were £24,518.00 and £24,811.00 in 2019, 13.3 times worsening to 14 below the lowest quartile house prices (ratio of lower quartile house prices to lower quartile gross annual, residence based earnings<sup>6</sup>). In a mortgage market where lenders are traditionally willing to lend 3.5 times a person's income, clearly a lending requirement at 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 2019 to have a deposit of £260,161.00, or (without such a deposit) to earn £99,143.00 per annum to get onto the lowest/cheapest rung of the property ladder. An additional Stamp Duty payment would also have been due (subject to COVID related temporary relaxation).

When one considers the median affordability ratio<sup>7</sup> for Three Rivers compared to the rest of England and Wales, the position is even more serious: in 2016, the median quartile income to median quartile house price affordability ratio was 13.77, the fifth worst affordability ratio in England and Wales (excluding London), as set out in table 3 below, again when compared against three hundred and six local authorities.

Number	Local Authority Name	Median quartile house price affordability ratio <sup>8</sup> (2016)
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<sup>5</sup> Office for National Statistics (2020) *Dataset: House price to residence-based earnings ratio Table 6a* <https://www.ons.gov.uk/peoplepopulationandcommunity/housing/datasets/ratioofhousepricetoresidencebasedearningslowerquartileandmedian>

<sup>6</sup> Office for National Statistics (2020) *Dataset: House price to residence-based earnings ratio Table 6b* <https://www.ons.gov.uk/peoplepopulationandcommunity/housing/datasets/ratioofhousepricetoresidencebasedearningslowerquartileandmedian>

<sup>7</sup> Affordability ratio statistics are revised annually by the ONS to reflect revisions to the house price statistics and earnings data.

1	South Bucks	14.49
2	Hertsmere	14.23
3	Mole Valley	14.18
4	Elmbridge / Chiltern	13.87
<b>5</b>	<b>Three Rivers</b>	<b>13.77</b>

**Table 3.**

The median quartile house price affordability ratio has worsened since 2016. In 2019, Three Rivers had the third worst affordability ratio in England and Wales (excluding London), with its median quartile house affordability ratio measured at 14.53<sup>8</sup>, as set out in table 4 below. In 2017 and 2018, the median quartile house affordability ratios were 14.31 and 13.75 respectively. Whilst the ratio slightly improved from 2016 to 2018 with a decrease to 13.75, the 14.53 ratio measured in 2019 demonstrates a worsening position over the longer term 2016-2019 period.

Number	Local Authority Name	Median quartile house price affordability ratio <sup>1</sup> (2019)
1	Isles of Scilly	17.71
2	Mole Valley	14.87
<b>3</b>	<b>Three Rivers</b>	<b>14.53</b>

**Table 4.**

Looking at the ratio of lower quartile house prices to lower quartile to gross annual, residence based earnings, in 2016 the ratio was 13.26. By September 2019 that had risen to 13.99, showing a worsening ratio over the period from 2016 to 2019.

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>9</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

<sup>8</sup> Office for National Statistics (2020) *Dataset: House price to residence-based earnings ratio Table 5c*  
<https://www.ons.gov.uk/peoplepopulationandcommunity/housing/datasets/ratioofhousepricetoresidencebasedearningslowerquartileandmedian>

<sup>9</sup> Table 33: Estimated Current Need, South West Hertfordshire Housing Market Assessment (January 2016).

period from 2013 to 2036. This is 2,391 units per annum.<sup>10</sup> The net need within Three Rivers was calculated as being 357 units per annum or 8,211 units over the same 23 year period. The SMHA identified the district's OAN for the next plan period as being 514 dwellings a year; thus affordable housing need equates to 69% of total housing need.

### **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 2020 (the latest date where the most recent completion figures are available), 4,689 gross dwellings were completed. From this, 1,037 were secured as affordable housing, a total of 22.1%. This percentage is significantly below the Core Strategy target of 45% which means there was a shortfall of 1,073 or 23% in order to fulfil the 45% affordable housing requirement up to 31 March 2020. This shortfall only exacerbates the already pressing need for small sites to contribute towards the provision of affordable housing.
- 2.11 In the latest monitoring period of 2019/20 (financial year), 17 sites<sup>11</sup> delivered a net gain of one or more dwellings and would therefore be required to contribute to affordable housing under Policy CP4 (either through an on-site or off-site contribution). These were made up of five major developments (29%) and 12 minor developments (71%). Only five schemes contributed to affordable housing provision:
- Four out of the 17 provided viability justification, in line with CP4 policy, for the absence of affordable housing provision.
  - Eight of the applications were determined during the 2014/15 and 2016/17 periods noted at 1.2 above (when the Council was dealing with applications on the basis that the WMS should be given overriding effect regardless of the viability position on specific schemes). Affordable housing provision was forgone on them on this basis, which is now reflected in the low affordable provision as they are built out.
  - Of the five sites which contributed to affordable housing delivery in 2019/20 four were major developments and one was a minor development (17/2628/FUL – Thrive Homes (Registered Provider) scheme). This reflects the pattern of on-site delivery from large schemes, with commuted sums from minor developments (see para. 2.12).

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

- 2.12 In 2017/2018 (financial year), there were 67 planning applications determined<sup>12</sup> for net gain residential schemes, of which 57 were small site schemes (85%). In 2018/19 (financial year), there were 50 planning applications determined for net gain residential schemes, of which 46 were small site schemes (92%). In 2019/20 (financial year), there were 60 planning applications for net gain residential schemes determined, of which 55 were small sites

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<sup>10</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.

<sup>11</sup> Sites with completions in 2019/20

<sup>12</sup> Includes refused and approved applications. Excludes prior approval developments.

schemes (92%). It is therefore clear that a high proportion of small site schemes have been proposed in the District, equating to 89% of applications over the past three years.

- 2.13 In terms of numbers of completed dwellings proposed by those small site schemes, between 2011-2020 (financial years) some 341 net dwellings were completed which equates to 38 net dwellings per annum and to 20.8% over the 2011-2020 period. 20.8% is a significant proportion of the overall supply. Whilst such numbers are significant, it is acknowledged that major developments, whilst far less frequent, provided significantly greater quantities of housing. However CP4(e) does not generally require small site schemes to provide on-site affordable housing (small-scale piecemeal development is unattractive to RP's). Instead commuted sums in lieu of on-site provision are required and thus it is the sums of money secured and the contribution those make towards the provision of additional much needed affordable housing in the District which the policy should be tested against. This has been acknowledged by Planning Inspectors on appeal, as referred to at paragraph 2.21 below: APP/P1940/W/19/3230999, 27 Gable Close, Abbots Langley: *"It also identifies the importance of small sites in providing affordable housing with contributions from small sites amounting to over £2.1 million since 2011 being spent towards the delivery of 38 affordable dwellings."*

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

- 2.14 As set out at paragraphs 1.7 and 1.8 above, the commuted payments (£2.1 million) to be spent on the provision of affordable housing which have been collected by the Council to date have made a direct contribution towards the identified affordable housing shortfall in the district: providing some 21 units with some of the monies being utilised to assist in the delivery of a further 17 units (38 in total). Furthermore, as set out at paragraph 1.8 above, small scale (1-9 unit) schemes have (as at December 2019) secured a further **£2.5million - £3.8million** (see footnote 2) in respect of unimplemented but current planning permissions. The Council has several large scale future residential developments planned which will aim to deliver substantial quantities of further affordable housing in the District in the medium term future, utilising those additional affordable housing contributions as and when they are received. It is clear therefore that CP4(e) has made and will continue to make a significant contribution towards the provision of much needed affordable housing in the District in the future.

**Adopted development plan policy does not impose burdens where they would render schemes unviable**

- 2.15 As set out at paragraph 1.9 above, 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. The application of CP4, which includes this in built viability allowance, cannot properly be said to be a barrier to delivery. The Council accepts that if, properly tested, viability cannot be established on current day costs and values then a scheme should not currently be required to provide or contribute to affordable housing delivery. Between 1 October 2011 and 31 March 2020 there were 226 planning permissions granted for minor (net gain) residential developments in the District. Of those only 21 have lapsed (9%). This demonstrates that the application of CP4 has not acted as a brake on small scale residential developments.

**Relevant Appeal Decisions**

- 2.16 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.
- 2.17 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.
- 2.18 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.
- 2.19 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.
- 2.20 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>13</sup>*
- 2.21 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.
- 2.22 The Council's stance has been tested on appeal on numerous occasions and the Planning Inspectorate have repeatedly concluded (16 decisions as at the date of this document) that whilst the NPPF carries considerable weight, it does not outweigh CP4 of the Councils development plan given the acute and substantial need for affordable housing in the District

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<sup>13</sup> Paragraph 7, Planning Inspectorate Letter, March 2017.

and the important contribution small sites make towards addressing this shortfall. Below are extracts from a few of those decisions:

- **APP/P1940/W/19/3222318, Eastbury Corner, 13 Eastbury Avenue, Northwood, Decision date: 21<sup>st</sup> June 2019:**  
*“The Council has however provided robust evidence to demonstrate high affordable housing need locally and that affordability in the District continues to deteriorate. Indeed, needs analysis carried out by the Council highlights the importance of small sites in addressing shortfall and the lack of affordability that exists in the District. I apply substantial weight to this local evidence due to its recentness and the clear conclusions that can be drawn from it. Policy CP4 makes it clear that site circumstances and financial viability will be taken into account when seeking affordable housing provision.”*
- **APP/P1940/W/19/3221363, The Swallows, Shirley Road, Abbots Langley Decision date: 27<sup>th</sup> June 2019:**  
*“The Council has however provided robust evidence to demonstrate high affordable housing need locally and that affordability in the District continues to deteriorate. Indeed, needs analysis carried out by the Council highlights the importance of small sites in addressing shortfall and the lack of affordability that exists in the District. I apply substantial weight to this local evidence due to its recentness and the clear conclusions that can be drawn from it.”*
- **APP/P1940/W/19/3225445, 6 Berkely Close, Abbots Langley Decision date 5<sup>th</sup> August 2019:**  
*“The Council has provided robust evidence of high affordable housing need in the District, and in line with the findings of other appeal decisions cited by the Council, I attribute substantial weight to that need as a consequence and consider that a contribution towards the provision of affordable housing is necessary.”*
- **APP/P1940/W/19/3230999, 27 Gable Close, Abbots Langley Decision Date: 1<sup>st</sup> November 2019:**  
*“The Council has provided detailed evidence of acute affordable housing need locally: a Needs Analysis was undertaken in May 2016 after the publication of the Written Ministerial Statement which introduced the affordable housing thresholds now included in the Framework. Based on the Needs Analysis, the Council’s evidence highlights the issue of general house price affordability in the District, plus an exceptionally high need for affordable housing exacerbated by a significant shortfall in supply. It also identifies the importance of small sites in providing affordable housing with contributions from small sites amounting to over £2.1 million since 2011 being spent towards the delivery of 38 affordable dwellings.  
A further Needs Analysis following publication of the revised Framework in July 2018 demonstrated that housing stress had increased since 2016. The Council has therefore revisited its position following the update to national policy. There is no evidence before me that affordable housing contributions are acting as a brake on development. Rather, the evidence is that contributions from small sites collected since the policy was adopted in 2011 are delivering affordable housing on the ground. Due to its recentness and the clear conclusions that can be drawn from it, I give this local evidence substantial weight. It underpins the approach in Policy CP4 as an exception to national policy.”*
- **APP/P1940/W/19/3230911, 67 & 69 St Georges Drive, Carpenders Park, Decision date 22<sup>nd</sup> October 2019:**  
*“The Council has undertaken several needs analyses, the latest being July 2018, to demonstrate the acute shortage of affordable housing in the District, especially in light of high house prices and that much of the District is also constrained by the Metropolitan Green Belt. It further highlights the importance small sites make to the contribution to the overall provision of affordable housing. Up until the end of March 2017 there has only been 22.6% of affordable housing provision which falls short of*

*the policy requirement of 45% The shortfall demonstrates that the provision of affordable housing is still very much needed, such that Policy CP4 should continue to apply to small sites, despite the Framework and the WMS. In light of the Council's body of evidence that demonstrates the particular housing circumstances and needs of the District, I attach substantial weight to this local evidence and consider that the national policy position does not outweigh the development plan and Policy CP4 in this instance."*

- **APP/P1940/W/19/3230458, 19 Lynwood Heights, Rickmansworth,**

**Decision date 11<sup>th</sup> October 2019:**

*"The Council states that its Strategic Housing Market Assessment (2010) has demonstrated that there is a significant affordable housing need locally due to very high house prices and rents and a constricted supply of suitable housing sites. Further, the South West Hertfordshire Strategic Housing Market Assessment (2016) estimated a net affordable housing need of 14,191 in the District between 2013-36 and there is also a worsening situation with regards to affordability. Based on the Council's evidence the District is the 7<sup>th</sup> most expensive local authority area in England and Wales in 2016 and demonstrates that its application of Policy CP4 has delivered a significant contribution of over £2.1 million towards the delivery of affordable housing without disrupting the supply of small residential sites. Decisions should be made in accordance with the development plan unless material considerations indicate otherwise. The robust evidence referred to in footnote 1 and the clear need to deliver affordable housing in the District underpins the Council's approach in Policy CP4 as an exception to national policy and therefore in this case, the Framework's threshold would not outweigh the conflict with the development plan. I therefore attach considerable weight to Policy CP4. I am also referred to a number of recent appeal decisions in the District which support this approach and are therefore relevant to the scheme before me and as such carry considerable weight."*

- **APP/P1940/W/18/3213370: No.9 Lapwing Way, Abbots Langley.**

**Decision Date 22<sup>nd</sup> May 2019:**

*"In considering whether provision should be made for affordable housing, there are two matters that need to be addressed. Firstly, whether in principle the provisions of Policy CP4 are outweighed by more recent Government policy. Secondly, if not, whether for reasons of financial viability a contribution is not required... There is no evidence before me that the application of Policy CP4 has put a brake on small windfall sites coming forward. Indeed, such sites have contributed over £2m to the affordable housing pot since 2011... Decisions should be made in accordance with the development plan unless material considerations indicate otherwise. There are very important factors in support of the continued application of Policy CP4. These factors are not unique to Three Rivers. Government policy does not suggest that areas where affordability is a particular issue should be treated differently. Nonetheless, although a weighty matter, the national policy threshold is not a material consideration which outweighs the conflict with the development plan in this case. In making this policy judgment I have given considerable but not full weight to Policy CP4. I have also had regard to the other appeal decisions in the south-east referred to by the Council where Inspectors considered development plan policies seeking affordable housing against national policy. My approach is consistent with these decisions."*

- **APP/P1940/W/19/3219890: 4 Scots Hill, Croxley Green**

**Decision Date 5<sup>th</sup> May 2019:**

*Whilst the appeal was allowed the Inspector considered that when "having regard to TRDCS Policy CP4 and the Council's Affordable Housing Supplementary Planning Document 2011, I consider that a contribution towards the provision of affordable housing is necessary. A draft unilateral undertaking was submitted at appeal stage and was agreed by the Council."*

- **APP/1940/W/19/3229274: 101 Durrants Drive, Croxley Green**

**Decision Date 16<sup>th</sup> August 2019:**



*“Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise... Therefore, I find that the proposal would fail to make appropriate provision for affordable housing and as such, would be contrary to policy CP4 of the CS which seeks to secure such provision, which although does not attract full weight, in light of the evidence provided, attracts significant weight sufficient to outweigh paragraph 63 of the Framework.”*

- **APP/P1940/W/19/3238285: Bell Public House, 117 Primrose Hill, Kings Langley**  
**Decision Date 9<sup>th</sup> March 2020**

*“Even taking the appellants figures that 22.8% of affordable units have arisen from non major sites, I consider this to be an important and meaningful contribution...even taking the appellant’s figures my conclusion remains unaltered.”*

- **APP/P1940/W/19/3229189: Glenwood, Harthall Lane, Kings Langley**  
**Decision Date 7<sup>th</sup> May 2020**

*“The Council’s evidence sets out the acute need for affordable housing in the area and the importance of small sites in contributing to the provision of such housing. They also highlighted a large number of recent appeal decisions for small residential schemes where it has been considered that the exceptional local need should outweigh government policy, as set out in the Framework... Despite the appellant’s evidence, which included reference to a Local Plan Consultation Document (October 2018) and an analysis undertaken by them based on the Council’s Housing Land Supply Update (December 2018), it was clear to me, in the light of all the evidence before me, that a pressing need for affordable housing in the area remains. It was also clear that small sites play a key role in ensuring this provision. As such, in this case, I am satisfied that although considerable weight should be given to the Framework, it does not outweigh the development plan policy.”*

- **APP/P1940/W/20/3249107: 2 Church Cottages, Old Uxbridge Road, West Hyde**  
**Decision Date: 21<sup>st</sup> October 2020**

*“The Framework at paragraph 63 sets out that the 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. That said, there is clear evidence to suggest that there is an acute need for affordable housing in the Three Rivers District and there have been several appeal decisions which supported this view... I agree that there are special circumstances which justify the provision of affordable housing below the Framework’s suggested threshold... As a result, the proposal would be contrary to Policy CP4 of the CS which amongst other matters seeks to increase the provision of affordable homes including by means of a commuted sum payment for sites of between one and nine dwellings... I have also had regard to the obvious benefits in relation to the provision of a much-needed new dwelling. However, the benefits of this are outweighed by the lack of provision for affordable housing”*

## **Conclusion**

- 2.23 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 in 2018, in December 2019 and 2020 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 2019 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.

**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), Three Rivers District Council (3222318, 3221363, 3225445, 3230999, 3230911, 3230458, 3213370, 3219890, 3229274, 3238285, 3229189, 3249107)**

**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/eqcl-page/core-strategy>
2. Annual Monitoring Report 2019/2020 (December 2020)  
<http://www.threerivers.gov.uk/eqcl-page/annual-monitoring-report>
3. Affordable Housing Supplementary Planning Document (June 2011)  
<http://www.threerivers.gov.uk/eqcl-page/supplementary-planning-documents>
4. South West Hertfordshire Strategic Housing Market Assessment (January 2016)  
<http://www.threerivers.gov.uk/eqcl-page/shma-and-economic-study-for-future-review-of-local-plan>
5. Office of National Statistics Housing Data 2002-19  
<https://www.ons.gov.uk/peoplepopulationandcommunity/housing/datasets/ratioofhousepricetoresidencebasedearningslowerquartileandmedian>

**December 2020**

